

REAL ESTATE PRINCIPLES I

Donald A. Corb, JD

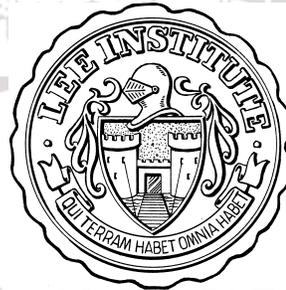
Lee Institute School of Real Estate (Founder)

Richard A. Giovangelo

Lee Institute School of Real Estate (President)

Lee Institute -- Brookline, Mass.

THIRTEENTH EDITION



COPYRIGHT © 2013-14 Lee Institute

©All rights reserved. The text of this publication, or any part thereof, may not be reproduced in any manner whatsoever without written permission from the publisher.

Printed in the United States of America

Published by **Lee Institute, Inc.**
310 Harvard Street
Brookline, Mass. 02446
800.649.0008-617.734.3211
www.leeinstitute.com
sysadmin@leeinstitute.com

CONTENTS

Acknowledgements xxvii

Foreword xxvii

CHAPTER 1	
CONCEPTS OF REAL ESTATE	1-1
REAL vs. PERSONAL PROPERTY	
A. Characteristics of Land/Real Estate	
a. Land	1-1
b. Economic Characteristics	
i. scarcity	
ii. improvements	
c. Physical Characteristics	1-2
i. immobility	
ii. indestructability	
iii. non-homogeneity (<i>Uniqueness</i>)	
B. Personal Property / Chattels	
a. Tangeble Personal Property	
b. Intangible Personal Property	
C. Fixtures	1-3
a. Law of Affixation(Annexation)	
b. Determining What a Fixture Is	
c. Legal Test of a Fixture	
i. intention	
ii. manner	1-4
iii. relation	
iv. adaptability	
D. Trade Fixtures	
a. Accession	
E. Trees and Crops	
a. Emblements	
i. annual crops	
F. Manufactured Housing	
G. Concept of Ownership	1-5
a. Feudal System	
b. Allodial System	
H. Property Rights – Tenements, Appurtenances, and Hereditaments	
a. Identification of the Bundle of Rights	
i. possession	
ii. control	
iii. quiet Enjoyment	
iv. exclusion	
v. disposition	
I. Physical Rights of Ownership of Land	1-6
a. Surface	
i. right of lateral support	
b. Subsurface	
i. mineral rights	
ii. law of capture	
c. Air rights	1-7

d. Water rights	
i. riparian rights	
ii. littorial rights	
J. Limitations on Ownership	
a. Governmental Powers	
i. taxation	
ii. escheat	
iii. eminent Domain	
iv. police Power	
K. Private or Contractual	1-8
a. Lease	
b. Mortgage	
c. Easement	
d. License	
L. Key Words and Phrases	
M. Related Web Sites	
N. Chapter 1 Quiz	1-9

CHAPTER 2

TRANSFER OF TITLE TO REAL ESTATE

2-1

LAND DESCRIPTIONS – VOLUNTARY vs. INVOLUNTARY

A. Involuntary Transfer of Property

- a. Eminent Domain
- b. Court Action
 - i. bankruptcy
 - ii. partition
 - iii. foreclosure
 - iv. execution sale
 - v. escheat
- c. Adverse Possession
 - i. prescriptive right
 - ii. tacking

2-2

B. Voluntary Transfer of Property

- a. Public grant (*patent*)
- b. Public dedication
- c. Transfer by Will
 - i. testator
 - ii. codicil
 - iii. bequeath
 - iv. devise
 - v. bequest (*legacy*)
- d. Transfer of Property by Inheritance (*Succession*)
 - i. intestate
 - ii. law of Descent and Distribution
- e. Transfer of Property by Accession
 - i. annexation (*affixation*)
 - ii. accretion
- f. Voluntary Transfer of Property by Deed

2-3

C. Deed Types, Details, and Legal Conveyance

2-4

- a. Deed Covenants
 - i. seisin
 - ii. against encumbrances
 - iii. quiet enjoyment
 - iv. warranty of title
 - v. further assurance
- b. Types of Deeds

i.	general Warranty Deed	
ii.	special Warranty or limited warranty deed	
iii.	bargain and sale deed	2-5
iv.	quitclaim deed	
v.	Massachusetts statutory quitclaim deed	
D.	Special Purpose Deeds	
a.	Sheriff's Deed	
b.	Fiduciary's Deed	
c.	Timber Deed	
d.	Crops and Farm Produce	
E.	Essential Elements of a Valid Conveyance by Deed	2-6
a.	Written Instrument	
b.	Legally Competent Grantor	
c.	Grantee	
d.	Consideration	
e.	Granting Clause	
f.	Habendum Clause	
g.	Legal Description of the Property	
h.	Signature	
i.	Notarization	2-7
j.	Acknowledgement	
k.	Delivery and Acceptance	
F.	Deed Tax Stamps	
G.	Recording Interest in Real Estate	2-8
a.	Constructive Notice	
b.	Title Search	
i.	abstract of title	
c.	Title Insurance	
i.	owner's title insurance	2-9
ii.	mortgagee's title insurance	
H.	Cloud on Title, Color or Title, Action to Quiet Title	
i.	incompetent grantor	
ii.	undischarged mortgage or liens	
iii.	boundary lines	2-10
iv.	cloud on title	
v.	color of title	
vi.	action to quiet title	
I.	Title Defects	
a.	Incompetent Grantor	
b.	Undischarged Mortgage or Liens	
c.	Boundary Lines	
J.	Torrens System – Registered Land	
a.	Conveyance of Registered Land	
i.	registry of deeds	2-11
b.	Fraudulent Conveyance or Conveyance Transfer	
K.	Land Descriptions	2-12
a.	Informal References	
b.	Metes and Bounds	
c.	Lot-and-Block	2-13
d.	Reference to Recorded Maps, Plans or Plats	
e.	Rectangular Survey	2-14
i.	principal meridians	
ii.	base lines	
f.	Quit Claim Deed Form	2-15
L.	Key Words and Phrases	2-16
M.	Chapter 2 Quiz	2-17

THE LISTING CONTRACT – EARNING A COMMISSION

A. Types of Listing

- a. Open
- b. Exclusive
 - i. exclusive agency
 - ii. exclusive right to sell
- c. Multiple
- d. Net
- e. Termination of Listings
 - i. mutual agreement
 - ii. abandonment
 - iii. expiration of the time period
 - iv. death, insanity
 - v. transfer of title
 - vi. destruction of the property
 - vii. performance by the broker
 - viii. revocation or cancellation of the listing

3-2

B. Requirements for Earning a Commission

- a. Requirements
 - i. must be hired
 - ii. procuring cause
 - iii. ready, willing and able
- b. The Hiring
- c. Performance by the Broker
- d. Procuring Cause
- e. Time for Performance
- f. Two or More Brokers in the Same Transaction
- g. Earning a Commission / Tristram Case
- h. Broker's License Required to Sue for Commission
- i. Commission Rates

3-3

3-4

3-5

C. Principal and Agency

- a. Anti-Trust Laws
- b. Sherman Anti-Trust Act
 - i. price fixing
 - ii. group boycotting
 - iii. tying arrangements
 - iv. allocation schemes
 - v. conspiratorial behavior detection

D. Principal and Agency

- a. Agency
 - i. scope of authority
 - ii. implied authority
 - iii. "respondeat superior"
 - iv. apparent authority (ostensible)
 - v. general or special
- b. Duties Imposed Upon Fiduciaries (C.O.A.L)
 - i. care
 - ii. obedience
 - iii. accounting
 - iv. loyalty

3-6

3-7

E. Brokers Obligation to Third Parties

- a. Substantial Misrepresentations
- b. Unfair and Deceptive Act
 - i. consumer protection laws
 - ii. "caveat emptor" (*let the buyer beware*)

c. Dual Agency	3-8
i. seller's agent	
ii. buyer's agent	
d. Relationship between Brokers and Salespersons	
F. Exclusive Right to Sell Listing	3-9
G. Anti-Trust Laws	3-10
a. Price Fixing	
b. Group Boycotting	
c. Tying Arrangement	
d. Allocation Schemes	3-11
e. Conspiratorial Behavior Detection	
f. The National Do Not Call Registry	
H. Key Words and Phrases	3-12
I. Chapter 3 Quiz	3-13

CHAPTER 4
ESTATES IN LAND 4-1

COMMON LAW vs. STATUTORY LAW

A. Freehold Estate	
a. Fee Simple Absolute	
i. inheritance	
b. Fee Simple Defeasible	
i. qualified estate	
ii. fee Simple subject to a condition subsequent	
iii. fee simple determinable	
B. Life Estate	4-2
a. Legal Life Estate	
i. dower & curtesy	
ii. divorce	
b. Homestead	4-3
c. Non-Freehold Estate	
i. leasehold	
ii. tenancy for years	4-4
iii. periodic tenancy	
iv. tenancy at will	
v. tenancy at sufferance	
vi. demise	
C. License to Use Real Estate	
D. Easements	4-5
a. Appurtenant	
b. Gross	
c. Light / Air	
E. Creation of Easements	4-6
a. Express grant	
b. Prescription (<i>Adverse Use</i>)	
c. Necessity (<i>Implied</i>)	
d. Termination	4-7
e. Prevention	
f. Description	
F. Party Wall	
G. Encroachments	
H. Key Words and Phrases	4-8
I. Related Web Sites	
J. Chapter 4 Quiz	4-9

CONDOMINIUMS vs. COOPERATIVES

A. Severalty vs. Concurrent

- a. Severalty
 - i. severed
- b. Concurrent
 - i. Joint Tenancy
 - 1. equal rights of possession
 - 2. right of survivorship
 - 3. four unities
 - a. time
 - b. title
 - c. interest
 - d. possession
- c. Tenancy in Common
 - i. no right of survivorship
- d. Tenancy by the Entirety
 - ii. petition to partition
- e. Terminating Co-Ownership

5-2

B. Ownership of Real Estate by Business Organizations

- a. Corporation Ownership
 - i. advantages
 - ii. disadvantages
- b. Partnership
 - i. general
 - ii. limited
- c. Trust
 - i. agreement
 - ii. beneficiaries
 - iii. business
 - iv. estate planning
- d. Syndication
 - i. (REITS)

5-3

5-4

C. Home Ownership and Investment

D. House Types and Styles

- a. List of Various House Types and Styles
 - i. american colonial
 - ii. cape cod
 - iii. contemporary
 - iv. gable front
 - v. gambrel
 - vi. garrison (*New England*)
 - vii. manufactured
 - viii. modular
 - ix. ranch
 - x. split level
 - xi. victorian
 - xii. yankee classic

5-5

5-6

5-7

5-8

5-9

5-10

5-11

E. Condominiums, Cooperatives and Time-Shares

- a. Condominium
- b. Cooperative Ownership
 - i. financing
 - ii. selling
 - iii. disadvantage
- c. Condominium Ownership

5-12

5-13

i. fee simple	
ii. undivided interest	
iii. common property	
d. Formation of a Condominium	
i. master deed (<i>declaration</i>)	
ii. association	5-14
iii. bylaws	
iv. unit deeds	
v. real estate taxes	
vi. insurance	
vii. governing (<i>association meetings</i>)	
viii. condominium Fees	5-15
ix. special Assessments	
e. Purchasing a Condominium	
f. Financing	
g. Conversions Comparisons Chart	5-16
h. Time Sharing	5-17
i. interval ownership	
F. Keywords and Phrases	
G. Related Web Sites	
H. Chapter 5 Quiz	5-18

CHAPTER 6
ENCUMBRANCES 6-1

LIENS AND REAL ESTATE TAXES

A. Liens	
a. General	
b. Special	
B. Private Creditors' Liens	
a. mortgages	
b. attachments	6-2
c. judgments	
d. mechanic's	
i. recording	
e. Municipal	6-3
f. Government	
g. Discharge	
h. Satisfaction	
i. Filing	
j. Agreement	
k. dissolution	
C. Priority of Liens	
D. Real Estate Taxation	6-4
a. "Certificate of Liens"	
b. Ad Valorem	
c. Abatements	
d. Special Assessments for Improvements	
e. Payments	
f. Enforcement	
g. Right of Redemption	6-5
E. Key Words and Phrases	
F. Related Web Sites	
G. Chapter 6 Quiz	6-6

CHAPTER 7

CONTRACTS – ESSENTIALS OF A VALID CONTRACT

A. Contracts	
a. Meeting of the Minds	
b. Offer and Acceptance	
c. Consideration	
i. value	
ii. earnest money	
d. Competency	7-2
i. incompetent's ability	
ii. transfer of title	
iii. ratification	
e. Legal Objective (<i>Lawful</i>)	
f. Reality of Consent	
B. Legal Status of Contracts	7-2
a. Valid	
b. Void	
c. Voidable	
d. Unenforceable	7-3
C. Misrepresentation	
a. False Statement	
b. Expression of an Opinion	
c. Fraud	7-3
d. Undue Influence	
e. Duress	
f. Realty of Consent	
D. Status of Contracts	7-4
a. Executory	
b. Executed	
E. Types of Contracts	
a. Bilateral	
b. Unilateral	
c. Implied	
d. Oral	
F. Defenses for Non-Performance of a Contract	
a. Destruction	
b. Death	
c. Statute of Frauds	7-5
i. unenforceable	
d. Statute of Limitations	
i. laches	
G. Remedies for Breach of Contract	
a. Default	
b. Buyer's Remedies	
c. Seller's Remedies	
H. Essentials Terms of a Real Estate Purchase and Sale Agreement	7-6
a. Date Signed	
b. Description of the Buyer and Seller	
c. Description of the Real Estate	
d. Consideration	
I. Standard Printed Clauses in P&S	
a. Number of Copies	
b. Changes in the Terms	7-7
c. Earnest Money Deposit	
d. Escrow Account	
J. Other Forms of Contracts	

a.	Offer to Buy (<i>Meeting of the Minds</i>)	
b.	Counteroffer	
c.	Termination of Offer	
i.	withdrawal or revocation	
ii.	rejection	
iii.	death	
iv.	lapse of time	
v.	destruction	
d.	Binder	
e.	Option	7-8
f.	Financing Agreements	
K.	Miscellaneous Terminology	
a.	Assignment of a Contract	
b.	Rescission	
c.	Waiver	
d.	Parole Evidence Rule	
e.	"Time is of the Essence"	
f.	Novation	
L.	Agreement for G.I. Mortgage	7-9
M.	Offer to Purchase Real Estate	7-10
N.	Standard Condominium P&S Agreement	7-11
O.	Purchase & Sale Agreement	7-15
P.	Key Words and Phrases	7-19
Q.	Related Web Sites	
R.	Chapter 7 Quiz	7-20

CHAPTER 8		
MORTGAGES		8-1

MORTGAGE INSTRUMENTS – FINANCING INSTRUMENT PROVISIONS

A.	Mortgage	
a.	Conveyance of an Interest	
b.	Mortgagor	
c.	Mortgagee	
d.	Hypothecation	
B.	Federal Government	8-2
a.	Federal Housing Administration (<i>FHA</i>)	
b.	Veteran Administration (<i>VA</i>)	
c.	Rural Development Loans	
C.	Promissory Note (4 Notes Used)	8-3
a.	Straight	
b.	Installment	
c.	Partially Amortizing Installment	
d.	Fully Amortizing Installment	
D.	Security Instruments	
a.	Trust Deeds	
b.	Mortgages	
E.	Deeds of Trust	8-3
a.	Trutor	
b.	Trustee	
c.	Beneficiary	
d.	Equity	8-4
F.	Title Theory vs. Lien Theory	
a.	Lien Theory	
b.	Title Theory	

c. Defeasance Clause	
G. Recording a Mortgage	
a. Constructive Notice	
H. Rights of the Mortgagee	8-5
a. Assignment	
I. Rights of the Mortgagor	
a. Possession & Enjoyment	
b. Release of Mortgage Upon Performance	
c. Right of Redemption after Default	
J. Obligations of the Mortgagor	
a. Covenants	
i. repay the loan	
ii. maintain proper insurance	
iii. prevent waste	
iv. maintain the improvements	
v. pay all taxes and assessments	
b. Release of a Mortgage	
K. Financing Instrument Provisions	
a. Acceleration Clause	
b. Alienation (<i>Due-on-Sale Clause</i>)	8-6
i. nonrecourse loan	
ii. late charge penalties	
iii. tax & insurance escrow	8-7
c. Subordination Clause	
d. Prepayment Penalty Clause	
e. Assignment Clause	
f. Estoppel Clause	
g. Partial Release Clause	8-8
h. Other Clauses	
i. interest	
ii. usury laws	
iii. balloon payment	
L. Default & Foreclosure	8-9
a. Default	
i. lis pendens	
b. Equitable Right of Redemption	
c. Statutory Right of Redemption	
d. Voluntary Conveyance (<i>Deed in Lieu</i>)	
e. Foreclosure	
i. judicial	
ii. statutory	
f. Power of Sale Foreclosure	
i. soldiers & Sailors Civil Relief Act	
g. Mortgagor's Equitable Right of Redemption	8-10
h. Deficiency Due after Sale	
i. Deed in Lieu (<i>Friendly Foreclosure</i>)	
j. Bankruptcy	
M. Second Mortgage	8-11
a. Junior Mortgage	
i. subordination	
b. Purchase Money	
c. Equity	
N. Mortgage Take-Over	
a. Assumable Mortgage	
b. Effect of Mortgage Take-Over	
O. Special Purpose Financing (<i>Mortgages</i>)	
a. Blanket	
b. Bridge	8-12

c. Chattel	
d. Construction	
e. End Loan	
f. Equity Participation	
g. Graduated Payment	
h. Open End	8-13
i. Package	
j. Permanent Construction	
k. Reverse Annuity	
l. Wrap-Around	8-14
P. Fixed Disbursement Plan	
a. Voucher System	
b. Warrant System	8-15
c. Advance Financing Techniques	
i. shared Appreciation	
ii. equity Sharing (<i>participation</i>)	
iii. creative Financing	
Q. Mortgage Form	8-16
R. Key Words and Phrases	8-17
S. Chapter 8 Quiz	8-18

