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**GENERAL PORTION (REAL ESTATE
PRINCIPLES AND PRACTICES)**

PSI 1 PROPERTY OWNERSHIP (8/10%)

A. Real versus personal property; conveyances

B. Land characteristics and legal descriptions

1. Types of legal descriptions; Metes and bounds, Lot and block, government survey
2. Measuring structures
3. Livable, rentable, and usable area
4. Land Measurement
5. Mineral, air, and water rights

C. Encumbrances and effects on property ownership

1. Liens
2. Easements and licenses
3. Encroachments
4. Other potential encumbrances of title

TYPES OF OWNERSHIP

TENANTS IN COMMON

JOINT TENANCY

COMMON- INTEREST OWNERSHIP

TIMESHARES

CONDOMINIUMS

CO-OPS

OWNERSHIP IN SEVERALTY/SOLE OWNERSHIP

LIFE ESTATE OWNERSHIP

**PROPERTY OWNERSHIP
HELD IN TRUST (BROKER
ONLY)**

I. PROPERTY OWNERSHIP (Salesperson 8%; Broker 10%)

UNIT 2

Real Property and the Law

REAL PROPERTY AND THE LAW

- Real estate is a market like any other.

REAL PROPERTY AND THE LAW

- Real property is the product, and the real estate professional is the salesperson

REAL PROPERTY AND THE LAW

- The real estate professional needs to know enough about the product to be able to educate and guide clients and customers, whether they are buyers, sellers, renters, or investors.

UNIT OBJECTIVES

- Discuss the concepts of land and ownerships rights in real property

UNIT OBJECTIVES

- Distinguish between real and personal property and the differences in transferring ownership and title

UNIT OBJECTIVES

- Describe and explain the basic economic and physical characteristics of real property

UNIT OBJECTIVES

- Discuss the limitations of the real estate professional under the law

KEY TERMS TO DEFINE AND RECORD

- Accession

KEY TERMS TO DEFINE AND RECORD

- **Accession**
 - Acquiring title to additions or improvements to real property as a result of the annexation of fixtures or the accretion of alluvial deposits along the banks of streams.

KEY TERMS TO DEFINE AND RECORD

- Accretion

KEY TERMS TO DEFINE AND RECORD

❑ Accretion

- ❑ The increase or addition of land by the deposit of sand or soil washed up naturally from a river, lake, or sea.

KEY TERMS TO DEFINE AND RECORD

- Air Rights

KEY TERMS TO DEFINE AND RECORD

- Air Rights
 - The right to use the open space above a property, usually allowing the surface to be used for another purpose.

KEY TERMS TO DEFINE AND RECORD

- Allodial System

KEY TERMS TO DEFINE AND RECORD

- **Allodial System**

- A system of land ownership in which land is held free and clear of any rent or service due to the government; commonly contrasted to the feudal system. Land is held under the allodial system in the United States.

KEY TERMS TO DEFINE AND RECORD

- Annexation

KEY TERMS TO DEFINE AND RECORD

- **Annexation**
 - Process of converting personal property into real property.

KEY TERMS TO DEFINE AND RECORD

- Appurtenance

KEY TERMS TO DEFINE AND RECORD

- Appurtenance
 - A right, privilege, or improvement belonging to, and passing with, the land; “runs with the land.”

KEY TERMS TO DEFINE AND RECORD

- Area Preference

KEY TERMS TO DEFINE AND RECORD

- Area Preference
 - People's desire for one area over another, based on a number of factors such as history, reputation, convenience, scenic beauty, and location.

KEY TERMS TO DEFINE AND RECORD

- Attachment

KEY TERMS TO DEFINE AND RECORD

- Attachment
 - The act of taking a person's property into legal custody by writ or other judicial order to hold it available for application to that person's debt to a creditor.

KEY TERMS TO DEFINE AND RECORD

- Avulsion

KEY TERMS TO DEFINE AND RECORD

- **Avulsion**
 - The sudden tearing away of land, as by earthquake, flood, volcanic action, or the sudden change in the course of a stream.

KEY TERMS TO DEFINE AND RECORD

- Bundle of Legal Rights

KEY TERMS TO DEFINE AND RECORD

- **Bundle of Legal Rights**
 - The concept of land ownership that includes ownership of all legal rights to the land-possession, control within the law, enjoyment, exclusion, and disposition.

KEY TERMS TO DEFINE AND RECORD

- Common Law

KEY TERMS TO DEFINE AND RECORD

- **Common Law**
 - The body of law based on custom, usage, and court decisions.

KEY TERMS TO DEFINE AND RECORD

- Constructive Annexation

KEY TERMS TO DEFINE AND RECORD

- **Constructive Annexation**
 - The combination of items into real property that are not fixed or fastened to the property.

KEY TERMS TO DEFINE AND RECORD

- Dwelling

KEY TERMS TO DEFINE AND RECORD

- Dwelling
 - Any building or part of a building designed for occupancy as a residence by one or more families.

KEY TERMS TO DEFINE AND RECORD

- Easement by Implication

KEY TERMS TO DEFINE AND RECORD

- Easement by Implication
 - An easement that occurs when a party's actions reflect the intention to create an easement.

KEY TERMS TO DEFINE AND RECORD

- Emblems

KEY TERMS TO DEFINE AND RECORD

- **Emblements**
 - Growing crops, such as corn, that are produced annually through labor and industry; also called fructus industriales.

KEY TERMS TO DEFINE AND RECORD

- Erosion

KEY TERMS TO DEFINE AND RECORD

- **Erosion**
 - The gradual and sometimes imperceptible wearing away of the land by natural forces, such as wind, rain, and flowing water.

KEY TERMS TO DEFINE AND RECORD

- Feudal System

KEY TERMS TO DEFINE AND RECORD

- **Feudal System**

- A system of ownership usually associated with pre-colonial England, in which the king or other sovereign is the source of all rights. The right to possess real property was granted by the sovereign to an individual as a life estate only. Upon the death of the individual, title passed back to the sovereign, not to the decedent's heirs.

KEY TERMS TO DEFINE AND RECORD

- Fixture

KEY TERMS TO DEFINE AND RECORD

- **Fixture**
 - An item of personal property that has been converted to real property by being permanently affixed to the realty.

KEY TERMS TO DEFINE AND RECORD

- Immobility

KEY TERMS TO DEFINE AND RECORD

- **Immobility**
 - The fact that property cannot be relocated to satisfy demand where supply is low, nor can buyers always relocate to areas with greater supply.

KEY TERMS TO DEFINE AND RECORD

- Improvement

KEY TERMS TO DEFINE AND RECORD

- **Improvement**
 - (1) Any structure, usually privately owned, erected on a site to enhance the value of the property (e.g., a building, fence, or driveway).

KEY TERMS TO DEFINE AND RECORD

- (2) A publicly owned structure added to or benefitting land (e.g., a curb, sidewalk, street, or sewer).

KEY TERMS TO DEFINE AND RECORD

- Judicial Precedent

KEY TERMS TO DEFINE AND RECORD

- **Judicial Precedent**
 - In law, the requirements established by prior court decisions within the jurisdiction of the dispute.

KEY TERMS TO DEFINE AND RECORD

- Land

KEY TERMS TO DEFINE AND RECORD

- Land
 - The earth's surface, extending downward to the center of the earth and upward infinitely into space including things permanently attached by nature, such as trees.

KEY TERMS TO DEFINE AND RECORD

- Littoral Rights

KEY TERMS TO DEFINE AND RECORD

- **Littoral Rights**

- (1) A landowner's claim to use water in large navigable lakes and oceans adjacent to her property.

KEY TERMS TO DEFINE AND RECORD

- (2) The ownership rights to land bordering these bodies of water up to the high-water mark.

KEY TERMS TO DEFINE AND RECORD

- Manufactured Housing

KEY TERMS TO DEFINE AND RECORD

- **Manufactured Housing**
 - Dwellings that are built off site and trucked to a building lot where they are installed or assembled.

KEY TERMS TO DEFINE AND RECORD

- Nonhomogeneity

KEY TERMS TO DEFINE AND RECORD

- **Nonhomogeneity**
 - A lack of uniformity; dissimilarity. Because no two parcels of land are exactly alike, real estate is said to be nonhomogeneous.

KEY TERMS TO DEFINE AND RECORD

- Panic Peddling

KEY TERMS TO DEFINE AND RECORD

- **Panic Peddling**
 - The illegal practice of soliciting people in a neighborhood to sell their homes because of fear or alarm; also referred to as blockbusting.

KEY TERMS TO DEFINE AND RECORD

- Personal Property

KEY TERMS TO DEFINE AND RECORD

- **Personal Property**
 - Items, called chattels, that do not fit into the definition of real property; movable objects.

KEY TERMS TO DEFINE AND RECORD

- Personality

KEY TERMS TO DEFINE AND RECORD

- **Personalty**
 - Personal Property

KEY TERMS TO DEFINE AND RECORD

- Possession

KEY TERMS TO DEFINE AND RECORD

- **Possession**
 - Owning or occupying a property.

KEY TERMS TO DEFINE AND RECORD

- Prior Appropriation

KEY TERMS TO DEFINE AND RECORD

- **Prior Appropriation**
 - A concept of water ownership in which the landowner's right to use available water is based on a government-administered permit system.

KEY TERMS TO DEFINE AND RECORD

- Protected Class

KEY TERMS TO DEFINE AND RECORD

- **Protected Class**
 - Any group of people designated as such by the Department of Housing and Urban Development (HUD) in consideration of federal civil rights legislation.

Individual states and local jurisdictions provide such designation to additional groups as well.

KEY TERMS TO DEFINE AND RECORD

- Real Estate

KEY TERMS TO DEFINE AND RECORD

- **Real Estate**
 - Land; a portion of the earth's surface extending downward to the center of the earth and upward infinitely into space, including all things permanently attached to it, whether naturally or artificially.

KEY TERMS TO DEFINE AND RECORD

- Real Estate License Law

KEY TERMS TO DEFINE AND RECORD

- **Real Estate License Law**
 - State law enacted to protect the public from fraud, dishonesty, and incompetence on the part of those they hire to represent them in the purchase and sale of real estate.

KEY TERMS TO DEFINE AND RECORD

- Real Estate Recovery Fund

KEY TERMS TO DEFINE AND RECORD

- **Real Estate Recovery Fund**
 - A fund established in some states from real estate license revenues to cover claims of aggrieved parties who have suffered monetary damage through the actions of a real estate professional.

KEY TERMS TO DEFINE AND RECORD

- Real Property

KEY TERMS TO DEFINE AND RECORD

- **Real Property**
 - The interests, benefits, and rights inherent in real estate ownership; often used as a synonym for real estate.

KEY TERMS TO DEFINE AND RECORD

- Revocation

KEY TERMS TO DEFINE AND RECORD

- **Revocation**
 - Canceling or annulling licensed privileges or rights.

KEY TERMS TO DEFINE AND RECORD

- Riparian Rights

KEY TERMS TO DEFINE AND RECORD

- **Riparian Rights**
 - An owner's rights in land that borders on or includes a stream, river, or lake. These rights include access to and use of the water.

KEY TERMS TO DEFINE AND RECORD

- Rules and Regulations

KEY TERMS TO DEFINE AND RECORD

- **Rules and Regulations**
 - Real estate licensing authority orders that govern real estate professionals' activities, having the same force and effect as statutory law.

KEY TERMS TO DEFINE AND RECORD

- Severance

KEY TERMS TO DEFINE AND RECORD

- Severance
 - Changing an item of real estate to personal property by detaching it from the land (e.g., cutting down a tree).

KEY TERMS TO DEFINE AND RECORD

- Situs

KEY TERMS TO DEFINE AND RECORD

- **Situs**
 - The location of land for legal purposes; the jurisdiction in which land is located.

KEY TERMS TO DEFINE AND RECORD

- Subsurface Rights

KEY TERMS TO DEFINE AND RECORD

- **Subsurface Rights**
 - Ownership rights in a parcel of real estate to the water, minerals, gas, oil, and so forth that lie beneath the surface of the property.

KEY TERMS TO DEFINE AND RECORD

- Surface Rights

KEY TERMS TO DEFINE AND RECORD

- **Surface Rights**
 - Ownership rights in a parcel of real estate that are limited to the surface of the property and do not include the space above it (air rights) or the substances below the surface (subsurface rights).

KEY TERMS TO DEFINE AND RECORD

- Tie-in Agreement

KEY TERMS TO DEFINE AND RECORD

- **Tie-in Agreement**
 - Agreement to sell one product only if the buyer purchases another product as well; also called a tying agreement.

KEY TERMS TO DEFINE AND RECORD

- Trade Fixture

KEY TERMS TO DEFINE AND RECORD

- Trade Fixture
 - An article installed by a tenant under the terms of a lease that is removable by the tenant before the lease expires.

KEY TERMS TO DEFINE AND RECORD

- Uniform Commercial Code (UCC)

KEY TERMS TO DEFINE AND RECORD

- **Uniform Commercial Code (UCC)**
 - A codification of commercial law, adopted in most states, that attempts to make uniform all laws relating to commercial transactions, including chattel mortgages and bulk transfers. Security interests in chattels are created by an instrument known as a security agreement.

KEY TERMS TO DEFINE AND RECORD

To give notice of the security interest, a financing statement must be recorded. Article 6 of the code regulates bulk transfers-the sale of a business as a whole, including all fixtures, chattels, and merchandise.

KEY TERMS TO DEFINE AND RECORD

- Water Rights

KEY TERMS TO DEFINE AND RECORD

- **Water Rights**
 - Common law rights held by owners of land adjacent to rivers, lakes, or oceans; includes restrictions on those rights and land ownership.

B. Land characteristics and legal descriptions

LAND, REAL ESTATE AND REAL PROPERTY

Land

- Land is defined as the earth's surface extending downward to the center of the earth and upward to infinity.

REAL ESTATE AND REAL PROPERTY

Real Estate

- Real estate is defined as land plus all human-made improvements to the land that are permanently attached (annexed) to it.

REAL ESTATE AND REAL PROPERTY

Real Estate (cont.)

- An improvement to land can be any artificial thing attached on or below ground, such as a building, fence, water line or sewer pipe, as well as growing things that are made part of the landscaping.

REAL ESTATE AND REAL PROPERTY

Real Property

- Real property is defined as the interests, benefits, and rights that are automatically included in the ownership of real estate.

SURFACE, SUBSURFACE AND AIR RIGHTS

Surface rights

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

BUNDLE OF LEGAL RIGHTS

- Possession

BUNDLE OF LEGAL RIGHTS

- Control

BUNDLE OF LEGAL RIGHTS

- Enjoyment

BUNDLE OF LEGAL RIGHTS

- Exclusion

BUNDLE OF LEGAL RIGHTS

- Disposition

BUNDLE OF LEGAL RIGHTS

- “DEEP C”

TITLE TO REAL PROPERTY

- The right to or ownership of the property, including the owner's bundle of legal rights.

TITLE TO REAL PROPERTY

- Evidence of that ownership by a deed

SURFACE, SUBSURFACE AND AIR RIGHTS

Subsurface rights

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

SURFACE, SUBSURFACE AND AIR RIGHTS

Air rights

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

5. Mineral, air, and water rights

WATER RIGHTS

- Littoral Rights

WATER RIGHTS

- Accretion, Erosion and Avulsion

WATER RIGHTS

- Doctrine of Prior Appropriation

REAL PROPERTY VS. PERSONAL PROPERTY

- Personal Property (chattels)

REAL PROPERTY VS. PERSONAL PROPERTY

- Factory-Built Housing

REAL PROPERTY VS. PERSONAL PROPERTY

- Plants

REAL PROPERTY VS. PERSONAL PROPERTY

- Fructus Naturales

REAL PROPERTY VS. PERSONAL PROPERTY

- Emblements (fructus industriales)

CLASSIFICATION OF FIXTURES

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

LEGAL TEST OF A FIXTURE

- Method of annexation

LEGAL TEST OF A FIXTURE

- Adaptability of item to land's use

LEGAL TEST OF A FIXTURE

- Relationship of parties

LEGAL TEST OF A FIXTURE

- Intention in placing item on the land

LEGAL TEST OF A FIXTURE

- Agreement of the parties

TRADE FIXTURES

- Usually owned and installed by a tenant for the tenant's use

TRADE FIXTURES

- May be attached to a building so they appear to be fixtures, but are removable

CHARACTERISTICS OF REAL PROPERTY

Economic Characteristics

- Scarcity

CHARACTERISTICS OF REAL PROPERTY

Economic Characteristics

- Improvements

CHARACTERISTICS OF REAL PROPERTY

Economic Characteristics

- Permanence of Investment

CHARACTERISTICS OF REAL PROPERTY

Economic Characteristics

- Area Preference (situs)

CHARACTERISTICS OF REAL PROPERTY

Physical Characteristics

- Immobility

CHARACTERISTICS OF REAL PROPERTY

Physical Characteristics

- Indestructibility

CHARACTERISTICS OF REAL PROPERTY

Physical Characteristics

- Uniqueness

LAWS AFFECTING REAL ESTATE

- Contract Law

LAWS AFFECTING REAL ESTATE

- General Property Law

LAWS AFFECTING REAL ESTATE

- Agency Law

LAWS AFFECTING REAL ESTATE

- Real Estate License Law

LAWS AFFECTING REAL ESTATE

- Federal, state, and local laws and regulations (e.g., consumer protection, environmental, tax, land use, and zoning)

QUESTIONS

ExamSmart Property Ownership

MASS 5

Forms of Real Estate Ownership



ESTATE IN COMMON

- ❑ In Massachusetts, it is presumed that when a deed conveys land to two or more people, or to a husband and a wife—except if it is a mortgage, a devise, or a conveyance in trust—it is conveying ownership as an estate in common, unless there is evidence that another form of ownership was intended.

ESTATE IN COMMON

- ❑ Tenants in common do not have a right of survivorship **between owners**, and may sell or give away their ownership interest.
- ❑ They have a right of inheritance

ESTATE IN COMMON

- ❑ Another distinction of tenants in common is that the ownership interest does not need to be equal.

ESTATE IN COMMON

- ❑ Upon the death of a tenant in common, the estate is probated in order to transfer ownership interest.

JOINT TENANCY

- ❑ Four main elements indicate a joint tenancy ownership:

JOINT TENANCY

- ❑ 1.) The joint tenants own an undivided **interest** in the property as a whole, and each share is equal.

JOINT TENANCY

- ❑ 2.) All joint tenants own for exactly the same period of **time**—in this case, the tenants' lifetime.

JOINT TENANCY

- ❑ 3.) The joint tenants received and maintain their ownership under the same **title**.

CAKE ANALOGY

Possession~ they all possess it together

JOINT TENANCY

- ❑ 4.) All joint tenants enjoy the same rights until one of them dies. (survivorship)

JOINT TENANCY

Under the right of survivorship, the death of one joint tenant **automatically** transfers the remainder of the property in equal parts to the survivors.

- ❑ When only one joint tenant is left alive, he receives the entire estate

TENANCY BY THE ENTIRETY

- A tenancy by the entirety is created when
- ❑ the conveying deed expressly transfers the property “to X and Y as tenants by the entirety”; and the conveyance is to a **married couple**.
 - ❑ **Right of survivorship to remaining spouse**

PARTNERSHIP OWNERSHIP

- ❑ Partnership ownership results if partnership funds are used in the purchase of property by persons who are partners.

PARTNERSHIP OWNERSHIP

- ❑ Massachusetts has adopted the Uniform Partnership Act, under the terms of which a partner may purchase property with the partnership funds in his own individual name.

PARTNERSHIP OWNERSHIP

- ❑ The property does not have to be in the partnership's name.

COOPERATIVES

- ❑ To foster the development of safe, decent, and affordable housing, the state encourages the establishment of multiple-family housing cooperative associations.

COOPERATIVES,

- ❑ Following statutory requirements, a special kind of corporation is established, in which individual unit residents own stock in the corporation, and receive a proprietary lease, entitling her to occupy a specific unit in the building, and to use the common areas.

CONDOMINIUMS

M.G.L. C. 183A

- ❑ Condominium ownership is a real-property interest, combining mixed forms of ownership (e.g., joint tenancy with an estate in common).

CONDOMINIUMS

M.G.L. C. 183A

- ❑ Condominium means to “exercise dominion with others.”

CONDOMINIUM CONVERSION

The notice must contain the following three items:

CONDOMINIUM CONVERSION

- ❑ The owner has filed or intends to file a **master deed** converting the property to a condominium.

CONDOMINIUM CONVERSION

- ❑ The tenant shall be given a **period of time to vacate**, based on status as elderly, low to moderate income, handicapped, or other.

CONDOMINIUM CONVERSION

- ❑ The tenant shall be given a **chance to purchase the unit he occupied**, at terms equal to or better than those offered to the general public.

CONDOMINIUM CLOSING REQUIREMENTS

In addition to normal property closing requirements, a condominium requires two items:

- ❑ 6D Certificate. Common area fees have been paid.
- ❑ Master Insurance Policy.

CONDOMINIUM FINANCING

- ❑ Condominium buyers are often surprised to find their bank will allow them to buy a house that costs more than a condominium.

CONDOMINIUM FINANCING

- ❏ In calculating how much a buyer can afford, most lenders will include the condominium fee as a monthly expense.

CONDOMINIUM FINANCING

- Therefore, when calculating how much of a buyer's monthly income is available to carry a mortgage, include the condominium fee.

CONDOMINIUM SUPER LIEN

- ❑ The Massachusetts Condominium Super Lien improves a condominium association right to collect unpaid condominium fees in the case of foreclosure.

CONDOMINIUM SUPER LIEN

- ❑ It allows the condominium association to collect up to six months of overdue condominium fees, after taxes and municipal debts have been paid, but before any mortgage obligations are paid.

CONDOMINIUM SUPER LIEN

- ❑ This is true even if the condominium association lien is recorded after the mortgage at the Registry of Deeds.

TIMESHARE OWNERSHIP

M.G.L. C. 183B

- ❑ In a time-share arrangement, a parcel is held by several owners in common.

TIMESHARE OWNERSHIP

M.G.L. C. 183B

- ❑ Each owner has the right to use the property for a certain period of time, which may be either fixed or variable.

TIMESHARE OWNERSHIP

M.G.L. C. 183B

- ❑ In Massachusetts, an ownership interest in a unit that includes the right of possession during a **potentially infinite number of separate periods**, is an estate in fee simple, and it includes all the rights of common law fee ownership.

TIMESHARE OWNERSHIP

M.G.L. C. 183B

- ❑ An interest in a unit, that includes the right of possession during five or more separate time periods, over a limited number of years, that is greater than five, including extension and renewal options, is a common law estate for years.



UNIT 5 QUIZ

The four unities of possession, interest, time, and title are associated with which of the following?

- a. Community property
- b. Severalty ownership
- c. Tenants in common
- d. Joint tenancy

Answer

D. JOINT TENANCY

UNIT 5 QUIZ

A trust is a legal arrangement in which property is held for the benefit of a third party by a(n)

- a. beneficiary
- b. trustor
- c. trustee
- d. attorney-in-fact

Answer

C. TRUSTEE

CHAPTER 5 QUIZ

A legal arrangement under which the title to real property is held to protect the interests of a beneficiary is a

- a. trust
- b. corporation
- c. limited partnership
- d. general partnership

Answer

A. TRUST

CHAPTER 5 QUIZ

An owner purchases an interest in a house in Beachfront. The owner is entitled to the right of possession only between July 10 and August 4 of each year. Which of the following is MOST likely the type of ownership that has been purchased?

- a. Cooperative
- b. Condominium
- c. Time-share
- d. Partnership

Answer

C. TIME-SHARE

CHAPTER 5 QUIZ

A corporation is a legal entity, recognized as an artificial person. Property owned solely by the corporation is owned in

- a .Trust
- b. Partnership
- c.severalty
- d.survivorship tenancy

Answer

C. SEVERALTY

CHAPTER 5 QUIZ

Which of the following is MOST likely evidence of ownership in a cooperative?

- a. Tax bill for an individual unit
- b. Existence of a reverter clause
- c. Shareholder's stock
- d. Right of first refusal

Answer

C. SHAREHOLDER'S STOCK

CHAPTER 5 QUIZ

An ownership interest that can be an estate interest or a right of use is a

- a. leasehold
- b. time-share
- c. condominium
- d. cooperative

Answer

B. TIME-SHARE

CHAPTER 5 QUIZ

Which of the following is NOT a form of co-ownership?

- a. Tenancy in common
- b. Ownership in severalty
- c. Tenancy by the entirety
- d. Community property

Answer

B. OWNERSHIP IN SEVERALTY

CHAPTER 5 QUIZ

If property is held by two or more owners as joint tenants, the interest of a deceased co-owner will be passed to the

- a. surviving owner or owners
- b. heirs of the deceased
- c. state, under the law of escheat
- d. trust under which the property was owned

Answer

A. SURVIVING OWNER OR OWNERS

D. TYPES OF OWNERSHIP

UNIT 4

Forms of Real Estate Ownership

FORMS OF REAL ESTATE OWNERSHIP

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



UNIT OBJECTIVES

- ❑ Define and explain the distinction between ownership in severalty and co-ownership.

UNIT OBJECTIVES

- ❑ Describe the various forms of co-ownership in real estate.

UNIT OBJECTIVES

- ❑ Describe the key elements of trusts, partnerships, corporations, and LLCs.

UNIT OBJECTIVES

- ❑ Identify and describe the types of property ownership for common-interest properties.

KEY TERMS TO DEFINE AND RECORD

- Administrator
- Co-ownership
- Codicil
- Common Elements
- Community Property
- Condominium
- Conveyance
- Cooperative
- Corporation
- Courtesy
- Decedent
- Descent
- Determinable Fee
- Estate
- Dower
- Executor

KEY TERMS TO DEFINE AND RECORD

- ❑ Incorporeal Right
- ❑ Joint Tenancy
- ❑ Land Trust
- ❑ Legacy
- ❑ Legally Competent Parties
- ❑ Life Tenant
- ❑ Limited Liability
- ❑ Minor
- ❑ Model Real Estate
- ❑ Time-Share Act
- ❑ Nuncupative Will
- ❑ Partition
- ❑ Partnership
- ❑ PITT
- ❑ Power of Attorney

KEY TERMS TO DEFINE AND RECORD

- ❑ Severalty
- ❑ Tenancy by the Entirety
- ❑ Tenancy in Common (TIC)
- ❑ Testamentary Trust
- ❑ Time-share
- ❑ Town House
- ❑ Trust
- ❑ Trustee
- ❑ Uniform Partnership Act
- ❑ Unity of Ownership
- ❑ Unity of Possession

KEY TERMS TO DEFINE AND RECORD

☐ Administrator

KEY TERMS TO DEFINE AND RECORD

❑ Administrator

- ❑ A court-selected person who assists with the settlement of an estate of a person who died without leaving a will.

A woman might be called an administratrix, although administrator is the term used most often to refer to either a man or woman.

KEY TERMS TO DEFINE AND RECORD

- ❏ Co-ownership

KEY TERMS TO DEFINE AND RECORD

❑ Co-ownership

- ❑ Title ownership held by two or more persons.

KEY TERMS TO DEFINE AND RECORD

☐ Codicil

KEY TERMS TO DEFINE AND RECORD

❑ Codicil

- ❑ A supplement or an addition to a will, executed with the same formalities as a will, which normally does not revoke the entire will.

KEY TERMS TO DEFINE AND RECORD

- ❑ Common Elements

KEY TERMS TO DEFINE AND RECORD

❑ Common Elements

- ❑ Parts of a property that are necessary or convenient to the existence, maintenance, and safety of a condominium or are normally in common use by all the condominium residents.

Each condominium owner has an undivided ownership interest in the common elements.



KEY TERMS TO DEFINE AND RECORD

- ❑ Community Property

KEY TERMS TO DEFINE AND RECORD

- ❑ **Community Property**
 - ❑ A system of property ownership based on the theory that each spouse has an equal interest in the property acquired by the efforts of either spouse during marriage.

A holdover of Spanish law found predominantly in the western U.S. states; the system was unknown under English common law.

KEY TERMS TO DEFINE AND RECORD

☐ Condominium

KEY TERMS TO DEFINE AND RECORD

❑ Condominium

- ❑ The absolute ownership of a unit in a multi-unit building based on a legal description of the airspace the unit actually occupies, or a separate dwelling unit in a multi-unit development, plus an undivided interest in the ownership of the common elements in the building or development,

which are owned jointly with the other

KEY TERMS TO DEFINE AND RECORD

- ❑ Conveyance

KEY TERMS TO DEFINE AND RECORD

❑ Conveyance

- ❑ A term used to refer to any document that **transfers title** to real property. The term is also used in describing the act of transferring.

KEY TERMS TO DEFINE AND RECORD

- ☐ Cooperative

KEY TERMS TO DEFINE AND RECORD

- ❑ **Cooperative- Personal Property**
 - ❑ A residential multi-unit building whose title is held by a trust or corporation that is owned by and operated for the benefit of people living within the building who are the beneficial owners of the trust or shareholders of the corporation, each possessing a proprietary lease to a property unit.

KEY TERMS TO DEFINE AND RECORD

☐ Corporation

KEY TERMS TO DEFINE AND RECORD

❑ Corporation

- ❑ An entity or organization, created by operation of law, whose rights of doing business are essentially the same as those of an individual.

The entity has continuous existence until it is dissolved according to legal procedures.

KEY TERMS TO DEFINE AND RECORD

☐ Curtesy

KEY TERMS TO DEFINE AND RECORD

❑ Curtesy

- ❑ A life estate, usually a fractional interest, given by some states to the surviving husband in real estate owned by his deceased wife.

Most states have recognized other marital property rights and abolished courtesy.

KEY TERMS TO DEFINE AND RECORD

☐ Decedent

KEY TERMS TO DEFINE AND RECORD

- ❑ Decedent

- ❑ A person who has died.

KEY TERMS TO DEFINE AND RECORD

❑ Descent

- ❑ Acquisition of an estate by inheritance in which an heir succeeds to the property by operation of law.

KEY TERMS TO DEFINE AND RECORD

- ❑ Determinable Fee Estate

KEY TERMS TO DEFINE AND RECORD

❑ Determinable Fee Estate

- ❑ A fee simple estate that the property returns to the original grantor or heirs when specified condition occurs, indicating that the property is no longer being used for the purpose prescribed.

KEY TERMS TO DEFINE AND RECORD

☐ Dower

KEY TERMS TO DEFINE AND RECORD

❑ Dower

- ❑ The legal right or interest, recognized in some states, that a wife acquires in the property her husband held or acquired during their marriage.
- ❑ Spousal rights

During the husband's lifetime, the right is only a possibility of an interest; upon his death, it can become an interest in land.

KEY TERMS TO DEFINE AND RECORD

☐ Executor

KEY TERMS TO DEFINE AND RECORD

❑ Executor

- ❑ An appointed person who carries out the directions of a will.

KEY TERMS TO DEFINE AND RECORD

☐ Heir

KEY TERMS TO DEFINE AND RECORD

❑ Heir

- ❑ One who might inherit or succeed to an interest in land under the state law of descent when the owner dies without leaving a valid will.

KEY TERMS TO DEFINE AND RECORD

- ❑ Holographic Will

KEY TERMS TO DEFINE AND RECORD

❑ Holographic Will

- ❑ A will that is written, dated, and signed in the testator's handwriting.

KEY TERMS TO DEFINE AND RECORD

- ❑ Incorporeal Right

KEY TERMS TO DEFINE AND RECORD

❑ Incorporeal Right

- ❑ A nonpossessory right in real estate (e.g., an easement or a right-of-way).

KEY TERMS TO DEFINE AND RECORD

❑ Joint Tenancy

- ❑ Ownership of real estate between two or more parties who have been named in one conveyance as joint tenants. Upon the death of a joint tenant, the decedent's interest usually passes to the surviving joint tenant or tenants by the right of **survivorship.**

KEY TERMS TO DEFINE AND RECORD

☐ Land Trust

KEY TERMS TO DEFINE AND RECORD

❑ Land Trust

- ❑ A trust in which property is conveyed, and in which real estate is the only asset.

KEY TERMS TO DEFINE AND RECORD

☐ Legacy

KEY TERMS TO DEFINE AND RECORD

❑ Legacy

- ❑ A disposition of money or personal property by will.

KEY TERMS TO DEFINE AND RECORD

- ☐ Legally Competent Parties

KEY TERMS TO DEFINE AND RECORD

- ❑ **Legally Competent Parties**
 - ❑ People who are recognized by law as being able to contract with others; those of legal age and sound mind.

KEY TERMS TO DEFINE AND RECORD

- ☐ Life Tenant

KEY TERMS TO DEFINE AND RECORD

❑ Life Tenant

- ❑ A person in possession of a life estate.

KEY TERMS TO DEFINE AND RECORD

- ❑ Limited Liability Company (LLC)

KEY TERMS TO DEFINE AND RECORD

- ❑ **Limited Liability Company (LLC)**
 - ❑ A form of business organization the most attractive features of limited partnerships and corporations.

KEY TERMS TO DEFINE AND RECORD

☐ Minor

KEY TERMS TO DEFINE AND RECORD

❑ Minor

- ❑ A person who has not reached the age of majority and, therefore, does not have legal capacity to transfer title to real property.

KEY TERMS TO DEFINE AND RECORD

- ❑ Model Real Estate Time- Share Act

KEY TERMS TO DEFINE AND RECORD

- ❑ **Model Real Estate Time-Share Act**
 - ❑ An act that governs the management, use, and termination of time-share-units.

KEY TERMS TO DEFINE AND RECORD

- ❑ Nuncupative Will

KEY TERMS TO DEFINE AND RECORD

❑ Nuncupative Will

- ❑ An oral will declared by the testator in his final illness, made before witnesses and afterward reduced to writing; not permitted by all states.

KEY TERMS TO DEFINE AND RECORD

☐ Partition

KEY TERMS TO DEFINE AND RECORD

❑ Partition

- ❑ The division of cotenants' interests in real property when the parties do not all voluntarily agree to terminate the co-ownership; takes place through a court procedure.

KEY TERMS TO DEFINE AND RECORD

☐ Partnership

KEY TERMS TO DEFINE AND RECORD

❑ Partnership

- ❑ An association of two or more individuals who carry on a continuing business for profit as co-owners. Under the law, a partnership is regarded as a group of individuals rather than as a single entity separate from the individual owners.

A general partnership is a typical form of joint venture in which each general partner shares in the administration, profits, and losses of the operation. A limited partnership is a business arrangement whereby the operation is administered by one or more general partners and funded, by and large, by limited or silent partners, who are by law responsible for losses only to the extent of their investments.



KEY TERMS TO DEFINE AND RECORD

☐ PITT

KEY TERMS TO DEFINE AND RECORD

❑ PITT

- ❑ The four unities of tenants in a joint tenancy; **p**ossession, **i**nterest, **t**ime, and **t**itle.

KEY TERMS TO DEFINE AND RECORD

- ☐ Power of Attorney

KEY TERMS TO DEFINE AND RECORD

❑ Power of Attorney

- ❑ A written instrument authorizing a person, the attorney-in-fact, to act as agent for another person to the extent indicated in the instrument.

KEY TERMS TO DEFINE AND RECORD

- ❑ Public Ownership

KEY TERMS TO DEFINE AND RECORD

- ❑ Public Ownership
 - ❑ Government-owned property.

KEY TERMS TO DEFINE AND RECORD

- ❑ Separate Property

KEY TERMS TO DEFINE AND RECORD

❑ Separate Property

- ❑ Under community property law, property owned solely by either spouse before the marriage, acquired by gift or inheritance during the marriage, or purchased with separate funds after the marriage.

KEY TERMS TO DEFINE AND RECORD

- ❑ Severalty

KEY TERMS TO DEFINE AND RECORD

❑ Severalty

- ❑ Ownership of real property by one person only; also called sole ownership.

KEY TERMS TO DEFINE AND RECORD

- ❑ Tenancy by the Entirety

KEY TERMS TO DEFINE AND RECORD

❑ Tenancy by the Entirety

- ❑ The joint ownership, recognized in some states, of property acquired by husband and wife during marriage. Upon the death of one spouse, the **survivor** becomes the owner of the property.

KEY TERMS TO DEFINE AND RECORD

- ❑ Tenancy in Common (TIC)

KEY TERMS TO DEFINE AND RECORD

- ❑ Tenancy in Common (TIC)
 - ❑ A form of co-ownership by which each owner holds an undivided interest in real property as if each were sole owner. Each individual owner has the right to partition. Unlike joint tenants, tenants in common have the right of **inheritance**.

KEY TERMS TO DEFINE AND RECORD

- ❑ Testamentary Trust

KEY TERMS TO DEFINE AND RECORD

❑ Testamentary Trust

- ❑ A trust that is established by will after one's death.

KEY TERMS TO DEFINE AND RECORD

☐ Time-share

KEY TERMS TO DEFINE AND RECORD

❑ Time-share

- ❑ A form of ownership interest that may include an estate interest in property and that allows use of the property for a fixed or variable time period.

KEY TERMS TO DEFINE AND RECORD

☐ Town House

KEY TERMS TO DEFINE AND RECORD

❑ Town House

- ❑ A type of residential dwelling with two floors that is connected to one or more dwellings by a common wall or walls. Title to the unit and lot vest in the owner who shares a fractional interest with other owners in any common areas.

KEY TERMS TO DEFINE AND RECORD

☐ Trust

KEY TERMS TO DEFINE AND RECORD

❑ Trust

- ❑ A fiduciary arrangement whereby property is conveyed to a person or an institution, called a trustee, to be held and administered on behalf of another person, called a beneficiary. The one who conveys the trust is called the trustor.

KEY TERMS TO DEFINE AND RECORD

☐ Trustee

KEY TERMS TO DEFINE AND RECORD

❑ Trustee

- ❑ One to whom something is entrusted and who holds legal title to property and administers the property for the benefit of a beneficiary. Can also be a member of a board entrusted with the administration of an institution or organization, such as a cooperative.

KEY TERMS TO DEFINE AND RECORD

- ❑ Uniform Partnership Act

KEY TERMS TO DEFINE AND RECORD

- ❑ **Uniform Partnership Act**
 - ❑ Law that provides for the continuation of an existing business if a partner in a general partnership dies, withdraws, or goes bankrupt.

KEY TERMS TO DEFINE AND RECORD

- ☐ Unity of Ownership

KEY TERMS TO DEFINE AND RECORD

❑ Unity of Ownership

- ❑ The four unities that are traditionally needed to create a joint tenancy- unity of title, time, interest, and possession.

KEY TERMS TO DEFINE AND RECORD

- ☐ Unity of Possession

KEY TERMS TO DEFINE AND RECORD

❑ Unity of Possession

- ❑ Co-owners of a joint tenancy are each entitled to possession and use of the entire property, even though each hold only a fractional ownership interest.

OWNERSHIP IN SEVERALTY

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

Co-Ownership

- ❑ Ownership by two or more individuals

1. Tenants in common

2. Joint tenancy

4. Ownership in severalty/sole ownership

FORMS OF CO-OWNERSHIP

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

TRUSTS AND BUSINESS ORGANIZATIONS

- ❑ Living and Testamentary Trusts
- ❑ Land Trusts
- ❑ Business Organizations
- ❑ Partnership
- ❑ Corporation
- ❑ Limited Liability Company

6. Property ownership held in trust (*BROKER ONLY*)

- a) Timeshares
- b) Condominiums
- c) Co-ops

CONDOMINIUMS, COOPERATIVES & TIME-SHARE'S

Condominium Ownership

- Common elements
- Right of first refusal option
- HOA

CONDOMINIUMS, COOPERATIVES & TIME-SHARE'S

Cooperative Ownership

- Corporation holds title
- Corporation bylaws
- Shares of stock

CONDOMINIUMS, COOPERATIVES & TIME-SHARE'S

Time-Share Ownership

- Time-share estate
- Time-share use

3. Common- interest ownership

1. Types of legal descriptions;

- ❑ Metes and bounds,
- ❑ Lot and block,
- ❑ government survey

UNIT 5

Land Descriptions

LAND DESCRIPTIONS

A street address, while helpful for finding the location of a property or building, is not precise enough to define the perimeter of a parcel of land in a way that excludes all other parcels.

A property description must be legally sufficient, or described in a way that will enable a sales contract, deed, or mortgage document to be legally enforceable. A legal description is a detailed way of describing a parcel of land for such documents. The description is based on information collected through a survey.



UNIT OBJECTIVES

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

4. Land Measurement

KEY TERMS TO DEFINE AND RECORD

- ❑ Acre
- ❑ Air Lots
- ❑ Area
- ❑ Base Line
- ❑ Benchmarks
- ❑ Datum
- ❑ Front Footage

KEY TERMS TO DEFINE AND RECORD

- ❑ Frontage
- ❑ Legal Description
- ❑ Linear Measurement
- ❑ Lot-and-block (recorded plat) method
- ❑ Meridian
- ❑ Metes-and-bounds method
- ❑ Monument

KEY TERMS TO DEFINE AND RECORD

- ❑ Plat Map
- ❑ Point of beginning (POB)
- ❑ Principal Meridian
- ❑ Range
- ❑ Recorded plat
- ❑ Rectangular (government) survey system

KEY TERMS TO DEFINE AND RECORD

- ❑ Section
- ❑ Spot survey
- ❑ Survey
- ❑ Tiers
- ❑ Township
- ❑ Township Lines
- ❑ Uniqueness

KEY TERMS TO DEFINE AND RECORD

☐ Acre



KEY TERMS TO DEFINE AND RECORD

☐ Acre

- ☐ A measure of land equal to 43, 560 square feet, 4,840 square yards, 4,047 square meters, 160 square rods, or 0.4047 hectares.

KEY TERMS TO DEFINE AND RECORD

☐ Air Lots



KEY TERMS TO DEFINE AND RECORD

❑ Air Lots

- ❑ Designated airspace over a piece of land. An air lot, like surface property, may be transferred.

KEY TERMS TO DEFINE AND RECORD

□ Area



KEY TERMS TO DEFINE AND RECORD

❑ Area

- ❑ A level surface or piece of ground; the size of a surface; the amount of a two-dimensional object.

KEY TERMS TO DEFINE AND RECORD

☐ Base Line



KEY TERMS TO DEFINE AND RECORD

❑ Base Line

- ❑ The main imaginary line running east and west and crossing a principal meridian at a definite point; used by surveyors for reference in locating and describing land under the rectangular (government) survey system of legal description.

KEY TERMS TO DEFINE AND RECORD

- ❑ Benchmarks



KEY TERMS TO DEFINE AND RECORD

❑ Benchmarks

- ❑ Permanent reference marks or points established for use by surveyors in measuring differences in elevation.

KEY TERMS TO DEFINE AND RECORD

- Datum

KEY TERMS TO DEFINE AND RECORD

- ❑ Datum

- ❑ A horizontal plane from which heights and depths are measured.

KEY TERMS TO DEFINE AND RECORD

- ❑ Front Footage

KEY TERMS TO DEFINE AND RECORD

❑ Front Footage

- ❑ The measurement of a parcel of land by the number of feet of street or road frontage.

KEY TERMS TO DEFINE AND RECORD

☐ Frontage



KEY TERMS TO DEFINE AND RECORD

- ❑ Frontage

- ❑ The length of property along the street or waterfront.

KEY TERMS TO DEFINE AND RECORD



- ☐ Legal Description

KEY TERMS TO DEFINE AND RECORD

❑ Legal Description

- ❑ A description of a specific parcel of real estate complete enough for an independent surveyor to locate and identify it.

KEY TERMS TO DEFINE AND RECORD

- ❑ Linear Measurement

KEY TERMS TO DEFINE AND RECORD

- ❑ Linear Measurement
 - ❑ Measurement in a straight line.

KEY TERMS TO DEFINE AND RECORD

- ❑ Lot-and-block (recorded plat) method

KEY TERMS TO DEFINE AND RECORD

- ❑ **Lot-and-block (recorded plat) method**
 - ❑ A method of describing real property that identifies a parcel of land by reference to lot and block numbers within a subdivision as specified on a recorded subdivision plat.

KEY TERMS TO DEFINE AND RECORD

- ☐ Meridian

KEY TERMS TO DEFINE AND RECORD

❑ Meridian

- ❑ One of a set of imaginary lines running north and south and crossing a base line at a definite point, used in the rectangular (government) survey system of property description.

KEY TERMS TO DEFINE AND RECORD

- ☐ Metes-and-bounds Method

KEY TERMS TO DEFINE AND RECORD

- ❑ **Metes-and-bounds Method**
 - ❑ A method used to describe a parcel of land that begins at a well-marked point and follows the property's boundaries, using directions and distances around the tract, back to the place of beginning.

KEY TERMS TO DEFINE AND RECORD

☐ Monument



KEY TERMS TO DEFINE AND RECORD

❑ Monument

- ❑ A fixed natural or artificial object used to establish real estate boundaries for a metes-and-bounds description.

KEY TERMS TO DEFINE AND RECORD

- ❑ Plat Map

KEY TERMS TO DEFINE AND RECORD

❑ Plat Map

- ❑ A map of a town, section, or subdivision indicating the location and boundaries of individual properties.

KEY TERMS TO DEFINE AND RECORD

- ❑ Point of Beginning (POB)

KEY TERMS TO DEFINE AND RECORD

- ❑ **Point of Beginning (POB)**
 - ❑ In a metes-and-bounds legal description, the starting point of the survey, situated in one corner of the parcel; all metes-and-bounds descriptions must follow the boundaries of the parcel back to the point of beginning.

KEY TERMS TO DEFINE AND RECORD

- ❑ Principal Meridian

KEY TERMS TO DEFINE AND RECORD

❑ Principal Meridian

- ❑ The main imaginary line running north and south and crossing a base line at a definite point; used by surveyors for reference in locating and describing land under the rectangular (government) survey system of legal description.

KEY TERMS TO DEFINE AND RECORD

- Range

KEY TERMS TO DEFINE AND RECORD

❑ Range

- ❑ A strip of land six miles wide, extending north and south an numbered east and west according to its distance from the principal meridian in the rectangular (government) survey system of legal description.

KEY TERMS TO DEFINE AND RECORD

- ❑ Recorded Plat

KEY TERMS TO DEFINE AND RECORD

❑ Recorded Plat

- ❑ A map of a subdivision filed as a public record showing the location and boundaries of the individual parcels.

KEY TERMS TO DEFINE AND RECORD

- ❑ Rectangular (government) survey system

KEY TERMS TO DEFINE AND RECORD

- ❑ **Rectangular (government) survey system**
 - ❑ A system established in 1785 by the federal government, providing for surveying and describing land by reference to principal meridians and base lines.

KEY TERMS TO DEFINE AND RECORD

☐ Section

KEY TERMS TO DEFINE AND RECORD

❑ Section

- ❑ A portion of a township under the rectangular (government) survey system. A township is divided into 36 sections, numbered 1 through 36. A section is a square with mile-long sides and an area of one square mile, or 640 acres.

KEY TERMS TO DEFINE AND RECORD

- ❑ Spot Survey

KEY TERMS TO DEFINE AND RECORD

❑ Spot Survey

- ❑ A survey that shows the location, size, and shape of buildings on the lot, in addition to the lot's legal description.

KEY TERMS TO DEFINE AND RECORD

- ☐ Survey

KEY TERMS TO DEFINE AND RECORD

❑ Survey

- ❑ The process by which boundaries are measured and land areas are determined; the on-site measurement of lot lines, dimensions, and position of a house on a lot, including the determination of any existing encroachments or easements.

KEY TERMS TO DEFINE AND RECORD

- ❑ Tiers

KEY TERMS TO DEFINE AND RECORD

❑ Tiers

- ❑ Strips of land that are six miles wide, extending east and west and numbered north and south according to their distance from the base line in the rectangular (government) survey system of legal description.

KEY TERMS TO DEFINE AND RECORD

- ❑ Township

KEY TERMS TO DEFINE AND RECORD

❑ Township

- ❑ The principal unit of the rectangular (government) survey system. A township is a 6-mile square or 36 square miles.

KEY TERMS TO DEFINE AND RECORD

- ❑ Township Lines

KEY TERMS TO DEFINE AND RECORD

❑ Township Lines

- ❑ All the lines in a rectangular survey system that run east and west, parallel to the baseline and six miles apart.

KEY TERMS TO DEFINE AND RECORD

☐ Uniqueness



KEY TERMS TO DEFINE AND RECORD

❑ Uniqueness

- ❑ The idea that no matter how identical they may appear, no two parcels of real estate are ever exactly alike.

METHODS OF DESCRIBING REAL ESTATE

- ❑ Metes and bounds
 - ❑ Point of beginning
 - ❑ Monuments: Fixed objects used to identify the POB, all corners of the parcel or ends of boundary segments, and the location of intersecting boundaries.

METHODS OF DESCRIBING REAL ESTATE

- ❑ Rectangular (government) survey
 - ❑ Principal meridian
 - ❑ Tiers
 - ❑ Ranges
 - ❑ Townships
 - ❑ Sections

METHODS OF DESCRIBING REAL ESTATE

- ❑ Lot and block (recorded plat)
 - ❑ Lot and block number
 - ❑ Subdivision plat

THE SURVEY- MEASURING PROPERTY RIGHTS

- ❑ Legal description
- ❑ Survey sketch

LAND DESCRIPTION

- ❑ Measuring Elevations
 - ❑ Air lots
 - ❑ Datum
- ❑ Monuments and Benchmarks
- ❑ Units of Land Measurement

CHAPTER 15

Land-Use Controls and Property Development

ZONING REGULATIONS

- ❑ Through power conferred by state enabling acts, each city and town in Massachusetts develops its own city plan and zoning ordinances or bylaws.

ZONING REGULATIONS

- ❑ The Zoning Act (M.G.L. c. 40A) is the source of zoning authority for all communities in the state except Boston. It sets forth procedural rules for establishing zoning ordinances.

THE ZONING ACT

SPECIFICALLY EXEMPTS:

- ❑ The Zoning Act specifically exempts land and buildings, that did not conform to the prescribed use for the location, at the time the zoning code was passed.

THE ZONING ACT

SPECIFICALLY EXEMPTS:

- ❑ The statute indicates that nonconforming (i.e., grandfathered) uses may not continue forever, and prescribes that if the use is abandoned and not used for a period of two years or more, the current zoning code must be followed.

THE ZONING ACT

SPECIFICALLY EXEMPTS:

The statute also states that pre-existing, nonconforming structures or uses, may be extended or altered, so long as the permit granting authority finds that the extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming use.

APPLICATION FOR A VARIANCE

Objections to the zoning of particular pieces of land may be taken to the Zoning Board of Appeals.

APPLICATION FOR A VARIANCE

Applicants for zoning variance



APPLICATION FOR A VARIANCE

- ❏ must demonstrate that the desired variance will be in the public interest, and that it will remain within the spirit of the ordinance.

APPLICATION FOR A VARIANCE

- ❑ must show that the change is necessary because of the hardship caused by the existing requirement, and that the variance would affect only his property, and not the general district. Decisions of the Zoning Board of Appeals may be appealed to the Massachusetts Superior Court.

PLANNING BOARDS

- ❏ In addition to local zoning boards, Massachusetts law provides for the creation of local and regional planning boards in all parts of the state.

PLANNING BOARDS

- ❏ Planning boards have two major functions:

PLANNING BOARDS

 planning

PLANNING BOARDS

- ❑ subdivision control - Subdivision control consumes most of a board's time, especially in growing suburban and rural areas.

SUBDIVISION CONTROL LAW

Subdivisions are defined in Massachusetts as land divided into two or more lots that do not front on a public or approved road.

SUBDIVISION CONTROL LAW

The Subdivision Control Law is also in effect in every city, except for Boston, and in every town in Massachusetts that develops its own plan and zoning regulations.

SUBDIVISION CONTROL LAW

The basic purposes of subdivision control law include:



SUBDIVISION CONTROL LAW

- protecting the health, safety, convenience, and welfare of inhabitants

SUBDIVISION CONTROL LAW

- ❑ providing adequate access by roads that are safe and convenient for travel

SUBDIVISION CONTROL LAW

- ❑ lessening congestion on subdivision roads and adjacent public roads

SUBDIVISION CONTROL LAW

- ❏ reducing motor vehicle accidents

SUBDIVISION CONTROL LAW

- ❏ securing safety in case of fire, flood, panic, and other emergencies

SUBDIVISION CONTROL LAW

- ❏ lessening congestion on subdivision roads and adjacent public roads

SUBDIVISION CONTROL LAW

- ❏ securing safety in case of fire, flood, panic, and other emergencies

SUBDIVISION CONTROL LAW

- ❏ ensuring compliance with applicable zoning ordinances and bylaws

SUBDIVISION CONTROL LAW

- ❑ securing adequate provision for water, sewer, drainage, underground utility services, fire, police, other municipal equipment, street lighting, and other requirements where necessary in a subdivision

SUBDIVISION CONTROL LAW

- ❏ coordinating the ways in a subdivision with each other, with the public ways in the city or town where it is located, and with the ways in neighboring subdivisions

UNIFORM BUILDING CODE

- ❑ The Uniform Building Code regulates residential, commercial, and industrial construction in Massachusetts.

UNIFORM BUILDING CODE

- ❏ It supersedes local building codes.

ANTI-SNOB ZONING

- ❑ In response to selective zoning practices in many cities and towns in the Commonwealth, the Massachusetts legislature enacted an anti-snob zoning law in 1969 called the Massachusetts Comprehensive Permit Law.

ANTI-SNOB ZONING

- ❑ In an effort to increase the supply and improve the regional distribution of low-income and moderate-income housing, the law allows certain public agencies and any nonprofit or limited dividend organization, to construct low-income and moderate-income housing, despite local zoning bylaws.

PRIVATE LAND-USE CONTROLS FOR SUBDIVISIONS

In Massachusetts, restrictions may be created to exist for any length of time, but, unless the creating document includes a definite time limit, they become void after 30 years.

PRIVATE LAND-USE CONTROLS FOR SUBDIVISIONS

Courts will refuse to enforce a restriction if:



PRIVATE LAND-USE CONTROLS FOR SUBDIVISIONS

- ❑ changes in the neighborhood have frustrated the purpose of the restriction

PRIVATE LAND-USE CONTROLS FOR SUBDIVISIONS

- ❑ the parties who have the right to enforce the restriction have acted in such a way as to make enforcement unfair

PRIVATE LAND-USE CONTROLS FOR SUBDIVISIONS

- ❑ The general plan first contemplated by the subdivider has been abandoned or no longer exists

PRIVATE LAND-USE CONTROLS FOR SUBDIVISIONS

- ❑ the highest and best use of the land is impeded by the restriction

PRIVATE LAND-USE CONTROLS FOR SUBDIVISIONS

- ❑ enforcement of the restriction is inequitable

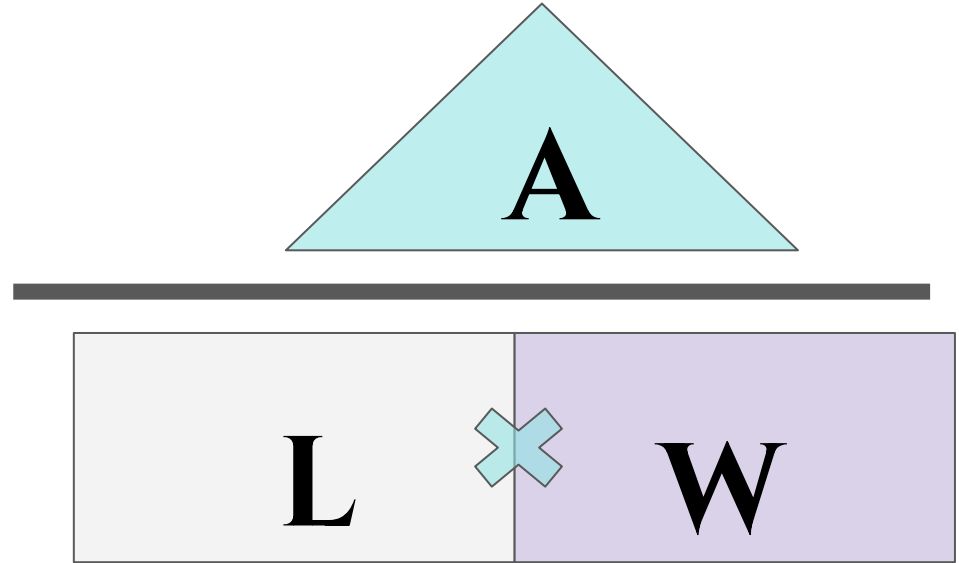
2. Measuring structures

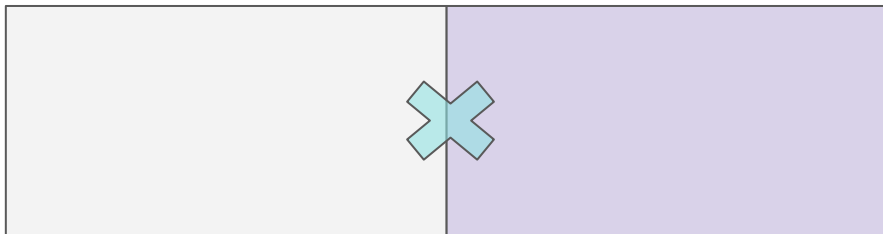
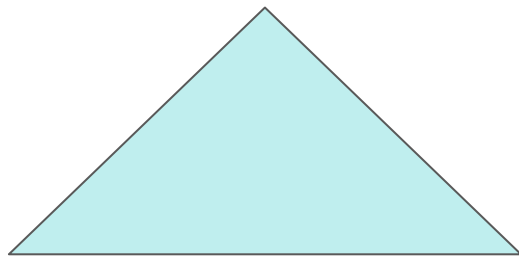
TIPS TO SOLVE

- ❑ Cover the item you are solving for
 - ❑ (The one you do not have!)
- ❑ Put the one you are solving for alone on one side alone
 - ❑ What is left is on the other!

3. Livable, rentable, and usable area

LENGTH X WIDTH = AREA





C. Encumbrances and effects on property ownership

1. Liens
2. Easements and licenses
3. Encroachments
4. Other potential encumbrances of title

5. Life Estate ownership

II. LAND USE CONTROLS AND REGULATIONS (SALESPERSON 5%; BROKER 5%)

A. Government rights in land

1. Property taxes and special assessments
2. Eminent domain, condemnation, escheat

B. Government controls

1. Zoning and master plans
2. Building codes
3. Regulation of special land types
 - a) Flood zones
 - b) Wetlands
4. Regulation of environmental hazards
 - a) Types of hazards
 - b) Abatement and mitigation
 - c) Restrictions on contaminated property

C. Private controls

1. Deed conditions or restrictions
2. Covenants, conditions, and restrictions (CC&Rs)
3. Homeowners association regulations

PSI EXAMS 2

Land use controls and regulations (Salesperson 5 items/Broker 5 items)

GOVERNMENT RIGHTS IN LAND

PROPERTY TAXES AND SPECIAL ASSESSMENTS

**EMINENT DOMAIN, CONDEMNATION,
ESCHEAT**

GOVERNMENT CONTROLS

ZONING AND MASTER PLANS

BUILDING CODES

REGULATION OF SPECIAL LAND TYPES

FLOOD ZONES

WET LANDS

REGULATION OF ENVIRONMENTAL HAZARDS

TYPES OF HAZARDS

ABATEMENT AND MITIGATION

RESTRICTIONS ON CONTAMINATED PROPERTY

PRIVATE CONTROLS

DEED CONDITIONS OR RESTRICTIONS

COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&RS)

HOMEOWNERS ASSOCIATION REGULATIONS

LAND USE CONTROLS

1. Government rights in land
 - a. Property taxes and special assessments
 - b. Eminent domain, condemnation, escheat
 - c. Police power

Unit 20

Land-Use Controls and Property Development





Key Terms to Define and Record

- ❑ Buffer Zone





Key Terms to Define and Record

❑ Buffer Zone

- ❑ A strip of land, usually used as a park or designated for a similar use, separating land dedicated to one use from land dedicated to another use (e.g., residential from commercial).





Key Terms to Define and Record

- ❑ Building Code





Key Terms to Define and Record

❑ Building Code

- ❑ An ordinance that specifies minimum standards of construction for buildings to protect public safety and health.





Key Terms to Define and Record

- ❑ Building Permit





Key Terms to Define and Record

❑ Building Permit

- ❑ Written governmental permission for the construction, alteration, or demolition of an improvement, showing compliance with building codes and zoning ordinances.





Key Terms to Define and Record

- ☐ Certificate of Occupancy



Key Terms to Define and Record

- ❑ **Certificate of Occupancy**
 - ❑ Permission by the municipal inspector to occupy a completed building structure after being inspected and having complied with building codes.





Key Terms to Define and Record

- ❑ Conditional-use Permit





Key Terms to Define and Record

❑ Conditional-use Permit

- ❑ Written governmental permission allowing a use inconsistent with zoning but necessary for the common good, such as locating an emergency medical facility in a predominantly residential area.



4. PRIVATE CONTROLS

- a. Deed conditions or restrictions
- b. Homeowners association (HOA) regulations



Key Terms to Define and Record

- ❑ Covenants, Conditions, and Restrictions (CC&Rs)





Key Terms to Define and Record

- ❑ **Covenants, Conditions, and Restrictions (CC&Rs)**
 - ❑ Private agreements that affect land use. They may be enforced by an owner of real estate that benefits from them and can be included in the seller's deed to the buyer.





Key Terms to Define and Record

- ❑ Deed Restrictions





Key Terms to Define and Record



❑ Deed Restrictions

- ❑ Clauses in a deed limiting the future uses of the property. Deed may impose a vast variety of limitations and conditions--for example, they may limit the density of buildings, dictate the types of structures that can be erected, or prevent buildings from being used for specific purposes or even from being used at all.



Key Terms to Define and Record

- Density Zoning





Key Terms to Define and Record

❑ Density Zoning

- ❑ Zoning ordinances that restrict the maximum average number of housing units per acre that may be built within a particular area, generally a subdivision.





Key Terms to Define and Record

- ❑ Developer





Key Terms to Define and Record

❑ Developer

- ❑ One who attempts to put land to its most profitable use through the construction of improvements.