CHAPTER 9
THE FINANCING PROCESS

9-1

REAL ESTATE FINANCE – FINANCING TECHNIQUES

A. The Importance of Financing	
a. The Broker's Role	
B. Procedure for Applying for a Mortgage	
a. Credit Report	
b. Letter of Commitment	
c. Loan-to-Value Ratio	9-2
C. Loan Fees –Discount Points	
a. Points	
b. Effective Yield	
D. Ratio Comparisons	
a. Front-End	
b. Back-End	
E. Sources of Financing	9-3
a. Primary Mortgage Market	
b. Savings & Loan Associations (S&Ls)	
c. Mutual Savings Bank	9-4
d. Cooperative Banks	
e. Commercial Banks	
f. Credit Unions	
F. Finance Companies (<i>Financial Institutions</i>)	9-5
a. Portfolio Lenders	
b. Insurance	
c. Mortgage Banking	
d. Mortgage Bankers	9-6
e. Mortgage Brokers	
f. Private, Individual Lenders	
g. Pension & Retirement Funds	
h. Farmer's Home Administration (<i>FMHA</i>)	
G. Government Regulation of Mortgage Lending	9-7
a. The Federal Home Loan Bank Act of 1932	
b. The Banking Act of 1933	
c. Federal Home Loan Bank System	

d. Federal Reserve System	
e. Deposit Insurance	
i. reform, recovery and enforcement act (<i>firrea</i>)	
ii. office of thrift supervision (<i>ots</i>)	
iii. federal deposit insurance corporation (<i>fdic</i>)	
iv. resolution trust corporation (<i>rtc</i>)	
H. Types of Mortgages	9-8
a. Conventional	
i. PMI	
b. Privately-Backed	
i. MGIC	
c. Government-Backed	
i. FHA	
ii. VA	
d. The National Housing Act of 1934	
i. department of housing and urban development (<i>hud</i>)	
I. FHA Requirements and Regulations	9-9
a. Interest Rates	
b. Insurance	
c. Appraisal	
d. Minimum Property Standards	
e. Statement of Occupancy	
f. Loan Prepayment Privileges	
g. Discount Points (<i>Origination Fee</i>)	9-10
h. Secondary Financing	
i. Maximum Loan Amounts	
j. Assumption Rules	
k. Other FHA Programs	
J. VA Requirements and Regulations	
a. Interest Rates	
b. Loan Terms	
c. Appraisal (CRV)	
d. Eligibility	
e. Certificate of Eligibility	
f. Amount of Loan Guaranteed by the VA	
g. Down Payment Required	
h. Prepayment Penalties	
i. Assumption Regulations	
j. Points and Origination Fee	
k. Buyer's Funding Fee	
l. Comparisons with VA and FHA	
K. Mortgage Loan Repayment Techniques	9-11
a. Straight Loan	
i. term loan	
ii. balloon	
b. Installments Note	
c. Amortized Loan	
L. Variations of Direct Reduction Loans	9-12
a. Adjustable Rate	
b. Rollover	9-13
c. Graduated Payment	
M. Creative Financing	
a. Deferred Purchase Money Mortgage	
b. Mortgage Take-Over	
c. Buy-Down or Subsidized Mortgage	
d. Equity Sharing	9-14
e. Wrap-Around Mortgage	
f. Types Contracts	

i.	installment	
ii.	land sales	
iii.	deed	
iv.	conditional sale	
v.	equitable Title	
vi.	buyer default	
g.	Land Contracts	9-15
i.	advantages	
1.	buyer & seller	
ii.	disadvantages	
1.	buyer & seller	
N.	Secondary Mortgage Market	
a.	Differences between Primary and Secondary Markets	9-16
b.	Money Flow in Home Mortgage Financing	
i.	Federal National Mortgage Association (<i>FNMA</i>)	9-17
1.	securitization	9-18
ii.	Government National Mortgage Association (<i>GNMA</i>)	9-19
iii.	Federal Home Loan Mortgage Corporation (<i>FHLMC</i>)	
O.	Federal Consumer Credit Protection Act of 1968	9-20
a.	Truth-in-Lending Law (<i>TIL</i>)	
i.	regulation Z	9-21
b.	Loan Transactions Subject to TIL	9-22
i.	real estate mortgage lenders	
ii.	not secured by a lien on real estate	
1.	personal	
2.	agricultural	
3.	household	
4.	less than \$25,000 loan	
c.	Loan Transactions Not Subject to TIL	
i.	lenders transactions (<i>business or commercial</i>)	
ii.	Individual lenders	
d.	Written disclosure	
e.	Three day right of rescission	
f.	Advertising	9-23
g.	Enforcement & Penalties	
P.	Real Estate Settlement & Procedures Act of 1974 (<i>RESPA</i>)	
a.	Real Estate Settlement Procedures Act	9-24
i.	1-4 families	
ii.	residential properties	
b.	Loan Application	
c.	"Good Faith Estimate"	9-25
d.	Homeowners Protection Act of 1998	9-26
i.	fixed Rate Mortgages	
ii.	adjustable Rate Mortgages (<i>ARMs</i>)	
e.	Regulation V the Fair Credit Reporting Act (<i>FCRA</i>)	9-27
i.	copy of consumer credit file	
f.	Fair & Accurate Credit Transaction Act of 2003 (<i>FACT</i>)	9-28
Q.	Provisions of the Fact Act	
a.	Access to Credit Reports	
b.	Fraud Alerts	
c.	Truncation of Credit & Debit Card Numbers	
i.	security & disposal	
R.	Gramm-Leach-Bliley Act (<i>GLB Act</i>)	9-29
a.	Provisions in Title V	
b.	Pretexting	
c.	Nonpublic Personal Information	
S.	U.S Patriot Act in 2001	9-30
T.	Equal Credit Opportunity Act (<i>ECOA</i>)	9-31

U. Community Reinvestment Act	9-32
V. Home Ownership and Equity Protection Act (HOEPA)	
W. Housing & Economic Recovery Act of 2008 (HERA)	9-34
X. Secure & Fair Enforcement (Safe Act)	
Y. Flipping	9-36
a. Illegal flipping	
Z. Key Words and Phrases	9-37
AA. Chapter 9 Quiz	9-38

CHAPTER 10
THE NATURE OF LEASES AND TENANCIES 10-1

THE LEASEHOLD INTEREST

A. Leasehold Interest	
a. Tenancy for Years	
b. Tenancy At Will	
c. Periodic Tenancy	
d. Tenancy at Sufferance	
B. Types of Leases	
a. Straight	
b. Gross	
c. Net	
d. Percentage	
e. Step-up or Graduated	
f. Reappraisal	
C. Special Leases	10-2
a. Sale and Leaseback	
b. Ground	
D. Essentials of a Valid Lease	
a. Writing	
b. Description	
c. Terms of the lease	
d. Rent	
e. Demise Clause	
f. Signatures	
g. Delivery and Acceptance	10-3
h. Recording	
E. Covenants in Leases	
a. Expressed (Duties Imposed upon Fiduciaries <i>see pages 3-7</i>)	
i. e.g. security deposits	10-4
b. Implied	10-5
i. quiet enjoyment	
ii. prevention of waste	
F. Termination of Leases and Tenancies	
a. Termination Notice	
i. Massachusetts 30 day	
ii. Massachusetts 14 day to quit	10-6
b. Constructive Eviction	
c. Eviction	
d. Eviction Proceedings	
G. Landlord & Tenant Rights	10-5
a. Landlord Responsibilities	
b. Tenants Responsibilities	
c. Permissible Late Fees	
d. Abandoned Property	10-7
e. Tenant Protection Laws	
i. abandoned property	

- ii. removal of or locking out of a tenant
- f. Safe & Sanitary Housing for Massachusetts Residents
 - i. state sanitary code (***see chapter 14-8***)

H. Key Words and Phrases

I. Chapter 10 Quiz

10-8

CHAPTER 11

ENVIRONMENTAL POLICIES & HAZARDOUS MATERIALS

11-1

POLLUTION & HAZARDOUS SUBSTANCES vs. EFFECTS ON REAL ESTATE TRANSACTION

A. Lead Paint

- a. M.G.L Chapter 111, Sections 190 to 199
 - i. owners
 - ii. responsibilities
 - iii. financial
 - iv. MCAD

11-2

b. De-Leading

- i. abatement
- ii. interim

c. Duties of New Owners

- i. compliance letter
- ii. enforcement and penalties
- iii. fair housing
- iv. liability or secured lenders

B. Other Hazardous Materials

- a. Radon Gas
- b. Asbestos
- c. Title 5 – Onsite Sewage Disposal Systems
- d. Underground Storage Tanks

11-3

C. Disclosure Requirements and Legal Implications

- a. Lead Paint Disclosure
 - i. verbal
 - ii. prospective purchasers 10 day right
 - iii. enforcement & penalties
 - iv. license surcharge
 - v. failure to disclose

11-4

b. Title V

- c. Mass Consumer Protection Law, M.G.L. 93A
- d. Buyer's Right to an Inspection

11-5

D. Property Transfer Notification Certification

E. Seller's Disclosure

11-6

F. Key Words and Phrases

11-7

G. Chapter 11 Quiz

11-8

CHAPTER 12

FAIR HOUSING LAWS

12-1

FEDERAL vs. MASSACHUSETTS FAIR HOUSING LAWS

A. Federal Fair Housing Laws

- a. The Civil Rights Act of 1866
- b. Jones v. Alfred H. Mayer Co.

c.	The Civil Rights Act of 1964	
d.	The Civil Rights Act of 1968, Title VIII	
e.	The 1988 Amendment to the Civil Rights Act	
f.	Practices Prohibited by the Federal Fair Housing Law	12-2
g.	Housing Transactions Exempted from the Federal Fair Housing Law	
B.	Housing Transactions Exempted from the Federal Fair Housing Law	
a.	Sale or Rental	
b.	Owner-Occupied Two, Three or Four Family	
C.	Organizations Exempted from the Federal Fair Housing Law	
a.	Religious Organizations	
b.	Private Clubs	
D.	Discrimination Against Handicapped	12-3
a.	Physical	
b.	Mental Impairment	
c.	Persons Not Considered Handicapped	
i.	current drug addicts	
ii.	persons convicted of a drug related crime	
iii.	transvestites	
iv.	any person whose tenancy would constitute a direct threat	
d.	Persons Considered Handicapped	
i.	alcoholics	
ii.	AIDS	
e.	Construction requirements	
E.	Discrimination Against Families with Children (Familial Status)	
a.	Exemptions for Elderly Housing Projects	
F.	Enforcement of the Federal Civil Rights Acts	
a.	Enforcement of the Civil Rights Act of 1866	
b.	Administrative Enforcement and Penalties for Violation of the 1968 FFHL	
G.	Massachusetts Fair Housing Law, M.G.L.Chapter 151B	12-4
a.	Protected Classes	
i.	class one	
1.	<i>major exemption</i>	
ii.	class two	
1.	<i>major exemption</i>	12-5
iii.	class three	
1.	<i>familial status</i>	
2.	<i>major exemptions</i>	
iv.	handicapped persons	
H.	Violations of Fair Housing Law by Brokers and Salespersons	
a.	Overall View of Fair Housing Act	
b.	The Declaration of Independence	12-6
c.	Housing & Community Development Act	
I.	History of Residential Segregation	12-7
a.	Housing Segregation List	12-8
b.	Racial Zoning	
c.	Restrictive Covenants	
d.	Discriminatory Sales, Rental and Financing practices	
i.	exemptions	12-9
J.	Discriminatory Housing Practices	12-10
K.	HUD Regulations	12-11
a.	Discrimination in Terms, Conditions & Privileges in Service Facilities	
b.	Other Prohibited Sale and Rental Conduct	12-12
c.	Discriminatory Representations on the Availability of Dwellings	
d.	Blockbusting	12-13
e.	Unlawful Practices in the Selling, Brokering or Appraising of Property	12-14
L.	AIDS	
a.	HUD's AIDS Disclosure Policy	
b.	National Association of Realtor's AIDS Disclosure Policy	

M. The Americans with Disabilities Act	12-15
a. Civil Rights & Protection Classes Chart	12-16
b. Clarification of the Fair Housing Act and the Americans with Disabilities Act	12-17
N. Key Words and Phrases	12-18
O. Chapter 12 Quiz	12-19

CHAPTER 13	
LAND USE CONTROLS	13-1

CITY PLANNING – ZONING – SUBDIVISION & PROPERTY DEVELOPMENT

A. Public Control of Private Property	
a. Zoning Laws	
b. Building Codes	
c. Subdivision Control	
d. Environmental Protection Laws	
e. State and Federal Interstate Subdivision Land Sales Acts	
B. Zoning by-Laws	
a. Limitations	
b. City Planning	
i. planning boards	
ii. master plan	
c. Land Use Restrictions	
d. Classification of Land Use	13-2
i. residential	
ii. commercial	
iii. industrial	
iv. agricultural	
e. Dimensional Requirements and Limitations	
f. Area or Bulk Regulations	
g. Non-Conforming Use	
C. Enforcement of Zoning Laws	13-3
a. Building Permit	
b. Board of Appeals	
c. Zoning ordinance	
d. Maps	
e. Special permit	
f. Variance	
g. Spot Zoning	
h. Planned Use Development (PUD)	
i. Buffer Zone	
j. Snob Zoning	13-4
i. anti-snob law	
k. Downzoning	
l. Marketability, Effect of Zoning Regulations	
m. Broker's Duty to Disclose Zoning Laws or Pending Changes	
n. Building Codes	
D. Subdivision Control Law	
a. Preliminary Approval	
b. Definitive Plans	
E. Environmental Protection Laws	13-5
a. The National Environmental Policy Act (<i>NEPA</i>)	
b. Environmental Impact Statement (<i>EIS</i>)	13-4
i. environmental protection agency	
F. Interstate Land Sales Full Disclosure Act	
a. Registration Requirement	
b. Anti-Fraud Provision of the Act	
G. Private Land Use Control – Deed Restrictions	13-5

a. Declaration Restriction	
b. Clustering	
c. Condominium Rules & Regulations	13-6
d. Neighborhood Associations	
e. Police Powers	
H. Urban Development	13-7
a. Economic Base	
b. Urban Development Patterns	
c. Urban Development Theories	
i. concentric	
ii. axial	
iii. sector	
iv. multiple nuclei	
I. Emerging Patterns of Urban Land Use	13-8
J. Key Words and Phrases	13-9
K. Chapter 13 Quiz	13-10

CHAPTER 14

LICENSING LAW – MASSACHUSETTS SUPPLEMENT

14-1

LICENSING LAW- MASSACHUSETTS LICENSING LAW

A. Massachusetts Real Estate License Law, Rules & Regulations

a. Parts I Through VII	
b. Duties and Powers of the Board of Registration	
i. examine Records	
ii. conduct Investigations	
iii. hold Hearings	
iv. chapter 112: Section 87AAA	
c. Suspension, Revocation or Refusal to Renew a License	14-2
d. Fines and/or Imprisonment	14-3
i. blockbusting	
ii. chapter 112:Section 87CCC	
1. performing without a license	
iii. professional standards of practice	
e. Licensure: 254 CMR 2.00	
i. purpose list of application procedures, etc.	
f. Promotional Sales of Out of State Property	14-7
g. Apartment Rentals	

B. Safe and Sanitary Housing for Massachusetts Residents

a. Summary of Standards	14-8
b. Summaries of Enforcement Procedures	14-12

C. Licensing Requirements

a. Person & Organizations Required to be Licensed	14-13
b. Types of Licenses	
c. Distinction Between a Broker's License and a Salesperson's License	14-14
d. Persons or Organizations not Required to be Licensed	
e. Persons and Organizations Required to be Licensed	
f. Qualifications for Licensing	
g. Persons Exempt or Partially Exempt from Requirements	
h. Nonresident License Requirements	
i. License Term and Renewal	14-15

D. Statutory Requirements Governing the Activities of Licensees

a. Prohibited Advertising	
b. Broker/Salesperson Relationship	
c. Display of License	14-16
d. Sharing of Fees	
e. Fees and License Renewal Schedules for Real Estate Agents	

f. Advertising	14-17
g. Client Funds	
h. Conflicts of Interest	14-18
i. Commissions	14-19
j. Disclosure/Conflict of Interest	
k. Handling of Documents by Licensees	
l. Handling of Moneys/Escrow Accounts	
m. Net Listings	
n. Maintenance of Place of Business	
o. Regulations for the Conduct of Business	
p. Record Keeping	
q. Unfair Inducement	
r. Legal Advice	
E. Other Requirements for Real Estate Brokers, Corporations and LLC	14-20
a. Surety Bonds	
b. Promotional Sales of Out of State Real Property	
c. Apartment Listing Service Requirements	
F. Rules and Regulations – Real Estate School Authorization	14-21
G. Massachusetts Department of Environmental Regulations	14-23
a. Title 5/Septic Systems	14-24
b. Smoke Detector Regulations	14-25
H. Massachusetts Consumer Protection Act	14-26
a. What Violates the Consumer Protection Law?	
<i>i. selected Case Laws</i>	14-27
I. Agency Disclosure	14-28
a. Agency Disclosure Requirement	
b. Relationships with Real Estate Brokers and Salespeople	
c. Consensual Dual Agency Disclosure	14-29
d. Sub-Agency Representation	14-30
e. Massachusetts Mandatory Licensee-Consumer Relationship Disclosure	
<i>i. the time when the licensee must provide this notice to the consumer</i>	
f. Consumer Information and Responsibility	14-31
g. Relationship of Real Estate Licensee with the Consumer	
h. Types of Agency Representation	14-32
i. Massachusetts Consent to Designated Agency	14-34
j. Massachusetts Consent to Dual Agency	14-35
k. Lapsed License Policy	14-36
J. Reciprocal Licensure, Attorney Licensure and Waivers	14-38
a. Name Change	14-39
i. general Partnership	
ii. limited Partnership	
iii. corporation	
b. Sole Proprietorship	
c. Change of Corporate Officers or Partners	
d. Designating a New Broker of Record	14-40
e. Dissolution and/or Death or Severance of Broker	
i. general and limited partnerships	
f. Changing from a General Partnership to a sole Proprietorship	14-41
g. Corporations	
h. Business Name	14-42
K. Massachusetts Consumer Protection Law M.G.L. Chapter 93A	
L. The Homestead Act	14-46
M. The Real Estate Broker Bond	14-59
N. Chapter 14 Quiz	14-61

CONCEPTS OF APPRAISING

- A. Value**
 - a. Market Value
 - i. characteristics
 - ii. elements of value
 - 1. *utility*
 - 2. *scarcity*
 - 3. *demand*
 - 4. *transferability*
 - b. Forces which Create Value
 - i. social
 - ii. economic
 - iii. political or Government
 - iv. physical
 - c. Types of Value 15-2
 - i. insurable
 - ii. assessed
 - iii. condemnation
 - iv. liquidation
- B. Cost vs. Market Price**
- C. Economic Principles that Affect Value** 15-3
 - a. Highest & Best Use
 - b. Supply & Demand
 - c. Substitution
 - d. Balance
 - e. Conformity
 - f. Contribution
 - g. Increasing & Decreasing Returns
 - h. Anticipation
 - i. Competition
 - j. Plottage
 - k. Change
- D. Three Approaches to Estimating Value** 15-4
 - a. Market Data
 - b. Cost
 - c. Income (Capitalization)
- E. Adjustments for Three Principal Factors** 15-5
 - a. Date of Sale
 - b. Location
 - c. Physical Characteristics & Amenities
- F. Cost Approach to Appraising** 15-5
 - a. Estimate the Value
 - b. Estimate the Current Cost
 - c. Estimate & Deduct Depreciation
- G. Value of the Land** 15-6
 - a. Replacement Cost
- H. Determining Replacement Cost**
 - a. Quantity Survey
 - b. Unit-In-Place
 - c. Square Footage
 - d. Building Component Samples 15-7
 - i. rafter
 - ii. sheathing
 - iii. joists
 - iv. sills
 - v. studs
 - vi. foundations 15-8

vii. flashing

I. Depreciation	
a. Physical Deterioration	15-9
b. Functional Obsolescence	
c. Economic Obsolescence	
J. Methods for Determining Depreciation Allowance	
a. The Breakdown	
b. The Straight Line Age-Life	15-10
c. Example of Cost Approach	
d. Example of Straight Line Depreciation	
e. The Income (Capitalization) Approach	
f. Capitalization Rate	
K. Steps in the Income Approach	15-11
a. Gross Income Multiplier (GIM)	
b. Gross Rent Multiplier (GRM)	
L. Steps in the Appraisal Process	
a. Correlation	15-12
M. Appraisal of Lease Interests	
a. Leased Fee	
b. Leasehold Interest	
c. Competitive Market Analysis	15-13
N. Key Words and Phrases	
O. Chapter 15 Quiz	15-14