Key Terms to Define and Record

- ❑ Development





Key Terms to Define and Record



❑ Development

- ❑ The construction of improvements that benefit land.



Key Terms to Define and Record

- ☐ Enabling Acts





Key Terms to Define and Record

- ❑ **Enabling Acts**
 - ❑ State legislation that confers zoning and other powers on municipal governments.





Key Terms to Define and Record

- ❑ Interstate Land Sales Full Disclosure Act (ILSA)





Key Terms to Define and Record

- ❑ **Interstate Land Sales Full Disclosure Act (ILSA)**
 - ❑ A federal law that regulates the sale of certain real estate in interstate commerce.





Key Terms to Define and Record

☐ Laches



Key Terms to Define and Record

❑ Laches

- ❑ An equitable doctrine used by courts to bar a legal claim or to prevent the assertion of a right because of undue delay or failure to assert the claim or right.





Key Terms to Define and Record

- ☐ Master Plan



Key Terms to Define and Record

❑ Master Plan

- ❑ A comprehensive government plan to guide the long-term physical development of a particular area.





Key Terms to Define and Record

- ❑ Master-planned Community





Key Terms to Define and Record

❑ Master-planned Community

- ❑ A planned combination of diverse land uses, such as housing, recreation, and shopping, in one contained development or subdivision; also called a planned unit development (PUD).





Key Terms to Define and Record

- ❑ Mixed Use





Key Terms to Define and Record

❑ Mixed Use

- ❑ Property that accommodates more than one use, such as commercial use and residential use.





Key Terms to Define and Record

- ❑ Nonconforming Use





Key Terms to Define and Record

❑ Nonconforming Use

- ❑ A use of property that is permitted to continue after a zoning ordinance prohibiting it has been established for the area.





Key Terms to Define and Record

❑ Obsolescence





Key Terms to Define and Record

❑ **Obsolescence**

- ❑ The loss of value due to property features that are outmoded or less useful. Obsolescence may be functional or external.





Key Terms to Define and Record

- ❑ Occupancy Permit



Key Terms to Define and Record

❑ Occupancy Permit

- ❑ A permit issued by the appropriate local governing body to establish that the property is suitable for habitation by meeting certain safety and health standards.





Key Terms to Define and Record

- ❑ Planned Unit Development (PUD)





Key Terms to Define and Record

- ❑ **Planned Unit Development (PUD)**
 - ❑ A planned combination of diverse land uses, such as housing, recreation, and shopping, in one contained development or subdivision.





Key Terms to Define and Record

☐ Plat Map





Key Terms to Define and Record

❑ Plat Map

- ❑ A map of a town, section, or subdivision indicating the location and boundaries of individual properties.





Key Terms to Define and Record

- ❑ Property Reports





Key Terms to Define and Record

❑ Property Reports

- ❑ The mandatory federal and state documents compiled by subdividers and developers to provide potential purchasers with facts about a property prior to a purchase.





Key Terms to Define and Record

- ❑ Restrictive Covenant





Key Terms to Define and Record



❑ Restrictive Covenant

- ❑ A clause in a deed that limits the way the real estate ownership may be used.



Key Terms to Define and Record

❑ Setback





Key Terms to Define and Record

❑ **Setback**

- ❑ The amount of space local zoning regulations require between a lot line and a building.





Key Terms to Define and Record

- ☐ Spot Zoning



Key Terms to Define and Record

❑ Spot Zoning

- ❑ Granting a particular parcel a classification that differs from the classification of other land in the immediate area; may be considered illegal.





Key Terms to Define and Record

☐ Subdivider





Key Terms to Define and Record

❑ Subdivider

- ❑ One who buys undeveloped land, divides it into smaller, usable lots and sells the lots to potential users.





Key Terms to Define and Record

- ❑ Subdivision





Key Terms to Define and Record

❑ Subdivision

- ❑ A tract of land divided by the owner, known as the subdivider, into blocks, building lots, and streets according to a recorded subdivision plat, which must comply with local ordinance and regulations.





Key Terms to Define and Record

- ❑ Subdivision and Development Ordinances





Key Terms to Define and Record

- ❑ **Subdivision and Development Ordinances**
 - ❑ Municipal ordinances that establish requirements for subdivisions and development.





Key Terms to Define and Record

☐ Variance

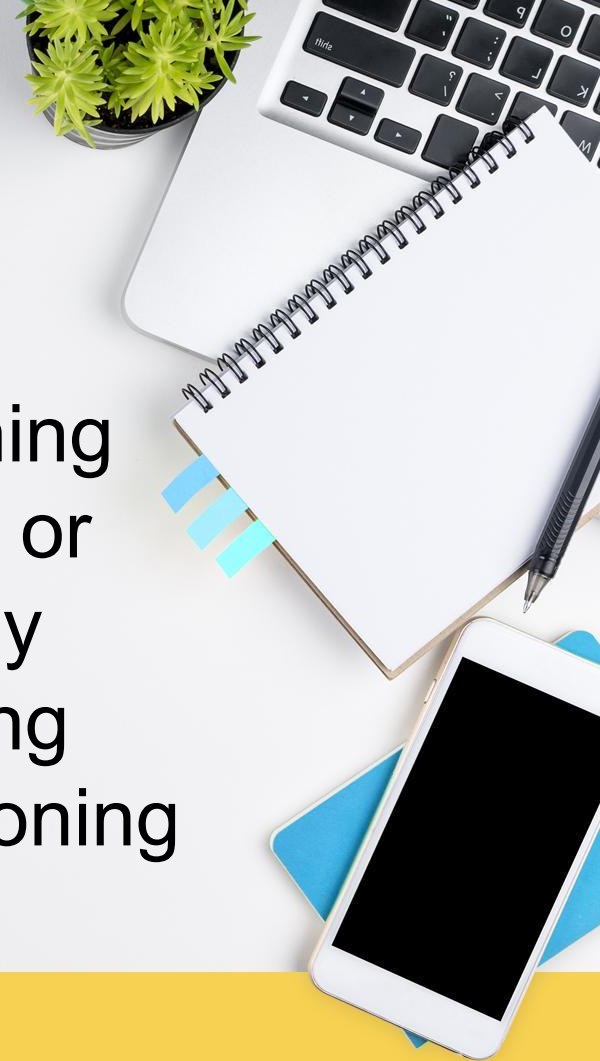




Key Terms to Define and Record

❑ Variance

- ❑ Permission obtained from zoning authorities to build a structure or conduct a use that is expressly prohibited by the current zoning laws; an exception from the zoning ordinances.





Key Terms to Define and Record

☐ Waste



Key Terms to Define and Record

❑ Waste

- ❑ An improper use or an abuse of a property by a possessor who holds less than fee ownership, such as a tenant, or vendee. Such waste ordinarily impairs the value of the land or the interest of the person holding the title or the reversionary rights.

2. PUBLIC CONTROLS BASED IN POLICE POWER

- a. Zoning and master plans
- b. Building codes
- c. Environmental impact reports
- d. Regulation of special land types (floodplain, coastal, etc.)



Key Terms to Define and Record

☐ Zoning





Key Terms to Define and Record

- ❑ **Zoning**
 - ❑ A regulatory tool that helps communities regulate and control how land is used.





Key Terms to Define and Record

- ❑ Zoning Board of Appeals





Key Terms to Define and Record



❑ Zoning Board of Appeals

- ❑ A board that must be formed when the local legislature adopts a new zoning law, to provide for property owners to object to the application of the law to their property.



Key Terms to Define and Record

- ❑ Zoning Ordinance





Key Terms to Define and Record

- ❑ **Zoning Ordinance**
 - ❑ An exercise of police power by a municipality to regulate and control the character and use of property.





Land-Use Controls & Zoning

- ❑ **Land-Use Controls:**
- ❑ Government Ownership
- ❑ The Comprehensive Plan
 - ❑ aka “Master Plan”





Land-Use Controls & Zoning

- ❑ **Zoning:**
- ❑ Classifications
- ❑ Ordinances
- ❑ Permits
 - ❑ Non Conforming
 - ❑ Variances and
 - ❑ conditional-use permits
 - ❑ Zoning Hearing Boards



3. REGULATION OF ENVIRONMENTAL HAZARDS

- a. Abatement, mitigation and cleanup requirements
- b. Restrictions on sale or development of contaminated property
- c. Types of hazards and potential for agent or seller liability



Building Codes



- ❑ Building Codes and Certificates of Occupancy
 - ❑ Permits
 - ❑ Certificate of Occupancy
 - ❑ ADA Considerations



Subdivision

- ❑ A subdivider segments land into parcels.
- ❑ A developer constructs improvements on subdivided parcels.





Land Development

- ❑ Land Development Plan:
- ❑ Subdivision Plan
- ❑ Plat map
- ❑ Density

- ❑ Private Land-Use Controls:
- ❑ Deed Restrictions
- ❑ Restrictive Covenants





Regulation of Land Sales



- ❑ Interstate Land Sales Full Disclosure Act (ILSA)
- ❑ State Subdivided Land Sales Laws

Massachusetts

5. Zoning and land-use regulations

A. State Sanitary Code



Zoning Regulations

- ❑ Through power conferred by state enabling acts, each city and town in Massachusetts develops its own city plan and zoning ordinances or bylaws.





Zoning Regulations

- ❑ The Zoning Act (M.G.L. c. 40A) is the source of zoning authority for all communities in the state except Boston. It sets forth procedural rules for establishing zoning ordinances.





The Zoning Act

Specifically Exempts:

- ❑ The Zoning Act specifically exempts land and buildings, that did not conform to the prescribed use for the location, at the time the zoning code was passed.

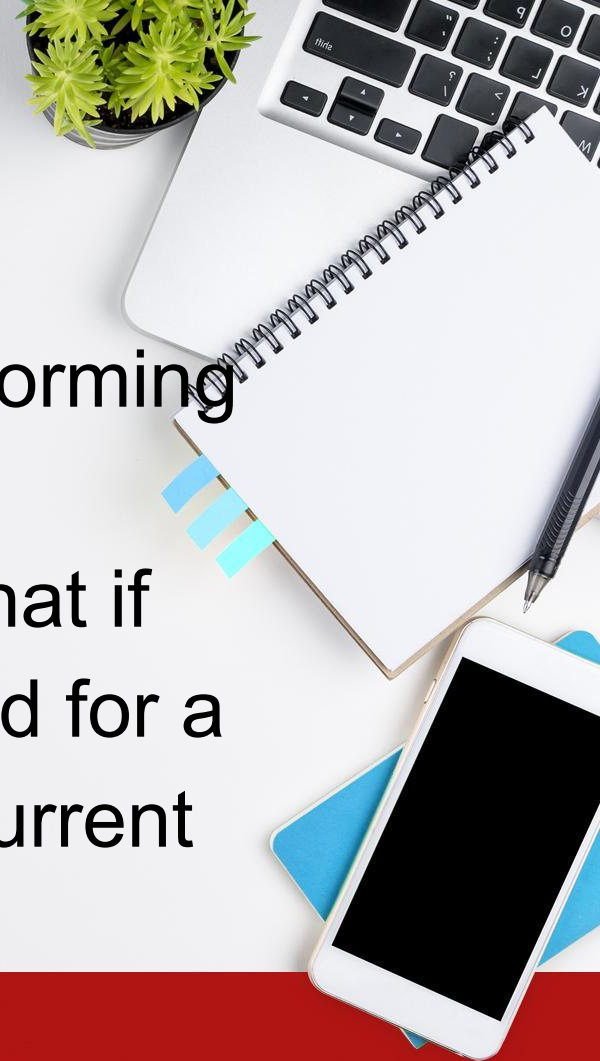




The Zoning Act

Specifically Exempts:

- ❑ The statute indicates that nonconforming (i.e., grandfathered) uses may not continue forever, and prescribes that if the use is abandoned and not used for a period of two years or more, the current zoning code must be followed.





The Zoning Act

Specifically Exempts:

The statute also states that pre-existing, nonconforming structures or uses, may be extended or altered, so long as the permit granting authority finds that the extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming use.





Application for a Variance

Objections to the zoning of particular pieces of land may be taken to the Zoning Board of Appeals.





Application for a Variance

Applicants for zoning variations:





Application for a Variance

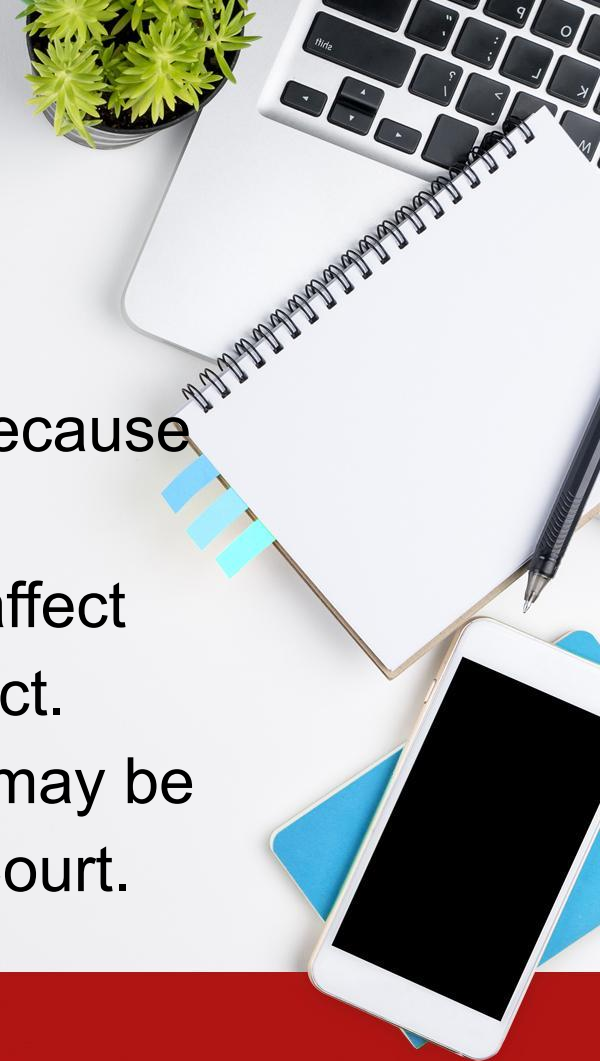


- ❑ must demonstrate that the desired variance will be in the public interest, and that it will remain within the spirit of the ordinance.



Application for a Variance

- ❑ must show that the change is necessary because of the hardship caused by the existing requirement, and that the variance would affect only his property, and not the general district. Decisions of the Zoning Board of Appeals may be appealed to the Massachusetts Superior Court.





Planning Boards

In addition to local zoning boards, Massachusetts law provides for the creation of local and regional planning boards in all parts of the state.





Planning Boards

Planning boards have two major functions:





Planning Boards

□ planning





Planning Boards

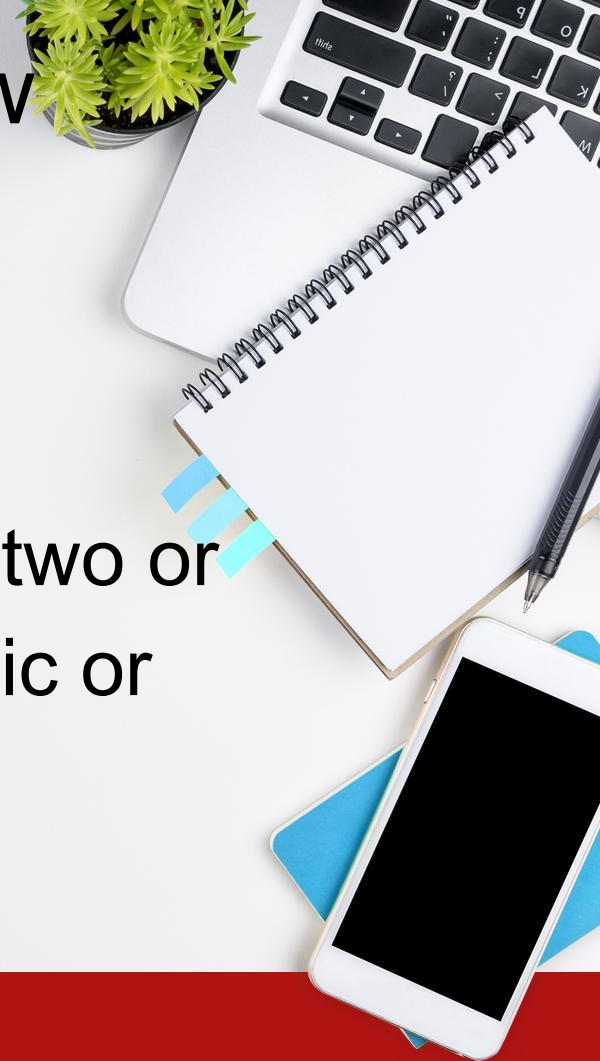
- ❑ subdivision control - Subdivision control consumes most of a board's time, especially in growing suburban and rural areas.





Subdivision Control Law

Subdivisions are defined in Massachusetts as land divided into two or more lots that do not front on a public or approved road.





Subdivision Control Law

The Subdivision Control Law is also in effect in every city, except for Boston, and in every town in Massachusetts that develops its own plan and zoning regulations.

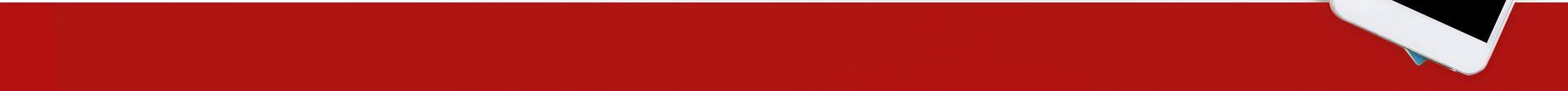




Subdivision Control Law



The basic purposes of subdivision control law include:

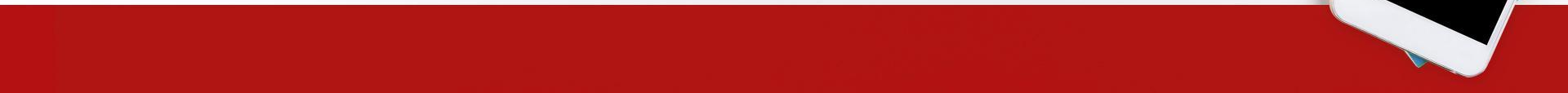




Subdivision Control Law



- protecting the health, safety, convenience, and welfare of inhabitants





Subdivision Control Law



- providing adequate access by roads that are safe and convenient for travel



Subdivision Control Law



- ❑ lessening congestion on subdivision roads and adjacent public roads



Subdivision Control Law

- ❑ reducing motor vehicle accidents





Subdivision Control Law

- ❑ securing safety in case of fire, flood, panic, and other emergencies





Subdivision Control Law

- ❑ lessening congestion on subdivision roads and adjacent public roads





Subdivision Control Law

- ❑ securing safety in case of fire, flood, panic, and other emergencies





Subdivision Control Law

- ❑ ensuring compliance with applicable zoning ordinances and bylaws





Subdivision Control Law

- ❑ securing adequate provision for water, sewer, drainage, underground utility services, fire, police, other municipal equipment, street lighting, and other requirements where necessary in a subdivision





Subdivision Control Law

- ❑ coordinating the ways in a subdivision with each other, with the public ways in the city or town where it is located, and with the ways in neighboring subdivisions





Subdivision Control Law

- ❑ reducing motor vehicle accidents





Subdivision Control Law

- ❑ securing safety in case of fire, flood, panic, and other emergencies





Uniform Building Code



- ❑ The Uniform Building Code regulates residential, commercial, and industrial construction in Massachusetts.





Anti-Snob Zoning

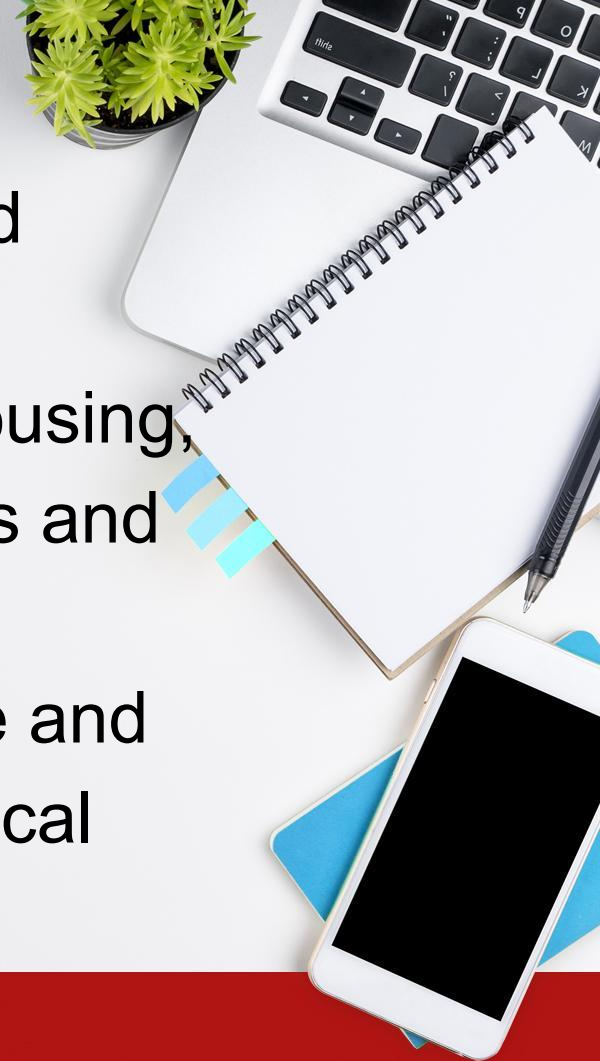


- ❏ In response to selective zoning practices in many cities and towns in the Commonwealth, the Massachusetts legislature enacted an anti-snob zoning law in 1969 called the Massachusetts Comprehensive Permit Law.



Anti-Snob Zoning

- ❑ In an effort to increase the supply and improve the regional distribution of low-income and moderate-income housing, the law allows certain public agencies and any nonprofit or limited dividend organization, to construct low-income and moderate-income housing, despite local zoning bylaws.





Private Land-Use Controls for Subdivisions

In Massachusetts, restrictions may be created to exist for any length of time, but, unless the creating document includes a definite time limit, they become void after 30 years.





Private Land-Use Controls for Subdivisions

- ❑ changes in the neighborhood have frustrated the purpose of the restriction





Private Land-Use Controls for Subdivisions

- ❑ the parties who have the right to enforce the restriction have acted in such a way as to make enforcement unfair





Private Land-Use Controls for Subdivisions

- ❑ The general plan first contemplated by the subdivider has been abandoned or no longer exists





Private Land-Use Controls for Subdivisions



- ❑ the highest and best use of the land is impeded by the restriction



Private Land-Use Controls for Subdivisions

- ❑ enforcement of the restriction is inequitable





11. Hazardous materials

a. Lead

b. Asbestos

c. Fuel storage

d. Massachusetts Superfund Law

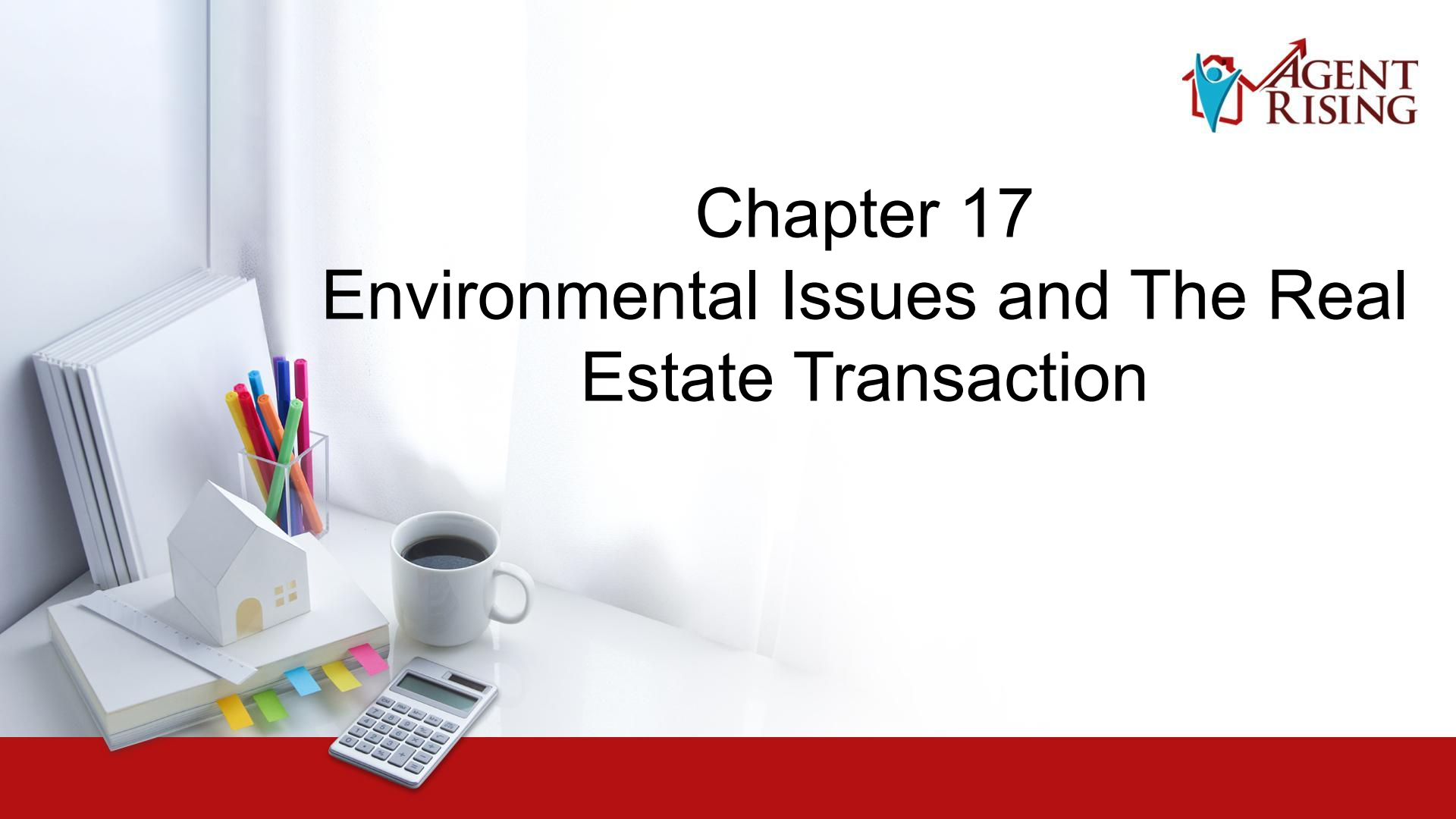


12 State Environmental Issues

- a. Radon
- b. Private sewage disposal
- c. Smoke and carbon monoxide detection
- d. Wetlands and rivers protection

Chapter 17

Environmental Issues and The Real Estate Transaction





ENVIRONMENTAL ISSUES

Balance of legitimate commercial and residential use with preserving vital resources.





ENVIRONMENTAL ISSUES

Quality of:

- air
- water
- soil





ENVIRONMENTAL ISSUES

Prevention *and* clean up





MASSACHUSETTS LAW

Attorney General is authorized to prevent or remedy damages to natural resources:

- ☐ destruction





MASSACHUSETTS LAW

Attorney General is authorized to prevent or remedy damages to resources:

☐ damage

natural





MASSACHUSETTS LAW

Attorney General is authorized to prevent or remedy damages to natural resources:

- ❑ impairment





MASSACHUSETTS LAW (Cont.)

The statutory definition includes air and water pollution, improper sewage disposal, use of toxic pesticides, and excessive noise.





MASSACHUSETTS LAW (Cont.)

Improper operation of dumping grounds; impairment of rivers, streams, floodplains, lakes, ponds, and other surface or subsurface water resources; and destruction of seashores, dunes, marine resources, underwater archeological resources, wetlands, open spaces, natural areas, parks, and historic districts or sites, are all addressed by statute

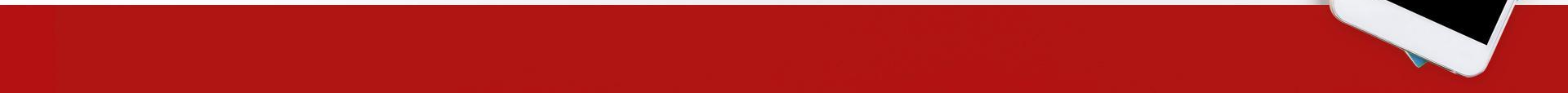




HAZARDOUS WASTE



The Massachusetts Oil and
Hazardous Material Release
Prevention and Response Act





HAZARDOUS WASTE

Comprehensive Environmental
Response, Compensation, and Liability
Act (CERCLA). (NATIONAL)





HAZARDOUS WASTE

If any toxic chemicals or petroleum products are on or under the soil of a property, the information should be given to a prospective buyer.





HAZARDOUS WASTE

If the owner suspects the presence of any hazardous waste, he should have an expert examine the site.





HAZARDOUS WASTE (Cont.)

In Massachusetts the site inspection for toxic substances is called a “21E” site inspection.





HAZARDOUS WASTE (Cont.)

If toxins are present, arrangements will be made for their removal by the proper state authority.





HAZARDOUS WASTE (Cont.)

This environmental cleanup law is sometimes called the Superfund.





WHO IS RESPONSIBLE?

☐ manager





WHO IS RESPONSIBLE?

☐ transporter





WHO IS RESPONSIBLE?

- ❑ generator of hazardous wastes





WHO IS RESPONSIBLE?

- ❑ If the responsible party cannot be found





WHO IS RESPONSIBLE?

- ❑ site owner or landowner is responsible





WHO IS RESPONSIBLE?

- ❑ STATE will remediate then record a lien.





WHO IS RESPONSIBLE?

- ❑ This lien takes priority over all other recorded liens





WHO IS RESPONSIBLE?

- ❑ Because an automatic lien against the tainted land takes precedence over mortgages, most banks will demand that the property be inspected, before they commit to a loan.





WETLANDS

WETLANDS are legally protected property.





WETLANDS

Land in Massachusetts in a wetland or bordering a wetland is legally protected property.





WETLANDS

Wetlands Restriction Act, the Department of Environmental Protection may draw non encroachment lines around any waterway, in order to restrict harmful, or destructive activities, such as dredging, filling, or polluting.





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WETLANDS (Cont.)

The Coastal Zone Management Act and Ocean Sanctuaries Act both restrict the use and development of the state's coastline, out to the three-mile territorial limit.





WETLANDS (Cont.)

The Scenic Rivers Act; the Clean Waters Act; and a wide array of air, water, and land pollution regulations, protect Massachusetts' wetlands from the detrimental effects of land development.





SCENIC ROADS

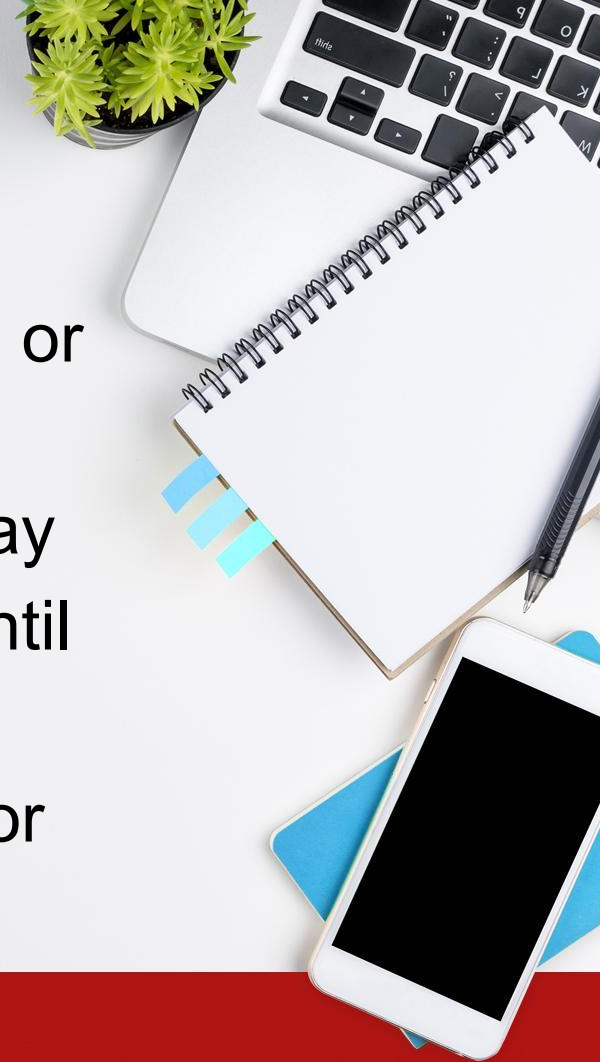
1973 LAW that recognizes that trees and stone walls that border local roads have scenic, aesthetic, and historic value.





SCENIC ROADS

Any repair, maintenance, reconstruction, or paving work that involves destruction of trees or stone walls, within the right-of-way of a rural road, may not be undertaken until the planning board has held a public hearing and granted written permission for the work to commence.





LEAD PAINT

Massachusetts first lead poisoning prevention law in 1971.





LEAD PAINT

Since 1971, Homeowners permanently control specified lead-based paint hazards in any housing unit in which a child under the age of six resides. The law was revised in 1987 in three ways.





LEAD PAINT

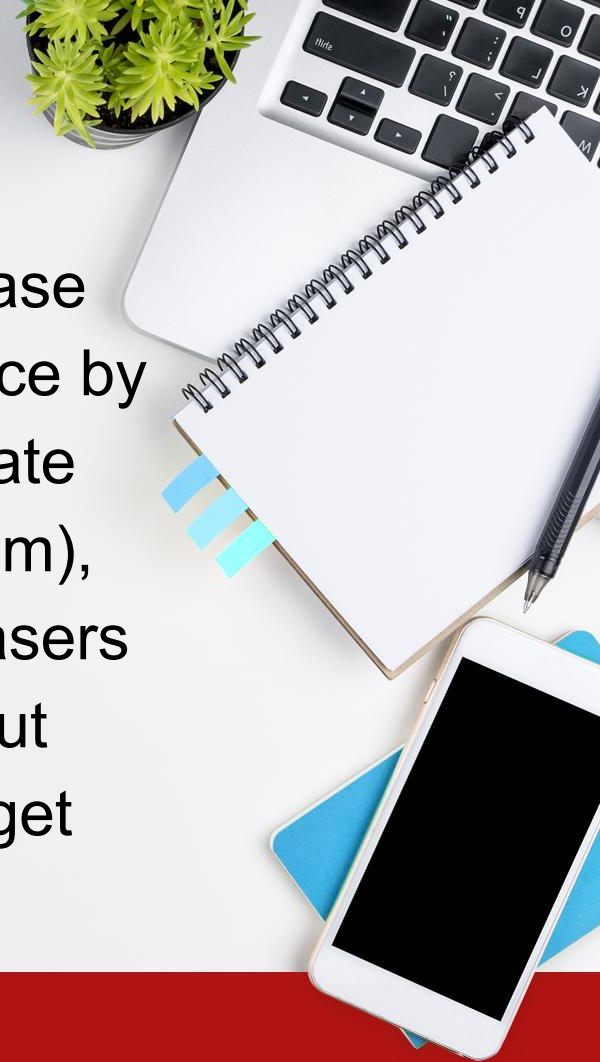
- ❑ First, improve the quality and safety of lead abatement work by requiring use of trained and licensed contractors, relocation of housing occupants during abatement, and daily and final cleanup in units undergoing abatement.





LEAD PAINT (Cont.)

- ❑ Second, the amendments sought to increase the number of units brought into compliance by providing financial assistance (a \$1000 state income tax credit, and a grant/loan program), and by mandating that prospective purchasers of residential premises receive notice about the lead law, and have the opportunity to get an inspection.





LEAD PAINT (Cont.)

- ❑ Third, the amendments embraced universal blood lead screening, mandating that physicians screen children, and that health insurers cover those costs.





1993 Amendments (Lead)

- ❑ 2 year interim controls





1993 Amendments (Lead)

- ❑ Encapsulants allowed





1993 Amendments (Lead)

- ❑ \$1500 per unit tax credit





1993 Amendments (Lead)

- ❑ Liability lessened with certification





1993 Amendments (Lead)

- ☐ Tenant Lead Law Notification





1993 Amendments (Lead)

- ❑ Short term vacation of 31 days exempt





Removed or Encapsulated

 window sills





Removed or Encapsulated

- ☐ stair risers





Removed or Encapsulated

☐ woodwork





Removed or Encapsulated

 doors





Removed or Encapsulated

- ❑ interior wall corners





Removed or Encapsulated

- ❑ Railings up to a height of five feet.





Removed or Encapsulated

- ❑ Any chipped or cracked plaster or paint must be removed.





Removed or Encapsulated

- ❑ Flat wall surfaces do not normally have to be de-leaded.





Removed or Encapsulated

In short the de-leading requirement applies to all “*mouthable*” surfaces, accessible to a child under the age of six.





Removed or Encapsulated

Owners or brokers of pre-1978 properties may not discriminate against potential buyers or tenants who have children.





Property Transfer Notification Certification

If property was constructed prior to 1978, the state-approved lead disclosure form entitled *Property Transfer Notification Certification* (see Figure 16.3), signed by the seller must then be signed by the prospective buyer or tenant, whether or not lead paint is present.





Property Transfer Notification Certification

The form certifies that the buyer has been informed of the existence of a lead paint hazard.





Property Transfer Notification Certification

Owners must declare on the form whether they have knowledge of the presence of lead paint.





Property Transfer Notification Certification

The buyer must also indicate whether the 10-day period for a lead inspection is being selected or waived.





Property Transfer Notification Certification

The listing and selling agents must sign the disclosure indicating they have informed the buyer and seller of the possible presence of lead.





Childhood Lead Poisoning Prevention Program

Real Estate Agents *ALWAYS*:

- ❑ Verbally inform purchasers of the lead law's abatement requirement and of their right to have a lead inspection of the property.





Childhood Lead Poisoning Prevention Program

Real Estate Agents *ALWAYS*:

- ❑ Provide a list of professionals who are licensed to perform lead paint inspections and abatement if requested.

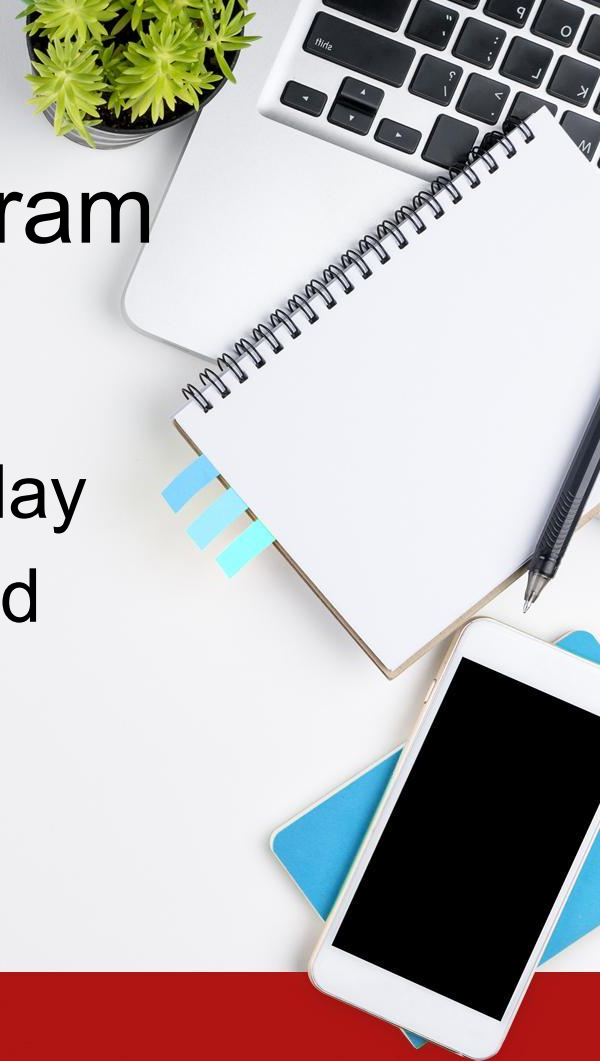




Childhood Lead Poisoning Prevention Program

Real Estate Agents ALWAYS:

- ❑ Allow the potential purchaser a 10-day opportunity to conduct lead paint and risk assessment inspections before the purchaser becomes obligated under a contract to purchase.





Childhood Lead Poisoning Prevention Program

- ❑ The P&S agreement may or may not be contingent on the property passing inspection.





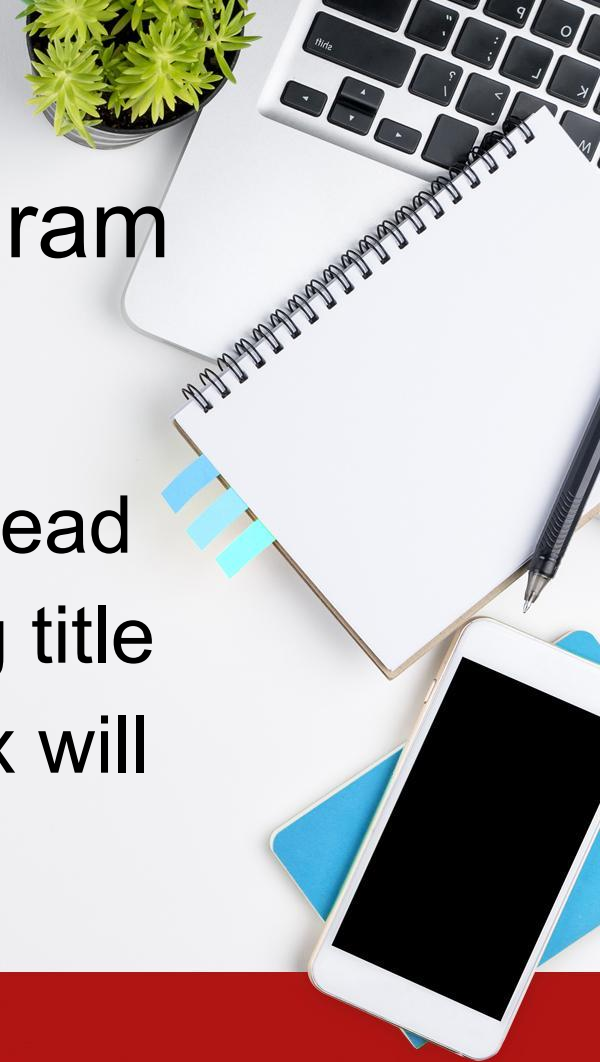
Childhood Lead Poisoning Prevention Program

- ❑ If no test is performed on a pre-1978 prior to closing, the purchaser has 90 days after closing to have the property inspected.





Childhood Lead Poisoning Prevention Program



- ❑ Purchaser is required to abate a lead hazard within 90 days of securing title to the property, if a child under six will live in it.



Childhood Lead Poisoning Prevention Program

Childhood Lead Poisoning Prevention Program (CLPPP) packet published by the Department of Public Health





Renovations Repairs and Painting Pre-1978

A copy of the EPA's lead hazard information pamphlet, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*, must be provided for all property built before 1978 when renovating, repairing, or preparing, for painting rental housing space rented for child care facilities or schools.





Renovations Repairs and Painting Pre-1978

The EPA requires that licensed contractors be trained and certified and follow lead- safe work practices.





Renovations Repairs and Painting Pre-1978

They must follow three simple
procedures:

- ❑ contain the work area





Renovations Repairs and Painting Pre-1978



They must follow three simple procedures:

- ❑ minimize dust



Renovations Repairs and Painting Pre-1978

They must follow three simple
procedures:

- ❑ clean up thoroughly.





ASBESTOS

Material in good repair and free from any defects, including but not limited to:

☐ holes





ASBESTOS

Material in good repair and free from any defects, including but not limited to:

- ☐ cracks





ASBESTOS

Material in good repair and free from any defects, including but not limited to:

- ☐ tears





ASBESTOS

Material in good repair and free from any defects, including but not limited to:

- ❑ or any looseness that may allow the release of asbestos dust





ASBESTOS

Material in good repair and free from any defects, including but not limited to:

- ❑ any powdered, crumbled, or pulverized asbestos material.





ASBESTOS

Anyone who handle asbestos-containing material must do so in a manner that does not cause or contribute to air pollution.





Underground Storage Tanks

Fuel Storage

- ❑ No person may construct, maintain, or use any tank or container of more than a 10000-gallon capacity for the storage of any fluid other than water, unless located underground with a permit from the marshal.





Underground Storage Tanks

Fuel Storage

- ❑ Permit needed for tank removal.





Underground Storage Tanks

Fuel Storage

- ❑ Must be drained, cleaned properly, and filled with sand, pea gravel, or removed.





Underground Storage Tanks

Fuel Storage

- ❑ Owners of underground storage tanks may be required to maintain a leak detection system, along with records, and reporting of leaks and corrective actions.





FUEL LINES

(Chapter 453 Acts of 2008) (M.G.L. c.
111 § 127B 1/2)

<https://malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter453> for
more information.





FUEL LINES

Owners of residential property who heat with oil must:





FUEL LINES

- ❑ Have the fuel supply line covered with a continuous, non-metallic sleeve





FUEL LINES

- ❑ Have an oil safety valve installed at the tank.





FUEL LINES

The upgrades are not required if:

- ❑ The burner is located above the fuel storage tank and the entire supply line is connected to the top of the tank





FUEL LINES

The upgrades are not required:

- If the heating system was installed after Jan. 1 1990





FUEL LINES

The upgrades are not required:

- ❑ Or if a new tank was installed and fuel lines and fuel safety valves were replaced.





Old Industrial or Waste Sites Chapter 206 of the Acts of 1998

In 2002 the Brownfields Legislation
became federal law.





Old Industrial or Waste Sites Chapter 206 of the Acts of 1998

Under the law, states and localities receive funds to clean up polluted industrial sites.





Old Industrial or Waste Sites Chapter 206 of the Acts of 1998

As of May of 2015, Massachusetts has received over \$111.4 million to assess and clean up properties that have been abandoned or underdeveloped because of contamination or the fear of contamination.





Smoke Detectors (M.G.L. c. 148 § 26F)

Massachusetts sellers are required to provide buyers with smoke detector compliance certificates before a property closing can occur.





Smoke Detectors (M.G.L. c. 148 § 26F)

- ❑ An appointment must be made with the local fire department for an inspection of the property and a fee must be paid.





Smoke Detectors (M.G.L. c. 148 § 26F)

- ❑ A fire official will examine the property to check that detectors are of the correct type, in the right location, and are working properly.





Smoke Detectors (M.G.L. c. 148 § 26F)

- ❑ A certificate will be signed by the official. The original certificate must be presented at the closing.





Smoke Detectors (M.G.L. c. 148 § 26F)

Owners of certain residential properties are required to install both ionization and photoelectric smoke detectors. These properties include the following:





Smoke Detectors (M.G.L. c. 148 § 26F)

- ❑ Residential buildings under 70 feet tall and containing less than six dwelling units





Smoke Detectors (M.G.L. c. 148 § 26F)

- ❑ Residential buildings not substantially altered since January 1, 1975 and containing less than six residential units





Smoke Detectors (M.G.L. c. 148 § 26F)

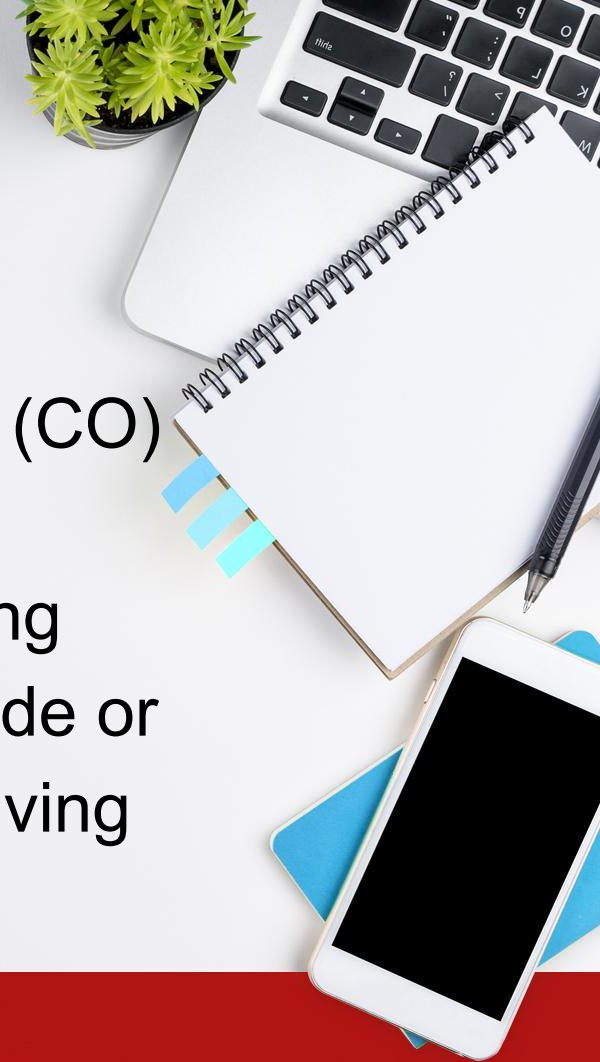


- ❑ All residential buildings sold or transferred after January 1, 2010 which are less than 70 feet tall, have less than 6 units, or have not been substantially altered since January 1 1975



Carbon Monoxide Detectors

In the commonwealth, carbon monoxide (CO) detectors are required for all residential dwellings equipped with fossil-fuel-burning equipment that produces carbon monoxide or that have enclosed parking attached to living areas.





Carbon Monoxide Detectors

- ❑ The law and regulations apply to all homes not just property that is being transferred.





Carbon Monoxide Detectors

- ❑ Inspections for compliance are performed prior to a closing by the local fire department





Carbon Monoxide Detectors

- ❑ If the inspection is done simultaneously with the smoke detector inspection there is no additional charge.





Carbon Monoxide Detectors

- ❑ Maximum fees are defined in the law for inspections performed separately.





Title 5: On-Site Sewage Disposal Systems

Few changes in real estate law have stirred as much controversy as Title 5 of the Massachusetts Environmental Code.





Title 5: On-Site Sewage Disposal Systems

Title 5 requires that all properties that have on-site sewage disposal systems are to have those systems inspected when a change in ownership of property is going to take place, or when an addition to the property is planned.





Title 5: On-Site Sewage Disposal Systems

Homes that are not connected to a sewer system, use cesspools or septic systems, both of which are regulated by the state Department of Environmental Protection





Title 5: On-Site Sewage Disposal Systems

Cesspool and septic system
inspections are required:





Title 5: On-Site Sewage Disposal Systems

- within two years before the sale of a home or transfer of title, or six months after the sale, if weather conditions preclude prior inspection





Title 5: On-Site Sewage Disposal Systems

- ❑ in certain inheritance situations





Title 5: On-Site Sewage Disposal Systems

- ❑ in certain insolvency proceedings





Title 5: On-Site Sewage Disposal Systems

- ❑ when the use of the home is changed





Title 5: On-Site Sewage Disposal Systems

- ❑ when the home is expanded and a building or occupancy permit is required





Title 5: On-Site Sewage Disposal Systems

Inspections are not required:

- ❑ when a mortgage is refinanced





Title 5: On-Site Sewage Disposal Systems

Inspections are not required:

- ❑ when title to the house is transferred from one spouse to another or placed in a particular family trust





Title 5: On-Site Sewage Disposal Systems

Inspections are not required:

- ❑ when the system was inspected within three years before the sale of the house, and the owners have records showing that their system was pumped annually since the inspection





Title 5: On-Site Sewage Disposal Systems

Inspections are not required:

- ❑ when the local board of health has issued a certificate of compliance within two years before the time of transfer of title





Title 5: On-Site Sewage Disposal Systems

- ❑ when the homeowner has entered into an enforceable agreement that is binding on subsequent buyers with the board of health, requiring a system upgrade, or connection to the municipal sewer system, within two years of transfer or sale





Title 5: On-Site Sewage Disposal Systems

- ❑ when the community has adopted a plan approved by the department requiring periodic inspections, and the system was inspected at the most recent time as required by the plan.





Mold

- ❑ Mold is a growing concern in all parts of the country.



Mold

- ❑ Mold can be found almost anywhere and can grow on almost any organic substance as long as moisture and oxygen are present.





Mold

- ❑ Few states have enacted legislation concerning mold.





Mold

- ❑ Currently Massachusetts has no legislation on mold.



Mold

- ❑ Not only is it a serious health concern in new building construction, mold is also an area of increasing litigation.





Radon

While there are no Massachusetts state regulations regarding radon, the Environmental Protection Agency has issued recommended guidelines.





Radon

The Massachusetts Department of Health's Radiation Control Program can advise property owners on how to get their homes tested for radon and assist them in interpreting the results.





Radon

The Radiation Control Program has a booklet describing methods of reducing high concentrations of radon.



Radon (Cont.)

- ❑ Radon is a naturally occurring radioactive gas produced in the ground through decay of uranium and radium.



Radon (Cont.)

- ❑ As it decays radon produces new radioactive elements or decay products.



Radon (Cont.)

- ❑ These products cannot be detected by human senses, colorless, odorless, and tasteless.



MODULE 3 (7%)

VALUATION AND MARKET ANALYSIS



PSIEXAMS.COM

**GENERAL PORTION (REAL ESTATE
PRINCIPLES AND PRACTICES)**

A. APPRAISALS

REAL ESTATE APPRAISAL

UNIT 16





KEY TERMS TO DEFINE AND RECORD



- ❑ Accrued Depreciation



KEY TERMS TO DEFINE AND RECORD

❑ **Accrued Depreciation**

- ❑ Loss in a property's value resulting from physical deterioration, external depreciation, and functional obsolescence.





KEY TERMS TO DEFINE AND RECORD

 Anticipation





KEY TERMS TO DEFINE AND RECORD

❑ Anticipation

- ❑ The appraisal principle holding that value can increase or decrease based on the expectation of some future benefit or detriment produced by the property.



KEY TERMS TO DEFINE AND RECORD

Appraisal





KEY TERMS TO DEFINE AND RECORD

❑ Appraisal

- ❑ An estimate of the quantity, quality, or value of something. The process through which conclusions of property value are obtained; also refers to the report that sets forth the process of estimation and conclusion of value.





KEY TERMS TO DEFINE AND RECORD

☐ Appraisal
Report





KEY TERMS TO DEFINE AND RECORD

❑ Appraisal Report

- ❑ An opinion of a property's market value given to a lender or client with detailed market information.



KEY TERMS TO DEFINE AND RECORD

☐ Appraiser





KEY TERMS TO DEFINE AND RECORD

- ❑ **Appraiser**
 - ❑ An independent person trained to provide an unbiased estimate of value.





KEY TERMS TO DEFINE AND RECORD

- ❑ Appraiser Independence Requirements (AIR)





KEY TERMS TO DEFINE AND RECORD

- ❑ **Appraiser Independence Requirements (AIR)**
 - ❑ Regulations issued by Fannie Mae that must be followed by appraisers to ensure accurate and objective appraisals.





KEY TERMS TO DEFINE AND RECORD

☐ Assemblage





KEY TERMS TO DEFINE AND RECORD

- ❑ **Assemblage**
 - ❑ The combining of two or more adjoining lots into one larger tract to increase their total value.



KEY TERMS TO DEFINE AND RECORD

 Balance

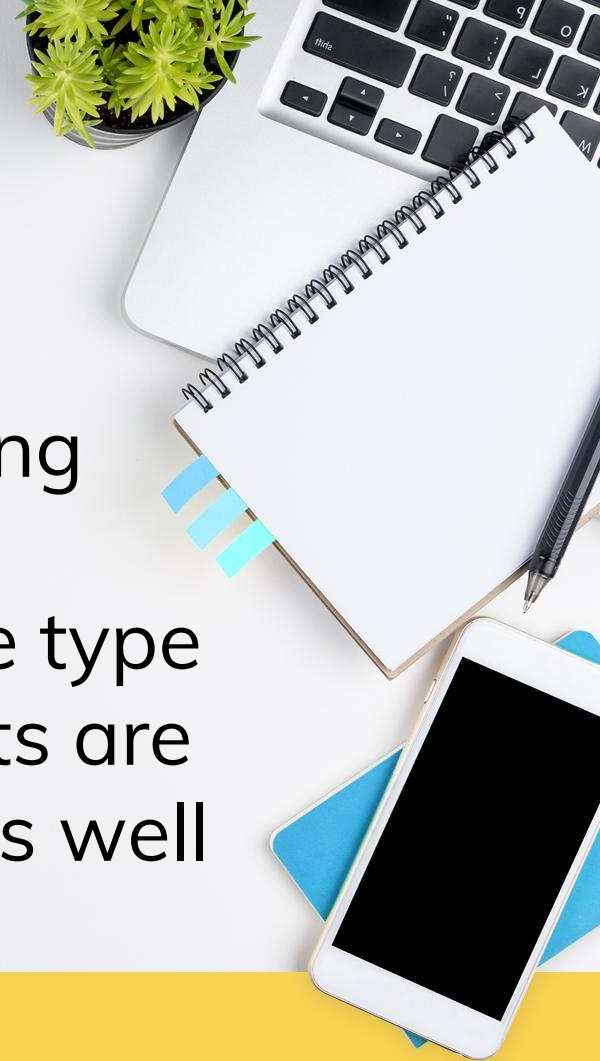




KEY TERMS TO DEFINE AND RECORD

❑ Balance

- ❑ The appraisal principle stating that the greatest value in a property will occur when the type and size of the improvements are proportional to each other as well as the land.





KEY TERMS TO DEFINE AND RECORD

- ❑ Broker's Price Opinion (BPO)





KEY TERMS TO DEFINE AND RECORD

- ❑ **Broker's Price Opinion (BPO)**
 - ❑ An opinion of real estate value commissioned by a bank or an attorney and provided by a broker.





KEY TERMS TO DEFINE AND RECORD

- ❏ Capitalization





KEY TERMS TO DEFINE AND RECORD

❑ Capitalization

- ❑ A mathematical process for estimating the value of a property using a proper rate of return on the investment and the annual net operating income expected to be produced by the property. The formula is expressed as follows: $\text{income} \div \text{rate} = \text{value}$.





KEY TERMS TO DEFINE AND RECORD

- ❑ Capitalization Rate





KEY TERMS TO DEFINE AND RECORD

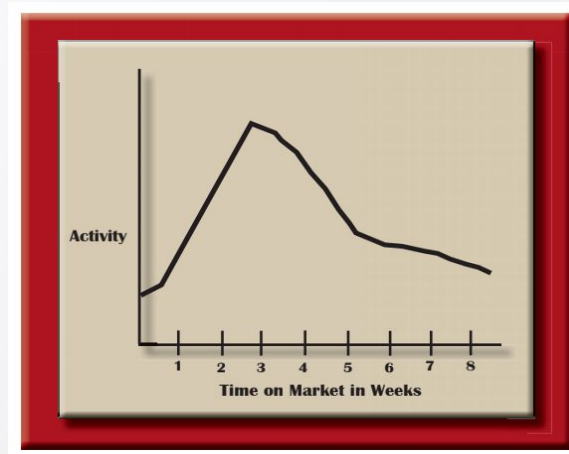
- ❑ **Capitalization Rate**
 - ❑ The rate of return a property will produce on the owner's investment.





KEY TERMS TO DEFINE AND RECORD

 Change



KEY TERMS TO DEFINE AND RECORD

- ❑ **Change**
 - ❑ The appraisal principle that holds that no physical or economic condition remains constant.





KEY TERMS TO DEFINE AND RECORD

- ☐ Comparables





KEY TERMS TO DEFINE AND RECORD

- ❑ **Comparables**
 - ❑ Properties used in an appraisal report that are substantially equivalent to the subject property.



KEY TERMS TO DEFINE AND RECORD

❑ Competition

- ❑ The appraisal principle stating that excess profits generate competition.



KEY TERMS TO DEFINE AND RECORD

☐ Conformity





KEY TERMS TO DEFINE AND RECORD

❑ Conformity

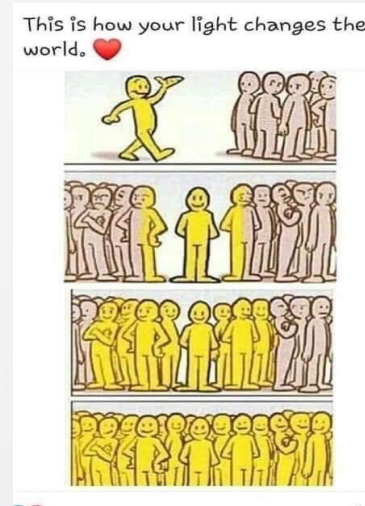
- ❑ The appraisal principle holding that the greater the similarity among properties in an area, the better they will hold their value.





KEY TERMS TO DEFINE AND RECORD

☐ Contribution





KEY TERMS TO DEFINE AND RECORD

❑ Contribution

- ❑ The appraisal principle stating that the value of any component of a property is what it gives to the value of the whole or what its absence detracts from that value.





KEY TERMS TO DEFINE AND RECORD

☐ Cost Approach





KEY TERMS TO DEFINE AND RECORD

❑ Cost Approach

- ❑ The process of estimating the value of a property by adding to the estimated land value the appraiser's estimate of the reproduction or replacement cost of the building, less depreciation.





KEY TERMS TO DEFINE AND RECORD

☐ Depreciation





KEY TERMS TO DEFINE AND RECORD

❑ Depreciation

- ❑ (1) In appraisal, a loss of value in property due to any cause, including physical deterioration, functional obsolescence, and external obsolescence. (2) In real estate investment, a deduction for tax purposes taken over the period of ownership of income property, based on the property's acquisition cost.





KEY TERMS TO DEFINE AND RECORD

- ❑ Economic Life



KEY TERMS TO DEFINE AND RECORD

- ❑ **Economic Life**
 - ❑ The number of years during which an improvement will add value to land.