CHAPTER 16

FEDERAL TAXES AFFECTING REAL ESTATE

16-1

TAXES FOR REAL ESTATE INCOME

A. Federal Taxes Involving a Primary Residence	
a. Income Tax Deductions	
i. non-deductible items	
b. Capital Improvements	
c. Capital Gains & Losses	
i. example of capital gain from sale of a residence	
B. Deferral of Capital Gains Tax on a Principal Residence	16-2
a. Taxpayer Relief Act of 1997	
i. exclusion of gain on sale of a principal residence	
ii. elimination of the once-in-a-lifetime(<i>over 50 years exclusion</i>)	
C. Federal Income Taxes on Investment Property	
a. Capital Gains Tax	
i. example of capital gain calculation	
b. Exchanges	16-3
c. Installment Sale	
d. Tax Credits	
D. Tax on Rental Income	
a. Net Operating income	
E. The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA)	
a. omnibus Reconciliation Act of 1980	
F. Depreciation (<i>Cost Recovery</i>) Allowance – Tax Shelter	
a. Example of Depreciation Allowance	16-4
G. Determining the Amount Deductible for Depreciation	
a. Value of the Asset	
b. Useful Life (<i>Recovery Period</i>)	
c. Depreciation (<i>Cost Recovery</i>) Methods	16-5
i. straight line	
ii. accelerated method	
H. Tax Shelter	

I. Passive Losses	
a. Tax Reform Act of 1986	
b. Example of Passive Loss	
J. Home Office & Vacation Home Expenses	16-6
a. Business Use of a Home	
b. Second Home Rental Expenses	
K. Information Reporting on Real Estate Transactions – Form 1099-B	
a. Transactions Subject to Reporting	
b. What Must be Reported?	
c. When to File	
L. Key Words and Phrases	16-7
M. Chapter 16 Quiz	16-8

CHAPTER 17	
CLOSING THE REAL ESTATE TRANSACTION	17-1

CLOSING PROCEDURE vs. DOCUMENTS

A. The Broker's Role in the Closing	
a. Preliminaries to the Closing	
b. Date & Place of the Closing	
c. Mortgage Commitment	
d. Title Search	
i. "good and marketable"	
ii. lien certificate	
e. Engineer's Survey	17-2
f. Inspection of the Property	
g. Seller's Obligation	
h. Buyer's Walk-Through	
B. Closing Procedure	17-2
a. Where Closings are Held and Who Attends	
b. What Occurs at the Closing?	
i. settlement statement	
c. Flow of Money and Documents in a Typical Closing (Fig.17-1)	17-3
C. Document Required at Closing	
a. (<i>Please View List of Closing Documents on pages 17-3 & 17-4</i>)	
D. Closing Settlement Statement Explanation	17-5
a. Financial Obligation	
i. items related to the actual purchase of the property	
ii. costs related to transferring title	
iii. adjustments between the seller and the buyer	
E. Debits & Credits	
a. Items Related to the Purchase of the Property	
i. purchase Price	
ii. earnest Money Deposit	
iii. seller Financing	
iv. tenant Security Deposits	
v. buyer's Financing	
F. Costs Related to Transferring Title	
a. Seller's Closing Costs	
b. Buyer's Closing Costs	17-6
G. Proration's & Adjustments between Buyer and Seller	
a. Prepaid Items	
b. Accrued Items	
c. Prorated Items	
i. fuel oil	
ii. prepaid property taxes or utilities	
iii. prepaid premiums if assigned to buyer	

d. Basic Rules for Prorating	17-7
i. proration examples	
H. Real Estate Settlement Procedures Act (RESPA)	
a. Settlement Costs and You (<i>Good Faith Estimate</i>)	
I. Closing Statements	17-8
a. Transaction Summary	
J. Settlement Statement Worksheet	17-9
K. HUD Uniform Closing Statement	17-10
L. Keywords and Phrases	17-13
M. Chapter 17 Quiz	17-14

CHAPTER 18	
PROPERTY MANAGEMENT	18-1

PROPERTY MANAGERS vs. RESPONSIBILITIES

A. Types of Properties Requiring Management	
a. Types of Managers	
i. small office	
ii. building manager	
iii. resident manager	
B. Goals of the Property Manager	
a. The Physical Property Maintenance	
b. Responsible for Budgeting & Controlling Expenses	
c. Keep Property Accountability	
d. Make Periodic Reports to the Owner	
C. Functions of Property Managers	18-2
a. List of Functions of the Property Manager	
b. License Requirement	
i. broker license required	
D. Rentals and Leases	
a. Attracting and Securing Tenants	18-3
b. Collecting Rents	
c. Condominium & Association Management	
d. Repairs & Maintenance	
e. Repair Expenditures	18-4
f. Maintaining Proper Records	
g. Housing for the Elderly	
E. Federal Laws Affecting Property Managers	
a. “The Americans with Disabilities Act”	
b. The Equal Credit Opportunity Act	18-5
c. Fair Housing Act	
F. Risk Management	
a. Protection from Monetary Loss	
b. Avoid Risk	
c. Safety Precautions	
G. Various Types of Insurance for Commercial Property	
a. Fire or Hazard	
b. Liability	18-6
c. Worker’s Compensation	
d. Optional	
i. subrogation	
H. Private Dwelling Insurance	18-7
a. Homeowner’s Insurance	
I. The Management Contract	
J. Environmental Issues	
K. Management Fees	18-8
L. Key Words and Phrases	

CHAPTER 19**REAL ESTATE INVESTMENTS**

19-1

ADVANTAGES OF OWNING INVESTMENT PROPERTY**A. Real Estate Investments**

- a. Preserve Capital
- b. Earn a Profit
- c. Obtain Tax Shelter

B. Preservation of Capital

- a. Hedge Against Inflation
- b. Leveraging

C. Earning a Profit

- a. Annual Net Income
- b. Appreciation

D. Investing in Unimproved Land

19-2

E. Tax Shelter**F. Pyramiding Through Equity Buildup****G. Disadvantages of Real Estate Investments**

- a. Cash Flow
 - i. example for annual income statement
- b. Annual Income Statement
- c. Negative Cash Flow

19-3

H. Leveraging

19-4

I. Syndication

- a. Corporation
- b. Limited Partnership
- c. Real Estate Investment Trust (*REIT*)
- d. Real Estate Mortgage Trust (*REMT*)
- e. Combinations of *REIT*'s & *REMT*'s

J. Taxes on Profits from Real Estate

19-5

- a. Capital Gains Tax
- b. Tax Deferrals
 - i. installment sale
 - ii. 1031 exchange
- c. Tax Credits

K. Key Words and Phrases**L. Chapter 19 Quiz**

19-6

CHAPTER 20**REAL ESTATE MATH**

20-1

A. Math Aptitude Test

20-2

- a. Percentage Problems
- b. Commission Problems
- c. Area Problems
- d. Profit or Loss Problems
- e. Interest Problems
- f. Capitalization Problems
- g. Depreciation Problems
- h. Real Estate Tax Problems
- i. Proration Problems

20-3

B. Using a Calculator

- a. Fractions
- b. Percentages
- c. Multiplying & Dividing
- d. Addition & Subtraction

20-4

C. Basic Steps – Fractions, Percentages and Decimals	
D. Decimals	20-5
E. Introduction to Solving Word Problems	20-6
a. Rate	
b. Principal	
c. Earnings	
F. The Box Formula	20-7
G. Strategy for Solving Word Problems	20-8
H. Commission Problems	20-9
I. Measurement Problems	20-10
J. Practice Triangle Problem	20-12
K. Profit or Loss Problems	20-13
L. Interest	20-15
a. Interest	
b. Types of Interest	
i. simple	
ii. compound	
iii. add-on	
iv. discount	
M. Interest on Real Estate Loans	20-16
N. Discounts - Points, Origination Fees	
O. Capitalization and Return on Investment	20-17
a. Net Annual Income	
b. Rate of Return on Investment	
c. Practice Problems	
P. Rate of Return on Cash Invested	20-18
Q. Gross Income Multiplier (GIM)	
R. Gross Rent Multiplier (GRM)	
S. Depreciation and Appreciation	
T. Real Estate Tax Problems	20-19
U. Mills	20-20
V. Proration	
a. Fire Insurance	20-22
b. Mortgage Interest	
W. Exchange or Boot Problems	20-23
X. Practice Math Test	20-24
Y. Answers and Solutions to Math Aptitude Test	20-27
Z. Answers and Solutions to Practice Math Test	20-27

ACKNOWLEDGEMENTS

I dedicate this book to my beloved wife Joan, whose encouragement and understanding made it all possible.

Many thanks to Leah Caliri-Clark for a superb job of editing, for which the readers, as well as myself, owe a debt of gratitude.

My thanks to the superb staff of Lee Institute instructors, present and past, whose expertise gleaned from years of experience in the classroom has contributed greatly to the content of this book. In reverse alphabetical order they are: Attorney Leon D. Woltman, Attorney Joseph Porter, Attorney Rocco Liberatore, Joseph Lenehan, Joseph Farragher, Peter Camarra, Attorney Charles Capraro and additional thanks to David Lovler for reviewing the text. Also, special thanks to Kimberly Barron and Stephen Pothier for formatting and editing as well and especially thanks to the new president of Lee Institute and Company, Richard A. Giovangelo, for his fine job overseeing text corrections and the editing process.

FOREWORD

The purpose of this book is two-fold: First, it will help to assist the reader in obtaining a real estate license, and secondly, it will provide the basic knowledge of real estate principles and practices necessary to become a successful real estate professional.

For the most part, the text covers the "general" practice of real estate such as the principles and practices which are applicable in all states. Customs and laws which differ from the "general" practice or may be peculiar to Massachusetts are appropriately indicated in each chapter. In addition, Chapter 14 is completely devoted to the Massachusetts real estate licensing laws and other topics relating to Massachusetts. While the information in the chapters are powerful tools in the field of study, all of it may not be necessarily found on the state exam. We do recommend that the students read all the chapters and become fluent with the subject matter.

Each chapter contains a list of key words and phrases and a self-evaluating quiz. The key words will assist the reader in organizing a study plan in preparation for the state license examination. The importance of doing the chapter quizzes cannot be over-emphasized. The quizzes not only gauge the reader's progress in understanding the subject matter, they also expose the reader to the form and type of questions, which are likely to appear on the state examination. *Also we recommend as well to all our students to focus primarily on the (Note) alerts pointed out and illustrated in most chapters as a key study to knowing the material in preparation for the state exam.* The Glossary and Index are the result of a great deal of effort and research. They provide the reader with a concise definition of the various terminologies used in this book as well as a page reference to where the material is located.

As with any text, this book is not intended to be the sole source of material in preparation for entering the real estate business. The reader is encouraged to consult other publications as well as professionals and experts in the field. The student should select a course of instruction, which stimulates a desire to learn and brings additional material into the classroom to supplement the text.

CONCEPTS OF REAL ESTATE

Real estate includes the definition of land as well as all natural and man-made improvements that are affixed (permanently attached) to the land. In practice, the term “real estate” is used synonymously with the term “realty” and “real property” to describe the land, improvements, rights, and incidents of ownership.

LAND

The basis of all wealth springs from the land. Land is the solid material of the Earth in whatever natural form it may be found. This includes the soil, rocks, and other substances permanently attached by nature (streams, ponds, plants, etc...). As an investment, land has both economic and physical characteristics which give value and enhance desirability. The economic characteristics are based upon scarcity, demand, utility, and transferability. Physical characteristics define land as immovable, permanent and non-homogenous (no two parcels of land are alike). Although land is generally thought to be only the surface of the land; in modern practice, ownership includes the rights to the soil and mineral deposits below the surface, as well as the air space above the land.

CHARACTERISTICS OF LAND/REAL ESTATE

Real estate possesses seven basic characteristics that define its nature and affect its use. These seven characteristics fall into two broader categories-- economic and physical;

ECONOMIC CHARACTERISTICS: The four characteristics of land that affect its value as a product in the market place are **scarcity, improvements, permanence of investment, and area preference:**

- **SCARCITY:** Land as we know it is scarce, and its usability is determined by habitability and productiveness. Our planet is made up of, roughly, $\frac{3}{4}$ open water and $\frac{1}{4}$ dry land. While a considerable amount of land remains unused or uninhabited, the supply in a given location, or of a given quality, is generally considered to be finite (limited).
- **IMPROVEMENTS:** This aspect of real estate can explain how land can become valuable in any area on the Earth. Usually the cost of building an improvement will be very expensive, and today most investors rely on this aspect of investment for real estate profits. However, as one builds improvements on a parcel of land, this can have a reverse effect on the value of a *different* parcel of land.
- **PERMANENCE OF INVESTMENT:** Investments can be structured in all areas of real estate. The capital and labor costs to build an improvement represent a large fixed investment. Returns on these types of investments tend to be long term and relatively stable.

Helpful Hints: Improvements

The construction of a new shopping center or the selection of a site for a nuclear power plant can dramatically change the value of land in *any* area.

Helpful Hints: Area Preference

Many homes in the 1950s were built in close proximity to city airports. Common issues with locations near an airport are complaints about the noise of arriving and departing aircraft. Property values under the flight paths of the aircraft will have lost value.

- **AREA PREFERENCE:** This preference for location is a major aspect in the appraisal business and is commonly referred to as **situs** (meaning “site”). This economic aspect refers to natural geography as well as people’s preference for a specific area of real estate. Area preference is based on several factors such as convenience, reputation, and history.

PHYSICAL CHARACTERISTICS: The three physical characteristics of land are **immobility, indestructability, and non-homogeneity:**

- **IMMOBILITY:** Land is immovable and stationary, meaning the geographic location is rigidly fixed.
- **INDESTRUCTABILITY:** Land is durable and can potentially last forever.
- Despite natural or man-made changes that vary the land, the basic element will always be there and remains the same.
- **NON-HOMOGENEITY:** Land is unique, individual, and no two parcels are the same. A parcel of land purchased by a buyer could not be switched by the seller for a (seemingly) identical plot of land.

PERSONAL PROPERTY / CHATTELS

All property is classified as either real property or personal property. An important distinction between the two is that personal property is movable, and it includes all property that is not land or improvements. Real property can become personal property through the process of **severance**. Personal property is transferred with a **bill of sale**, whereas real property is transferred by **deed**. Personal property may be **tangible (corporeal) or intangible (incorporeal):**

Helpful Hints: Severance

A tree growing on the land is considered real property. When the tree is cut down and turned into lumber it is now considered personal property. If this lumber is later used to construct a house, then it will once again be considered real property, as it is affixed to the land.

- **TANGIBLE PERSONAL PROPERTY:** Has physical substance (furniture, cars, clothing, jewelry, etc...) and also known as a **chattel**.
- **INTANGIBLE PERSONAL PROPERTY:** No intrinsic value or material being, the value is derived from what it represents (stocks, bonds, checks, promissory notes, etc...).

FIXTURES

Helpful Hints: Property Becoming a Fixture

A chandelier, when initially purchased, is personal property. Once it is permanently installed on the dining room ceiling it has become a fixture, and thus, it has become real property.

A fixture is a **chattel** which has become permanently attached to the real estate.

LAW OF AFFIXATION (ANNEXATION): Ownership of real property includes everything that is permanently **affixed or annexed** to the land. An item is considered real property when it is permanently attached to the property. When title to real estate is conveyed; it includes all buildings, structures, and fixtures, even though they may not be specifically mentioned in the deed. Unless there is a written agreement to the contrary, all improvements automatically pass with title.

DETERMINING WHAT A FIXTURE IS:

Due to the fact that the distinction between real property and personal property is not always apparent, disagreements can arise as to whether an item should or should not be included in the sale as a fixture. Purchase and sale agreements should contain a list of items, included or excluded from the sale, as a way to avoid such problems. That list would include such things as; carpeting, shades, venetian blinds, air conditioners, fireplace fixtures, TV antennas, heating appliances, electrical appliances, etc...

LEGAL TEST OF A FIXTURE: While parties can come to an agreement to determine whether an item will stay or may be removed, this is not a legal test of what defines a fixture (such as when a landlord allows the removal of light fixtures, installed by the tenant, which have become part of the real estate). When parties resort to litigation to determine whether a **chattel** has become a fixture, the court will apply these tests:

- **THE INTENTION OF THE PARTIES:** Did the installer intend the item to remain personal property or to become a part of the real estate?
- **THE MANNER OF ATTACHMENT:** How permanently is it attached? Has it become attached in such a way that it has lost its identity, such as brick & mortar? Would removal result in substantial damage to the property, such as the removal of a stained glass window that may result in damage to the building in which it is installed?

Helpful Hints:
Type/Adaptability of the Fixture

A personal heater is used as personal property. An oil heating unit is used as, and is a part of, the real property.

Helpful Hints:
Fixture Transfer with Title

A buyer and seller enter into a purchase agreement for the sale of the seller's home. Prior to closing, the seller removes a valuable chandelier and replaces it with another fixture. The buyer has a right to claim ownership of the original chandelier unless the purchase agreement specifically excluded it.

Helpful Hints: Intention of Fixture

A tenant who installs a window air conditioner would most likely be expected to remove it when vacating. A person who builds a picket fence around a parcel of land probably intends to make it a part of the property.

- **THE RELATION OF THE PARTIES:** The relation between the parties may negate the ordinarily presumed intention of the installer. This circumstance may arise in such situations where a when a landlord installs window air conditioning units in each apartment of a building. A prospective buyer would expect these units to remain as part of the real estate as their purpose

is to enhance rental income.

- **TYPE/ADAPTABILITY TO THE REAL ESTATE:** Is it being used as real or personal property?

Helpful Hints: Trade Fixtures

A supermarket may remove frozen food freezers and counters upon termination of the lease.

TRADE FIXTURES: Trade fixtures are items of personal property that are necessary to carry on a business, and can be removed by the tenant upon termination of the tenancy. Trade fixtures that are not removed within a reasonable amount of time after the premises has been vacated are considered abandoned. These become property of the landlord through **accession.**

TREES AND CROPS

Trees, perennial shrubs, and grasses, which are permanently rooted in the ground, are considered real property and pass with transfer of title. **Emblements are annual crops that require cultivation and seasonal planting (wheat, corn, vegetables, etc...) and are treated as personal property, even while growing.** A previous tenant who planted the crops has the right to re-enter the property to harvest them.

MANUFACTURED HOUSING

Manufactured housing defines dwellings that are not constructed on the property, but are built off-site and then shipped to the location for installation and/or assembly. The other terms used synonymously with manufactured housing include “modular,” “panelized,” and “precut.” When we refer to mobile homes, we refer to personal property as it is not permanently attached (affixed) to the land. In all cases before 1976, the term mobile home was used to describe factory constructed or housing constructed property. Most states have agencies that administer and enforce federal regulations on manufactured housing, and licensees should always be aware and familiar with local laws before attempting to sell manufactured housing.

CONCEPTS OF OWNERSHIP

FEUDAL SYSTEM AND ALLODIAL SYSTEM

Under early English law, absolute ownership of all land was vested in the king or sovereign, with the subjects having only a right to use the land in return for services provided. This was known as the **feudal system** and was abolished in favor of the **allodial system**, which recognizes the right of individuals to own land subject to no proprietary control of the government. The **allodial system** is used in the United States of America.

PROPERTY RIGHTS - TENEMENTS, APPURTENANCES, AND HEREDITAMENTS

Real property is defined as the ownership of the land as well as interest, benefits, and rights which are related to the property. **Tenements** are property rights of a permanent nature which are related to the land and pass with conveyance of the title. These rights may be tangible (building, fixtures) or intangible (an easement over a neighbor's land).

Appurtenances are rights and privileges that belong to, and pass with, the title of the property (water rights, easements, improvements). **Hereditaments** are property, real and personal, which are conveyed to heirs upon the death of the owner.

BUNDLE OF LEGAL RIGHTS THEORY: The inherent rights of owning land are referred to as the **bundle of legal rights**. According to the bundle of legal rights theory, ownership of real estate is compared to a bundle of sticks (individual yet still tied-together), with each stick representing an individual right. These rights are **possession, control, quiet enjoyment, exclusion, and disposition:**

1. **POSSESSION:** The owner may live on the land, move away, or come and go as they please.
2. **CONTROL:** The owner may control the way in which the land is used. They may build on the land, leave it vacant, farm it, mine it for minerals, or lease it to others.
3. **QUIET ENJOYMENT:** The owner's right to use and enjoy the property without interference from other parties.
4. **EXCLUSION:** The owner has the right to keep others from entering or using the property.
5. **DISPOSITION:** The owner has the right to sell, will, give away, dedicate, or otherwise dispose of the land in any way they choose.

PHYSICAL RIGHTS OF OWNERSHIP OF LAND

Ownership of land includes separately defined groups of physical rights (Figure 1.1). The various rights of the land may be owned and controlled by more than one individual. One person may own the surface rights, while another individual owns the air rights, and a third

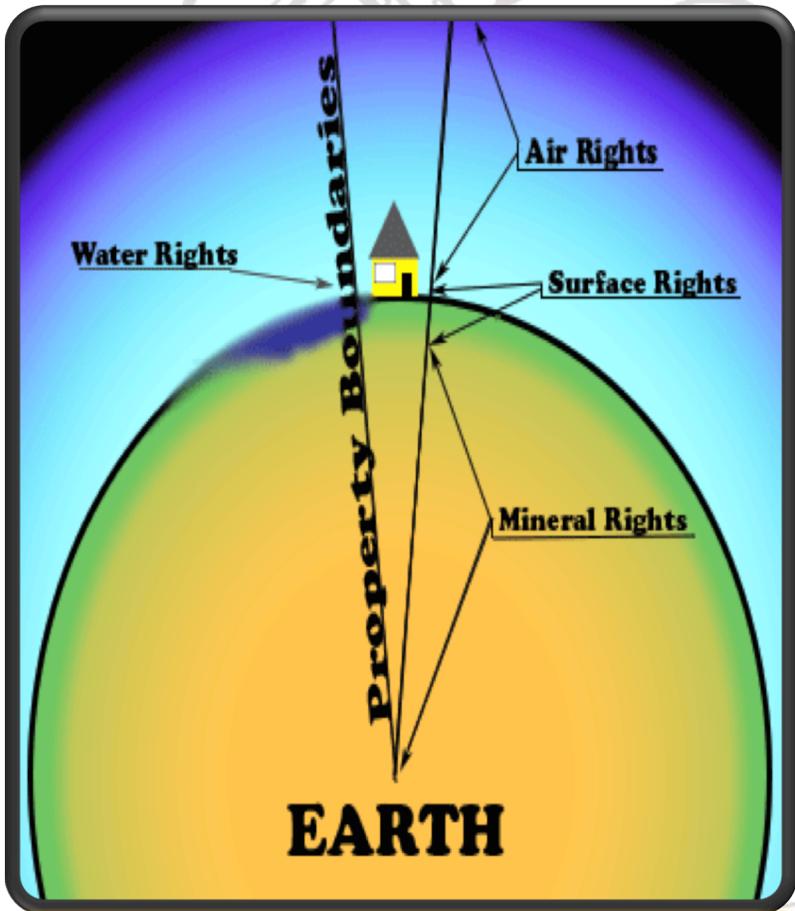
owns mineral rights to mine deposits. These groups consist of **surface rights**, **subsurface rights**, **air rights**, and **water rights**.

Helpful Hints: Separate Owners for One Property's Rights

The airspace above a highway could be purchased by a developer who plans to utilize the space for a hotel, retail store, or restaurant.

Helpful Hints: Lateral Support

If the excavation for a building's foundation removes land support from a neighbor's property, then the neighboring owner has a claim due to their right of lateral support.



underlying soil which provide substance for vegetation and support for structures. This group also includes the **right of lateral support** which ensures that the stability received from an adjacent property will not be removed or destroyed.

SUB-SURFACE RIGHTS: The rights of this group are also referred to as “**mineral rights**.” They describe the rights to natural resources below the surface of the land. Mineral rights

Helpful Hints: Air Rights

An owner would be prohibited from building a patio with a roof that extended over their neighbor's air space. -or- A new, tall building that blocks sunlight from a smaller building may be held accountable for interfering with the small building's right to sunlight—particularly if the smaller building incorporates solar-powered systems.

(Figure 1.1): The physical rights of owning property.

pass to the grantee (buyer) with the sale of land unless otherwise specified in the contract. These rights allow an owner to mine for various ores, drill for oil or tap natural gas, as well as entitling them to enjoy any profits that may be produced. Associated with this group of rights is the **law of capture** which allows for the siphoning of a natural resource from a deposit which extends beyond the boundary of one's own property.

AIR RIGHTS: This group defines the rights of an owner to use and enjoy the air space above the land to infinity. An owner can lease or sell this space independently, provided the rights have not been preempted by law. Air rights protect an owner from unreasonable obstruction of their property from above. With solar power development today; air rights, and more specifically solar/light rights, are being closely examined by the courts.

WATER RIGHTS: Owners who have property that borders a body of water have **riparian rights** or **littoral rights**:

- **RIPARIAN RIGHTS:** Riparian land is property which borders a natural watercourse such as a lake, stream, or river. Owning property of this nature provides the owner with riparian rights, which exist as a natural and inherent incident of ownership. These generally include the right to use the water for irrigation, swimming, boating, fishing, and for the construction of piers and boathouses.
 - Where the body of water is *navigable*; land rights extend to the water's edge and use of the water must not interfere with public rights.
 - Where the body of water is *non-navigable*; land rights extend to the exact center of the waterway.
- **LITTORAL RIGHTS:** Littoral land is property which exists on the bank or shore of a sea, ocean, or large lake. Owning property of this nature provides the owner with littoral rights. Littoral rights are similar to riparian rights except that they extend only to the mean high-water mark.

LIMITATIONS ON OWNERSHIP

GOVERNMENT POWERS: An individual's right, to use and enjoy a property they own, is limited by certain government powers to protect the common good of the community. These powers include **taxation, escheat, eminent domain, and police power**:

- **TAXATION:** The government has the right to tax property to receive revenue to finance necessary public expenditures (schools, fire stations, hospitals, public employees, etc...).
- **ESCHEAT:** The government has the right to take title to property of a deceased person who dies intestate (without will) and has no heirs. This is to prevent property from becoming ownerless.
- **EMINENT DOMAIN:** The government has the right to take property from an owner, upon just compensation, for public purposes. The procedure for taking property through **eminent domain** is called **condemnation**.
- **POLICE POWER:** The government has the inherent right to restrict the use of the land to preserve order and to protect the public health and safety (rent control, zoning laws, building codes, environmental protection laws, etc...).

PRIVATE OR CONTRACTUAL: Owners may enter into contracts or arrangements which restrict the use of the land or limit their bundle of rights. These limitations include **leases, mortgages, easements, and licenses**:

1. **LEASE:** The owner gives up possession of the property for a temporary time period.
2. **MORTGAGE:** Title to the property is pledged as security for a loan.
3. **EASEMENT:** A right of way given to another to use the land for a specific purpose.
4. **LICENSE:** A privilege to use the land without exclusive control (lease, tenancy-at-will, etc...).

KEYWORDS AND PHRASES

ACCESSION	CAPTURE	FEUDAL SYSTEM	LITTORAL	SEVERANCE
AFFIXATION	CHATTEL	FIXTURES	MANUFACTURED HOUSING	SUBSURFACE RIGHTS
AIR RIGHTS	CONDEMNATION	HEREDITAMENTS	PERENNIAL	SURFACE RIGHTS
ALLODIAL SYSTEM	CORPOREAL	IMPROVEMENTS	PERSONAL PROPERTY	TANGIBLE
ANNEXATION	DISPOSITION	INCORPOREAL	POLICE POWER	TENEMENTS
ANNUAL CROPS	EMBLEMENTS	INTANGIBLE	QUIET ENJOYMENT	TRADE FIXTURES
APPURTENANCES	EMINENT DOMAIN	LAND	REAL PROPERTY	WATER RIGHTS
BUNDLE OF RIGHTS	ESCHEAT	LATERAL SUPPORT	RIPARIAN	

RELATED WEB SITES

CONNECTICUT DEPARTMENT OF CONSUMER PROTECTION:
www.state.ct.us.dcp/

MASSACHUSETTS DIVISION OF REGISTRATION:
www.state.ma/reg/

MAINE OFFICE OF PROFESSIONAL OCCUPATIONAL REGULATION:
www.state.me.us

NEW HAMPSHIRE REAL ESTATE COMMISSION:
www.nh.gov/nhrec

EMINENT DOMAIN:
www.realtor.org/topics/eminent-domain-and-private-property-rights

INTEREST IN REAL ESTATE:
topics.law.cornell.edu/wex/real_property/

Multiple Choice Questions

1) Items which are considered by law to be permanently attached to the earth are called:

- A. Fixtures.
- B. Emblements.
- C. Surface rights.
- D. Personality.

2) Property which is not considered to be a part of the real estate is called:

- A. Personal.
- B. Fixtures.
- C. Littoral.
- D. Appropriated.

3) In determining whether an article of personal property has become a fixture; which of the following tests would not be applied?

- A. The manner of attachment.
- B. The relationship of the parties.
- C. The adaption to the land.
- D. The cost of the article.

4) All of the following would be considered fixtures EXCEPT:

- A. Stock-designed removable storm windows.
- B. Built-in kitchen stove.
- C. Built-in dishwasher.
- D. Custom fitted wall-to-wall carpeting.

5) Which of the following would be considered a part of the real estate?

- A. Perennials planted in a tub.
- B. House plants.
- C. Annual crops (corn, wheat).
- D. Perennial shrubs in the ground.

6) Cultivated annual crops are normally classified as:

- A. Personal property.
- B. Fixtures.
- C. Real property.
- D. Fructus.

7) Which of the following would not be a part of the real estate?

- A. A birdbath sitting on the lawn.
- B. A disposal installed by a tenant.
- C. Perennial shrubs.
- D. Suspended-tile kitchen ceiling.

8) Which of the following is not a physical characteristic of land?

- A. Immobility.
- B. Non-homogeneity.
- C. Indestructibility.
- D. Fungibility.

9) The system of private land ownership is known as:

- A. Feudal.
- B. Allodial.
- C. Domain.
- D. Escheat.

10) Real property was deeded with no mention of buildings or improvements; would they be included in the conveyance?

- A. Yes, because they are not removable.
- B. Yes, because they are a part of the land.
- C. No, because they are personal.
- D. No, because they were not mentioned in the deed.

11) George rented space for a machine shop. He fastened shelves to the wall and bolted machinery to the floor. Are these now the property of the landlord?

- A. Yes, because they are permanent.
- B. Yes, because their removal will cause damage to the property.
- C. No, because they are not fixtures.
- D. No, provided the tenant removes them before the termination of the lease.

12) Prior to showing the property and signing a sales agreement, the seller removed all the bathroom toilets. Is this legal?

- A. Yes, because it was done before the sale.
- B. Yes, because they were personal property.
- C. No, because they were adapted to the property.
- D. No, because they are a part of the realty.

13) Which of the following items is not classified as real estate?

- A. Easement.
- B. Mobile home on a foundation.
- C. Furniture.
- D. Fence.

14) Easements, right-of-way, and condominium parking stalls are examples of:

- A. Emblements.
- B. Trade fixtures.
- C. Riparian rights.
- D. Appurtenances.

15) The government's right to reasonably restrict private use of land is known as:

- A. Eminent domain.
- B. Escheat.
- C. Condemnation.
- D. Police Power.

16) Which of the following is not an example of the exercise of police power?

- A. Rent control.
- B. Building codes.
- C. Zoning laws.
- D. Deed restrictions.

17) A neighbor's tree is overhanging your property. You can legally:

- A. Cut the tree down.
- B. Do nothing about it.

- C. Remove the overhanging branches.
- D. Charge the neighbor damages.

18) Bill moved into a home, before taking title, and installed new kitchen cabinets. The sale fell through and Bill moved out. What is the status of the cabinets?

- A. They are trade fixtures.
- B. Bill may remove them provided he does not damage the property.
- C. Bill cannot get them back.
- D. The cabinets must remain, but Bill is entitled to the value of the cabinets.

19) Since one parcel of land cannot be exactly substituted, it is said to be:

- A. Non-homogeneous.
- B. Immobile.
- C. Fungible.
- D. Mobile.

20) Real property includes:

- A. Leasehold interests.
- B. Fixtures.
- C. Mortgages.
- D. Cultivated annual crops.

21) A landowner who takes water from a river flowing through his or her property is exercising what kind of right?

- A. Littoral.
- B. Prescriptive.
- C. Riparian.
- D. Avulsion.

22) All of the following interests in real estate are considered real property interests EXCEPT:

- A. Water rights.
- B. Fences.
- C. Leases.
- D. Trees.

23) The police power of the state can be used for all of the following EXCEPT:

- A. Controlling land use.
- B. Collecting taxes.
- C. Controlling rents.
- D. Condemning as unfit for occupancy.

24) All of the following are personal property EXCEPT:

- A. Appurtenances.
- B. Chattels.
- C. Trade fixtures.
- D. Mortgages.

25) All of the following are appurtenances EXCEPT:

- A. Trade fixtures.
- B. Water rights.
- C. Mineral rights.
- D. Buildings

26) A property which has littoral rights:

- A. Is subject to restrictive zoning.
- B. Borders a sea or an ocean.
- C. Has ownership restrictions spelled out in the deed.
- D. Includes all mineral, oil, and water rights to the center of the earth.

27) Ownership of land bordering a stream includes certain rights that are known as:

- A. Littoral.
- B. Riparian.
- C. Accretion.
- D. Avulsion.

CONDOMINIUMS AND COOPERATIVES

The right of real estate ownership vested in one person or one organization may own property in **Severalty**, or two or more persons or organizations may own it **Concurrently**. Organizations include corporations, partnerships and trusts, which are used for business, tax shelter, syndication and estate planning.

SEVERALTY OWNERSHIP

When title to property is held by one person or one organization, it is said to be held in severalty or sole ownership, as distinguished from a tenancy in common or a joint tenancy. The severalty owner's interest is **severed**, or separated, from the interest of all others. The sole owner may exercise all incidents of ownership without the consent of any other person or entity. Ownership by an individual, corporation, partnership or a trust is **severalty ownership**.

CONCURRENT OWNERSHIP

Simultaneous ownership by two or more persons or organizations is known as co-ownership or concurrent ownership. The three major forms of co-ownership are (1) **joint tenancy**, (2) **tenancy in common** and (3) **tenancy by the entirety**. As with freehold and non-freehold estates, the law regarding concurrent ownership is derived from common law. The various forms of concurrent ownership are discussed in this chapter.

JOINT TENANCY: A joint tenancy is an interest in land owned by two or more persons with **equal rights of possession** under a title created by a **single** will or transfer which expressly declares the interest to be a **joint ownership**. The outstanding feature of joint tenancy is the **right of survivorship** by which the interest of a deceased joint tenant (owner) passes to the surviving joint owner. Joint tenancies were created to make certain that the ultimate survivor would become the sole owner of the property. Grantors often used this form of ownership when deeding or bequeathing property jointly to their children or family.

Helpful Hints: Joint Tenancy

William died, leaving his property to his two sons, John and Paul, as joint tenants. Paul married and had three children. When Paul died, John became the sole owner of the property by right of survivorship. Paul's wife and children were entitled to nothing of Paul's interest in the property.

Four Unities: Four conditions (unities) are required to create a joint tenancy:

- **Time** - All joint tenants must acquire title **simultaneously**.
- **Title** - Title must be acquired by **one instrument**, such as a deed or will.
- **Interest** - All joint tenants must have equal shares in the property.
- **Possession** - All joint tenants must have **equal rights of possession**.

The deed must contain affirmative language, which clearly indicates the intent of the grantor. The words "To John Buyer and Bill Medlor as joint tenants and not as tenants in common," are sufficient to create a joint tenancy.

Helpful Hints: Transfer of Joint Tenant Interest

Peter, Edwin and Donald own property as joint tenants. Peter sells his share to Ted, who becomes a tenant in common with Edwin and Donald who remain as joint tenants.

EFFECT OF A TRANSFER OF JOINT TENANT'S

INTEREST: Under common law, a joint tenancy could not be terminated by the actions of the joint owners. A joint owner's interest could be transferred only to one of the other joint owners. This resulted in certain hardships, since a joint owner's interest could not be conveyed or bequeathed to his or her spouse or children. To avoid such situations, the common law was modified by statute. Now, joint owners may transfer their interest to third persons that become tenants in common with the remaining joint tenant(s).

TENANCY IN COMMON: Ownership of property by two or more persons **without the right of survivorship** creates a tenancy in common. Each tenant (owner) in common owns a separate, but undivided, interest in the land, and all have an equal right of possession of the land. Only one unity, namely that of possession, need be present. One owner in common may own an undivided half interest, and another fourth interest and two others an eighth interest each.

The interest of a tenant in common may be conveyed by deed or will, or may be granted to a trust without the consent of the co-owners. The interest of a common owner who dies intestate will pass to his or her heirs.

TENANCY BY THE ENTIRETY: A tenancy by the entirety is a form of co-ownership, which exists only for married couples. It is based on the old common law concept that a husband and wife are one person, the wife's rights being merged with her husband's. A tenancy by the entirety may exist only between husband and wife and must be created during the marriage. Ownership may not be divided by a court action, (**i.e. petition to partition**), nor may the interest of either party be sold separately. Upon the death of a spouse, the surviving spouse becomes the sole owner of the property in fee simple. Upon divorce, tenancy by the entirety is terminated and the parties become tenants in common. Usually, the property is sold and the proceeds divided according to a court approved settlement agreement.

Under common law, a husband and wife could share property ownership only as tenants by the entirety. They are now permitted to own property in any of the three concurrent forms of ownership. However, most attorneys recommend tenancy by the entirety for the couple's residence. Also, a tenancy by the entirety will provide some protection from creditors seeking to attach the couple's home for the payment of a debt of one of the spouses.

TERMINATING CO-OWNERSHIP: A tenancy in common and a joint tenancy may be voluntarily terminated by a conveyance or by agreement of the owners. In the event of a disagreement, a suit to partition in common may terminate a tenancy. A partition of the land operates to sever the ownership of the tenancy in common and divide the interests so that each co-owner may enjoy his or her part of the land in severalty. A joint tenancy and a tenancy by the entirety may not be partitioned. A tenancy by the entirety terminates upon divorce.

OWNERSHIP OF REAL ESTATE BY BUSINESS ORGANIZATIONS

There are special reasons why business organizations should be used to own real estate. In the case of a corporation, ownership exists independent of the people who are members of the business entity, and the arrangement makes it possible for many people to have an interest in the same parcel of real estate. Some of the goals to be achieved through business organizations are **(1) limited liability, (2) tax shelter, (3) centralized management, (4) easy transferability of interest, (5) a source of financing, and (6) syndication/joint ventures.**

The three most common forms of business organizations are **(1) corporations, (2) partnerships and (3) trusts.**

CORPORATION: A corporation is an artificial person, a legal entity, chartered by the state. A board of directors elected by the stockholders governs it, and bylaws and articles of organization limit its activities. In most states, only one person who is the sole stockholder may organize a corporation. Corporate ownership is **ownership in severalty.**

- **Advantages of Corporate Ownership:**

1. Avoidance of personal liability for corporate debts and obligations.
2. Continuity of life. Death of one or all stockholders does not end the business.
3. Centralized management **i.e. board of directors.**
4. Ease in transferability of interest by stock sale.