KEY TERMS TO DEFINE AND RECORD

- ❑ External Depreciation





KEY TERMS TO DEFINE AND RECORD

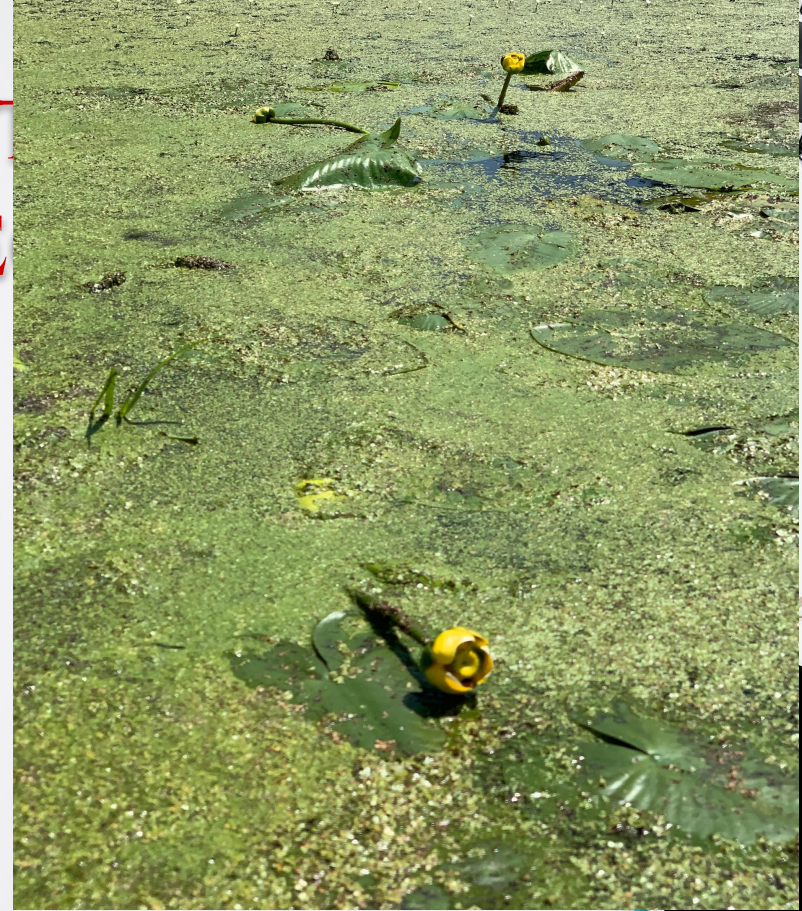
- ❑ **External Depreciation**
 - ❑ Reduction in a property's value caused by outside factors (i.e., those that are off the property).





KEY TERMS TO DEFINE AND RE

- ❑ External Obsolescence



KEY TERMS TO DEFINE AND RECORD

- ❑ **External Obsolescence**
 - ❑ Incurable depreciation caused by factors not on the subject property, such as environmental or economic factors.





KEY TERMS TO DEFINE AND RECORD

- ❑ Functional
Obsolescence



KEY TERMS TO DEFINE AND RECORD

❑ Functional Obsolescence

- ❑ A loss of value to an improvement to real estate arising from problems of design or utility.





KEY TERMS TO DEFINE AND RECORD

- ❑ Gross Income Multiplier (GIM)





KEY TERMS TO DEFINE AND RECORD

- ❑ **Gross Income Multiplier (GIM)**
 - ❑ A figure used as a multiplier of the gross annual income of a property to produce an estimate of the property's value; usually used for commercial property.





KEY TERMS TO DEFINE AND RECORD

- ❑ Gross Rent Multiplier (GRM)





KEY TERMS TO DEFINE AND RECORD

- ❑ **Gross Rent Multiplier (GRM)**
 - ❑ The figure used as a multiplier of the gross monthly income of a property to produce an estimate of the property's value; usually used for single-family residential property.





KEY TERMS TO DEFINE AND RECORD

- ☐ Highest and Best Use





KEY TERMS TO DEFINE AND RECORD

☐ Highest and Best Use

- ☐ The legally permitted and physically possible use of a property that would produce the greatest net income and, thereby, develop the highest value.





KEY TERMS TO DEFINE AND RECORD

- ☐ Income Approach





KEY TERMS TO DEFINE AND RECORD

☐ Income Approach

- ☐ The process of estimating the value of an income-producing property through capitalization of the annual net income expected to be produced by the property during its remaining useful life.





KEY TERMS TO DEFINE AND RECORD

- ❑ Law of Diminishing Return



KEY TERMS TO DEFINE AND RECORD

- ❑ **Law of Diminishing Return**
 - ❑ Point at which additional property improvements do not increase the property's income or value.





KEY TERMS TO DEFINE AND RECORD

- ❑ Law of Increasing Returns





KEY TERMS TO DEFINE AND RECORD

- ❑ **Law of Increasing Returns**
 - ❑ Applies as long as money being spent on property improvements produces an increase in the property's income or value.





KEY TERMS TO DEFINE AND RECORD

- ❑ Market Data Approach





KEY TERMS TO DEFINE AND RECORD

❑ Market Data Approach

- ❑ Also known as the sales comparison approach. An estimate of value obtained by comparing property being appraised with recently sold comparable properties.





KEY TERMS TO DEFINE AND RECORD

- ❑ Market Value





KEY TERMS TO DEFINE AND RECORD

❑ Market Value

- ❑ The most probable price that a property would bring in an arm's-length transaction under normal conditions on the open market.





KEY TERMS TO DEFINE AND RECORD

- ❑ Net Operating Income (NOI)



KEY TERMS TO DEFINE AND RECORD

- ❑ **Net Operating Income (NOI)**
 - ❑ The income projected for an income-producing property after deducting anticipated vacancy and collection losses and operating expenses.





KEY TERMS TO DEFINE AND RECORD

- ❑ Physical Deterioration





KEY TERMS TO DEFINE AND RECORD

❑ Physical Deterioration

- ❑ A reduction in a property's value resulting from a decline in physical condition; can be caused by action of the elements or by ordinary wear and tear.





KEY TERMS TO DEFINE AND RECORD

☐ Plottage





KEY TERMS TO DEFINE AND RECORD

❑ Plottage

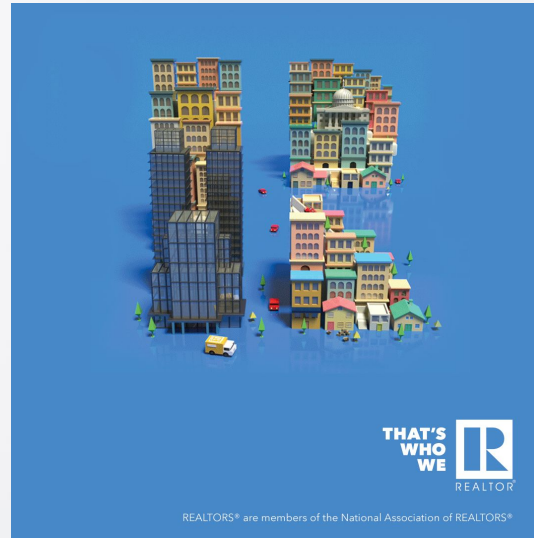
- ❑ The increase in value or utility resulting from the consolidation (assemblage) of two or more adjacent lots into one larger lot.





KEY TERMS TO DEFINE AND RECORD

☐ Progression



KEY TERMS TO DEFINE AND RECORD

❑ Progression

- ❑ An appraisal principle that the value of a lesser-quality property is favorably affected by the presence of a better-quality property.





KEY TERMS TO DEFINE AND RECORD

☐ Reconciliation





KEY TERMS TO DEFINE AND RECORD

❑ Reconciliation

- ❑ The final step in the appraisal process, in which the appraiser considers the estimates of value received from the sales comparison, cost, and income approaches to arrive at a final opinion of market value for the subject property.





KEY TERMS TO DEFINE AND RECORD

☐ Regression



KEY TERMS TO DEFINE AND RECORD

❑ Regression

- ❑ An appraisal principle that the value of a better-quality property is affected adversely by the presence of a lesser-quality property.





KEY TERMS TO DEFINE AND RECORD

- ☐ Replacement Cost





KEY TERMS TO DEFINE AND RECORD

❑ Replacement Cost

- ❑ The construction cost at current prices of a property that is not necessarily an exact duplicate of the subject property but serves the same purpose or function as the original.





KEY TERMS TO DEFINE AND RECORD

- ❑ Reproduction Cost





KEY TERMS TO DEFINE AND RECORD

- ❑ **Reproduction Cost**
 - ❑ The construction cost at current prices of an exact duplicate of the subject property.





KEY TERMS TO DEFINE AND RECORD

- ❑ Sales Comparison Approach





KEY TERMS TO DEFINE AND RECORD

- ❑ **Sales Comparison Approach**
 - ❑ The process of estimating the value of a property by examining and comparing sales and listings of comparable properties.





KEY TERMS TO DEFINE AND RECORD

☐ Sales Price





KEY TERMS TO DEFINE AND RECORD

- ❑ **Sales Price**
 - ❑ The amount of money paid to a seller for the product sold.





KEY TERMS TO DEFINE AND RECORD

☐ Substitution





KEY TERMS TO DEFINE AND RECORD

❑ Substitution

- ❑ An appraisal principle that the maximum value of a property tends to be set by the cost of purchasing an equally desirable and valuable substitute property, assuming that no costly delay is encountered in making the substitution.





KEY TERMS TO DEFINE AND RECORD

- ❑ Supply and Demand





KEY TERMS TO DEFINE AND RECORD

❑ Supply and Demand

- ❑ The appraisal principle that follows the interrelationship of the supply of and demand for real estate. Because appraising is based on economic concepts, this principle recognizes that real property is subject to the influences of the marketplace as with any other commodity.





KEY TERMS TO DEFINE AND RECORD

- ❑ Uniform Residential Appraisal Report (URAR)





KEY TERMS TO DEFINE AND RECORD

- ❑ **Uniform Residential Appraisal Report (URAR)**
 - ❑ The appraisal form created by Fannie Mae and Freddie Mac that is required for most residential real estate transactions.





KEY TERMS TO DEFINE AND RECORD

- ❑ Uniform Standards of Professional Appraisal Practice (USPAP)





KEY TERMS TO DEFINE AND RECORD

- ❑ **Uniform Standards of Professional Appraisal Practice (USPAP)**
 - ❑ A set of standards developed by the Appraisal Foundation that details information required for a property appraisal.





KEY TERMS TO DEFINE AND RECORD

☐ Value



KEY TERMS TO DEFINE AND RECORD

❑ Value

- ❑ The power of a good or service to command other goods in exchange for the present worth of future rights to its income or amenities.



1. PURPOSE AND USE OF APPRAISALS FOR VALUATION




APPRAISING

Appraisal: An opinion of value based on supportable evidence and approved methods.

Appraisal report: An opinion of market value on a property given to a lender or client with detailed market information.



The background of the slide is a top-down view of a white desk. On the right side, there is a laptop keyboard, a small potted plant with green succulents, a spiral-bound notebook with a pen resting on it, and a smartphone on a blue stand. The text is overlaid on the left side of the desk.

Appraiser: An independent professional trained to provide an unbiased opinion of value in an impartial and objective manner, following an identified appraisal process.

3. SITUATIONS REQUIRING APPRAISAL BY CERTIFIED APPRAISER



REGULATION OF APPRAISAL ACTIVITIES

- ❑ Appraiser Independence Requirements (AIR)
- ❑ Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)
- ❑ Uniform Standards of Professional Appraisal Practice (USPAP)





COMPARATIVE MARKET ANALYSIS (CMA)

- ❑ Recently sold properties
- ❑ Properties currently on the market
- ❑ Expired listings
- ❑ NOT an appraisal
- ❑ Pending Sales/ Under agreement





BROKER'S PRICE OPINION (BPO)

- ❑ Usually less extensive than a CMA
- ❑ NOT an appraisal
- ❑ Cannot be used if the matter involves a federally related transaction that requires an appraisal and/or the transaction occurs in a state that requires one



2. GENERAL STEPS IN APPRAISAL PROCESS



THE APPRAISAL PROCESS

- Identify problem
- Determine scope of work
- Gather, record, and verify data
- Analyze data
- Form opinion of land value
- Form opinions of value (3 approaches)
- Reconcile values
- Report final opinion of value



B. ESTIMATING VALUE



VALUE AND MARKET VALUE



Market Value:

- ❑ Most probable price a property will bring in a competitive market

Market Price:

- ❑ Property's asking offer, or sales price

1. EFFECT OF ECONOMIC PRINCIPLES AND PROPERTY CHARACTERISTICS

Value:

- ❑ Demand
- ❑ Utility
- ❑ Scarcity
- ❑ Transferability





BASIC PRINCIPLES OF VALUE

- ❑ Anticipation
- ❑ Change
- ❑ Competition
- ❑ Conformity
- ❑ Contribution



- ❑ Highest and Best Use
- ❑ Increasing and Diminishing Returns
- ❑ Plottage
- ❑ Regression and Progression
- ❑ Substitution
- ❑ Supply and Demand





THREE APPROACHES TO VALUE

- ❑ Sales Comparison Approach (Market Data Approach)
- ❑ Cost Approach
 - ❑ Depreciation



3. COST APPROACH

- ❑ Income Approach
 - ❑ Gross rent multiplier
 - ❑ Gross income multiplier





RECONCILIATION

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



CHAPTER 14 REAL ESTATE APPRAISAL





APPRAISING

A component of virtually every mortgage process is an appraisal.





APPRAISING

An appraisal is a set of facts about the market that helps to establish a property's market value.





APPRAISING

It is an opinion or estimate of value,
not a determination of price.





MARKET VALUE VS. MARKET PRICE

Market value

- ❑ is defined as the most probable price a property would bring in an arm's-length transaction, under normal conditions, in an open and competitive market.





MARKET VALUE VS. MARKET PRICE

Market price

- ❑ is defined as the price a buyer is willing to pay, and a seller is willing to sell, based on current market conditions.





HIGHEST AND BEST USE

- ❑ The principal of highest and best use plays a key role in the decision to purchase real property.



HIGHEST AND BEST USE

- ❑ An appraisal must presuppose that the owner or buyer would use the property in its highest and best use, and therefore, value the site accordingly.



REGULATION OF APPRAISAL ACTIVITIES

- ❑ In Massachusetts, real estate appraisal, like real estate brokerage, is a regulated profession.





REGULATION OF APPRAISAL ACTIVITIES

- ❑ Appraisers are required to be certified or licensed by the state, to appraise property for compensation, in all but non-federally related transactions.





REGULATION OF APPRAISAL ACTIVITIES

- ❑ The licensing or certification requirement for appraisers does not, however, prevent a real estate broker or salesperson from giving his opinion of a property's value in the ordinary course of business, as long as he does not refer to the opinion as an appraisal.





REGULATION OF APPRAISAL ACTIVITIES

There are four classes of real estate appraisers recognized in Massachusetts:





REGULATION OF APPRAISAL ACTIVITIES

- ❑ State-certified general real estate appraiser





REGULATION OF APPRAISAL ACTIVITIES

- ❑ State-certified residential real estate appraiser





REGULATION OF APPRAISAL ACTIVITIES

- ❑ State-licensed real estate appraiser





REGULATION OF APPRAISAL ACTIVITIES

- ❑ Real estate appraisal trainee





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ To be licensed or certified, an appraiser must demonstrate (on a written examination), several areas of expertise.





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ A licensed or certified appraiser must demonstrate knowledge of the technical terminology of real estate appraisal, appraisal report writing, and real estate economics.





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ She must have an understanding of the principles of land economics and real estate appraisal processes, as well as the challenges of gathering, interpreting, and processing data.





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ An appraiser must have an understanding of the standards for developing and communicating appraisals, and a basic comprehension of the theories of depreciation, cost estimating, methods of capitalization, and appraisal mathematics.





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

Some of the acts or omissions that may form the basis for revoking or suspending an appraiser's license or certificate are:





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ procuring or attempting to procure a certificate or license by providing false or incomplete information





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ procuring or attempting to procure a certificate or license by means of bribery, misrepresentation, or fraud





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ conviction of a crime substantially related to real estate appraisal





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ entry of a civil judgment against the appraiser based on an allegation of fraud, misrepresentation, or deceit





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ conviction of any felony





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- any act or omission involving dishonesty, fraud, or misrepresentation, with the intent to either benefit the appraiser or injure another person





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ violating the confidentiality of government records





REGULATION OF APPRAISAL ACTIVITIES (CONTINUED)

- ❑ negligence, incompetence, or failure to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.



2. SALES OR MARKET COMPARISON APPROACH

WHAT IS A 'CMA'?

- ❑ A CMA is an **unbiased estimate** or opinion of the **market value** of real property by a **real estate licensee** who is **not a licensed or certified appraiser**.
- ❑ BUT- is it unbiased?



C. COMPETITIVE/COMPARATIVE MARKET ANALYSIS

WHAT EXACTLY IS A CMA?

CMA referenced as
(interchangeable terms all in common usage):

- ❑ Comparative Market Analysis
- ❑ Competitive Market Analysis
- ❑ Comparable Market Analysis



SAME, BUT DIFFERENT!

- ❑ Broker's Price Opinion (BPO)
 - usually ordered by lenders
 - ❑ Drive by
 - ❑ Interior and neighborhood
 - ❑ determine list price
 - ❑ -Market Analysis
- Opinion of Value generally less detailed



CMA VS APPRAISAL

- ❑ The valuation techniques used are similar to the three approaches to value employed by a licensed or certified appraiser.
- ❑ Appraiser has no vested interest in transaction



CMA VS APPRAISAL

- ❑ Appraisals generally hired by lender
- ❑ Appraisers use Uniform Standards of Professional Appraisal Practices (USPAP)
- ❑ CMA generally used to determine list price



SALES COMPARISON APPROACH

- ❑ Identify properties with the same 'highest and proper use' that have sold recently (usually within the last six months)
- ❑ Excluded would be conveyances such as 'short sales', bankruptcy or foreclosures or sales between relatives, etc.
- ❑ Must be arms length transaction



AKA MARKET APPROACH

- ❑ Adjustments between subject property and comparables for significant differences such as location, physical characteristics, etc.
- ❑ Similarities generally should be in the bathrooms, bedrooms, number of rooms, building age, style of house, condition of property, and lot size.
- ❑ All comparable information should be reconciled and a value should be 'estimated'



1. SELECTING COMPARABLES

WE CALL THEM “COMPS”

- ❑ Beware of our ‘lingo’
- ❑ Caution about ‘what makes my house better’
- ❑ Usually 6 month look back



2. ADJUSTING COMPARABLES

COST APPROACH OR REPLACEMENT COST APPROACH



- ❑ Cost approach is based on the property's replacement cost.
- ❑ Add together the building and land value (each computed separately).
 - ❑ Estimate the replacement cost of the building new.
 - ❑ Deduct all accrued depreciation from the replacement cost
 - ❑ Add the estimate land value to the depreciated replacement cost.



4. INCOME ANALYSIS APPROACH

INCOME APPROACH

- ❑ Income approach is determined by the amount of net operating income the property will produce over its remaining economic life.
- ❑ Steps to estimate by Income Approach
- ❑ Normally commercial/investment



HOW TO APPLY INCOME APPROACH

- ❑ Estimate the potential annual gross income.
- ❑ Adjusted Gross Income - Deduct an allowance for vacancy and collection loss.
- ❑ Net Operating Income (NOI) Deduct all annual operating expenses of the property from Adjusted Gross Income.





THERE ARE CURRENTLY
12 HOMES FOR SALE

With this inventory number we feel
this makes a good, stable market.



INFO FROM THE INTERNET (BIG DATA)

Where do we see big data in Real Estate?



realtor.com®



ALGORITHMS

They all have their own systems to analyze the big data. That's why when you are looking for your home value, you get so many different responses.





WHAT WE SAY ABOUT YOUR HOME

Here are our considerations.

1

MARKET VALUE

What's your home worth?

3

ECONOMICS

What are today's conditions?

2

6 MONTHS OF COMPARABLES

What homes resemble yours?

4

LOCATION/CONDITION

What's the location and condition?



2 EARS 1 MOUTH?

Listing presentation

- ❑ Listen to what your seller has to say.
- ❑ Being prepared to roll up your sleeves and helping out can win a seller's heart.
 - ❑ Do not presume to know what they want



PSI 4

Financing

IV FINANCING

(Salesperson 10%; Broker 8%)

A. Basic concepts and terminology

1. Points

2. LTV

3. PMI

4. Interest

IV FINANCING

(Salesperson 10%; Broker 8%)

A. Basic concepts and terminology

5. PITI

6. Financing instruments (mortgage, promissory note, etc.)

UNIT 12

Real Estate Financing

REAL ESTATE FINANCING

Many homes in the United States are bought with borrowed money, and a huge lending industry has been built to service the financial requirements of homebuyers.



It is important for the real estate professional to be knowledgeable about real estate financing programs and products in order to provide quality service, especially when representing a buyer.



UNIT OBJECTIVES

- ❑ Describe the various aspects of housing affordability,
- ❑ including mortgage terms, ability to pay, and investment and tax considerations.

UNIT OBJECTIVES

- ❑ Describe the terms, conditions, and use of the promissory note.
- ❑ Explain the elements and use of security instruments, and describe the mortgage deed of trust and the roles, rights, and obligations of the parties involved.

UNIT OBJECTIVES

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

KEY TERMS TO DEFINE AND RECORD

- ❑ Acceleration Clause
- ❑ Adjustable-rate-mortgage (ARM)
- ❑ Alienation Clause
- ❑ Amortized Loan
- ❑ Annual Percentage Rate

KEY TERMS TO DEFINE AND RECORD

- Assumption of Mortgage
- Automated Underwriting
- Balloon Payment
- Beneficiary
- Coinsurance Clause

KEY TERMS TO DEFINE AND RECORD

- ❑ Collateral
- ❑ Comprehensive Loss Underwriting Exchange (CLUE)
- ❑ Computerized Loan Origination (CLO) Debt to Income (DTI)
- ❑ Deed in lieu of foreclosure

KEY TERMS TO DEFINE AND RECORD

- ❑ Defeasance Clause
- ❑ Deficiency Judgment
- ❑ Discount Point
- ❑ Discount Rate
- ❑ Due-on-sale clause

KEY TERMS TO DEFINE AND RECORD

- ❑ Equity
- ❑ Estoppel Certificate
- ❑ Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)
- ❑ Financing

KEY TERMS TO DEFINE AND RECORD

- ❑ Foreclosure
- ❑ Fully Amortized Loan
- ❑ Graduated-payment mortgage (GPM)
- ❑ Growing-equity mortgage
- ❑ Home Mortgage Disclosure Act



KEY TERMS TO DEFINE AND RECORD

- ❑ Index
- ❑ Interest
- ❑ Interest-only loan
- ❑ Liability Coverage
- ❑ Lien Theory



KEY TERMS TO DEFINE AND RECORD

- ❑ Loan-to-value ratio (LTV)
- ❑ Margin
- ❑ Mortgage
- ❑ Mortgage Banker
- ❑ Mortgagee
- ❑ Mortgagor

KEY TERMS TO DEFINE AND RECORD

- ❑ Negative Amortization
- ❑ Negotiable Instrument
- ❑ Nonconforming Loan
- ❑ Novation
- ❑ P&I
- ❑ Participation Mortgage

KEY TERMS TO DEFINE AND RECORD

- ❑ Payment Cap
- ❑ PITI
- ❑ Point
- ❑ Prepayment Penalty
- ❑ Promissory Note
- ❑ Rate Cap

KEY TERMS TO DEFINE AND RECORD

- ❑ Release Deed
- ❑ Reverse Mortgage
- ❑ Satisfaction of Mortgage
- ❑ Shared Appreciation Mortgage (SAM)
- ❑ Short Sale
- ❑ Straight Loan

KEY TERMS TO DEFINE AND RECORD

- ❑ “Subject to”
- ❑ Title Theory
- ❑ Trust Deed
- ❑ Trustor
- ❑ Usury
- ❑ Variable Rate Mortgage

KEY TERMS TO DEFINE AND RECORD

- ☐ Acceleration clause

KEY TERMS TO DEFINE AND RECORD

❑ Acceleration clause

The clause in a mortgage or deed of trust that can be enforced to make the entire debt due immediately if the borrower defaults on an installment payment or other obligation.

KEY TERMS TO DEFINE AND RECORD

- ❑ Adjustable-rate mortgage (ARM)

KEY TERMS TO DEFINE AND RECORD

- ❑ **Adjustable-rate mortgage (ARM)**
A loan characterized by a fluctuating interest rate, usually one tied to a bank or savings and loan association cost-of-funds index.

KEY TERMS TO DEFINE AND RECORD

- ❑ Alienation Clause

KEY TERMS TO DEFINE AND RECORD

❑ Alienation Clause

The clause in a mortgage or deed of trust stating that the balance of the secured debt becomes immediately due and payable at the lender's option if the property is sold by the borrower. In effect, this clause prevents the borrower from assigning the debt without the lender's approval.

KEY TERMS TO DEFINE AND RECORD

- ☐ Amortized Loan

KEY TERMS TO DEFINE AND RECORD

❑ Amortized Loan

A loan in which the principal, as well as the interest, is payable in monthly or other periodic installments over the term of the loan.

KEY TERMS TO DEFINE AND RECORD

- ❑ Annual Percentage Rate (APR)

KEY TERMS TO DEFINE AND RECORD

- ❑ **Annual Percentage Rate (APR)**
The relationship of the total finance charges associated with a loan. This must be disclosed to borrowers by lenders under the Truth in Lending Act.

KEY TERMS TO DEFINE AND RECORD

- ❑ Assumption of Mortgage

KEY TERMS TO DEFINE AND RECORD

❑ Assumption of Mortgage

Acquiring title to property on which there is an existing mortgage and agreeing to be personally liable for the terms and conditions of the mortgage, including payments.

KEY TERMS TO DEFINE AND RECORD

- ☐ Automated Underwriting

KEY TERMS TO DEFINE AND RECORD

❑ Automated Underwriting

Computer systems that permit lenders to expedite the loan approval process and reduce lending costs.

KEY TERMS TO DEFINE AND RECORD

- ❑ Balloon Payment

KEY TERMS TO DEFINE AND RECORD

❑ Balloon Payment

A final payment of a mortgage loan that is considerably larger than the required periodic payments because the loan amount was not fully amortized.

KEY TERMS TO DEFINE AND RECORD

- ❑ Beneficiary

KEY TERMS TO DEFINE AND RECORD

❑ Beneficiary

(1) The person for whom a trust operates or in whose behalf the income from a trust estate is drawn. (2) A lender in a deed of trust loan transaction.

KEY TERMS TO DEFINE AND RECORD

- ☐ Coinsurance Clause

KEY TERMS TO DEFINE AND RECORD

❑ Coinsurance Clause

A clause in insurance policies covering real property that requires the policyholder to maintain fire insurance coverage generally equal to at least 80% of the property's actual replacement cost.

KEY TERMS TO DEFINE AND RECORD

❏ Collateral

KEY TERMS TO DEFINE AND RECORD

❑ Collateral

- ❑ Something having value that is given to secure repayment of a debt.

KEY TERMS TO DEFINE AND RECORD

- ❑ Comprehensive Loss Underwriting Exchange (CLUE)

KEY TERMS TO DEFINE AND RECORD

- ❑ Comprehensive Loss Underwriting Exchange (CLUE)
 - ❑ A database of consumer claims history that allows insurance companies to access prior claims information in the underwriting and rating process.

KEY TERMS TO DEFINE AND RECORD

- ❑ Computerized Loan Origination (CLO)

KEY TERMS TO DEFINE AND RECORD

- ❑ **Computerized Loan Origination (CLO)**
 - ❑ An electronic network for handling loan applications through remote computer terminals linked to various lenders' computers.

KEY TERMS TO DEFINE AND RECORD

- ❑ Debt to income (DTI)

KEY TERMS TO DEFINE AND RECORD

- ❑ Debt to income (DTI)
 - ❑ Information about an applicant's gross income and total debt that lenders generally look at as a percentage to determine qualification for a loan.

KEY TERMS TO DEFINE AND RECORD

- ❑ Deed in lieu of foreclosure

KEY TERMS TO DEFINE AND RECORD

❑ Deed in lieu of foreclosure

- ❑ A deed given by the mortgagor to the mortgagee when the mortgagor is in default under the terms of the mortgage. If accepted by the mortgagee, this is a way for the mortgagor to avoid foreclosure **process.**

KEY TERMS TO DEFINE AND RECORD

- ❑ Deed of Reconveyance

KEY TERMS TO DEFINE AND RECORD

- ❑ **Deed of Reconveyance**
 - ❑ A document that a trustee uses to transfer the title back to the trustor (borrower) when the note is repaid.

KEY TERMS TO DEFINE AND RECORD

- ☐ Defeasance Clause

KEY TERMS TO DEFINE AND RECORD

❑ Defeasance Clause

- ❑ A clause used in leases and mortgages that cancels a specified right upon the occurrence of a certain condition, such as cancellation of a mortgage upon repayment of the mortgage loan.

KEY TERMS TO DEFINE AND RECORD

- ❑ Deficiency Judgment

KEY TERMS TO DEFINE AND RECORD

❑ Deficiency Judgment

- ❑ A personal judgment levied against the borrower when a foreclosure sale does not produce sufficient funds to pay the mortgage debt in full. In some states, a deficiency judgment cannot be sought when the mortgage debt was used to purchase, and is secured by, the borrower's principal residence.

KEY TERMS TO DEFINE AND RECORD

- ❑ Discount Point

KEY TERMS TO DEFINE AND RECORD

❑ Discount Point

- ❑ A unit of measurement used for various loan charges; one point equals 1% of the amount of the loan.

KEY TERMS TO DEFINE AND RECORD

- ❑ Discount Rate

KEY TERMS TO DEFINE AND RECORD

❑ Discount Rate

- ❑ The interest rate set by the Federal Reserve that member banks are charged when they borrow money through the Fed.

KEY TERMS TO DEFINE AND RECORD

- ☐ Due-on-sale Clause

KEY TERMS TO DEFINE AND RECORD

❑ Due-on-sale Clause

- ❑ A provision in the mortgage stating that the entire balance of the note is immediately due and payable if the mortgagor transfers (sells) the property.

KEY TERMS TO DEFINE AND RECORD

- ☐ Equity

KEY TERMS TO DEFINE AND RECORD

❑ Equity

- ❑ The interest or value that an owner has in property over and above any indebtedness.

KEY TERMS TO DEFINE AND RECORD

- ❑ Estoppel Certificate

KEY TERMS TO DEFINE AND RECORD

❑ Estoppel Certificate

- ❑ A document in which a borrower certifies the amount owed on a mortgage loan and the rate of interest.

KEY TERMS TO DEFINE AND RECORD

- ❑ Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)

KEY TERMS TO DEFINE AND RECORD

- ❑ Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)
 - ❑ This act restructured the savings and loan association regulatory system; enacted in response to the savings and loan crisis of the 1980's.

KEY TERMS TO DEFINE AND RECORD

❏ Financing



KEY TERMS TO DEFINE AND RECORD

❑ Financing

- ❑ The business of providing the funds that make real estate transactions possible.

KEY TERMS TO DEFINE AND RECORD

- ❑ First Mortgage

KEY TERMS TO DEFINE AND RECORD

❑ First Mortgage

- ❑ A mortgage that has priority over all other mortgages.

KEY TERMS TO DEFINE AND RECORD

- ❑ Foreclosure

KEY TERMS TO DEFINE AND RECORD

❑ Foreclosure

- ❑ A legal procedure whereby property used as security for a debt is sold to satisfy the debt in the event of default in payment of the mortgage document.