- **Disadvantages of Corporate Ownership:**

1. Income may be subject to double taxation. The corporation pays a tax on its profit, and the stockholders pay a tax on the dividends.
2. Dividends are not deductible as a corporate expense to offset taxable income. Excessive officer salaries may be treated as dividends resulting in double taxation. Double taxation can be avoided through a **Sub-Chapter S** corporation.
3. Depreciation may be taken only by the corporation and is not passed through to the stockholders, as is the case of a partnership.

PARTNERSHIP: A partnership is an association of two or more persons to carry on a business and to share in the profits and losses. Under the **Uniform Partnership Act**, a partnership can hold title to real estate. The partners share the profits and are personally accountable for the losses. One advantage is that the partnership pays no income tax. All profits are taxed to the partners in their own individual brackets. Partners may be classified as either **general or limited.**

- **General Partners:** General partners are responsible for the day-to-day operation and decision-making policy of the partnership. General partners are personally liable for partnership debts, which may exceed their personal contribution.
- **Limited Partners:** Limited partners do not participate in management. They share in

the profits according to their percentage of capital invested and are not responsible for losses, which exceed their cash investment. Thus, when the partnership fails, the limited partners stand to lose only their cash invested.

TRUST: A trust is created when legal title to real or personal property is transferred by the grantor (**trustor**) to a **trustee**. The property is held in trust, and managed for the benefit of the named **beneficiary** who has **equitable title**. The trustee has a fiduciary obligation to manage the trust property for the best interests of the beneficiary in accordance with the terms of the trust.

- **Trust Agreement:** Is a legal document that contains instructions to the trustee regarding (1) management of the trust assets; (2) who is to receive distributions from the trust; and (3) what happens to the trust if the person creating the trust becomes incompetent or dies. The trust agreement provides instructions for the termination of the trust and the distribution of assets to the beneficiaries. The trustee can do only what the trust agreement specifies.
- **Beneficiaries:** Beneficiaries of the trust are named by the grantor and can be the individual who formed the trust, friends, family members, and charities such as religious organizations, colleges, universities, or hospitals. To determine whether or not a living trust would fit into your financial planning goals, consider the advantages and disadvantages of a living trust.
- **Business Trust:** This is a trust with **transferable shares** similar to a corporation. By an instrument known as a "**declaration of trust**", a grantor may transfer property to a trust, naming him/herself both the trustee and the beneficiary. The declaration of trust and deed are recorded, but the names of the trustee and beneficiaries do not have to be made public. In Massachusetts, a business trust which owns real estate, is treated as a partnership. For federal tax purposes a business trust is treated as a corporation.
- **Estate Planning Trusts:** Estate planners use trusts as a means of limiting estate and inheritance taxes. An **inter vivos** (living) **trust** permits the grantor to receive income from the trust for life, and takes advantage of the federal estate tax exemptions. A **testamentary trust** takes effect at death.

SYNDICATION: A syndicate consists of an association or group of individuals who join together to pool funds and conduct a common venture to acquire real estate investments. It is used to raise venture capital, minimize the risks and provide attractive **tax shelters** to potential investors. Syndication allows many small investors to share in the purchasing power of a large investment organization. Syndications usually take the form of corporations, limited partnerships, or **Real Estate Investment Trusts (REITS)**. For tax advantages of syndicated ownership, Chapter 19 see *page 4*.

HOME OWNERSHIP AND INVESTMENT

One of the most important decisions a family can make is where to settle down and buy a home. A home is more than just a house it is a refuge from the stress of everyday life, grounding within the community, a necessary foundation for a good quality of life.

People buy their own homes for psychological as well as financial reasons. To many people, home ownership is a sign of financial stability. A home is an investment that can appreciate in value and provide federal income tax deductions. Home ownership also offers benefits that may be less tangible but are no less valuable, such as pride, security, and a sense of belonging to a community. In the past, most homes were single-family dwellings bought by married couples with small children. Today, social, demographic, and economic changes have altered the residential real estate market considerably. Many real estate buyers today are single men and women, childless professional couples, unmarried couples, and domestic partners. An aging baby boom generation has given rise to empty nesters, couples whose children have moved away from home. Still other buyers may be friends or relatives who plan to co-own a home in the same way they might share an apartment lease. Today's homebuyers come from all economic classes, from all ethnic backgrounds, and from all over the world.

As the real estate market changes and evolves, the changes associated with the growing demand for home ownership is an alarming turn for real estate agents as they will see the various motivations of people when searching for property.

HOUSE TYPES AND STYLES: As U.S. society evolves, the needs of its homebuyers become more specialized. Some housing types are not only innovative uses of real estate, but they also incorporate a variety of ownership concepts. These different forms of housing respond to the demands of a diverse marketplace.

- **Various House Types:** Houses can be built in a large variety of configurations. A basic division is between free-standing or detached dwellings and various types of attached or multi-user dwellings. Both sorts may vary greatly in scale and amount of accommodation provided. Although there appear to be many different types, many of the variations listed below are purely matters of style rather than spatial arrangement or scale. Some of the terms listed are only used in some parts of the English speaking world.
- **List of Various House Types and Styles:**
 1. American Colonial
 2. Cape Cod
 3. Contemporary
 4. Gable front
 5. Gambrel
 6. Garrison (New England)
 7. Manufactured
 8. Modular
 9. Ranch
 10. Split Level
 11. Victorian
 12. Yankee Classic

American Colonial: Colonial houses are usually side-gabled (roof ends at the sides of the house), flat-faced, wooden structures, covered with narrow pine clapboards, although most of the earliest ones had shingles. American colonial architecture includes several building design styles associated with the colonial period of the United States. These styles are associated with houses, churches and government buildings of the period between about 1600 through the 19th

century. An example of this type can be seen in **Figure 5-1**. The original form of Colonial houses was a simple one-room, two-story box. In time, many of the houses were built out back to make room for growing families and storage goods.

Fig 5-1 American Colonial



Cape Cod: A Cape Cod cottage is a style of house originating in New England in the 17th century. It is traditionally characterized by a low, broad frame building, generally a story and a half high, with a steep, pitched roof with end gables, a large central chimney and very little ornamentation. The Pilgrims designed houses that provided safety from New England's extreme winter climate. As temperatures plummet below freezing temperatures during the winter months, the Pilgrims built extensive central chimneys and low ceilinged rooms to conserve heat. Most Cape Cod homes faced the south, which allowed sunlight to enter the windows and provide additional heat. The steep roof characteristic of New England homes also prevented excessive amounts of snow from accumulating on the house.

Isolated from Europe, early New Englanders used natural resources available in the environment for building materials. Colonists made shingles out of cedar trees, while using pine and oak for hardwood flooring. **Figure 5-2** shows an example of a Cape Cod Style house.

Fig. 5-2 Cape Cod



Colonial Revival Capes: (1930's – 1950's) These houses are very similar to Colonial Cape Cod houses, but some have the chimney at one end of the living room on the side of the house. Homeowners also added roof dormers for increased space, light, and ventilation. Despite the changes, 1 1/2-story Capes are still a popular, affordable style on the housing market. Please the Colonial Revival Cape example in **Figure 5-3**.

Fig. 5.3 Colonial Revival Cape



Contemporary: Contemporary house design integrates a wide number of style features, melding historic elements with current lifestyle concepts, resulting in homes that are warm, inviting and connected with the outdoors. Almost all Contemporary houses share common design elements such as tall, irregularly shaped windows, bold geometric shapes, and asymmetrical facades and floor plans.

The Contemporary house floor plan is open, with minimal doors and walls. In keeping with today's lifestyles, it is designed to be functional, but without the cold, machine like feel of the modern style. New Contemporary houses have been getting smaller as homebuyers have turned to more efficient, "right-sized" homes that are more economical to maintain and more eco-friendly. The National Association of Home Builders reports that the size of single-family homes in the United States started decreasing steadily after 2007, when the national average peaked at 2,521 square feet. **Figure 5-4**, shows an example of a Contemporary style house.

Fig. 5-4 Contemporary Style



Gable Front: A gable is the triangle formed by a sloping roof. A building may be front-gabled or side-gabled. The Gable front house developed after 1825, and coincided with the popularity of the Greek Revival style, which placed emphasis on the gable-end of the house in the form of a pediment; often associated with Greek temples. This style is also known as a **Gable Front house** or **Front Gable house**, (e.g. a vernacular or "folk") house type in which the Gable is facing the street or entrance side of the house. They were built in large numbers throughout the United States primarily between the early 19th century and 1920s.

The gable front house allows the narrow part of the house to face the street, usually on a typically rectangular lot. The gable front house became a uniquely American folk house type. The Gable front house cropped up in styles ranging from Greek Revival, to Gothic Revival, to Queen Anne, to a simpler vernacular style home. The Gable front house form remained popular into the early 20th century. An example on this style can be seen in **Figures 5-5**.

Fig. 5-5 Gable front



Gambrel: A **gambrel** (also known as a **Dutch gambrel**) is a usually-symmetrical two-sided roof with two slopes on each side. The cross-section of a gambrel roof is similar to that of a mansard roof, but a gambrel has vertical gable ends instead of being hipped at the four corners of the building. A gambrel roof overhangs the façade, whereas a mansard normally does not. *Gambrel* is a Norman English word, sometimes spelled *gamerel*, *gamrel*, *gambril*, or *gameral*, referring to a wooden barn used by butchers to hang the carcasses of slaughtered animals.

The upper slope is positioned at a shallow angle, while the lower slope is steep. This design provides the advantages of a sloped roof while maximizing headroom on the building's upper level. Please see sample of a Gambrel style house on **Figure 5-6**.

Fig. 5-6 Gambrel



Garrison (New England): A garrison style house is typically two stories with the second-story overhanging in the front. The traditional ornamentation is four carved drops (pineapple or acorn shape) below the overhang. Garrisons usually have an exterior chimney at the end. Older versions have casement windows with small panes of glass, while later versions have double-hung windows. The second-story windows often are smaller than those on the first floor. Dormers often break through the cornice line. Like the Cape Cod, the Garrison Colonial is a variation of the Colonial Revival style, which enjoyed enormous popularity during the 20th century. It shares with the Colonial Revival many of the same characteristics including symmetry, roof pitch, and decorative detailing in such classical elements as double-hung six-over-six windows, pilasters, and traditional entries with broken pediments, side lights, or transoms. Though Colonial Revival was hugely popular during the first quarter of the 20th century, middle-class Garrisons are almost never seen until the late 1920s. During the 1930s, the style peaked in popularity, becoming much more common. It remains a popular style just after the War and into the 1950s when more modern styles begin to emerge. **Figure 5-7** shows an image of a Garrison house.

Fig. 5-7 Garrison



Manufactured: A manufactured home is one that is constructed almost entirely in a factory. The *house* is placed on a steel chassis and transported to the building site. The wheels can be removed but the chassis stays in place. A manufactured home can come in many different sizes and shapes. It may be a simple one-story "*mobile home*," or it can be so large and complex that

you might not guess that it was constructed off site. Building inspectors check the work done locally (electric hook up, etc.) but are not required to approve the structure. Segments are not always placed on a permanent foundation, making them more difficult to re-finance. Manufactured housing is generally less expensive than site built and modular homes. Manufactured homes sometimes decrease in value over time.

Mobile homes, now called manufactured homes, are built to conform to the same federal code, no matter where they will be delivered. That code is called the **HUD** code. A modular home conforms to the building codes that are required at the specific location it will be delivered to, and in many cases construction exceeds the required codes. Please see **Figure 5-8**.

Fig. 5-8 Manufactured



Modular: Modular homes are built in sections at a factory. They are often called 'stick-built' houses. These homes are constructed entirely at the building site. Modular homes are built to conform to all state, local or regional building codes at their destinations. Sections are transported to the building site on truck beds, and then joined together by local contractors. Local building inspectors check to make sure a modular home's structure meets requirements and that all finish work is done properly. Modular homes are sometimes less expensive per square foot than site built houses. A well-built modular home should have the same longevity as its site-built counterpart, increasing in value over time.

Modular home manufacturers use computer aided design programs to draw plans to your specifications, or to modify one of their standard plans to suit your needs, so nearly any home plan can be turned into a modular home. It's true that some modulares are very basic and resemble double wide manufactured homes, but the two structures are still built in different ways. Each manufacturer is different, so be sure to ask questions about flexibility if you would like to design your own home. A well-built, cared for site-built home generally increases in value over time, although its location plays a key role in value. As the size of modular homes has greatly increased since the 1980s, so have the available options for customization. You can now order a custom designed building that is created by an architect solely for you. The architect's plans are then built with modular techniques and the final building is assembled to be as tall and as wide as you wish. Please note the sample of the Modular home in **Figure 5-9**.

Fig. 5-9 Modular



Ranch: (1935-1975) Ranch-style housing (also American ranch, California ranch, rambler or rancher) is a domestic architectural style originating in the United States. The ranch house is noted for its long, close-to-the-ground profile, and minimal use of exterior and interior decoration. The houses fuse modernist ideas and styles with notions of the American Western period working ranches to create a very informal and casual living style. The 20th century ranch house style has its roots in North American Spanish colonial architecture during the 17th to 19th century. Sample **Figure 5-10** shows a Ranch house.

These buildings used single story floor plans and native materials in a simple style to meet the needs of their inhabitants. Walls were often built of adobe brick and covered with plaster, or more simply used board and batten wood siding. Roofs were low and simple, and usually had wide eaves to help shade the windows from the Southwestern heat.

First built in the 1920s, the ranch style was extremely popular amongst the booming post-war middle class of the 1940s to 1970s. The style is often associated with tract housing built during this period, particularly in the western United States, which experienced a population explosion during this period, with a corresponding demand for housing. The style was exported to other nations and so is found in other countries. Their popularity waned in the late 20th century as neo-eclectic house styles; a return to using historical and traditional decoration became popular.

Fig. 5-10 Ranch



Split Level: A split-level home (also called a tri-level home) is a style in which the floor levels are staggered, so that the "main" level of the house (e.g. the level that usually contains the front entry), is halfway between the upper and lower floors. The main level typically contains common living areas (a living room, kitchen, dining room, and/or family room). There are typically two short sets of stairs, one running upward to a bedroom level, and one leading downward toward a basement area. There are two levels associated with the split style.

1. A side split is where the split level is visible from the front elevation of the home.
2. A back split is where the split level is only visible from the side elevation.

There are some advantages to the split level house in which some regions such as the northeastern United States, the term "split level" is used to refer to a bi-level house with a split entry. **See figure 5-11.** This style of house is also known as a "split foyer." This is a two-story house that has a small entrance foyer with stairs that "split"—half a flight of stairs go up (usually to the living room, kitchen, and bedrooms) and half a flight of stairs go down (usually to a family room and garage/storage area). This style is very popular in other areas of the country as well. Other styles include the (Stacked Split Level, and the Split Entry).

Fig.5-11 Split Level



Victorian: (1855-1900) In the United Kingdom, and former British colonies, a Victorian house generally meant any house built during the reign of Queen Victoria (1837-1901). During the Industrial Revolution, successive housing booms resulted in the building of many millions of Victorian houses which are today a defining feature of most British towns and cities.

The Victorians may have been straitlaced in their corsets and tight in their collars, but they were joyous and free in their houses. "Victorian" is not one style but several. It is often described as eclectic, meaning that the houses can look like just about anything. **Please see Figure 5-12.** But what it means in this case is that Victorian houses look almost nothing like any of the houses that came prior to that period. Some Victorian house styles can be distinguished by their "feel," others by characteristic features. There is much detail to Victorian architecture, and so much unabashed borrowing, making it difficult to sort out the individual house styles.

Fig. 5-12 Victorian



Yankee Classic: (June 1997) whether they come as leaf peepers, antiques hunters, or Freedom Trailers, travelers in New England frequently find themselves gawking at the Yankee Classic houses. And no wonder. With 370 years of historical settlement behind it, New England hosts a collection of architectural styles that is older and more varied than in any other part of the country.

We probably know more about old houses than we realize. Because we see houses every day and know them from our history lessons, most of us carry around in our heads a subconscious inventory of house forms. In the same way, most people can tell a duck from a heron even without knowing its proper scientific name, as most people instinctively distinguish a saltbox house from a Second Empire and a Cape Cod from a Queen Anne home. But knowing some of the distinguishing details, and a little of their history, can deepen one's appreciation of the unique personality of each town or city one visits. An unusual style house found in the precious neighborhoods is shown as sample image on **figure 5-13.**

Fig. 5-13 Yankee Classic



CONDOMINIUMS, COOPERATIVES AND TIME-SHARES

CONDOMINIUMS AND COOPERATIVES

Both are forms of ownership, but differ in the manner in which they are created and owned. Condominium owners purchase their own units in exactly the same manner as they would a detached residence. Unit owners share the ownership of the common areas and each pays a monthly fee for the maintenance of the areas owned in common. In a cooperative, the occupants do not purchase their own units. They buy a share in the cooperative association, which entitles them to a long-term lease of one of the apartments. **Note:** Acquiring property through a “cooperative” involves purchase of stock shares.

COOPERATIVE OWNERSHIP: A cooperative apartment building is a multi-unit dwelling in which each resident has a stock interest in the corporation (partnership or trust) owning the building, as well as a lease entitling occupancy of a particular apartment within the building. In essence, the cooperative owner is a shareholder in an entity whose principal asset is a building. In return for the purchase of stock in the corporation, the owner receives a proprietary lease granting occupancy of a specific unit. Through the election of a board of directors, as stockholders, the residents participate in the operation and management of the cooperative. The board of directors has the sole responsibility for management decisions and for governing the cooperative.

FINANCING COOPERATIVE OWNERSHIP: The cooperative borrows money for the purchase or construction of the building and is solely responsible to the lender. The shareholders or occupants buy a portion of the equity (interest over the mortgage indebtedness) and agree to pay a share of the principal and interest based upon their percentage of ownership. The purchase of a cooperative usually requires a larger down payment than that of a single family home or condominium. Consequently, a cooperative developer may take back a second mortgage (share loan) on the buyer's stock as security for the loan on the equity purchase.

1. **Cooperative Owner's Monthly Cost:** Co-op owners pay a monthly fee, which includes maintenance, real estate taxes, insurance, principal and interest on the co-op mortgage. The co-op owner's share of the mortgage interest and taxes may be taken as a tax deduction.
2. **Selling a Cooperative Unit:** A shareholder's interest may be sold in accordance with a transfer value and set forth rules in the bylaws of the corporation. The sale is frequently subject to the **right of first refusal** or approval by the board of directors. Until 1984,

bank financing was difficult to obtain since stock is personal property and could not be used as collateral for a loan. Since then, the Federal National Mortgage Association has agreed to purchase co-op blanket mortgages and share loans written on co-op units, making it easier to obtain bank financing.

3. **Main Disadvantage of Cooperatives:** The co-op has a single mortgage and there is one tax assessment covering the entire property. If tenant-owner fails to pay their share of the property taxes or mortgage debt service, the corporation or trust may face the possibility of foreclosure unless the other tenant-owners make up the difference. Another potential problem is that under the bylaws, any equity build-up due to property appreciation may accrue to the co-op and the continuing tenant-owners. Thus, a tenant-owner, upon deciding to leave the co-op, may only recover the initial equity investment plus equity build-up due to mortgage amortization during the period of ownership.

CONDOMINIUM OWNERSHIP

In a condominium form of ownership, a purchaser receives title to a specified unit together with a membership in a **community association**, and an **undivided interest** in and rights to the use of a **common area** in which the purchaser holds the **specified unit in fee simple**, that is subject to declared restrictive covenants and conditions. Each unit is like a cubicle in space, which is why it is sometimes referred to as "**horizontal ownership**." The boundaries, which are described in the condominium blueprint plan, includes the interior surfaces of the perimeter walls, floors, windows and doors. The ceilings, supporting walls, utility installations, central heating, etc. are common property to be shared by all of the unit owners. **Note:** Condominium ownership is most commonly represented by a deed.

COMMON PROPERTY: Common elements include the supporting walls, ceilings, hallways, elevators, stairways, roof, lawns and recreational facilities, such as swimming pools, clubhouses, tennis courts and golf courses. Parking spaces could be a common element or may be purchased or rented in addition to the living unit.

FORMATION OF A CONDOMINIUM: The formation of a condominium project requires: (1) the public recording of a master deed or declaration of intent; (2) the formation of an association of unit owners; (3) a set of bylaws; and (4) unit deeds.

MASTER DEED OR DECLARATION: The declaration or master deed is a recorded statement of the owner's intent to transform a site into a condominium project or to convert an existing building to condominiums. The master deed describes the site, buildings, and common areas which should include floor plans showing the layout, location, number and dimensions of the individual units. The master deed contains a statement of the purpose for which the building and each of the units are intended, including restrictions, if any, as to their use. The master deed must designate the proportion to which each unit represents to the entire project. This percentage determines the unit's share of the monthly maintenance fee and the number of votes within the association. **Note:** *The rights of a condominium owner are defined by the condominium declaration and the master deed.*

ASSOCIATION OF UNIT OWNERS: The master deed must contain the name and description of the association, which is responsible for the operation of the condominiums. The governing body can be in the form of a corporation, trust, or association, disclosing provisions

for annual meetings and duly elected officers, trustees, and directors. Officers can be held individually liable to the members for their failure to act properly in accordance with the regulations and bylaws.

BYLAWS: The association must have a complete set of bylaws, in addition to other formalities, which must provide for the following:

1. The method of providing for the necessary work of maintenance, repair and replacement of the common areas and facilities.
2. The manner of collecting unit owners' share of the common expenses.
3. The procedure for hiring personnel, such as a manager.
4. The method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common areas.
5. Any restrictions and requirements regarding the use and maintenance of the units and the common areas and facilities.

UNIT DEEDS: Title to individual units is conveyed by a unit deed. A facsimile of the purchase and sale agreement, and unit deed must be recorded with the master deed.

REAL ESTATE TAXES ON CONDOMINIUMS: Unit owners are responsible for the real estate taxes assessed to their units. The common area is not directly subjected to real estate taxes, since the unit assessments is based on percentage.

INSURANCE: Hazard and liability insurance on the entire building and common area is maintained by the owners association. Unit owners are personally responsible for loss or damage to their personal property within their unit. Unit owners are also responsible for personal injuries and property damage to others as a result of their negligence. For complete protection, unit owners should maintain fire and theft insurance on their personal belongings, as well as casualty insurance for protection against claims of others for personal injury and property damage.

GOVERNING THE CONDOMINIUMS: The owners association governs the rules by holding regular meetings to elect officers and to vote upon administrative matters. Officers have special authority to hold executive meetings and to make decisions concerning matters, which require immediate attention for the best interests of the members.

CONDOMINIUM ASSOCIATION FEES: Unit owners are required to pay a **monthly maintenance charge (i.e. condominium dues, association dues)** to cover their pro-rata share of the common expenses. Common expenses include the costs of building insurance, maintenance, fuel, water and utilities for common areas, management fees, reserves for replacements and repairs, fees for parking, pool, and other recreational facilities. Unit owners usually pay for their own gas and electricity.

Helpful Hints: Liability Insurance

The hot water storage tank located in a condo unit rotted out and caused severe water damage to the owner's unit and to the unit directly below. Because the owner did not have casualty insurance, he was personally liable for the claims for damage to the building and for damage to the other unit owner's personal property.

SPECIAL ASSESSMENTS: *Condo assessments*, sometimes called association **fees**, are the payments made by condominium *owners* to cover the common expenses of the entire property. Payments are usually made monthly to the condo association, and are not part of the mortgage payment to the bank or other lender.

Expenses covered by condominium assessments include, but are not limited to the following:

- Sewer
- Water
- Scavenger (trash pickup)
- Electricity for *common areas*
- Insurance for common areas
- Lawn cutting
- Snow removal
- Hallway cleaning
- Parking lot maintenance
- Professional management
- Long- and short-term replacement reserve

PURCHASING A CONDOMINIUM - DOCUMENTS REQUIRED AT CLOSING: An attorney should always be consulted before any documents are signed. An original sale between the developer and the buyer sign an offer or preliminary agreement is subject to review of the condominium bylaws, and subject to refund of deposit, if requested, within a week or two. Resales are treated as any other sale of a residence. At the closing, the purchaser receives a unit deed, **6-D Certificate** from the condo association certifying there are no outstanding assessments or condos fees against the unit, and a certificate of insurance covering the common areas.

FINANCING THE PURCHASE OF A CONDOMINIUM: The purchase of a condominium may be financed in the same manner as any other type of property. A default on the mortgage of one unit owner will not adversely affect the other unit owners. In case of foreclosure sale, the purchaser assumes the same responsibilities of the previous owner.

CONDOMINIUM CONVERSIONS: Because of the growing trend for converting apartment buildings to condominiums, there is a concern that needy and elderly tenants will suffer financial hardship if forced to vacate. To minimize this problem, many states have passed laws requiring owners to provide financial assistance to cover a tenant's moving expenses and costs of finding comparable living accommodations. Massachusetts's conversion requirements are discussed on page 14-46 of Chapter 14.

Figure 5:1 CONDOMINIUM V. COOPERATIVE COMPARISON CHART

FEATURE	CONDOMINIUM	COOPERATIVE
1. What are occupants' rights?	Fee Simple	Proprietary Lease
2. May units be mortgaged?	Yes	No
3. May building be mortgaged?	No	Yes
4. Are units taxed separately?	Yes	No
5. Are owners liable for building tax or mortgage default?	No	Yes
6. How is condo title or co-op interest conveyed?	Deed	Stock transfer

7.	May ownership be restricted?	No	Yes*
8.	Easy transferability?	Yes	Financing problems
9.	Are real estate taxes and mortgage interest tax deductible?	Yes	Yes
10.	How are purchases financed?	Unit mortgage	Co-op share loan

Cooperatives may impose transfer restrictions, provided they do not violate any state or federal laws against discrimination. Condo associations may not impose any restrictions on transfer of unit ownership, such as a right of first refusal.



TIME SHARING

Time-sharing or **interval ownership** is a modern concept of ownership, which is used primarily for the sale of vacation homes. The units are usually attached condominiums or converted motel, hotel rooms or suites. Multiple purchasers buy undivided interest in the unit with a right to use the facility for a fixed time period. A developer may sell to each of fifteen buyers an undivided interest in a resort condominium unit with each owner being entitled to use the premises for a designated time period every year. The common expenses are prorated among the owners according to their use interval. The purchase price also varies according to the time of the year purchased; a two-week period in the Bahamas in December might sell for more than two weeks in August. An attractive selling feature is the ability to swap a time period in one resort for a time period in another. An owner of two weeks in December at a ski resort could exchange with an owner of two weeks in January at a tropical location. (See page 14-47 for more information discussed in Chapter 14 for Massachusetts Time-Share Regulations).

KEY WORDS AND PHRASES

American colonial	Bylaws	Cape Cod	Common property	Condominium	Contemporary
Cooperative	Co-ownership	Corporation	Four unities	Gable front	Gambrel
Garrison	General partners	Interval ownership	Joint tenancy	Limited partners	Manufactured
Master deed	Modular	Partition	Partnership	Proprietary lease	Ranch
REIT	Right of survivorship	Special assessments	Split level	Severalty	Syndication
Tenancy by the entirety	Tenancy in common	Time-share	Trust	Unit deed	Victorian
Yankee classic					

RELATED WEB SITES

Massachusetts RE Board:

<http://www.mass.gov/Eoca/docs/dte/cmr/220cmr2800.pdf>

Multiple Choice Questions

1) The unities of time, title, possession, and interest are characteristic of which of the following forms of ownership?

- A. Severalty.
- B. Tenancy in common.
- C. Joint tenancy.
- D. Tenancy at sufferance.

2) Title conveyed to a husband and his son, on a one-third, two-third, undivided basis, would create which kind of ownership?

- A. Severalty.
- B. Tenancy in common.
- C. Joint tenancy.
- D. Tenancy by the entirety.

3) A couple must be married to hold property in which of the following forms of ownership?

- A. Severalty.
- B. Joint tenancy with syndicate.
- C. Tenancy in common.
- D. Tenancy by the entirety.

4) Which of the following provides the right of survivorship?

- A. Tenancy in common.
- B. Joint tenancy.
- C. Life estate.
- D. Period-to-period lease.

5) If Mr. and Mrs. Warner own property as joint tenants and Mrs. Warner conveys her interest to their son. Mr. Warner and their son will own the property as:

- A. Joint tenants.
- B. Tenants in common.
- C. Tenants by the entirety.
- D. Tenants in severalty.

6) Upon the death of one tenant in common, the deceased person's interest would pass to the:

- A. State.
- B. Deceased owner's heirs.
- C. Spouse.
- D. Surviving joint tenant.

7) Joel and Mark share ownership of a house. When Joel dies, Mark owns the property in severalty. How was the house owned prior to Joel's death?

- A. Tenants by the entirety.
- B. Joint tenants.
- C. Tenants in common.
- D. Owners in severalty.

8) Which of the following would sometimes prove to be a negative factor in the corporate form of ownership?

- A. Limited personal liability.
- B. Liquidity of investment.
- C. The ability to acquire an ownership interest with small capital investment.
- D. Tax considerations.

9) Limited partners benefit from all of the following EXCEPT:

- A. Limited personal liability.
- B. Minimum management responsibility.
- C. Direct pass-through of profits.
- D. Passive loss deductions.

10) Which of the following offers the most liquid form of ownership?

- A. Limited partnership.
- B. Joint Tenancy.
- C. Sole ownership.
- D. General partnership.

11) Cooperative owners' occupancy rights are based on:

- A. Proprietary leases.
- B. Deeds to their units.

- C. Articles of incorporation.
- D. Association bylaws.

12) A condominium unit owner is responsible for all of the following

EXCEPT:

- A. The individual unit mortgage.
- B. Painting the unit interior.
- C. Sharing the cost of common element maintenance.
- D. Sharing the cost of liens on other owners' units.

13) A condominium association is responsible for all of the following

EXCEPT:

- A. Overseeing the care of common areas.
- B. Enacting bylaws for the operation of the condominium.
- C. Collecting the owner's association fees.
- D. Marketing the individual units.

14) Concerning real estate tax liability of a condominium owner and a co-op owner:

- A. Each is individually responsible for his/her own taxes.
- B. A co-op owner is individually responsible for the taxes on his/her apartment.
- C. A condominium owner is individually responsible for taxes on his/her unit.
- D. Neither is responsible for real estate taxes.

15) The time sharing plan of ownership is best described as:

- A. A joint tenancy.
- B. Interval ownership.
- C. A tenancy in common.
- D. Sharing a condominium unit.

16) In which of the following must the owner/occupants be stockholders of a corporation, which owns the building?

- A. Cooperative.
- B. Condominium.
- C. Time Share.
- D. Interval ownership.

17) Which form of ownership is used to hold title to real estate for the protection of a beneficiary?

- A. Trust.
- B. Corporation.
- C. Limited partnership.
- D. General partnership.

18) The person, to whom title is vested in a trust, is a:

- A. Trustor.
- B. Beneficiary.
- C. Trustee.
- D. Limited partner.

19) Individual unit ownership and shared common ownership are best described as a:

- A. Condominium.
- B. Cooperative.
- C. Time-share.
- D. Trust.

20) A fee simple interest is involved in all of the following EXCEPT a:

- A. Condominium.
- B. Time-share use.
- C. Tenancy by the entirety.
- D. Leasehold.

21) Which of the following is a characteristic of a cooperative?

- A. A right of first refusal.
- B. Individual unit tax bills.
- C. Shareholder stock certificates.
- D. Individual unit mortgages.

22) Concurrent ownership includes all of the following EXCEPT:

- A. Severalty.
- B. Tenancy by the entirety.
- C. Community property.
- D. Tenancy in common.

23) If any unity of joint tenancy is broken, the law will regard the estate as:

- A. A tenancy by the entirety.
- B. Community property.
- C. Tenancy in common.
- D. An estate for life.

24) When tenants by the entirety divorce, barring any other agreement:

- A. They become tenants in common with each other.
- B. The divorce has no effect on the status of their ownership.
- C. Each becomes a severalty owner.
- D. They become joint tenants.

25) Brown, Smith, and Lynch form a partnership to purchase real estate, naming Smith the general partner. Which type of ownership did they create?

- A. General partnership.
- B. Limited partnership.
- C. Corporation.
- D. Joint venture.

26) Mark died leaving his real estate to his two sons, John and Paul, as joint tenants. John and Paul both married and had children. After John and Paul died, John's children became sale owners of the property. Why?

- A. Paul disinherited his children
- B. John died before Paul.
- C. Paul died before John.
- D. Paul's children were still minors.

27) A partition is best described as a:

- A. Subdivision of land.
- B. Court proceeding to dissolve co-ownership of property.
- C. Conversion of rental units to condominiums.
- D. Conveyance of a life estate.

28) Lou, Mike and Nick are joint tenants. Nick sells his interest to Oliver, and then Mark dies. Which of the following statements is true?

- A. Mark's heirs, Olivier and Lou, are joint tenants.
- B. Mark's heirs and Lou are joint tenants, but Oliver is a tenant in common.
- C. Lou's, Oliver's and Mark's heirs are tenants in common.
- D. Lou and Oliver are tenants in common.

29) Which of the following features describe a condominium?

- A. Undivided interest in the whole.
- B. Undivided interest in common areas and separate interest in individual units.
- C. Separate interests in the whole.
- D. Divided interest in common areas and undivided interest in each unit.

30) At least 100 investors are required to form a:

- A. Real estate investment trust.
- B. Syndicate.
- C. Limited partnership.
- D. Corporation.

31) A brother and sister hold land as joint tenants. The sister conveys one-half of her interest to her husband. Ownership would now be held by the:

- A. Brother, the sister and her husband as tenants in common.
- B. Brother and sister as joint tenants and

by her husband as a tenant in common.

- C. Brother, the sister and her husband as joint tenants.
- D. Brother and sister as joint tenants.

32) Characteristics of joint tenancy include all of the following EXCEPT:

- A. Heirs of joint tenants retain a survivorship interest.
- B. Joint tenants receive their interest by the same documents.
- C. Joint tenants have equal rights of possession.
- D. The interests of the joint tenants are equal.

33) Which of the following descriptions applies to a partition action?

- A. A subdivision of lots by a developer.
- B. A court proceeding to break up a co-ownership.
- C. The conversion of rental apartments to condominiums or cooperatives.
- D. The conveyance of a partial interest to form a co-ownership.

34) An investor's personal assets could be subject to a creditor's claim in a:

- A. General partnership.
- B. Syndicate.
- C. Real estate investment trust.
- D. Corporation.

35) An advantage of an S corporation over a regular corporation is:

- A. Avoidance of double taxation.
- B. Exemption from property taxes.
- C. Easier transfer of interest.
- D. Exemption from inheritance tax.

36) Able, Baker, and Charles own an investment property as tenants in common. Their interest is divided 20% to Able, 30% to Baker and 50% to Charles. Charles offers to sell

David half of his interest. Can Able and Baker prevent the sale?

- A. Yes, because tenants in common must all approve the sale of individual interest.
- B. Yes, because Able and Baker must be given the right of first refusal.
- C. Yes, because the property must be partitioned in court before a sale.
- D. No, because a tenant in common may dispose of all or part of his/her interest without permission of the other co-owners.

CONCEPTS OF APPRAISING

A real estate appraisal is merely an estimate (or opinion) of value. It is usually presented in the form of a written or narrative report, which states the estimate of the value of a property as of a specified date, and is supported by the statement and analysis of factual and relevant data. An appraisal does not establish, create, or determine value. It is only an opinion of value. The accuracy of an appraisal depends upon the experience and skill of the appraiser and the availability of pertinent data.

Appraising is not an exact science, for no two people may agree on the same estimate of value. However, it is considered an "art" which can be learned and developed by training, experience, judgment and knowledge. In most real estate transactions, the broker is not called upon to make a formal appraisal. Appraising is a job for a professional who has the proper training and skill to be recognized as an expert. An appraiser's compensation is based **PRIMARILY** on the amount of time and work put into the appraisal report.

LICENSED REQUIRED: It is unlawful for a person to prepare, for a fee or other valuable consideration, an appraisal or appraisal report relating to real estate or real property in this State of Massachusetts without first obtaining a real estate appraisal license. Only an individual may be licensed under this chapter. This section does not apply to individuals who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Nothing in this chapter prohibits any person who is licensed to practice in this State under any other law from engaging in the practice for which that person is licensed.

VALUE

MARKET VALUE: The purpose of all appraisals is to estimate market value. Market value is defined as the most probable price a buyer, acting freely, would pay and the lowest price a seller, acting freely, would accept, assuming both are fully informed and the property has been on the market for a reasonable time. **Note:** "Market value" is best indicated by recent sales of comparable properties.

CHARACTERISTICS OF VALUE: Value is not a characteristic inherent in the object itself. The value of property has been defined as the relationship between something desired and a potential purchaser. The value of real estate is related to the need for shelter and income. As need increases and supply decreases, values go up. Personal factors, such as the desire for a particular location or type of home, also contribute to value.

FOUR ELEMENTS OF VALUE: There are four elements of value:

1. **Utility:** Utility is the ability to arouse desire for its possession or use.
2. **Scarcity:** The object must be relatively scarce to satisfy the demand.
3. **Demand:** There must be a need and ability to purchase.
4. **Transferability:** It must be possible to transfer good title with ease.

FORCES WHICH CREATE VALUE: Real property value is totally dependent upon four great forces, which motivate human activity. These forces create, maintain, modify or destroy value. The four forces are:

1. **Social:** Social forces include population growth and decline, shifts in population density and changes in family sizes.
2. **Economic:** Economic forces consist of natural resources, commercial and industrial trends, employment trends and wage levels, availability of money and credit, price

levels, interest rates and tax burdens.

3. **Political or Government:** Zoning laws, building codes, police and fire regulations and rent controls affect the value of real estate.
4. **Physical:** Physical forces include climate and topography, soil fertility, mineral resources, transportation, schools, churches, parks and flood control.

The interplay of these forces has an impact upon value and must be considered in estimating the value of real estate. They are the basis for making an appraisal.

TYPES OF VALUE: The purpose of most appraisals is to estimate market value. However, property may also be appraised to determine other types of value such as **insurable value, assessed value, salvage value, loan value, rental value, condemnation value and liquidation value.** *Note:* For appraisal purposes, the **assessed value** of a property *always* has the greatest influence on a property's value.

1. **Insurable value:** This value is based on the concept of replacement and/or reproduction cost of physical items subject to loss from hazards. Insurable value designates the amount of insurance that may or should be carried on destructible portions of a property to indemnify the owner in the event of loss.
2. **Assessed value:** This is a value according to a uniform schedule for tax rolls in ad valorem taxation. The schedule may not conform to market value, but usually has some relation to a market value base.
3. **Condemnation Value:** To estimate market value of a property as a whole – that is, before the taking as well as after the taking and to allocate market values between the properties taken and damage to the remainder.
4. **Liquidation Value:** Is a price that an owner is compelled to accept when the property's sale must occur with less-than-reasonable market exposure.

VALUE AS DISTINGUISHED FROM COST AND MARKET PRICE: **Cost** is a measure of **past** expenditures. A house, which sold for \$190,000, may have been sold for more or less than the market value, depending upon the circumstances of the sale. A home, which cost \$200,000, to build may be valued at \$300,000 because of a superior location.