The foreclosure procedure brings the rights of the parties to a conclusion and passes the title in the mortgaged property to either the holder of the mortgage or a third party who may purchase the realty at the foreclosure sale. Depending on the priority of the foreclosed mortgage, the property may be sold free of all other encumbrances incurred prior to the sale.



KEY TERMS TO DEFINE AND RECORD

- ☐ Fully Amortized Loan

KEY TERMS TO DEFINE AND RECORD

❑ Fully Amortized Loan

- ❑ A loan consisting of equal, regular payments satisfying the total payment of principal and interest by the due date.

KEY TERMS TO DEFINE AND RECORD

- ▣ Graduated-payment Mortgage (GPM)

KEY TERMS TO DEFINE AND RECORD

- ❑ **Graduated-payment Mortgage (GPM)**
 - ❑ A loan in which the monthly principal and interest payments increase by a certain percentage each year for a certain number of years and then level off for the remaining loan term.

KEY TERMS TO DEFINE AND RECORD

- ❑ Growing-equity Mortgage

KEY TERMS TO DEFINE AND RECORD

- ❑ **Growing-equity Mortgage**
 - ❑ A loan in which the monthly payments increase annually, with the increased amount being used to directly reduce the principal balance outstanding and thus shorten the overall term of the loan.

KEY TERMS TO DEFINE AND RECORD

- ❑ Home Mortgage Disclosure Act

KEY TERMS TO DEFINE AND RECORD

❑ Home Mortgage Disclosure Act

- ❑ A federal law, implemented at its creation by Regulation C of the Federal Reserve, that requires lenders to annually disclose the number of loan applications and loans made in certain areas to avoid the practice of redlining. On July 21, 2011, the rule-making authority of the law was transferred to the Consumer Financial Protection Bureau.

KEY TERMS TO DEFINE AND RECORD

- ☐ Homeowners Insurance

KEY TERMS TO DEFINE AND RECORD

❑ Homeowners Insurance

- ❑ Insurance that covers a residential real estate owner against financial loss from fire, theft, public liability, and other common risks.

KEY TERMS TO DEFINE AND RECORD

- ❑ Hypothecation

KEY TERMS TO DEFINE AND RECORD

❑ Hypothecation

- ❑ To pledge property as security for an obligation or loan without giving up possession of it.

KEY TERMS TO DEFINE AND RECORD

☐ Index

KEY TERMS TO DEFINE AND RECORD

☐ Index

- ☐ An objective economic indicator to which the interest rate for an adjustable-rate mortgage is tied.

KEY TERMS TO DEFINE AND RECORD

☐ Interest

KEY TERMS TO DEFINE AND RECORD

❑ Interest

- ❑ A charge made by a lender for the use of money.

KEY TERMS TO DEFINE AND RECORD

- ☐ Interest-only Loan

KEY TERMS TO DEFINE AND RECORD

❑ Interest-only Loan

- ❑ A loan that only requires the payment of interest for a stated period of time with the principal due at the end of the term.

KEY TERMS TO DEFINE AND RECORD

- ☐ Liability Coverage

KEY TERMS TO DEFINE AND RECORD

❑ Liability Coverage

- ❑ Feature of homeowners insurance that covers injuries or losses sustained within the home.

KEY TERMS TO DEFINE AND RECORD

- ☐ Lien Theory

KEY TERMS TO DEFINE AND RECORD

❑ Lien Theory

- ❑ Principle in which the mortgagor retains both legal and equitable title to property that serves as security for a debt. The mortgagee has a lien on the property, but the mortgage is nothing more than collateral for the loan.

KEY TERMS TO DEFINE AND RECORD

- ❑ Loan Origination Fee

KEY TERMS TO DEFINE AND RECORD

❑ Loan Origination Fee

- ❑ A fee charged to the borrower by the lender for making a mortgage loan. The fee is usually computed as a percentage of the loan amount.

KEY TERMS TO DEFINE AND RECORD

- ❑ Loan-to-value Ratio (LTV)

KEY TERMS TO DEFINE AND RECORD

❑ Loan-to-value Ratio (LTV)

- ❑ The relationship between the amount of the mortgage loan and the value of the real estate being pledged as collateral.

KEY TERMS TO DEFINE AND RECORD

- ☐ Margin

KEY TERMS TO DEFINE AND RECORD

❑ Margin

- ❑ A premium added to the index rate representing the lender's cost of doing business.

KEY TERMS TO DEFINE AND RECORD

- ❑ Mortgage

KEY TERMS TO DEFINE AND RECORD

❑ Mortgage

- ❑ A conditional transfer or pledge of real estate as security for the payment of a debt. Also, the document creating a mortgage lien.

KEY TERMS TO DEFINE AND RECORD

- ❑ Mortgage Banker

KEY TERMS TO DEFINE AND RECORD

❑ Mortgage Banker

- ❑ A mortgage loan company that originates, services, and sell loans to investors.

KEY TERMS TO DEFINE AND RECORD

- ❑ Mortgagee

KEY TERMS TO DEFINE AND RECORD

- ❑ Mortgagee
 - ❑ A lender in a mortgage loan transaction.

KEY TERMS TO DEFINE AND RECORD

- ☐ Mortgagor

KEY TERMS TO DEFINE AND RECORD

- ❑ **Mortgagor**
 - ❑ A borrower in a mortgage loan transaction.

B. Types of loans

1. Conventional loans
2. FHA Insured loans
3. VA guaranteed loans
4. USDA/rural loan programs

KEY TERMS TO DEFINE AND RECORD

- ❑ Negative Amortization

KEY TERMS TO DEFINE AND RECORD

❑ Negative Amortization

- ❑ Process by which the amount of the loan increases. The mortgagor sets a payment cap, or maximum amount for payments, but the difference between the payment made and the full payment amount is added to the remaining mortgage balance.

KEY TERMS TO DEFINE AND RECORD

- ❑ Negotiable Instrument

KEY TERMS TO DEFINE AND RECORD

❑ Negotiable Instrument

- ❑ A written promise or order to pay a specific sum of money that may be transferred by endorsement or delivery. The transferee then has the original payee's right to payment.

KEY TERMS TO DEFINE AND RECORD

- ❑ Nonconforming Loan

KEY TERMS TO DEFINE AND RECORD

❑ Nonconforming Loan

- ❑ A loan that exceeds the Federal Housing Finance Agency (FHFA) loan limits; also called a jumbo loan.

KEY TERMS TO DEFINE AND RECORD

- ❑ Novation

KEY TERMS TO DEFINE AND RECORD

❑ Novation

- ❑ Substituting a new obligation for an old one or substituting new parties to an existing obligation.

KEY TERMS TO DEFINE AND RECORD

☐ P&I

KEY TERMS TO DEFINE AND RECORD

- ❑ P&I

- ❑ Principal and interest.

KEY TERMS TO DEFINE AND RECORD

- ☐ Participation Mortgage

KEY TERMS TO DEFINE AND RECORD

❑ Participation Mortgage

- ❑ A mortgage loan wherein the lender has a partial equity interest in the property or receives a portion of the income from the property.

KEY TERMS TO DEFINE AND RECORD

- ❑ Payment Cap

KEY TERMS TO DEFINE AND RECORD

❑ Payment Cap

- ❑ The limit on the amount the monthly payment can be increased on an adjustable-rate mortgage when the interest rate is adjusted.

KEY TERMS TO DEFINE AND RECORD

☐ PITI

KEY TERMS TO DEFINE AND RECORD

❑ PITI

- ❑ The basic costs of owning a home--mortgage principal and interest, real estate taxes, and **hazard** insurance.

KEY TERMS TO DEFINE AND RECORD

☐ Point

KEY TERMS TO DEFINE AND RECORD

❑ Point

- ❑ A term used for a percentage of the principal loan amount charged by the lender. Each point is equal to 1% of the loan amount.

KEY TERMS TO DEFINE AND RECORD

- ❑ Prepayment Penalty

KEY TERMS TO DEFINE AND RECORD

❑ Prepayment Penalty

- ❑ A charge imposed on a borrower who pays off the loan principal early. This penalty compensates the lender for interest and other charges that would otherwise be lost.

KEY TERMS TO DEFINE AND RECORD

- ❑ Promissory Note

KEY TERMS TO DEFINE AND RECORD

❑ Promissory Note

- ❑ A financing instrument that states the terms of the underlying obligation, is signed by its maker, and is negotiable (transferable to a third party).

KEY TERMS TO DEFINE AND RECORD

- ☐ Rate Cap

KEY TERMS TO DEFINE AND RECORD

❑ Rate Cap

- ❑ The limit on the amount the interest rate can be increased at each adjustment period in an adjustable rate loan. The cap may also set the maximum interest rate that can be charged during the life of the loan.

KEY TERMS TO DEFINE AND RECORD

- ❑ Release Deed

KEY TERMS TO DEFINE AND RECORD

❑ Release Deed

- ❑ A document, also known as a deed of reconveyance, that transfers all rights given a trustee under a deed of trust loan back to the grantor after the loan has been fully repaid.

KEY TERMS TO DEFINE AND RECORD

- ❑ Reverse Mortgage

KEY TERMS TO DEFINE AND RECORD

❑ Reverse Mortgage

- ❑ A loan by which a homeowner receives a lump sum, monthly payments, or a line of credit based on the homeowner's equity in the property secured by the mortgage. The loan must be repaid at a prearranged date, upon the death of the owner, or upon the sale of the property.

KEY TERMS TO DEFINE AND RECORD

- ☐ Satisfaction of Mortgage

KEY TERMS TO DEFINE AND RECORD

- ❑ Satisfaction of Mortgage
 - ❑ A document acknowledging the payment of a mortgage debt.

KEY TERMS TO DEFINE AND RECORD

- ❑ Shared Appreciation Mortgage (SAM)

KEY TERMS TO DEFINE AND RECORD

- ❑ **Shared Appreciation Mortgage (SAM)**
 - ❑ A mortgage loan in which the lender, in exchange for a loan with a favorable interest rate, participates in the profits (if any) the borrower receives when the property is eventually sold.

KEY TERMS TO DEFINE AND RECORD

- ☐ Short Sale

KEY TERMS TO DEFINE AND RECORD

❑ Short Sale

- ❑ Sale of property in which the sales price is less than the remaining indebtedness.

KEY TERMS TO DEFINE AND RECORD

- ☐ Straight Loan

KEY TERMS TO DEFINE AND RECORD

❑ Straight Loan

- ❑ A loan in which only interest is paid during the term of the loan, with the entire principal amount due with the final interest payment.

KEY TERMS TO DEFINE AND RECORD

- ❑ “Subject to”

KEY TERMS TO DEFINE AND RECORD

- ❑ “Subject to”
 - ❑ A clause in a contract specifying exceptions or contingencies of a purchase.

KEY TERMS TO DEFINE AND RECORD

- ❑ Title Theory

KEY TERMS TO DEFINE AND RECORD

❑ Title Theory

- ❑ Principle in which the mortgagor conveys legal title to the mortgagee (or some other designated individual) and retains equitable title and the right of possession.

In effect, because the lender holds legal title, the lender has the right to immediate possession of the real estate and rents from the mortgaged property if the mortgagor defaults.



KEY TERMS TO DEFINE AND RECORD

- ☐ Trust Deed

KEY TERMS TO DEFINE AND RECORD

❑ Trust Deed

- ❑ An instrument used to create a mortgage lien by which the borrower conveys title to a trustee, who holds it as security for the benefit of the note holder (the lender); also called a deed of trust.

KEY TERMS TO DEFINE AND RECORD

- ☐ Trustor

KEY TERMS TO DEFINE AND RECORD

❑ Trustor

- ❑ A borrower in a deed of trust loan transaction; one who places property in a trust. Also called a grantor or settler.

KEY TERMS TO DEFINE AND RECORD

- ❑ Usury

KEY TERMS TO DEFINE AND RECORD

❑ Usury

- ❑ Charging interest at a higher rate than the maximum rate established by state law.

KEY TERMS TO DEFINE AND RECORD

- ❑ Variable Rate Mortgage

KEY TERMS TO DEFINE AND RECORD

- ❑ **Variable Rate Mortgage**
 - ❑ A mortgage loan in which the interest rate varies depending on market conditions.

HOUSING AFFORDABILITY

- ❑ Mortgage Terms
- ❑ Ownership Expenses and Ability to Pay
 - ❑ PITI (principal, interest, taxes, and insurance)
 - ❑ Debt-to-income ratio (DTI)
- ❑ Investment Considerations
 - ❑ Tax deductions and benefits

PROMISSORY NOTE

- ❑ Negotiable instrument
- ❑ Interest
 - ❑ Usury
- ❑ Loan Origination Fee
- ❑ Discount Points
- ❑ Prepayment Penalty

SECURITY INSTRUMENT

- ❑ Mortgage loan
- ❑ Hypothecation
- ❑ Lien theory

REAL ESTATE FINANCING

- ❑ Duties of the Borrower
- ❑ Provisions for Default
- ❑ Assignment of the Mortgage

- ❑ Release of the Mortgage Lien or Deed of Trust
 - ❑ Defeasance clause
 - ❑ Satisfaction of mortgage
- ❑ Tax and Insurance Reserves
 - ❑ Flood insurance reserves

REAL ESTATE FINANCING

- ❑ Buying “Subject to” or Assuming a Seller’s Mortgage or Deed of Trust
 - ❑ Alienation clause
- ❑ Recording a Mortgage or Deed of Trust
- ❑ Priority of Mortgage or Deed of Trust

TYPES OF LOANS

- ❑ Straight (interest-only)
- ❑ Amortized
- ❑ Adjustable-Rate Mortgage (ARM)
- ❑ Growing-Equity Mortgage (GEM)
- ❑ Balloon Payment Loan
- ❑ Reverse Mortgage

REAL ESTATE FINANCING

- ❑ Foreclosure
 - ❑ Judicial
 - ❑ Nonjudicial
- ❑ Strict

- ❑ Deed in Lieu of Foreclosure
- ❑ Redemption
- ❑ Deed to Purchaser at Sale
- ❑ Deficiency Judgment
- ❑ Short Sale

CONSUMER PROTECTIONS

- ❑ Dodd-Frank Act
- ❑ Homeowners Insurance
- ❑ Coverage and claims
- ❑ Comprehensive loss underwriting exchange (CLUE)
- ❑ Federal Flood Insurance Program

B. Types of loans

5. Amortized loans

6. Adjustable-rate mortgage loans

7. Bridge loans

8. Owner financing (installment and land contract/contract for deed)

C. Financing and lending

1. Lending process application through closing

2. Financing and credit laws and rules

a) Truth in lending

b) RESPA

c) Equal Credit Opportunity

d) CFPB/TRID rules on financing and risky loan features

3. Underwriting

a) Debt ratios

b) Credit scoring

c) Credit history

CHAPTER 12

Real Estate Financing Principles and Practices

MORTGAGE LAW

Massachusetts is a title theory state, meaning that the mortgage splits title to the property—the mortgagee takes legal title, while equitable title is retained by the mortgagor. The granting of the property to the mortgagee by the mortgagor is done with an instrument that is similar to a warranty deed, except that the document contains provisions permitting the mortgagor to get the property back if he fulfills certain conditions. Generally, these conditions are that he

MORTGAGE LAW

- ❑ pays back the sum of money with interest as provided in a separate promissory note;
- ❑ keeps the property insured for the benefit of the mortgagee
- ❑ promptly pays the taxes assessed against the property

MORTGAGE LAW

- ❑ keeps the property in good repair (does not allow the property to be waste)
- ❑ does not remove any buildings or improvements from the property.

MORTGAGE DISCHARGE (M.G.L. C. 183 § 54, 55)

(CHAPTER 63 ACTS OF 2006)

Within 45 days of receiving full payoff funds, the mortgagee must record an effective discharge, which includes recording or providing any necessary documentation, including assignments, to make the discharge effective. Documentary proof is needed to establish the authority of a servicer or note holder to discharge a mortgage.

FINANCING TECHNIQUES

Massachusetts banks are permitted to make, purchase, participate in, or service a wide variety of statutorily approved real estate mortgage loans, including certain loans in excess of 95% of value, open-end mortgages, and reverse mortgage loans.

In Massachusetts, several state agencies provide financing and loan programs for homeowners and renters.



FINANCING TECHNIQUES

- ❑ MassHousing
- ❑ The Massachusetts Housing Partnership Fund
- ❑ The Massachusetts Department of Housing and Community Development

PREDATORY LENDING

Examples

- ❑ Using false appraisals to sell properties for much more than they are worth
- ❑ Encouraging borrowers to lie about their income, expenses, or cash available for down payments to get a loan

PREDATORY LENDING

- ❑ Knowingly lending more money than a borrower can afford to repay
- ❑ Charging high interest rates to borrowers based not on their credit history but on their race or national origin

PREDATORY LENDING

- ❑ Charging fees for unnecessary or nonexistent products and services
- ❑ Pressuring borrowers to accept higher-risk loans, such as balloon loans, interest-only payments, and steep prepayment penalties

PREDATORY LENDING

- ❑ Targeting vulnerable borrowers, when they know borrowers are in need of cash due to medical, unemployment, or debt problems

PREDATORY LENDING

- ❑ Convincing homeowners to refinance again and again, when there is no benefit to the borrower, thereby stripping homeowners' equity from their homes
- ❑ Using high-pressure sales tactics to sell home improvements, and then financing them at high interest rates

LICENSING OF MA MORTGAGE COMPANIES AND LOAN ORIGINATORS

The Division of Banks, licenses mortgage lenders, and brokers, and mortgage loan originators, pursuant to M.G.L. c. 255E and its implementing regulations found at 209 CMR 42.00 et seq and Massachusetts General Laws chapter 255F and its implementing regulations found at 209 CMR 41.00 et seq, respectively.



LICENSING OF MA MORTGAGE COMPANIES AND LOAN ORIGINATORS

- ❑ Mortgage Broker License
- ❑ Mortgage Broker License (Branch)
- ❑ Mortgage Lender License
- ❑ Mortgage Lender License (Branch)
- ❑ Mortgage Loan Originator License
- ❑ Professional Requirements

AMORTIZED LOANS

In Massachusetts, amortized mortgage loans are called direct reduction loans. The payments on a direct reduction loan are the same amount each month. Each payment pays some of the interest on the loan and some of the principal amount borrowed.

AMORTIZED LOANS

Initially, most of the payment is credited to the interest with very little credited to the principal; eventually, payment increases toward the principal and decreases toward the interest

DEFAULT

Default occurs when any condition of the mortgage is not satisfied by the mortgagor. A default will activate the acceleration clause in the mortgage, and cause the entire debt to be due immediately.

DEFAULT

In most Massachusetts mortgages, the mortgagee will have included a power-of-sale clause, giving it the right to immediately possess the property, to advertise the property as having been foreclosed, and, after a stated period, to sell the property and apply the proceeds to the unpaid balance of the loan.



Massachusetts has undergone many changes to its foreclosure laws.



RIGHT TO CURE A MORTGAGE DEFAULT

In November 2007, the governor signed into law An Act Protecting and Preserving Home Ownership, which provided homeowners, who were facing foreclosure, a 90-day right to cure a default after written notice was given by the mortgagee to the mortgagor.



RIGHT TO CURE A MORTGAGE DEFAULT

The 90-day right to cure applied once in a five-year period, regardless of the mortgage holder. The law was amended in August 2010 to provide for a 150-day right-to-cure notice (or 90-day right-to-cure notice, if applicable). Lenders cannot accelerate or foreclose on the property during the 150 days.

RIGHT TO CURE A MORTGAGE DEFAULT

The 150-day right to cure is granted to a borrower once during any three-year period, regardless of the mortgage holder. If the homeowner remains in default, then the power-of-sale clause is activated.

RIGHT TO CURE A MORTGAGE DEFAULT (CONTINUED)

- ❑ In accordance with M.G.L. c. 244 § 35A (b), a mortgagee may send a 90-day right-to-cure notice provided:
- ❑ the mortgagee can demonstrate that it has negotiated in good faith with the borrower;

RIGHT TO CURE A MORTGAGE DEFAULT (CONTINUED)

- ❑ The mortgagee certifies that it has negotiated to reach an alternative to foreclosure in good faith with the borrower;
- ❑ At least one meeting has taken place between the mortgagee and the borrower;

RIGHT TO CURE A MORTGAGE DEFAULT (CONTINUED)

- ❑ The mortgagee provided loss mitigation information to the borrower before the meeting; and
- ❑ That, after the meeting, the creditor is able to demonstrate that the mortgagee and the borrower were not able to reach a resolution, (other than foreclosure).

FORECLOSURE UNDER POWER OF SALE (M.G.L. C. 244 § 14)

Some states use a judicial foreclosure process, which requires a lender to file a foreclosure action in the court system and receive an order from a judge, before the property goes to a foreclosure sale.



Massachusetts uses a *non-judicial foreclosure process*, where the lender only has to put the borrower on notice as to the default in payments and provide a 150/90- day right to cure the default.



In addition, Massachusetts also requires an *order of notice* be obtained, to determine if the property owner/s are entitled to relief under the **Servicemember Civil Relief Act (SCRA)** by filing a petition to foreclose in land court.



ASSIGNMENT OF LOANS

Lenders, or holders of mortgages or deeds of trust, often assign mortgages or deeds of trust to other lenders, or third parties. When this is done, the assignee (the person receiving the assignment) steps into the place of the original lender or assignor. An assignment is a legal document confirming that a mortgage loan has been transferred from one lender to another.



ASSIGNMENT OF LOANS

To make the assignment effective, the assignment must generally be in proper format and recorded to provide notice of assignment. Assignments must be recorded with the Registry of Deeds where the property is located, so anyone who is researching a property's title may trace the loan's ownership and origin.



Under the new § 14, a foreclosure may not proceed unless the entire chain of mortgage assignments from the original mortgagee to the foreclosing entity is recorded.



Previously, the foreclosing entity had to possess, but did not have to record, mortgage assignments before foreclosing (see U.S. Bank Nat. Ass'n v. Ibanez, 458 Mass. 637, 651 (2011)). Under the new law, no foreclosure notice will be valid unless at the time such notice is mailed evidencing the mortgage



DEED IN LIEU OF FORECLOSURE

A deed in lieu of foreclosure is a voluntary way of surrendering or giving back property to the lender without going through foreclosure process. The lender will often consider a deed in lieu because it saves the time and expense of a foreclosure.



The advantage to the homeowner is it avoids the embarrassment of a public foreclosure. A lender, however, will not accept a deed in lieu of foreclosure if there is a second mortgage on the property.



PSI 5

GENERAL PRINCIPLES OF AGENCY

13%/15 %

5. GENERAL PRINCIPLES OF AGENCY 13%/11%

[HTTPS://WWW.MASS.GOV/DOC/PSI-REAL-ESTATE-CANDIDATE-INFORMATION-BULLETIN-AND-APPLICATION/DOWNLOAD?_GA=2.199828397.22876473.1669027917-927352706.1648038387](https://www.mass.gov/doc/psi-real-estate-candidate-information-bulletin-and-application/download?_ga=2.199828397.22876473.1669027917-927352706.1648038387)

Examination	Portion	Number of Questions (Points)	Time Allowed
Salesperson	General	80 (80 points)	150 Minutes
	State	40 (40 points)	90 Minutes
	Both	120 (120 points)	240 Minutes
Broker	General	75* (80 points)	150 Minutes
	State	40 (40 points)	90 Minutes
	Both	120 (120 points)	240 Minutes

*Note: General broker exams include questions that are scored up to two points.

Textbook units and chapters:

General Principles of Agency

NA 9 - Real Estate Agency

NA 8 - Real Estate Brokerage

MA 1 - Real Estate Brokerage Relationship

CIB: NA V, NA X
MA III, MA IV, MA IX



CIB NA V

V. General principles of agency (Salesperson 13%; Broker 11%)

A. Agency and non-agency relationships

1. Types of agents and agencies
2. Other brokerage relationships (non-agents)
 - a) Transactional
 - b) Facilitators

B. Agent's duties to clients

1. Fiduciary responsibilities
2. Traditional agency duties (COALD)
3. Powers of attorney and other delegation of authority

C. Creation of agency and non-agency

agreements; disclosure of conflict of interest

1. Agency and agency agreements
 - a) Key elements of different types of listing contracts
 - b) Key elements of buyer brokerage/tenant representation contracts
2. Disclosure when acting as principal or other conflict of interest

D. Responsibilities of agent to customers and third parties, including disclosure, honesty, integrity, accounting for money

E. Termination of agency

1. Expiration
2. Completion/performance
3. Termination by force of law
4. Destruction of property/death of principal
5. Mutual agreement

CIB NA X



- X. Practice of real estate (Salesperson 13%; Broker 14%)
 - A. Trust/escrow accounts
 - 1. Purpose and definition of trust accounts, including monies held in trust accounts
 - 2. Responsibility for trust monies, including commingling/conversion
 - B. Federal fair housing laws and the ADA
 - 1. Protected classes
 - 2. Prohibited conduct (red-lining, blockbusting, steering)
 - 3. Americans with Disabilities (ADA)
 - 4. Exemptions
 - C. Advertising and technology
 - 1. Advertising practices
 - a) Truth in advertising
 - b) Fair housing issues in advertising
 - 2. Use of technology
 - a) Requirements for confidential information
 - b) Do-Not-Call List
 - D. Licensee and responsibilities
 - 1. Employee
 - 2. Independent Contractor
 - 3. Due diligence for real estate transactions
 - 4. Supervisory responsibilities **(BROKER ONLY)**
 - a) Licensees
 - b) Unlicensed personnel
 - E. Antitrust laws
 - 1. Antitrust laws and purpose
 - 2. Antitrust violations in real estate

CIB MA III

- III. REQUIREMENTS GOVERNING LICENSEES (33-35%) (SALESPERSONS: 13 ITEMS; BROKERS: 14 ITEMS)
 - A. Advertising
 - B. Broker/salesperson relationship
 - C. Commissions
 - D. Disclosures
 - 1. Consumer/Licensee Relationship
 - 2. Conflict of interest
 - 3. Rental fee disclosures
 - E. Agency and Non-Agency Relationships
 - F. Handling of documents
 - G. Handling of monies
 - H. Record Keeping (Broker only)
 - I. Home inspectors--licensee responsibility

CIB MA IV

- IV. **CONTRACTS (5%)(SALESPERSONS: 2 ITEMS;
BROKERS: 2 ITEMS)**
 - A. Offer to Purchase
 - B. Purchase and Sale agreement
 - C. Leases
 - D. Listing and Buyer Agreements

CIB MA IX

- IX. **ADDITIONAL TOPICS (5%)(SALESPERSONS: 2 ITEMS; BROKERS: 2 ITEMS)**
 - A. Ownership
 - B. Condominiums, Cooperatives, and Timeshares
 - C. Registered Land

UNIT 9

Real Estate Agency



As your real estate agent, I bring a lot to the table:

contacts, negotiating skills, resources, and time.

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On the fence about using an agent for your home purchase?



Searching for homes is literally an agent's day job.

Clever staging can blind you to a home's problems, but not an agent.

Moving to a new city, need a personal tour guide? That's an agent!

ListReports®

REAL ESTATE AGENCY

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



UNIT OBJECTIVES

- ❑ Explain agency concepts and terminology.
- ❑ Explain the difference between express and implied agency.
- ❑ Define the types of agency and identify which, if any, are involved in real estate practice.
- ❑ Describe and explain an agent's duties to third-party customers, especially regarding misstatements, misrepresentation, and potential fraud.

KEY TERMS TO DEFINE AND RECORD

- ❑ Agency
- ❑ Agency by Ratification
- ❑ Agent
- ❑ Buyer Representation Agreement
- ❑ Buyer's Agent
- ❑ Buyer's Broker

KEY TERMS TO DEFINE AND RECORD

- ❑ Buyer's Representative
- ❑ Client
- ❑ Customer
- ❑ Designated Agency
- ❑ Designated Agent
- ❑ Dual Agency

KEY TERMS TO DEFINE AND RECORD

- ❑ Employment Contract
- ❑ Estoppel
- ❑ Express Agency
- ❑ Express Agreement
- ❑ Fee-for-Service
- ❑ Fiduciary

KEY TERMS TO DEFINE AND RECORD

- ❑ Fiduciary Relationship
- ❑ Fraud
- ❑ General Agent
- ❑ Implied Agency
- ❑ Implied Agreement
- ❑ Latent Defect

KEY TERMS TO DEFINE AND RECORD

- ❑ Listing Agreement
- ❑ Listing Broker
- ❑ Megan's Law
- ❑ Ministerial Acts
- ❑ Negligent Misrepresentation
- ❑ Nonagent

KEY TERMS TO DEFINE AND RECORD

- ❑ Ostensible Agency
- ❑ Principal
- ❑ Puffing
- ❑ Ratification
- ❑ Real Estate Broker
- ❑ Representation

KEY TERMS TO DEFINE AND RECORD

- ❑ Seller's Broker
- ❑ Single Agency
- ❑ Special Agent
- ❑ Subagent
- ❑ Transaction Broker
- ❑ Universal Agent

KEY TERMS TO DEFINE AND RECORD

☐ Agency

KEY TERMS TO DEFINE AND RECORD

❑ Agency

- ❑ The relationship between a principal and an agent wherein the agent is authorized to represent the principal in certain transactions.

KEY TERMS TO DEFINE AND RECORD

- ❑ Agency by Ratification

KEY TERMS TO DEFINE AND RECORD

❑ Agency by Ratification

- ❑ An agency relationship created after the fact.

KEY TERMS TO DEFINE AND RECORD

☐ Agent

KEY TERMS TO DEFINE AND RECORD

❑ Agent

- ❑ One who acts or has the power to act for another. A fiduciary relationship is created under the law of agency when a property owner, as the principal, executes a listing agreement or management contract authorizing a licensed real estate broker to be his or her agent. A prospective property buyer may authorize a real estate broker to act as the buyer's agent to find a suitable property.

KEY TERMS TO DEFINE AND RECORD

- ❑ Buyer Representation Agreement

KEY TERMS TO DEFINE AND RECORD

❑ Buyer Representation Agreement

- ❑ A principal-agent relationship in which the real estate professional acts on behalf of the buyer, usually as an agent, with fiduciary responsibilities to the buyer.

KEY TERMS TO DEFINE AND RECORD

- ❑ Buyer's Agent

KEY TERMS TO DEFINE AND RECORD

❑ Buyer's Agent

- ❑ A real estate professional who is under contract to locate property for a buyer and represent the buyer's interests in a transaction.

KEY TERMS TO DEFINE AND RECORD

- ❑ Buyer's Broker

KEY TERMS TO DEFINE AND RECORD

❑ Buyer's Broker

- ❑ A residential real estate professional who represents prospective buyers exclusively.

KEY TERMS TO DEFINE AND RECORD

- ❑ Buyer's Representative

KEY TERMS TO DEFINE AND RECORD

❑ Buyer's Representative

- ❑ A residential real estate professional who represents the prospective purchaser in a transaction, often through a sales associate of the broker. The buyer's representative who acts as a buyer's agent owes the buyer-principal the common-law or statutory agency duties.