Market price is the amount **paid** for a property. It is what a seller gets for the sale of property or what a buyer pays under current market conditions. Price can be taken as an indicator of value only after considering all the factors that made up the sale, such as location, financing and forces influencing the sale.

ECONOMIC PRINCIPLES THAT AFFECT VALUE: The value of property is affected by certain economic principles. The most important of these principles are as follows:

1. **Highest and Best Use:** Highest and best use is that use of property, which at the time of appraisal is most likely to produce the greatest net return to the land over a given period of time. "Net return" doesn't always refer to return of money, but can take the form of amenities. A private dwelling may render a "net return" in the form of agreeable living far outweighing a monetary net rental yield. On the other hand, the presence of a single family dwelling on a lot zoned for business use, may not be utilizing the land for its highest and best use. The land might be more valuable for use as a parking lot. *Note:* A determination that a two-family structure located on a busy highway should be replaced by an office building is based on highest and best use. It is the best use of property, which creates its greatest value. Therefore, its current use at the time of the appraisal may not be considered in determining highest and best use.
2. **Supply and Demand:** Scarcity of a commodity influences its value by creating a greater

demand for the item. As oceanfront property diminishes, its value increases to meet the demand. Demand is also affected by desire. If there is an over-supply of apartments in a given area, the desire for them will diminish, and values or rents will go down.

3. **Substitution:** The value of property tends to be set at the cost of acquiring an equally desirable substitute property. In theory, no one should pay more for a property than what it would cost to obtain a site by purchase and sale and to construct a building of equal desirability and utility. **Substitution is the basis for the comparison or market data approach to appraising.** **Note:** The direct sales comparison and “market data approach” to estimate the property’s market value is most often used in evaluating residential property as well as of an appraisal of a residential property located in an area in which there has been an increase in real estate sales activity. It is used by brokers because it represents the actions of buyer and sellers and also best used for many comparable sales exist.
4. **Balance:** Balance refers to the relationship between cost, added cost and the value it returns. For each dollar invested, the value should increase by more than one dollar.
5. **Conformity:** A property will tend to hold its value when other properties in the area are similar in style and quality (homogeneity), and will decline in value when they are not. A \$300,000 house would be out of place in a neighborhood of \$180,000 houses. Conformity is the basis for zoning laws, since it assures a uniformity of structures and uses which enhances value.
6. **Contribution:** The value of an improvement to property is measured by its contribution to the net return of the property rather than its actual cost. A single-family homeowner installs a swimming pool at a cost of \$15,000, but the value of the home may only increase by \$5,000. On the other hand, a swimming pool installed at a cost of \$50,000 in an apartment building, might increase the property value by more than its cost, due to the potential increase in rents.
7. **Increasing and Decreasing Returns:** This theory states that the more money spent in the production of a project, the greater will be its return, up to a certain point (the law of increasing returns), and that any additional expenditures beyond this point will not produce a sufficient return to justify the additional investments (the law of decreasing returns). In estimating value, the appraiser must make a hypothetical projection as to what improvements would return the greatest net yield to the land.
8. **Anticipation:** The value of property is affected by anticipated, future benefits or deficits.
9. **Competition:** This principle states that competition will be encouraged in an area where substantial profits are being made. If a developer is making substantial profits on the sale of condominiums in a resort area, other builders will be encouraged to build more condominiums. For the developer, the danger of competition is that over-building may result in a reduction of value.
10. **Plottage:** Plottage is the merging of two or more adjoining lots to produce a larger lot having greater value than the original lots had separately.
11. **Change:** Everything is in a constant state of change, which is characterized by three

Helpful Hints: Anticipation

In estimating the value of an apartment building, the appraiser must examine the past income experience in order to determine whether the building will continue to produce at the same or a decreased level in the future. An

Helpful Hints: Plottage

Two lots valued at \$20,000 each may be worth a total of \$60,000 when combined to form one lot. The process of combining two lots into one is known as assemblage.

stages: **(1) Growth, (2) Stability and (3) Decline.** Property value in a given neighborhood will fluctuate and be influenced by these stages. The ability to anticipate and identify changes will produce a more accurate estimate of value.

THREE APPROACHES TO ESTIMATING VALUE

The three basic methods or approaches to appraising real estate are: **(1) Market Data, (2) Cost and (3) Income (Capitalization).** While each method works best for a particular type of property, all three are used in most appraisals. The appraiser determines how much weight is to be given to each approach.

MARKET DATA APPROACH TO APPRAISING: The market data approach (comparison method) is considered the most reliable, especially in appraising residential property where the amenities and intangible benefits are so difficult to measure. By using the principle of substitution, the appraiser compares the property being appraised with recent sales and offerings of similar properties in the neighborhood. The prices of the comparable sales are adjusted for the difference in ages, conditions, size, style, location and physical characteristics. The appraiser selects the most comparable sales and estimates the value of the subject property in relation to the ones selected. The appraiser prepares a rating chart, as illustrated in Figure 15:1, in which prices of the comparable sales are adjusted to match the subject property.

Figure 15:1

RATING CHART

SUBJECT PROPERTY	SALE NO. 1	SALE NO. 2	SALE NO. 3
Sale Price	\$170,500	\$160,000	\$161,000
Time Adjustment	none	+4,000	-8,000
Location	good	same	same
Physical Features			
Lot Value	good	same	same
Construction	brick	same	frame +4,800
Condition ext.	average	superior -4,000	same
Condition int.	good	same	same
1 st fl. rooms	4	same	3 +8,000
2 nd fl. rooms	4 bdrms	same	same
3 rd fl. rooms	1 bdrm	same	0 +7,000
2 nd fl. bath	2	1 +6,000	same
Lavatory	1	same	same
Kitchen	original	same	new -10,000
Piping	original	same	new -3,600
Net Adjustments	+2,000	+10,200	+9,200
Adjusted Value	\$172,500	\$170,200	\$170,200

Explanation of Rating Chart: Give a dollar or percentage value (not necessarily the cost) of each item of difference and adjust the price of the comparison sale up to that amount if the item is inferior to the subject house, or down if the item is superior. Sale No. 3 has a pie-shaped lot making it less desirable. The appraiser assumes that the price of Sale No. 3 would have been \$6,000 more if the lot were similar to the subject property.

The value bracket indicated for the subject property is between \$172,200 and \$170,500. The appraiser re-examines the data to decide whether the subject property belongs in the center of the bracket. In the above illustration, since the comparables are so close, the appraiser would probably use Sale No. 1 as the best indicator of the value of the subject house, since it has the fewest number of adjustments.

ADJUSTMENTS MUST BE MADE FOR THREE PRINCIPAL FACTORS:

1. **Date of the Sale.** A time adjustment affecting the price must be made to allow for economic changes from the date of the comparable sale to the date of the appraisal. Two years ago, similar houses may have been selling for two to three percent more than at present.
2. **Location.** An adjustment must be made for locational differences between the comparable and the subject property. Similar purchases in one neighborhood may be selling for two to five percent less than purchases in the subject neighborhood.
3. **Physical Characteristics and Amenities.** Age of the building, size of the lot, type of construction, interior and exterior condition, number of rooms, number of baths, square feet of living space, etc.

An adjustment to the price of a comparable could also be made if the sale was not financed by a standard mortgage procedure. A house might have sold for more than market value in a situation where the seller took back a purchase money mortgage and required a small down payment. In making a market data appraisal, the principle of substitution is used. The appraiser assumes that other houses similar to the one being appraised can be found, and that the value of the subject house should be close to the cost of the comparison (substitute) houses, provided the sales are very recent.

SOURCES OF DATA: In using the market data approach, the appraiser must find enough comparable houses in the neighborhood that have changed hands recently. **Three** is usually the minimum requirement for most bank appraisals. Five is most desirable. Information regarding recent sales can be obtained from such sources as: office files, public records, deed tax stamps, assessor's office, newspapers, trade journals, classified ads, word of mouth, other brokers, friends, sellers, buyers, tradesmen in the area and county recording offices.

COST APPROACH TO APPRAISING: The cost approach is based upon the cost of replacing the property to be appraised (subject property). *Note:* The “cost approach” to value is best used on a unique, older public building, such as a school or a library. The property's value is assumed to be equal to its replacement cost less depreciation. The appraiser estimates the value of the land and adds this to the reproduction cost of the improvement less an allowance for depreciation. *Note:* The cost approach is considered an appraisal approach that determines value by adding the value of the land to the depreciated replacement value of the improvement. The three steps to the cost approach are:

1. Estimate the value of the land as if vacant.
2. Estimate the current cost of reproducing the existing improvements.
3. Estimate and deduct depreciation from all causes.

VALUE OF THE LAND: Land value is estimated by referring to recent sales of comparable property in the neighborhood and by checking with the local tax assessor's office to determine what portion of the purchase price can be allocated to the land. Adjustments are made for significant differences, such as lot shape, presence of sewer lines, and utilities.

The value of the improvement may be estimated by using either the replacement cost or the reproduction cost. **Reproduction cost** is what it would cost, at current prices, to duplicate the building using the same materials and construction methods. **Replacement cost** is the cost of constructing the same general style of building using modern construction practices and designs. *Note:* An appraiser who is estimating the value of an owner-occupied,

single-family house will use the **replacement cost and market date**. Most appraisals use the replacement cost method.

DETERMINING REPLACEMENT COST: There are three methods of determining replacement cost: (1) Quantity survey, (2) Unit-In-Place and (3) Square footage.

1. **Quantity Survey:** This method is used mostly by experienced cost estimators for pricing contract bidding. Under this method, a detailed cost estimate is made for each major labor and material construction item, from cost of groundbreaking to final decorating and cleaning up. Since the average appraiser is neither technically trained nor qualified to undertake this minute and detailed cost study, other quicker methods are used.
2. **Unit-In-Place:** This is a simpler and quicker method of appraising cost, preferred by architects and builders. Under this method, the costs of structural units installed or in place are itemized and summarized. Although this method is fairly accurate, it is time consuming and costly for the average appraiser.
3. **Square Footage:** Under this method, the applicable unit cost per square foot of a building is determined by dividing the total building costs of similar structures recently completed, by the building's total interior square footage. The unit cost thus obtained is then multiplied by the total square feet of the building to be appraised. If a two story brick colonial costs \$90 per square foot to build, then a two-story brick colonial with a floor area of 1,800 square feet would then cost \$162,000. This is fairly accurate, provided the unit cost is obtained from a similar building constructed within the last six months.

Helpful Hints: Unit-In-Place

The number of cubic yards of concrete poured is multiplied by the units in place. The same is done for the number of square feet units of flooring, roofing, siding, and plastering.

BUILDING COMPONENT SAMPLES: Are specialized structural building products designed, engineered and manufactured under controlled conditions for a specific application. They are incorporated into the overall building structural system by a building designer. Some examples are wood or steel roof trusses, floor trusses, floor panels, I-joists, or engineered beams and headers. A structural building component manufacturer or truss manufacturer is an individual or organization regularly engaged in the manufacturing of components. A few samples of these components are:

- **Rafter:** A rafter is one of a series of sloped structural members (beams) that extend from the ridge or hip to the wall-plate, downslope perimeter or eave, and that are designed to support the roof deck and its associated loads. Please see **Figure. 15.1**.

Fig. 15.1



- **Sheathing:** A layer of boards or of other wood or fiber materials applied to the outer studs, joists, and of a building to strengthen the structure and serve as a base for an exterior weatherproof cladding. Please see **Figure. 15.2**.

Fig. 15.2



- **Joists:** A joist is one of the horizontal supporting members that run from wall to wall, wall to beam, or beam to beam to support a ceiling, roof, or floor. It may be made of oriented strand board, plywood, wood, steel, or concrete. Typically, a beam is bigger than, and is thus distinguished from, a joist. Joists are often supported by beams and are usually repetitive. Please see **Figure. 15-3**

Fig. 15.3



- **Sills:** A horizontal piece (as a timber) that forms the lowest member or one of the lowest members of a framework or supporting structure. It is the horizontal member at the base of a window and the threshold of a door. A sill is also explained as a tabular sheet intrusion that has intruded between older layers of sedimentary rock, beds of volcanic lava or tuff, or even along the direction of foliation in metamorphic rock. Sample 15.4 is a sample of a sill.

Fig. 15.4



- **Studs:** A wall stud is a vertical member in the light frame construction techniques called balloon framing and platform framing of a building's wall. Figure 15.5 shows a sample of a wall stud.

Fig. 15.5



- **Foundations:** Today's foundations are typically made of poured concrete, and

depending upon a home's design and soil considerations, the foundation will be built as a concrete slab-on-grade or as a basement foundation. Please see Figure 15.6.

Fig. 15.6



- **Flashing:** Flashing refers to thin continuous pieces of sheet metal or other impervious material installed to prevent the passage of water into a structure from an angle or joint. Flashing generally operates on the principle that, for water to penetrate a joint, it must work itself upward against the force of gravity or in the case of wind-driven rain. Please see Figure 15.7.

Fig. 15.7



DEPRECIATION: Depreciation is **the loss of value from any cause**. To arrive at value, the estimated cost of reproducing an improvement must be adjusted for depreciation. There are three categories of depreciation: (1) **Plottage Value**, (2) **Functional obsolescence** and (3)

ECONOMIC DEPRECIATION: Physical deterioration and functional obsolescence may be further subdivided according to curability. The third class, economic depreciation, is rarely curable.

Note: Depreciation of the value of investment property is commonly claimed as a tax deduction.

PHYSICAL DETERIORATION: Deterioration resulting from deferred maintenance, such as wear and tear on the roof; the heating and plumbing systems and the paintwork can usually be cured at a reasonable cost. Deterioration caused by the ravages of time, such as settling, a cracked foundation or a leaky basement, problems, which cannot be repaired at a reasonable cost, is incurable.

FUNCTIONAL OBSOLESCENCE: Functional obsolescence consists of physical or design features, which are no longer desirable, such as outmoded plumbing, old kitchens and baths, poor room arrangement and lack of closets.

Note: Functional obsolescence is caused by physical neglect. Most of these can be easily corrected, although at some expense. Physical or design features which are too costly to correct, such as a house with no basement or a four bedroom house with only one bathroom, are incurable. However, other factors, such as the scarcity of land or a desirable location, may make such items economically curable.

ECONOMIC OBSOLESCENCE: Economic or locational obsolescence relates to loss of value from external causes and is incurable. Population changes, zoning changes, nearness to construction of new apartment or office buildings, nearness to factories, highways, airports, noise, etc., all affect the desirability of the location.

METHODS FOR DETERMINING DEPRECIATION ALLOWANCE: In doing a cost approach estimate of value, there are two methods of determining the deduction for

depreciation: (1) **The Breakdown Method** and (2) **The Straight Line Age-Life Method**.

- **The Breakdown Method:** Using the breakdown method, the appraiser determines the total depreciation by observing and assigning a dollar value to the three kinds of depreciation and subtracting this from the replacement cost. Although more complicated, this method is more accurate than the straight line age-life method.
- **The Straight Line Age-Life Method:** Using the straight-line method, the appraiser determines a building's **economic life** when new and then determines its actual remaining life at the time of the appraisal. The actual remaining life is subtracted from to arrive at the **effective life**. The accrued depreciation is deducted from the replacement cost. **Note:** "Economic life" refers to the period during which a property may be profitably utilized.

Figure 15:2 **EXAMPLE OF COST APPROACH APPRAISAL**

Building Valued: Replacement Cost		
1,800 square feet @ \$50 per square foot		\$ 90,000
Allowance For Depreciation — Breakdown Method		
Physical Depreciation		
Curable - Roof repairs	\$ 3,200	
Incurable - Foundation settling	5,000	
Functional Obsolescence		
Curable - Add hall closet	1,600	
Incurable - No basement	4,000	
Economic Obsolescence		
Poor location – incurable	5,000	
Total Depreciation	\$18,800	(\$ 18,800)
Depreciated Value of Building		\$ 71,200
Land Valued - Comparison Method	\$42,000	
Site improvements		
Walks, driveways, landscaping	5,500	
Total Land Valued	\$47,500	\$ 47,500
Estimate of Value - Breakdown Method		\$118,700

Straight line/Age-Life Depreciation:

Building Valued: (as above)		\$ 90,000
Effective age of house	10 years	
Economic life of house	50 years	
Accrued Depreciation; $10 \text{ years} / 50 \text{ years} = 20\% \times 90,000 = \$18,000$		(\$ 18,000)
Depreciated Value of Building		\$ 72,000
Land Valued (as above)		\$ 47,500
Estimate of Value - Straight line age-life method		\$119,500

In **Figure 15:2**, **Note** that the estimated values using both methods of measuring depreciation are very close. However, if the appraiser had allowed a shorter remaining life of only two years, the straight line method would have produced a value of \$3,600 less. The appraiser determines which method best reflects the current value.

THE INCOME (CAPITALIZATION)

APPROACH: The income or capitalization approach is a method of estimating the value of investment property through capitalization of the annual net income. Capitalization is the mathematical process of converting annual net operating income (ANOI) into an indication of value. To arrive at value, the ANOI is divided by the appropriate capitalization rate, which is believed to represent the proper relationship between the property and the net income it produces.

CAPITALIZATION RATE: The most difficult part of using the income approach is to determine the appropriate capitalization rate. The rate should be one which investors in that type and class of property require as a condition for making their purchases of such properties. The rate varies depending upon the type of investment and risk involved. Generally, **the greater the risk results in the higher the rate of return.** By analogy, an investor will expect a higher rate of return on a speculative stock than for government bonds because of the difference in the risk. Likewise, a real estate investor will expect a greater rate of return from an older apartment building in a marginal location than from a newly constructed garden apartment building in a prime location. The following formulas are useful in doing capitalization problems:

Helpful Hints: Income Approach

An investor is considering purchasing an apartment building with an ANOI of \$39,600. A comparable property that produces an ANOI of \$54,000 was recently sold for \$600,000 resulting in a 9% capitalization rate (i.e. \$54,000 divided by \$600,000). Applying the 9% rate to the subject property, the investor should not pay more than \$440,000 (i.e. \$39,600 divided by 9%) for the building.

$$\text{Value} = \frac{\text{Income}^*}{\text{Rate}^{**}} \qquad \text{Rate} = \frac{\text{Income}}{\text{Value}} \qquad \text{Income} = \text{Rate} \times \text{Value}$$

- * Annual net operating income.
- ** Capitalization rate.

STEPS IN THE INCOME APPROACH

In applying the income approach, the appraiser first determines the gross annual rents. If the appraiser feels that the actual rents are too low, they may be estimated. An allowance of approximately 5% for vacancies and legal expenses is deducted from gross rents to arrive at effective gross rents. Annual operating expenses are then deducted from the effective gross rents to arrive at the annual net operating income. The value of the property is estimated by dividing the annual net operating income by the appropriate capitalization rate.

Figure 15:3 Example of Appraisal by: The Income Approach

Annual gross rents (adjusted to fair market value)	\$60,000
Less 5% vacancy loss	- 3,000
Effective gross rent	57,000
Less annual operating costs	-27,000
Net Annual Operating Income	\$30,000

Value, using a capitalization rate of 10%, is \$300,000 (\$30,000 divided by 10%).

GROSS INCOME MULTIPLIER (GIM): The gross income multiplier is a factor or number, which is multiplied by the annual gross income to arrive at a value estimate. If a duplex with an **annual gross income** of \$30,000 is sold for \$150,000, its price is five times the annual gross

income. The use of a gross income multiplier is not an acceptable appraisal method. It is used as a method of comparison. Suppose apartment buildings in a particular area are producing an annual gross income of 1/6th of the price at which they are selling. The value of a subject property being appraised in the same area could be said to be worth at least six times its annual gross income.