KEY TERMS TO DEFINE AND RECORD

☐ Client

KEY TERMS TO DEFINE AND RECORD

❑ Client

- ❑ The principal in an agency relationship or other form of representation.

KEY TERMS TO DEFINE AND RECORD

☐ Customer

KEY TERMS TO DEFINE AND RECORD

❑ Customer

- ❑ The third party or non represented consumer for whom some level of service is provided.

KEY TERMS TO DEFINE AND RECORD

- ❑ Designated Agency

KEY TERMS TO DEFINE AND RECORD

❑ Designated Agency

- ❑ A process that accommodates an in-house sale in which two different agents are involved. The broker designates one agent to represent the seller and one agent to represent the buyer.

KEY TERMS TO DEFINE AND RECORD

- ❑ Designated Agent

KEY TERMS TO DEFINE AND RECORD

❑ Designated Agent

- ❑ A real estate professional authorized by a broker to act as the agent for a specific principal in a particular transaction; also may be called assigned agent or appointed agent.

KEY TERMS TO DEFINE AND RECORD

- ❑ Dual Agency

KEY TERMS TO DEFINE AND RECORD

❑ Dual Agency

- ❑ Representing both parties to a transaction. This is unethical unless both parties agree to it, and it is illegal in some states.

KEY TERMS TO DEFINE AND RECORD

- ❑ Employment Contract

KEY TERMS TO DEFINE AND RECORD

❑ Employment Contract

- ❑ A document evidencing formal employment between employer and employee or between principal and agent or representative. In the real estate business, this generally takes the form of the agreement between broker and sales associate, client representation agreement (including a listing agreement or buyer representation agreement), or property management agreement.

KEY TERMS TO DEFINE AND RECORD

- ❑ Estoppel

KEY TERMS TO DEFINE AND RECORD

❑ Estoppel

- ❑ Method of creating an agency relationship in which someone states incorrectly that another person is his agent and a third person relies on that representation.

KEY TERMS TO DEFINE AND RECORD

- ❑ Express Agency

KEY TERMS TO DEFINE AND RECORD

❑ Express Agency

- ❑ An agency relationship based on a formal agreement between the parties.

KEY TERMS TO DEFINE AND RECORD

- ❑ Express Agreement

KEY TERMS TO DEFINE AND RECORD

❑ Express Agreement

- ❑ An oral or written contract in which the parties state the contract's terms and express their intentions in words.

KEY TERMS TO DEFINE AND RECORD

- ❑ Fee-for-service

KEY TERMS TO DEFINE AND RECORD

- ❑ **Fee-for-service**
 - ❑ Arrangement by which a consumer asks a real estate professional to perform specific real estate services for an agreed-upon fee.

KEY TERMS TO DEFINE AND RECORD

- ❑ Fiduciary

KEY TERMS TO DEFINE AND RECORD

❑ Fiduciary

- ❑ One in whom trust and confidence is placed; a reference to a real estate professional employed under the terms of a listing contract or buyer representation agreement.

KEY TERMS TO DEFINE AND RECORD

- ❑ Fiduciary Relationship

KEY TERMS TO DEFINE AND RECORD

❑ Fiduciary Relationship

- ❑ A relationship of trust and confidence, as between trustee and beneficiary, attorney and client, or principal and agent.

KEY TERMS TO DEFINE AND RECORD

❑ Fraud

KEY TERMS TO DEFINE AND RECORD

❑ Fraud

- ❑ Description intended to cause a person to give up property or a lawful right.

KEY TERMS TO DEFINE AND RECORD

- ❑ General Agent

KEY TERMS TO DEFINE AND RECORD

❑ General Agent

- ❑ One who is authorized by a principal to represent the principal in a specific range of matters.

KEY TERMS TO DEFINE AND RECORD

- ❑ Implied Agency

KEY TERMS TO DEFINE AND RECORD

❑ Implied Agency

- ❑ If the actions of the parties imply that they have mutually consented to an agency relationship, an implied agency relationship is formed.

KEY TERMS TO DEFINE AND RECORD

- ❑ Implied Agreement

KEY TERMS TO DEFINE AND RECORD

❑ Implied Agreement

- ❑ A contract under which the agreement of the parties is demonstrated by their acts and conduct.

KEY TERMS TO DEFINE AND RECORD

- ☐ Latent Defect

KEY TERMS TO DEFINE AND RECORD

❑ Latent Defect

- ❑ A hidden structural defect that could not be discovered by ordinary inspection and that threatens a property's soundness or the safety of its inhabitants. Some states impose on property sellers and real estate professionals a duty to inspect for and disclose latent defects.

KEY TERMS TO DEFINE AND RECORD

- ❑ Listing Agreement

KEY TERMS TO DEFINE AND RECORD

❑ Listing Agreement

- ❑ A contract between an owner (as principal) and a real estate professional (as representative of the owner) by which the real estate professional is employed to find a buyer for the owner's real estate on the owner's terms, for which service the owner agrees to pay a commission or other form of compensation.

KEY TERMS TO DEFINE AND RECORD

- ❑ Listing Broker

KEY TERMS TO DEFINE AND RECORD

❑ Listing Broker

- ❑ The broker from whose office a listing agreement is initiated.

KEY TERMS TO DEFINE AND RECORD

- ☐ Megan's Law

KEY TERMS TO DEFINE AND RECORD

❑ Megan's Law

- ❑ Federal legislation that promotes the establishment of state systems to maintain residential information on every person who kidnaps children, commits sexual crimes against children, or commits sexually violent crimes.

KEY TERMS TO DEFINE AND RECORD

- ☐ Ministerial Acts

KEY TERMS TO DEFINE AND RECORD

❑ Ministerial Acts

- ❑ The necessary paperwork and formalities involved in transferring ownership of real property.

KEY TERMS TO DEFINE AND RECORD

- ❑ Negligent Misrepresentation

KEY TERMS TO DEFINE AND RECORD

- ❑ **Negligent Misrepresentation**
 - ❑ Occurs when the real estate professional should have known that a statement about a material fact was false.

KEY TERMS TO DEFINE AND RECORD

- ❑ Nonagent

KEY TERMS TO DEFINE AND RECORD

❑ Nonagent

- ❑ An intermediary between a buyer and a seller, or a landlord and a tenant, who assists one or both parties with a transaction without representing either. Also known as a facilitator, transaction broker, transaction coordinator, and contract broker.

KEY TERMS TO DEFINE AND RECORD

- ❑ Ostensible Agency

KEY TERMS TO DEFINE AND RECORD

❑ **Ostensible Agency**

- ❑ A form of implied agency relationship created by the actions of the parties involved rather than by written agreement or document.

KEY TERMS TO DEFINE AND RECORD

- ❑ Principal

KEY TERMS TO DEFINE AND RECORD

❑ Principal

- (1) A sum loaned or employed as a fund or an investment, as distinguished from its income or profits.
- (2) The original amount (as in a loan) of the total due and payable at a certain date.
- (3) A main party to a transaction--the person for whom an agent works.

KEY TERMS TO DEFINE AND RECORD

- ❑ Puffing

KEY TERMS TO DEFINE AND RECORD

❑ Puffing

- ❑ Exaggerated or superlative comments or opinions.

KEY TERMS TO DEFINE AND RECORD

☐ Ratification

KEY TERMS TO DEFINE AND RECORD

❑ Ratification

- ❑ Method of creating an agency relationship in which the principal accepts the conduct of someone who acted without prior authorization as the principal's agent.

KEY TERMS TO DEFINE AND RECORD

- ❑ Real Estate Broker

KEY TERMS TO DEFINE AND RECORD

❑ Real Estate Broker

- ❑ A person licensed to arrange the buying, selling, leasing, or exchange of real property for a fee.

KEY TERMS TO DEFINE AND RECORD

- ☐ Representation

KEY TERMS TO DEFINE AND RECORD

❑ Representation

- ❑ The role of a real estate professional acting on behalf of a client in a real estate transaction.

KEY TERMS TO DEFINE AND RECORD

- ❑ Seller's Broker

KEY TERMS TO DEFINE AND RECORD

❑ Seller's Broker

- ❑ The real estate broker who represents only the seller in transactions.

KEY TERMS TO DEFINE AND RECORD

- ❑ Single Agency

KEY TERMS TO DEFINE AND RECORD

❑ Single Agency

- ❑ Agency relationship in which the agent represents only one party to a transaction.

KEY TERMS TO DEFINE AND RECORD

- ❑ Special Agent

KEY TERMS TO DEFINE AND RECORD

❑ Special Agent

- ❑ One who is authorized by a principal to perform a single act or transaction; a real estate professional is usually a special agent authorized to find a ready, willing, and able buyer for a particular property, when representing a seller, or a special agent authorized to find a suitable

property, when representing a buyer.

KEY TERMS TO DEFINE AND RECORD

- ❑ Subagent

KEY TERMS TO DEFINE AND RECORD

❑ Subagent

- ❑ A sales associate acting as an agent of a broker and who therefore owes fiduciary duties to the broker's client.

KEY TERMS TO DEFINE AND RECORD

- ❑ Transaction Broker

KEY TERMS TO DEFINE AND RECORD

❑ Transaction Broker

- ❑ Helps both the buyer and the seller with paperwork and formalities in transferring ownership of real property, but who is not an agent of either party.

KEY TERMS TO DEFINE AND RECORD

- ❑ Universal Agent

KEY TERMS TO DEFINE AND RECORD

❑ Universal Agent

- ❑ A person empowered to do anything the principal could do personally.

HISTORY OF AGENCY

- ❑ Common law
- ❑ Statutory Law
- ❑ Administrative Law

CHAPTER DEFINITIONS

- Law of Agency
- Agent
- Principal
- Agency
- Fiduciary
- Client
- Customer
- Non-Agent
- Single Agent

CREATION OF AGENCY

- ❑ Express Agency
- ❑ Implied Agency
- ❑ Compensation

FIDUCIARY RESPONSIBILITIES

❑ (Reasonable) Care

❑ Obedience

“OLD CAR”

❑ Loyalty

❑ Disclosure

❑ Accounting

❑ Confidentiality

TYPES OF AGENCY RELATIONSHIPS

- ❑ General agent:
 - ❑ Represents the principal in certain business matters generally
- ❑ Special agent:
 - ❑ Represents the principal only for specified transactions, such as the sale of a house
- ❑ Disclosure of agency:
 - ❑ Real estate professionals are required to disclose the parties they represent.

AGENCY

Single Agency

- Seller
Representation
- Buyer
Representation
- Property
Management

Dual Agency

- Disclosed
- Undisclosed
- Designated
Agency

TERMINATION OF AGENCY

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

CUSTOMER-LEVEL SERVICES

- ❑ Reasonable Care and Skill
- ❑ Honest and Fair Dealing
- ❑ Disclosure of Material Facts
- ❑ Opinion vs. Fact
- ❑ Puffing
- ❑ Fraud
- ❑ Negligent Misrepresentation

Disclosures:

- ❑ Environmental Hazards
- ❑ Property Conditions
- ❑ Stigmatized Properties
- ❑ Megan's Law

UNIT 8

REAL ESTATE BROKERAGE





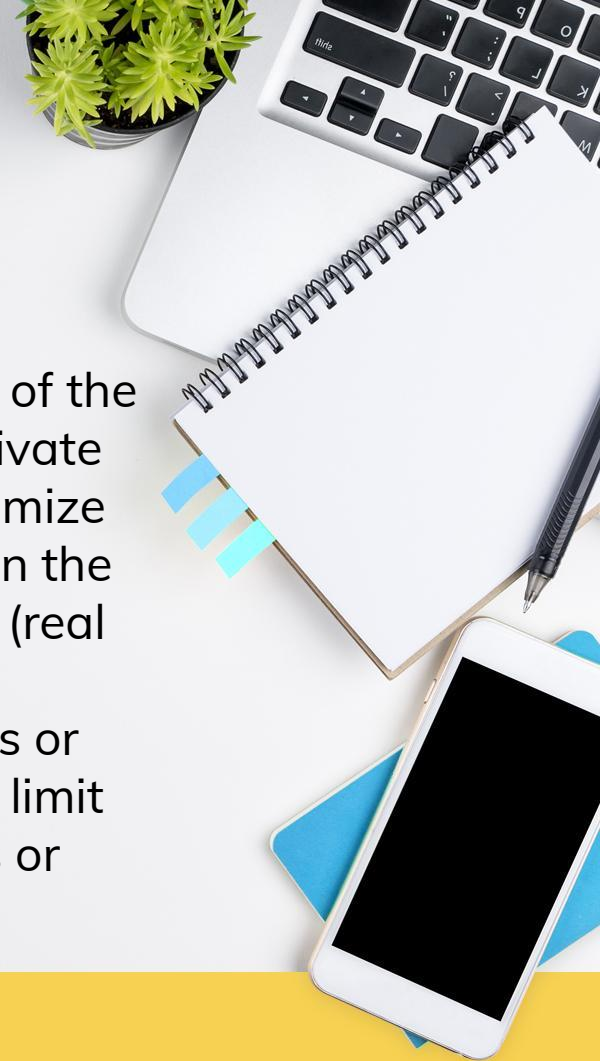
KEY TERMS TO DEFINE AND RECORD

- ☐ Antitrust Laws





KEY TERMS TO DEFINE AND RECORD



❑ Antitrust Laws

- ❑ Laws designed to preserve the free enterprise of the open marketplace by making illegal certain private conspiracies and combinations formed to minimize competition. Most violations of antitrust laws in the real estate business involve either price-fixing (real estate professionals conspiring to set fixed compensation rates) or allocation of customers or markets (real estate professionals agreeing to limit their areas of trade or dealing to certain areas or properties).



KEY TERMS TO DEFINE AND RECORD

- ❑ Boycott



KEY TERMS TO DEFINE AND RECORD

☐ **Boycott**

- ☐ When individuals or businesses withhold their patronage to a business as a protest or to reduce competition.






☐ Branch Office



Branch Office

-  A secondary place of business apart from the principal or main office from which real estate business is conducted. A branch office usually must be run by a licensed real estate professional.



☐ Brokerage



❑ Brokerage

- ❑ The bringing together of parties interested in making a real estate transaction.



Commingling



❑ **Commingling**

- ❑ The illegal act by a real estate professional of placing client or customer funds with personal funds. By law, real estate professionals are required to maintain a separate trust or escrow account for other parties' funds held temporarily by the real estate professional.



Commission



❑ Commission

- ❑ Payment to a real estate professional for services rendered, such as in the sale or purchase of real property; usually a percentage of the selling price of the property.





☐ Conversion



❑ Conversion

- ❑ The illegal use of money received on behalf of the principal.





Disclaimer



❑ **Disclaimer**

- ❑ A statement indicating no legal responsibility for information; no warranties or representations have been made.



❑ Do Not Call Registry



❑ Do Not Call Registry

- ❑ A national registry, managed by the Federal Trade Commission, that lists the phone numbers of consumers who have indicated their preference to limit the telemarketing calls they receive.



Electronic Contracting



❑ **Electronic Contracting**

- ❑ A process of integrating information electronically in a real estate transaction between clients, lender, and title and closing agents.



❏ Electronic Signatures in Global and National Commerce Act (E-Sign)



- ❑ **Electronic Signatures in Global and National Commerce Act (E-Sign)**
- ❑ An Act that makes contracts (including signatures) and records legally enforceable regardless of the medium in which they are created.



 Employee

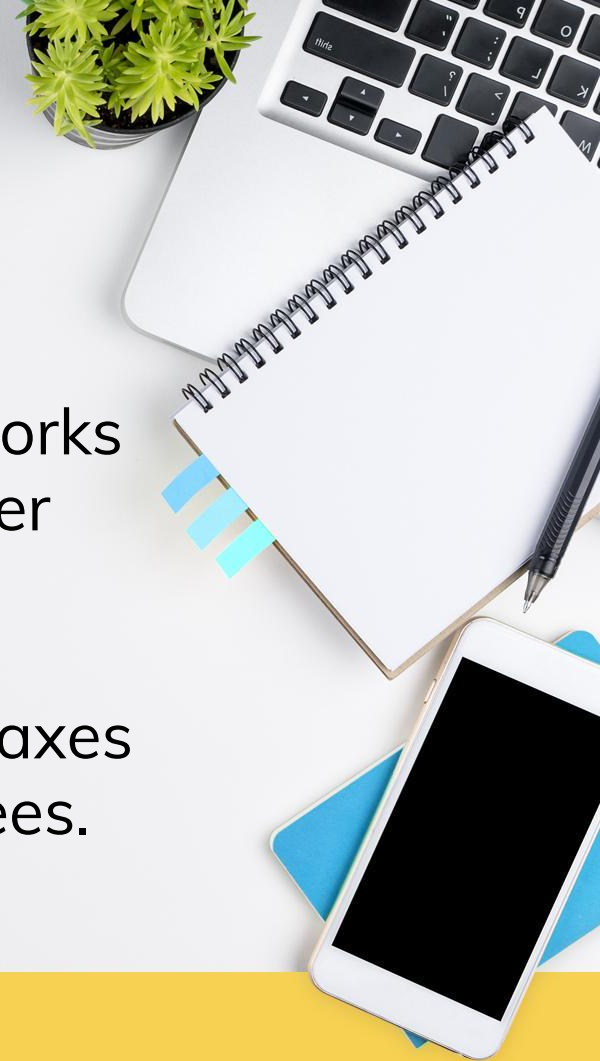


TELL US YOUR STORY
FREE Online, Flexible Real Estate Class
[Tell Me More!](#)

The advertisement features a central photograph of a smiling man with a beard, wearing a dark suit and tie, with his arms crossed. The background is a bright, modern office interior. The text is positioned at the top of the image, with a red button for 'Tell Me More!'.

❑ Employee

- ❑ For tax purposes, someone who works as a direct employee of an employer and has employee status. The employer is obligated to withhold income taxes and Social Security taxes from the compensation of employees. See also independent contractor.



❏ Independent Contractor





❑ Independent Contractor

- ❑ Someone who is retained to perform a certain act but who is subject to the control and direction of another only as to the end result and not as to the way in which the act is performed. Unlike an employee, an independent contractor pays for all expenses and Social Security and income taxes and receives no employee benefits. Most real estate sales associates are independent contractors, meeting the Internal Revenue Service definition for a qualified real estate agent.





Internet Data Exchange (IDX) Policy



❑ Internet Data Exchange (IDX) Policy

- ❑ Policy that allows all multiple listing service (MLS) members to restrict internet access to MLS property listings.



❏ Managing Broker



❑ Managing Broker

- ❑ The real estate professional who is responsible for supervision of the real estate professionals who act on behalf of the brokerage; may also be called a supervising broker.



Minimum Level of Services



❑ **Minimum Level of Services**

- ❑ The services that real estate professionals must provide to clients, as prescribed differently by certain states; for example, assisting clients in negotiation and answering questions from clients about offers, counteroffers, and contingencies.

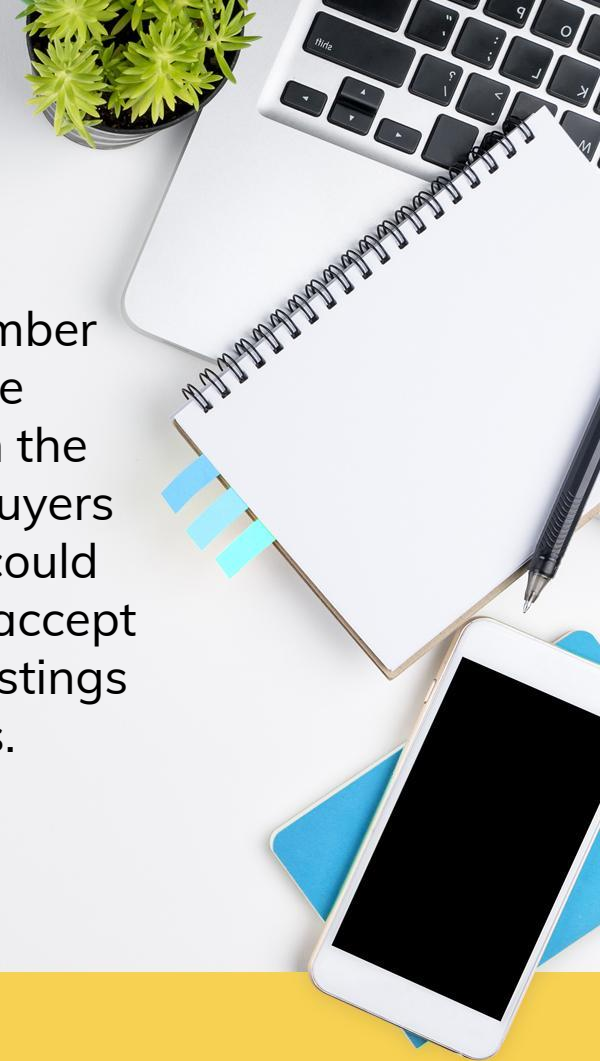


❏ Multiple Listing Service (MLS)



❑ **Multiple Listing Service (MLS)**

- ❑ A marketing organization composed of member real estate professionals who agree to share their listing agreements with one another in the hope of procuring ready, willing, and able buyers for their properties more quickly than they could on their own. Most multiple listing services accept exclusive right-to-sell or exclusive agency listings from their member real estate professionals.



Procuring Cause



❑ Procuring Cause

- ❑ The effort that brings about the desired result. Under an open listing, the real estate professional who is the procuring cause of the sale receives the commission.





☐ Ready, Willing, and Able Buyer



- ❑ **Ready, Willing, and Able Buyer**
 - ❑ Person who is prepared to buy property on the seller's terms and is ready to take positive steps to consummate the transaction.



❏ Unbundling Services



- ❑ **Unbundling Services**
 - ❑ Offering only the real estate services that a client requires.



The background of the slide is a top-down view of a white desk. On the right side, there is a laptop keyboard, a small potted succulent with green leaves, a spiral-bound notebook with a black cover and white pages, a black pen, and a white smartphone with a black screen. The desk is partially covered by a yellow horizontal bar at the bottom.

- ❏ Uniform Electronic Transactions Act (UETA)

- ❑ **Uniform Electronic Transactions Act (UETA)**
 - ❑ Sets forth rules for entering into an enforceable contract using electronic means.





BROKERAGE AND REAL ESTATE LICENSING LAWS

- ❑ Purpose of License Laws
 - ❑ Establish basic requirements for licensees
 - ❑ Define which activities require licensing
 - ❑ Describing standards of conduct and practice for licensees
 - ❑ Enforcing standards through disciplinary system





REAL ESTATE BROKERAGE

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





RELATIONSHIP OF BROKER AND SALESPERSON



- ❑ A real estate salesperson is licensed to perform real estate activities **on behalf of a licensed real estate broker.**



- ❑ The broker for whom the salesperson works is called the employing broker, and both will be subject to the terms of an employment agreement, even when the salesperson is an independent contractor for tax and other purposes.





INDEPENDENT CONTRACTOR VS EMPLOYEE

Employee:

- ❑ Rules for working hours, office routines, attendance at meetings, sales quotas, dress codes

Independent Contractor:

- ❑ No employee benefits
- ❑ Set own rules





BROKER'S COMPENSATION

- ❑ Specified in contract with clients
 - ❑ Commission
 - ❑ Co-broker's fee(i.e. Buyers agent)
 - ❑ Procuring cause
 - ❑ Ready, willing, and able buyer





MODELS FOR COMPENSATION

- ❑ 100% commission plan
- ❑ Commission splits
- ❑ No matter how the sales associate's compensation is structured, as a rule *only the employing real estate broker can pay it.*





FEE FOR SERVICE

- ❑ Minimum level of services
- ❑ Requirements vary by state



ANTITRUST LAWS

- ❑ Price-fixing
- ❑ Group boycott
- ❑ Allocation of customers
- ❑ Allocation of markets
- ❑ Tie-in agreements





TECHNOLOGY IN REAL ESTATE PRACTICE

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



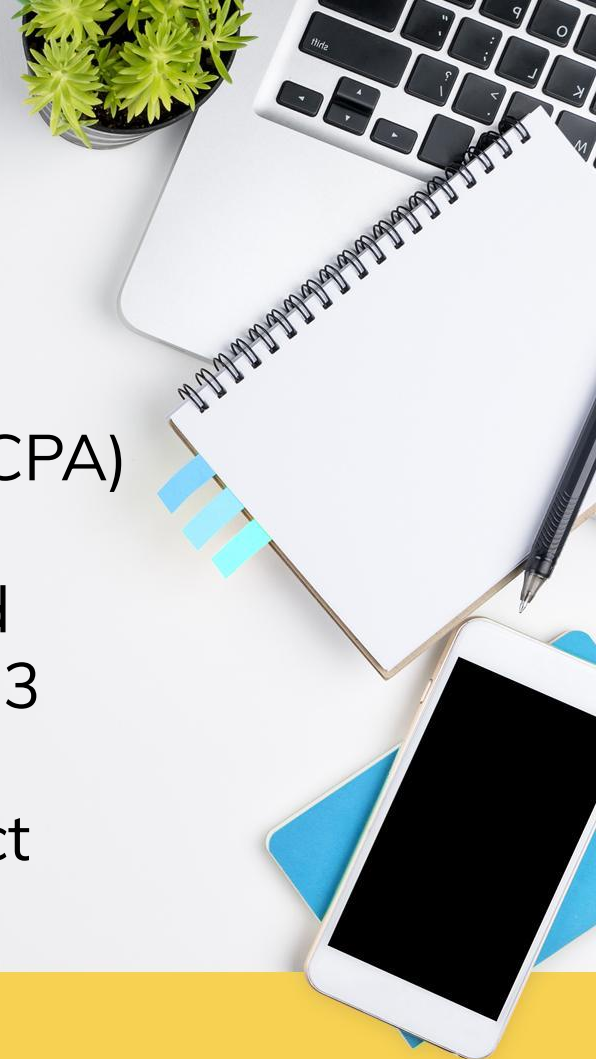
ELECTRONIC CONTRACTING

- ❑ Uniform Electronic Transaction Act (UETA)
- ❑ Electronic Signatures in Global and National Commerce Act (E-Sign)



PROHIBITED COMMUNICATIONS

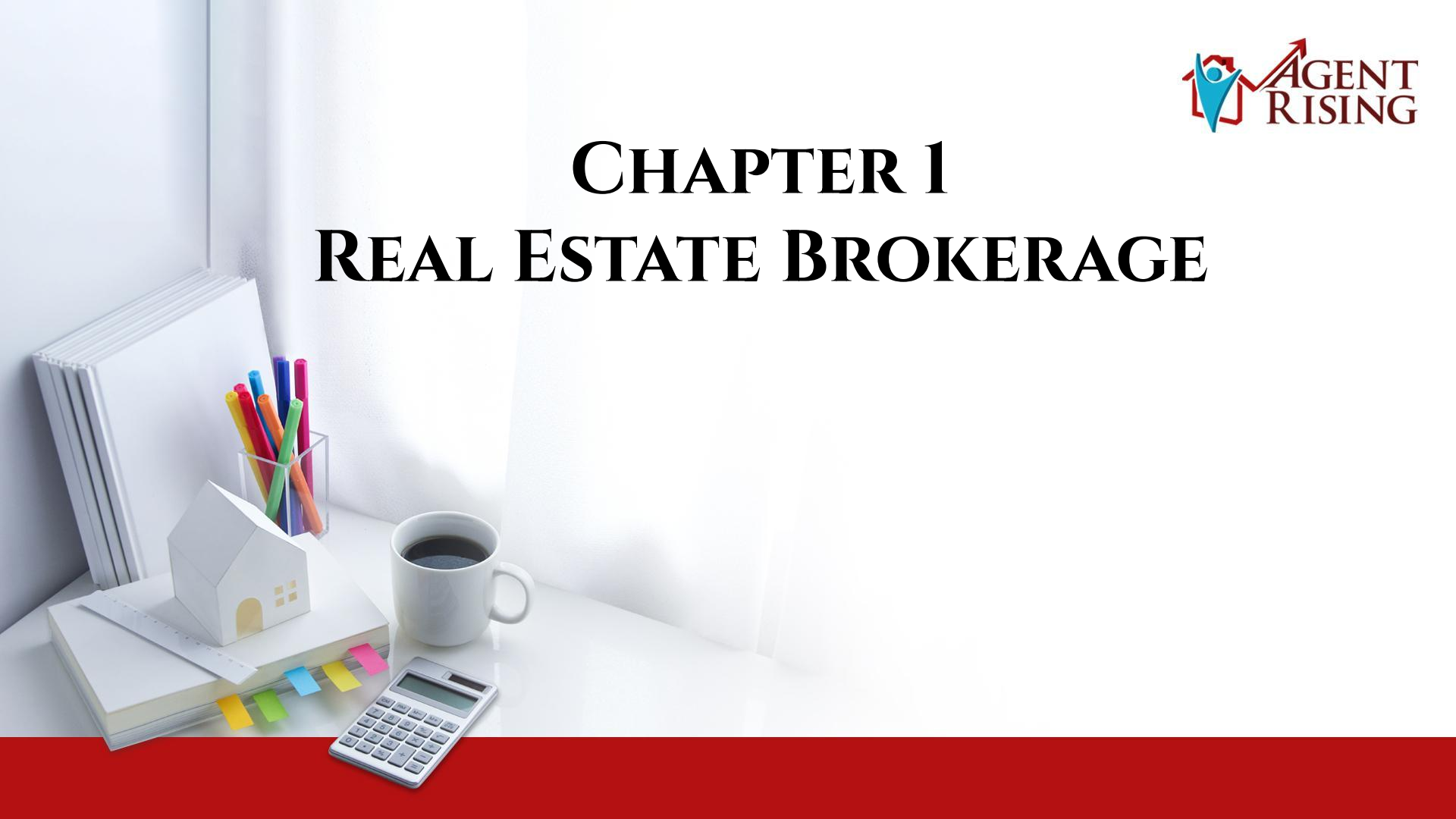
- ❑ National Do Not Call Registry
- ❑ Telephone Consumer Protection Act (TCPA)
- ❑ Junk Fax Prevention Act
- ❑ Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act)
- ❑ Children's Online Privacy Protection Act (COPPA)





CHAPTER 1

REAL ESTATE BROKERAGE





REAL ESTATE BROKERAGE

Massachusetts law distinguishes between two types of real estate professionals:

- ❑ Real estate brokers
- ❑ Real estate salespersons.





THE LAW OF AGENCY



- ❏ The law of agency defines the duties and responsibilities between the real estate agent and the consumer. This relationship between the principal, (buyer or seller) and the agent, results from a contract of employment.

THE LAW OF AGENCY

- ❑ When an agency relationship is created, the **principal** is called the **client**. Agents work for clients.



THE LAW OF AGENCY

- ❑ The **customer** is the **third party** for whom some level of service is provided. Agents work with customers.





CREATION OF AN AGENCY RELATIONSHIP

An agency relationship may be created in one of three ways:

- ❑ By written agreement





An agency relationship may be created in one of three ways:

- ❑ By oral agreement



An agency relationship may be created in one of three ways:

- ❑ By implications





CREATION OF AN AGENCY RELATIONSHIP

- ❑ Although Massachusetts does not require a listing agreement or a buyer agency agreement to be in writing, good business practices dictate the use of a signed listing/buyer contract.





FIDUCIARY DUTIES OF AN AGENT OLDCAR

☐ Obedience





FIDUCIARY DUTIES OF AN AGENT OLDCAR

☐ Loyalty





FIDUCIARY DUTIES OF AN AGENT OLDCAR

☐ Disclosure





Fiduciary Duties of an Agent OLD CAR

- ❑ Confidentiality





Fiduciary Duties of an Agent OLDCAR

☐ **Accountability**





Fiduciary Duties of an Agent OLD CAR

- ❑ Reasonable Care





Disclosure of Brokerage Relationship

The Massachusetts Licensee-
Consumer Relationship Disclosure
must be provided in the following
circumstances:

- ❑ At the first personal meeting





Disclosure of Brokerage Relationship

The Massachusetts Licensee-Consumer Relationship Disclosure must be provided in the following circumstances:

- ❑ When dealing with a prospective buyer or seller





Disclosure of Brokerage Relationship

The Massachusetts Licensee-Consumer Relationship Disclosure must be provided in the following circumstances:

- ❑ When discussing a specific property





Disclosure of Brokerage Relationship

Tradition Agency Business Model





Disclosure of Brokerage Relationship

Designated Agency Business Model





Disclosure of Brokerage Relationship

Open House Disclosure Requirements





Types of Agency Relationships

- ❑ Seller's Agent





Types of Agency Relationships

☐ Buyers' Agent





Types of Agency Relationships

- ❑ Single Agency





Types of Agency Relationships

- ❑ Disclosed Dual Agency





Types of Agency Relationships

☐ Subagent





Types of Agency Relationships

- ❑ Facilitator/Non-agent





Types of Agency Relationships

- ❑ Designated Buyer's Or Seller's Agent





Agency Termination

- ❑ Expiration of agreement





Agency Termination

- ❑ Mutual agreement to terminate, or rescission





Agency Termination

- ❑ Completion of performance under agreement





Agency Termination

- ❑ Death or insanity of buyer's/
seller's agent or client principal





Agency Termination

- ❑ Impossibility of performance (e.g., destruction of property)





Agency Termination

- ❑ Incapacity (i.e., mentally incapable), or bankruptcy of either party





Agency Termination

- ❑ Breach by one of the parties, (in which case the breaching party might be liable for damages)





Compensation

A real estate broker works under a contractual agreement with his employer (seller and/or buyer). In Massachusetts, this agreement may be created in one of three ways:

- ❑ Orally





Compensation

☐ In writing





Compensation

- ❑ By implication, where the broker and the seller behave as if they have an agreement





Compensation

- ❑ A written agreement between the broker and the principal is not necessary to create an enforceable brokerage contract.





Compensation

- ❑ The statute of frauds requirement of a written agreement, applies to conveyances of property, but it does not apply to employment agreements, such as listing contracts.





Compensation

- ❑ Note, however, that an exclusive-right-to-sell listing agreement must be in writing to be enforceable in court. Brokers and salespersons are advised to always execute a written contract.





Tristram's Landing v. Wait

The Massachusetts Supreme Court in *Tristram's Landing v. Wait*, 367 Mass. 622, 327 N.E.2d 727 (1975), held that a broker is entitled to a commission, only when the following three conditions are met:





Tristram's Landing v. Wait

- ❑ The broker produces a purchaser, ready, willing, and able to buy, on the terms fixed by the owner.





Tristram's Landing v. Wait

- ❑ The purchaser enters into a binding contract with the owner to purchase the property.





Tristram's Landing v. Wait

- ❑ The purchaser completes the transaction, by closing the title in accordance with the provisions of the contract.





Tristram's Landing v. Wait

- ❑ Under a brokerage agreement, a real estate broker is entitled to a commission from the seller, only if these three requirements are met. This is called the Tristram's Landing rule.





Procuring Cause

- ❑ In some cases, a broker may claim a commission by showing that he was the **procuring cause** of a sale, even though the broker did not actually complete the terms of the employment agreement.





Procuring Cause

- ❑ Generally, the mere introduction of a potential buyer to a property, does not entitle the broker to a commission.





Procuring Cause

- ❑ The broker needs to demonstrate that he was the efficient, effective, or final cause or force, bringing about the actual sale.





Procuring Cause

- ❑ This requires that the agent has set into operation, a continuing and uninterrupted chain of events, resulting in the agreed objective of the parties: the sale.





Procuring Cause

- ❑ Introducing a seller to a prospective buyer, or interesting a customer in a property that she later buys, may satisfy that test.





Procuring Cause

- ❑ The broker's case is particularly strong, if the seller impedes, or precludes the broker, from negotiations or involvement in the sale.





Multiple Commissions

When one broker is the procuring cause and another broker succeeds in getting the seller and the buyer to sign the sales contract, the owner could end up having to pay more than one commission.





Attachment

- ❑ When a broker is entitled to a commission and the seller refuses to pay, a writ of attachment may be filed against the seller's property.





Attachment

- ❑ An attachment is a legal writ or proceeding, by which property is made subject to a lien, pending the outcome of a suit.





Consumer Protection Law

- ❑ In addition to the obligations placed on the broker by the fiduciary relationship, Massachusetts brokers must comply with the provisions of the Massachusetts Consumer Protection Act (MCPA; M.G.L. c. 93A).





Consumer Protection Law

- ❑ The purpose of the MCPA is to level the playing field between consumers and businesses in all areas, not just real estate.





Consumer Protection Law

- ❑ The MCPA outlaws unfair and deceptive acts or practices in the conduct of any trade or commerce, including advertising, offering for sale, rent, or lease; or selling, renting, leasing, or distributing any service or property, whether real or personal, tangible or intangible.





Consumer Protection Law (cont)

In addition to this broad statement of liability, the MCPA lists specific actions considered to be misrepresentations. These include, but are not limited to:





Consumer Protection Law (cont)

- ❑ making false claims about a product's construction, durability, safety, or strength





Consumer Protection Law (cont)

- ❑ making false claims concerning the ease with which a product can be repaired or maintained





Consumer Protection Law (cont)



- ❑ making false claims about financing terms or availability



Consumer Protection Law (cont)

- ❑ advertising that something has a quality, value, or usability that it does not have





Consumer Protection Law (cont)

- ❑ substituting different goods for those advertised (i.e., bait and switch)





Consumer Protection Law (cont)

- ❑ offering guarantees without disclosing the nature and extent of the guarantees.





Affirmative Disclosure

- ❑ Equally important under the MCPA, is the broker's duty to disclose all facts relating to the sale.





AGENT RISING Affirmative Disclosure

- ❑ In the past, sellers and brokers were required, under common law, to disclose only defects they knew about, that could not be discovered in a normal inspection of the premises.





Affirmative Disclosure

- ❑ Now, however, it is illegal to fail to disclose to a buyer or prospective buyer, any fact that might influence the buyer or prospective buyer not to enter into the transaction, whether or not the buyer or prospective buyer requests the information.





Home Inspection Law

- ❑ Under the Home Inspection Law of Massachusetts (M.G.L. c. 112 § 87YY1/2), real estate agents are prohibited from making direct referrals.





Home Inspection Law

- ❑ Upon request, they may provide assistance to a buyer in accessing the information on licensed home inspectors, including providing a complete list of home inspectors, prepared by the Consumer Affairs Board.





Persons Affected by the Law

- ❑ The MCPA (93A) applies to all listing, selling, and cooperating brokers, and all salespersons affiliated with these brokers, as either employees, or independent contractors.





Persons Affected by the Law

- ❑ Sellers, developers, and builders, also come under the act's authority. However, the law does not apply to owners who sell their homes privately.





Enforcement

- ❑ The attorney general of Massachusetts has the power to issue rules and regulations for interpreting and enforcing the act.





Enforcement

- ❑ Although the attorney general may intervene, whenever a violation occurs, usually this only happens when a violation involves a large number of consumers.





Enforcement

- ❑ Individuals who have sustained losses as a result of unfair or deceptive practices, may bring a lawsuit themselves





Enforcement

- ❑ 30-Day Demand Letter





30 Day Demand Letter

- ❑ A consumer must first give the alleged violator, 30 days written notice of the claim, describing the unfair practice and the resulting loss, so that the accused can investigate the claim and offer to settle it out of court.





Enforcement

☐ Damages

- ☐ If the consumer rejects the offer, and a court finds that it was indeed reasonable, the consumer may recover no more than the amount of the offer.





Recommendations

- ❑ If the broker knows of a problem or discovers one during an inspection, he must disclose that information to the buyer or prospective buyer, identify its source, and state whether or not he has verified it.





Recommendations

- ❑ When the broker makes any sort of claim or representation, he should disclose both the source, and whether or not he has made an attempt to personally verify that information.





Recommendations

- ❑ The broker cannot be held responsible for the truthfulness of the claims, if he has not tried to verify them.





Recommendations

- ❑ However, if the broker has tried to verify the claims, or received information that could be used for verification, he must say so.





Recommendations

- ❑ The broker is not required to conduct any investigation of property that is beyond his level of competence.





Sex Offender Law

- ❑ Any people over the age of 18 may request sex offender information from their local police department, or by writing to the Sex Offender Registry Board, provided they are seeking it for their own protection; that of a child under the age of 18; or another person for whom the person requesting the information has responsibility, care, or custody.





Sex Offender Law

Information is available only if the offender has a duty to register, and has been classified by the Board as a Level 2 or a Level 3 offender:

- ❑ A low-risk offender is classified as Level 1.
- ❑ A moderate-risk offender is classified as Level 2.
- ❑ A high-risk offender is classified as Level 3.





Massachusetts Privacy and Security Laws

Any person who receives, stores, maintains, or processes (or has access to), personal information on a resident of Massachusetts in connection with providing services, goods, or employment, must have a Written Information Security Program (WISP) in place to protect any personal information collected (201 CMR 17.00) (M.G.L. c. 93H).





Personal Information

The regulation defines personal information as “a resident’s first name and last name, or first initial and last name, in combination with any 1 or more of the following data elements, that relate to such resident:





Personal Information

- ❑ Social Security number





Personal Information

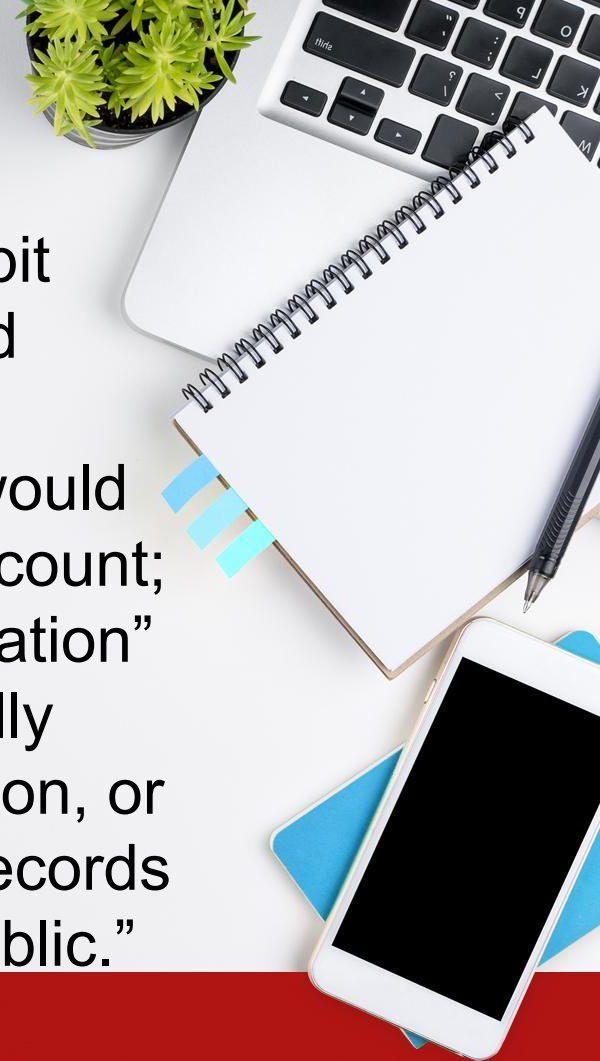
- ❑ driver's license number or state-issued identification card number





Personal Information

- ❑ financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "Personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public."





Breach of Information

In addition, M.G.L. c. 93H requires that any person or business that knows or has reason to know of a breach in security, must file a written notice with the attorney general and the director of the Office of Consumer Affairs.





Breach of Information

The notice must contain “the nature of the breach of security or unauthorized acquisition or use, the number of residents of the commonwealth affected by such incident at the time of notification, and any steps the person or agency has taken or plans to take relating to the incident.”





Breach of Information

In accordance with Section 4 of Chapter 93A, a violation of M.G.L. c. 93H allows the attorney general to bring an action against a person or business, to cure any violation of this chapter, and for any other relief that may be appropriate.





Breach of Information

The Office of Consumer Affairs and Business Regulation has provided several documents to assist businesses in their efforts to comply with the regulation:





Breach of Information

- ❏ Frequently Asked Questions:
www.mass.gov/ocabr/docs/idtheft/201cmr17faqs.pdf





Breach of Information

- ❏ 201 CMR 17.00:
[www.mass.gov/ocabr/docs/idtheft/
201cmr1700reg.pdf](http://www.mass.gov/ocabr/docs/idtheft/201cmr1700reg.pdf)





Breach of Information

- ❏ A Small Business Guide:
Formulating a Comprehensive
Written Information Security
Program:

[www.mass.gov/ocabr/docs/idtheft/
sec-plan-smallbiz-guide.pdf](http://www.mass.gov/ocabr/docs/idtheft/sec-plan-smallbiz-guide.pdf)





Breach of Information

- ❏ Compliance Checklist:
www.mass.gov/ocabr/docs/idtheft/compliance-checklist.pdf





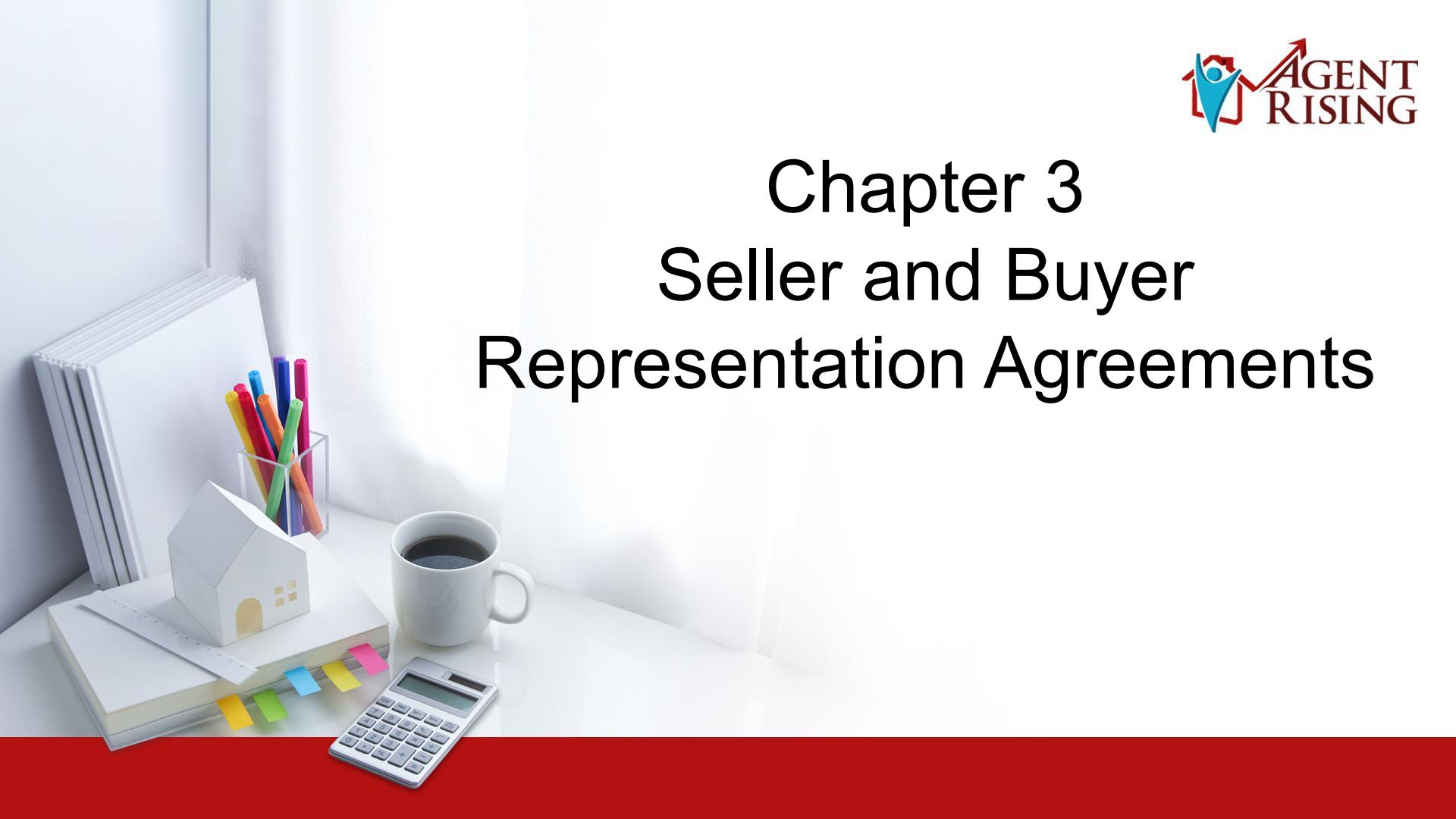
Breach of Information

- ❑ Requirement for Security Breach Notification under M.G.L. c. 93H:
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter93h/Section1>



Chapter 3

Seller and Buyer Representation Agreements





Listing Property

Seller Representation Agreements:

- Exclusive-Right-to-Sell Agreement
- Exclusive-Agency Agreement
- Open Listing
- Co-broker Listing





Listing Property

Buyer Representation Agreements:

- Exclusive Buyer Representation Agreement
- Exclusive Agency Buyer Representation Agreement
- Buyer Representation Open Agreement





Facilitator Agreement

- ❑ In Massachusetts, a real estate broker may provide services as a facilitator.





Facilitator Agreement

- ❑ A facilitator is defined as one who does not represent the buyer or seller in a transaction, and more importantly, does not act in an agency capacity.





Co-broker Cooperation

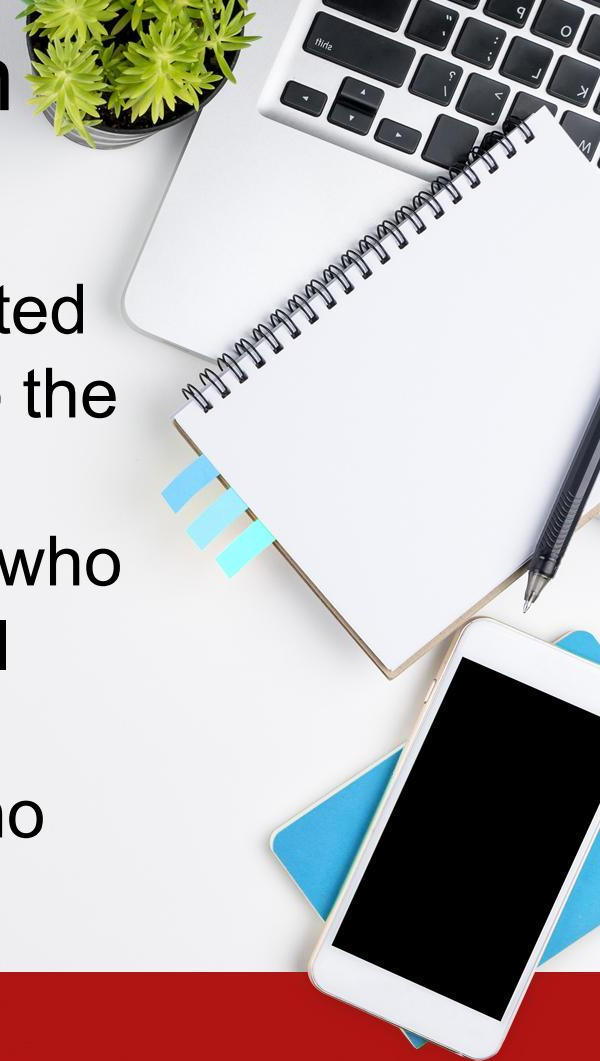
- ❑ It is not unusual for one broker to have a property listed that meets the needs of a buyer, found by another broker.





Co-broker Cooperation

- ❑ Cooperation between brokers is created when a brokerage submits a listing to the multiple listing service and offers cooperation to other brokerage firms who want to show the property to potential buyers, and compensation to the brokerage firm that brings a buyer who purchases the property.





Co-broker Cooperation

- ❑ If the buyer purchases the property, the listing broker will divide the commission in an agreed proportion between the two brokers.





Co-broker Cooperation

- ❑ The listing broker retains control of the listing. The co-broker agreement should be expressed in writing even if the two brokers have had previous dealings.





Net Listing

- ❑ Under the Massachusetts Real Estate License Law (M.G.L. c. 112 § 87AAA), a net listing is forbidden.





Net Listing

- ❑ A net listing results when an owner specifies a particular dollar amount that he must net from the sale of the property; any sum exceeding that amount will constitute the broker's commission.





Net Listing

- ❑ In those states in which such arrangements are legal, they often result in disagreements between owners and brokers on methods of payment, and in claims that brokers have set prices low and made exorbitant profits.





Net Listing

- ❑ Under a net listing, it is difficult to balance the broker's fiduciary responsibility to the principal, with the broker's own ability to make a profit.





Net Listing

- ❑ Because the practice of net listing is illegal in Massachusetts, brokers must inform owners that their fee will be either a percentage of the selling price or a flat fee for services.





Net Listing

- ❑ Then the broker presents the seller with information about comparable sales in the area, and the seller then determines the proper sales price based on the broker's advice and expertise.





Pricing The Property

- ❑ Comparative Market Analysis (CMA)
- ❑ Appraisal by a certified or licensed appraiser
- ❑ Seller's Statement of Property Condition (Voluntary, not required in Massachusetts)



Unit 10

Client Representation Agreements



C. CREATION OF AGENCY AND NON AGENCY

C. Creation of agency and non-agency

12

agreements; disclosure of conflict of interest

1. Agency and agency agreements

a) Key elements of different types of listing contracts

b) Key elements of buyer

brokerage/tenant representation contracts

2. Disclosure of representation agreements



Key Terms to Define and Record

❑ Automatic Extension Clause





Key Terms to Define and Record

❑ Automatic Extension Clause

- ❑ A listing agreement clause stating that the agreement will continue automatically for a certain period of time after its expiration date. In many states, use of this clause is discouraged or prohibited.





Key Terms to Define and Record

- ❑ Buyer Representation Agreement





Key Terms to Define and Record

- ❑ **Buyer Representation Agreement**
 - ❑ A principal-agent relationship in which the real estate professional acts on behalf of the buyer, usually as an agent, with fiduciary responsibilities to the buyer.





Key Terms to Define and Record

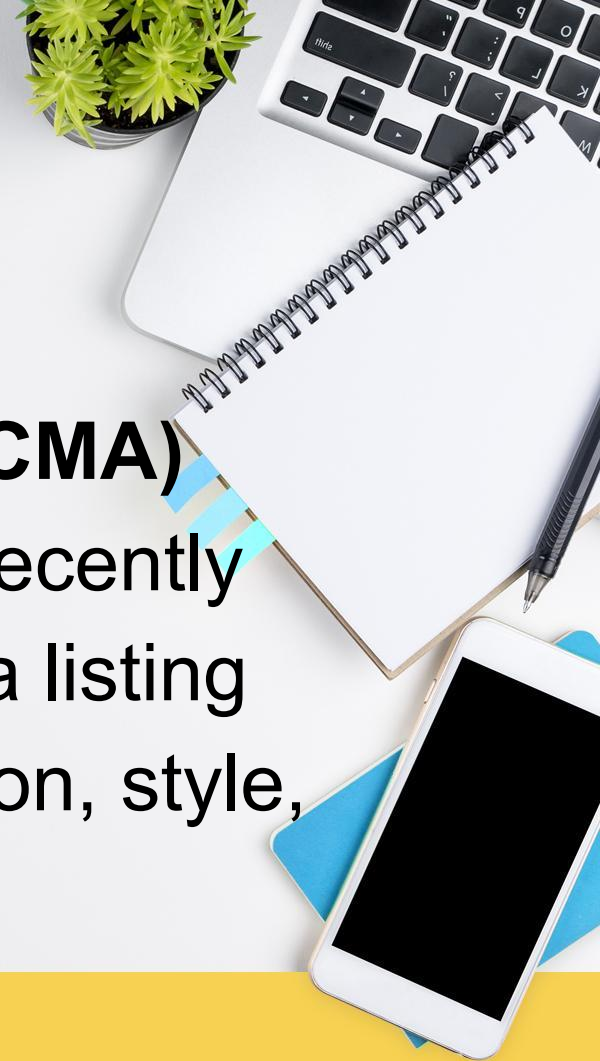
- ❑ Comparative Market Analysis (CMA)





Key Terms to Define and Record

- ❑ **Comparative Market Analysis (CMA)**
 - ❑ A comparison of the prices of recently sold homes that are similar to a listing seller's home in terms of location, style, and amenities.





Key Terms to Define and Record

- ❑ Controlled Business Arrangement





Key Terms to Define and Record



- ❑ **Controlled Business Arrangement**
 - ❑ An arrangement that offers consumers a package of services (e.g., a real estate firm, title insurance company, mortgage broker, and home inspection company).



Key Terms to Define and Record

- ❑ Exclusive Agency Listing

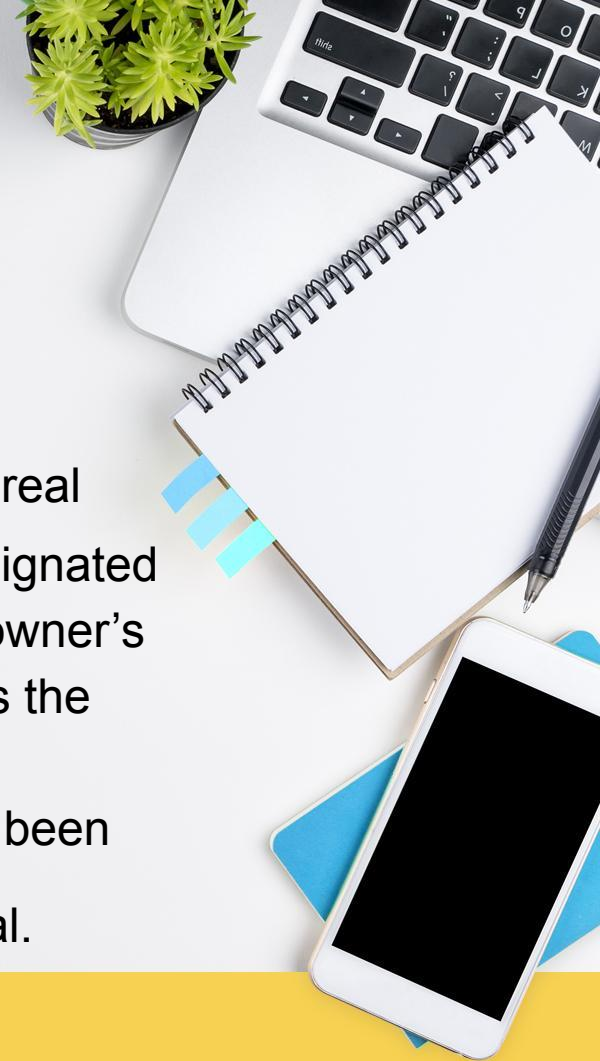




Key Terms to Define and Record

❑ Exclusive Agency Listing

- ❑ A listing contract under which the owner appoints a real estate professional as her exclusive agent for a designated period of time to sell the specified property, on the owner's stated terms, for a commission. The owner reserves the right to sell the property without paying anyone a commission if the sale is to a prospect who has not been introduced or claimed by the real estate professional.





Key Terms to Define and Record

- ❑ Exclusive Buyer Representation Agreement





Key Terms to Define and Record

❑ Exclusive Buyer Representation Agreement

- ❑ Agreement in which the buyer works with only one broker, although the broker is free to represent other buyer clients.





Key Terms to Define and Record

- ❑ Exclusive Right-to-sell Listing





Key Terms to Define and Record

❑ Exclusive Right-to-sell Listing

- ❑ A listing contract under which the owner appoints a real estate professional as his exclusive agent for a designated period of time to sell the specified property on the owner's stated terms and agrees to pay the real estate professional a commission when the property is sold, whether by the real estate professional, the owner, or another real estate professional.





Key Terms to Define and Record

- ❑ Multiple Listing Clause





Key Terms to Define and Record



❑ **Multiple Listing Clause**

- ❑ A provision in an exclusive listing for the authority and obligation on the part of the listing agent to distribute the listing to other real estate professionals in a multiple listing organization.



Key Terms to Define and Record

- ❑ Multiple Listing Service (MLS)





Key Terms to Define and Record

❑ Multiple Listing Service (MLS)

- ❑ A marketing organization composed of member real estate professionals who agree to share their listing agreements with one another in the hope of procuring ready, willing, and able buyers for their properties more quickly than they could on their own. Most multiple listing services accept exclusive right-to-sell or exclusive agency listings from their member real estate professionals.





Key Terms to Define and Record

☐ Net Listing





Key Terms to Define and Record

❑ Net Listing

- ❑ A listing based on the net price the seller will receive if the property is sold. Under a net listing, the real estate professional can offer the property for sale at the highest price obtainable to increase the commission. This type of listing is illegal in many states.





Key Terms to Define and Record

☐ Open Listing





Key Terms to Define and Record

❑ Open Listing

- ❑ A listing contract under which the real estate professional's compensation is contingent on the real estate professional producing a ready, willing, and able buyer before the property is sold by the seller or another real estate professional.





Representing the Seller

- ❑ Types of Listing Agreements
 - ❑ Exclusive Right-to-Sell Listing
 - ❑ Exclusive Agency Listing
 - ❑ Open Listing
 - ❑ Net Listing

- ❑ Listings Involving Cooperating Brokers
 - ❑ Multiple listing service (MLS)





Termination of Seller Representation

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





Listings

- ❑ Expiration of Listing Period
 - ❑ Automatic extension clause
 - ❑ Broker protection clause

- ❑ The Listing Presentation
 - ❑ Comparative Market Analysis (CMA)
 - ❑ Information Needed
 - ❑ Disclosures





The Listing Contract

- Names
- Brokerage Firm
- Description of Premises
- Listing Price
- Broker's Authorities and Responsibilities
- Broker's Compensation
- Real Property and Personal Property
- Leased Equipment
- Proposed Dates for Closing and Possession Closing





The Listing Contract



- Evidence of Ownership
- Encumbrances
- Home Warranty
- Termination
- Broker Protection Clause
- Warranties by Owner
- Indemnification Wording
- Nondiscrimination Wording
- Antitrust Wording
- Signatures
- Date





Buyer Representation

- ❑ Representing the Buyer
 - ❑ Exclusive buyer representation agreement

- ❑ Termination of Buyer Representation
 - ❑ Purpose of agreement fulfilled
 - ❑ Term expires
 - ❑ Mutual agreement
 - ❑ Breach
 - ❑ Either party dies or is incapacitated