GROSS RENT MULTIPLIER (GRM): The GRM is used for evaluating one family residences or duplexes, which are owned for rental income. Value is determined by multiplying the **monthly rent** by a number or factor developed from comparable sales. The GIM and GRM are not reliable methods of appraising property. They are used as a substitute for a more elaborate income capitalization analysis.

STEPS IN THE APPRAISAL PROCESS

The appraisal process consists of a number of orderly steps, which lead to the appraiser's estimate of value contained in an **appraisal report**. These steps are as follows:

Note: An appraiser checks a property's zoning to determine the legally permissible uses for the site and uses the market data approach to determine land value.

1. **Define the Problem:** Determine the purpose of the appraisal; define the value to be estimated.
2. **Determine Highest and Best Use:** Make a preliminary survey of the market forces, competition and potential uses of the property to determine its most profitable use.
3. **Establish a Data Program:** List the types of data needed and the sources to be consulted. There are two principal classes of data: **(1) General and (2) Specific**. General data indicates facts about and conditions in the region, the city and the neighborhood. Specific data comprises information about the title, the building and the site.
4. **Select the Appropriate Appraisal Approach:** In most appraisals, all three approaches are used, although the appraiser may believe the value indication from one approach is more significant than the others.
5. **Gather the Data for the Approaches To Be Used.**
6. **Estimate the Value of the Property Using All Three Approaches:** This is the process of interpreting the data into a value estimate.
7. **Reconcile the Estimated Values:** The appraiser reviews all three approaches and determines how much weight to give to each one in order to arrive at a final value estimate. This process is also known as correlation, and is more fully explained later in this chapter.
8. **Prepare an Appraisal Report:** An appraisal report is a formal, written presentation of the data considered and analyzed, the methods used, and the opinions and conclusions reached in formulating the appraiser's final estimate of value.
9. **Cost:** The cost of an appraisal is based primarily on the amount of time and work put into the report.

CORRELATION: In correlating the three value approaches, the appraiser takes into account the purpose of the appraisal, the type of property, and the adequacy of the data processed in each approach. This will determine how much weight will be given to each approach. In the case of a single-family residence, more weight would be given to the market data approach. If the appraisal were being made for insurance purposes, more weight would be given to the cost approach. In the case of a twenty-unit apartment building, the appraiser would rely more upon the capitalization approach.

The appraiser does not average the results of the three approaches to arrive at a value estimate. By placing more emphasis on the approach, which appears to be the most reliable, the appraiser may make a judgment as to what degree of reliance to place on the other two indicators of value.

APPRAISAL OF LEASE INTERESTS

When real estate is leased, the owner gives up or transfers one right of ownership, i.e. possession. To the owner, the right that has been given up is known as a **leased fee**. The person (lessee) receiving the right to use the property has a **leasehold interest**.

LEASED FEE: A leased fee is the owner's interest in property leased to another. A leased fee entitles the owner to rents plus the **reversion** of the property at the termination of the lease, plus any benefits according to the terms of the lease. In appraising a leased fee, the appraiser usually capitalizes the present value of the income received by the lessor and adds the reversionary value of the land and/or building.

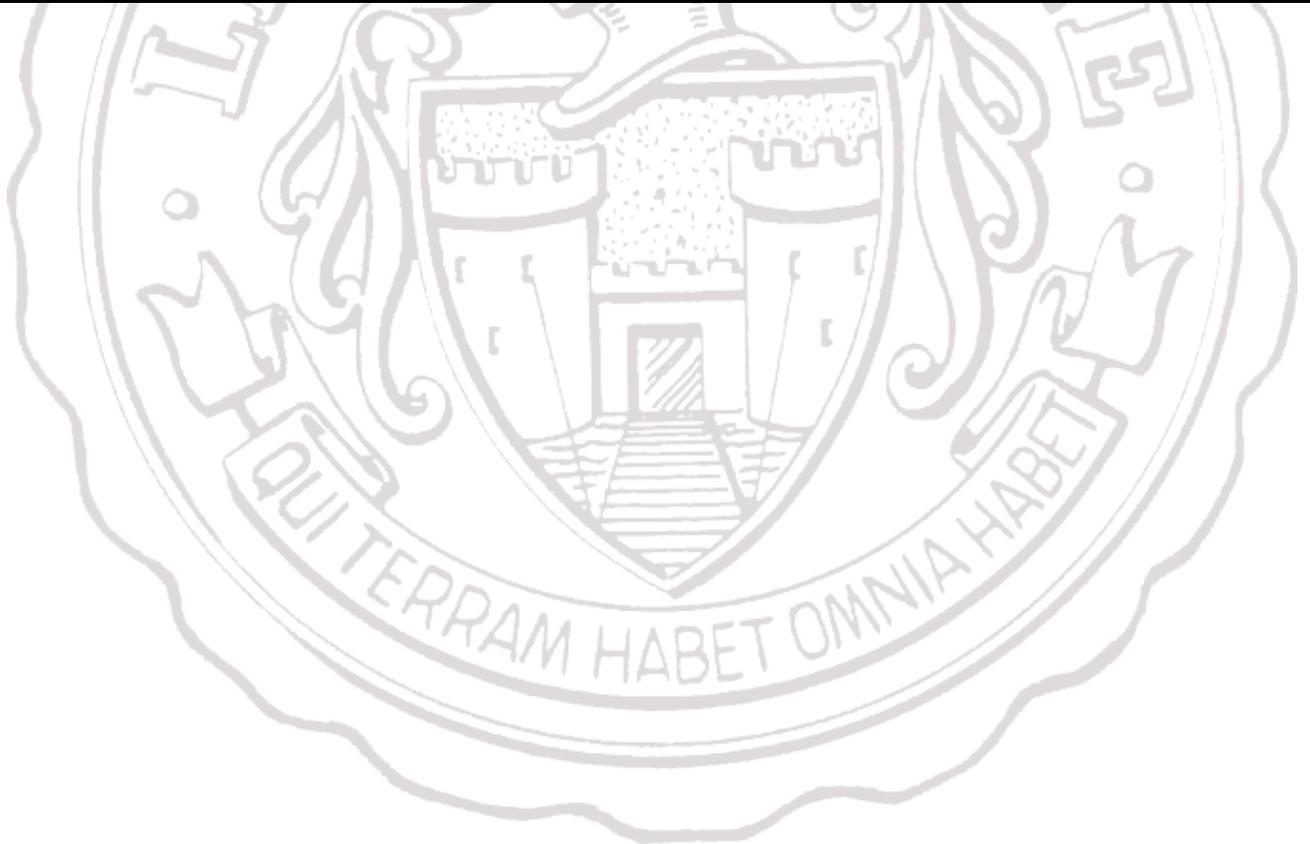
LEASEHOLD INTEREST: A leasehold interest consists of use and occupancy of the property, plus or minus the difference between the actual or **contract rent** paid and the **economic rent**. Economic rent is what should be paid under normal market conditions. The value of a lease is determined by the difference between the contract rent and the economic rent, and how long the lease has to run. A five-year lease with three years remaining has a contract rent of \$600 per month. The current rental value of the premises is now \$800 per month. If the lease is assignable, the fact that it offers a \$200 per month savings for three years makes it more valuable.

COMPETITIVE MARKET ANALYSIS

Real estate brokers who list and sell residences use the competitive market analysis (CMA) method to estimate the value of the listing. **Note:** CMA is the best impartial evidence for justifying the price of a property to both the seller and buyer. CMA is a variation of the market comparison approach and is based on the principle that value can be estimated, not only by looking at recent sales of similar homes, but also by taking into account homes presently on the market, plus homes that were listed for sale but did not sell. CMA is a tool used by brokers to show the seller what the home will likely sell for and to determine whether or not to accept the listing.

KEY WORDS AND PHRASES

Anticipation	Appraisal	Assemblage	Balance	Breakdown method	Capitalization	Capitalization Approach (income)
Capitalization Rate	Change	Comparison approach	Competition	Competitive Market Analysis	Conformity	Contribution
Correlation	Cost approach	Depreciation deterioration	Economic life	Economic obsolescence	Effective life	Flashing
Foundations	Functional Obsolescence	Gross Income Multiplier (GIM)	Gross Rent Multiplier (GRM)	Highest and best use	Joist	Obsolescence
Market data	Market Value	Income approach	Physical depreciation	Plottage	Quantity survey	Reconciliation
Replacement Cost	Reproduction cost	Sheathing	Sills	Square foot method	Straight Line Method	Studs
Substitution	Supply and Demand	Unit-in-Place Method	Value			



Multiple Choice Questions

1) The primary factor in the valuation of real estate is:

- A. National trends.
- B. Physical condition.
- C. location.
- D. function.

2) Which of the following is most applicable to the principle of "highest and best use"?

- A. The current use of the property.
- B. The future use of the property offering the greatest return on investment.
- C. The principle that nothing is static that future conditions must be taken into consideration.
- D. None of the above.

3) The largest volume of real estate appraisal work is the appraisal of:

- A. Single-family dwellings.
- B. Commercial income property.
- C. Apartment buildings.
- D. None of the above.

4) The capitalization method of appraisal is used most often in:

- A. Income property.
- B. Sub-divisions.
- C. Farm land.
- D. Residences.

5) Net return on commercial property is computed by deducting expenses from:

- A. Gross annual income.
- B. Gross annual income less depreciation.
- C. Fair market value.
- D. Assessed value.

6) The method of depreciation in which the same percentage is deducted each year from the value of the asset for its estimated economic life is:

- A. Accrual.
- B. Straight line.
- C. Future.
- D. Digits method.

7) The percentage used to convert net income into a capital amount is the:

- A. Gross multiplier.
- B. Capitalization rate.
- C. GIM.
- D. GRM.

8) What effect does neglect have on a

building?

- A. Obsolescence is accelerated.
- B. Depreciation is accelerated.
- C. Obsolescence is decreased.
- D. Depreciation is decreased.

9) In using the market data approach, adjustments for differences between the subject house and the comparables are made to the:

- A. Subject house.
- B. Comparable most closely resembling the subject house.
- C. Comparables.
- D. Subject house and comparables.

10) The value of a property may be lessened by:

- A. Depreciation.
- B. Rents.
- C. Obsolescence.
- D. All of the above.

11) In the market data approach, the appraiser does not adjust for:

- A. Lot size.
- B. Age.
- C. Net income.
- D. Location.

12) Appraisers consider that homogeneity in a neighborhood:

- A. Stabilizes value.
- B. Increases prices.
- C. Decreases prices.
- D. Has no effect.

13) A house located directly in the flight path of an airport is suffering from:

- A. Economic obsolescence.
- B. Physical deterioration.
- C. Garden obsolescence.
- D. None of the above.

14) Which of the following is not a factor in creating value?

- A. Scarcity.
- B. House size.
- C. Utility.
- D. Demand.

15) Which of the following is the most accurate method of estimating

cost?

- A. Unit-in-place.
- B. Square foot method.
- C. Quantity survey.
- D. Correlation method.

16) To estimate the value of a fifty-year-old single family home, an appraiser would use which of the following appraisal methods?

- A. Cost of replacement approach.
- B. Income approach.
- C. Market data approach.
- D. Capitalization method.

17) Which of the following types of property would be appraised by the income approach?

- A. Government building.
- B. Single-family residence.
- C. School.
- D. Commercial office building.

18) An outdated heating system in a building, which is structurally sound, is an example of which kind of depreciation?

- A. Physical.
- B. Economic.
- C. Functional.
- D. Incurable.

19) The remaining economic life of a building is:

- A. Its effective age.
- B. The number of years of its projected profitable use.
- C. The number of years before the property will need repairs.
- D. Its actual age.

20) Which of the following is true about estimating the value of income property using a capitalization rate?

- A. The greater the rate, the greater the indicated value.
- B. The greater the rate, the lower the indicated value.
- C. The lower the rate, the lower the indicated value.
- D. The rate does not affect the indicated value.

21) Which of the following methods is not used in the cost approach to estimating value?

- A. Square foot method.
- B. Unit-in-place method.
- C. Quantity survey method.
- D. Gross rent multiplier method.

22) In the absence of a formal appraisal, to help set a listing price for an older home in a subdivision, a broker should use all of the following EXCEPT:

- A. Listing prices of other homes in the subdivision.
- B. Recent sales price in the subdivision.
- C. The cost to build other houses that have sold in the sub-division.
- D. The listed prices of homes in the subdivision that did not sell.

23) To estimate value by the income approach:

- A. Divide capitalization rate by net income.
- B. Divide net income by capitalization Rate.
- C. Multiply capitalization rate by net income.
- D. Multiply income by capitalization rate plus 100 percent.

24) Which approach would be used to estimate the value of a church?

- A. Comparison.
- B. Market data.
- C. Income.
- D. Cost.

25) Which of the following approaches is used to estimate a separate value of the land?

- A. Market comparison.
- B. Income.
- C. Cost.
- D. GRM.

26) An appraiser would not depreciate the value of which of the following?

- A. Vacant warehouse.
- B. A single-family residence.
- C. Unimproved land.
- D. A church building.

27) An appraisal of property is the:

- A. Supported estimate of value.
- B. Utility value.
- C. Selling price.
- D. Cost plus improvements less depreciation.

28) The advisability of including a tennis court with a planned apartment building may be determined by the principle of:

- A. Contribution.
- B. Progression.
- C. Substitution.
- D. Change.

29) All of the following statements describe the capitalization rate EXCEPT:

- A. The rate increases when risk increases.
- B. The rate provides for the return on and the return of the investment.
- C. The rate is divided into net income to determine value.
- D. A decrease in rate results in a decrease in value.

30) An appraiser would need to determine accrued depreciation when using the:

- A. Gross rent multiplier method.
- B. Cost approach.
- C. Income approach.
- D. Market comparison approach.

31) An investor making extraordinary profits from a mini-warehouse is concerned with the principle of:

- A. Substitution.
- B. Competition.
- C. Surplus productivity.
- D. Conformity.

32) In appraising a ten-year-old, single-family home, the appraiser is interested in the:

- A. Capitalization rate for the property.
- B. Location of the home.
- C. Current gross rent multiplier.

D. Owner's cost basis.

33) If a property earned a fixed rent and had a capitalization rate of 8 percent, an increase in property taxes of \$4,000 would have what effect on the value of the property under the income approach?

- A. Decrease it by \$5,000.
- B. Decrease it by \$50,000.
- C. Increase it by \$5,000.
- D. Increase it by \$50,000.

34) An appraisal approach that determines value by adding the value of the land to the depreciated replacement value of the improvement is the:

- A. Income approach.
- B. Market data approach.
- C. Gross income multiplier approach.
- D. Cost approach.

35) An appraisal of a residential property located in an area in which there has been an increase in real estate sales activity should use which of the following approaches to estimate the property's market value?

- A. The income approach.
- B. The direct sales comparison (market data) approach.
- C. The residual value approach.
- D. The cost approach.

Short-answer questions

1. Explain the calculation formula for determining net return on prospective investment property.
2. What is the best appraisal approach when estimating the value of vacant land?

Please use your *Notebook* for your description.

APPENDIX B

GLOSSARY AND INDEX

- Abatement:** A reduction in amount, as in "abatement of taxes," 6-3, 6-4 & 14-44.
- Absolute Fee Simple Title:** An unqualified title; the best obtainable, 4-1.
- Abstractive Method:** The obtaining of land value by deducting the value of improvements from total value of the property.
- Abstract of Title:** A summary of all recorded documents affecting title to a parcel of real estate, 2-8.
- Abutting:** To end at; to reach or touch at an end.
- Accelerated Depreciation:** For tax purposes, a rate of depreciation which is more rapid than the straight-line method, 16-5.
- Acceleration Clause:** Allows a lender to require the balance of a loan to be paid in full upon the happening of a certain event, 8-6.
- Access:** A means of approach by easement, the right or power of ingress or egress to a parcel of real estate, 4-6, 13-4.
- Accession:** Acquiring ownership of fixtures left by the tenant, 1-4, 2-3.
- Accretion:** A gradual build up of soil by water, 2-3.
- Accrued Depreciation:** Total amount of depreciation over a given period of time used in appraisal cost approach, 15-9.
- Acknowledgement:** A formal oath or declaration certifying the authenticity of a signature, 2-7.
- Acre:** 160 square rods, 4,840 square yards, 43,560 square feet, 2-9
- Actual Notice:** Notice given directly to a person, 2-7, 10-3
- Ademption:** Disposal of testate property before death of the testator; any rights of beneficiary are defeated under the will.
- Adhesion Contract:** a one-sided contract.
- Adjacent:** Lying near or close by; may or may not be touching.
- Adjoining:** Touching or contiguous, as opposed to adjacent.
- Adjustable Rate Mortgage (ARM):** A real estate mortgage in which the interest rate rises and falls depending upon prevailing rates, 9-12.
- Adjusted Cost Basis:** The original cost (basis) of property plus the value of capital improvements, 16-1.
- Adjustment:** Apportionment of closing charges between buyer and seller, 17-5, 17-6.
- Administrator:** A person appointed by the probate court to settle an estate when there is no will, 2-3
- Administratrix:** A female administrator.
- Ad Valorem:** Taxing of real estate according to its value, 6-4.
- Adverse Possession:** Prescription, Acquiring title to property through prolonged and unauthorized occupation, 2-1, 4-7.
- Aesthetic Value:** Value of property attributable to beauty of location or improvements.
- Affiant:** One who has made an affidavit.
- Affirmative Easement:** An easement that allows the holder to do certain acts on another's land.
- Affidavit:** A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath of affirmation of the party making it, taken before an officer having authority to administer such oath.
- Affixed:** Permanently attached to real estate, 1-1, 1-3, 2-3.
- Age-Life Tables:** Appraisal tables which show the economic life for various types of structures.
- Agency:** Acting on behalf of another, 3-5, 3-6.
- Agency Disclosure:** 14-1, 14-28, 14-54; notice, 14-28.
- Agent:** The person designated to act for a principal, 3-6; general, 3-6; special, 3-6.
- Agent:** A person authorized to act for another.
- Agreement of Sale, or Purchase and Sale Agreement:** The written agreement whereby the purchaser agrees to buy and the seller agrees to sell according to stated terms, condominium, 7-11, and standard contract P&S, 7-15.
- Aids Disclosure:** 12-14.
- Air Rights:** The right to use, controls, or occupy the air space above a property, 1-4.
- Alienation:** The transfer of title and right to possession, 2-1.
- Alienation Clause:** Allows lender to require the balance of a loan to be paid in full if the collateral is sold, 8-6.
- Alienation of Title:** Change in ownership of any kind, 2-1.
- Allodial System:** The right to individual land ownership, 1-5.
- Allocation Schemes:** Are agreements in which competitors divide markets among themselves, 3-11.
- Alluvion:** Increase in land by soil deposited by water, 2-3.
- Amenities:** Benefits of a property which make it more desirable.
- American with Disabilities Act (ADA);** 12-14.
- Amortization:** The systematic repayment of a loan in monthly installments of principal and interest, the reduction of a loan by equal periodic payments, 9-12.
- Amortization Table,** 9-12.
- Annexation:** See *Affixed*, 1-3
- Annual Debt Service:** The annual amount of money required for interest and principal payment on all mortgagees of a property.
- Annual Percentage Rate (APR):** The cost of credit stated as an annual rate, including interest, loan fees, and discount points, 9-21.
- Annuity:** A fixed payment of money, payable periodically, for a given period of time, or for life.
- Anticipation:** Evaluating property based upon its ability to generate income in the future, 15-3.
- Antitrust Laws:** Laws preventing monopolies, 3-11; Sherman Anti-Trust, See *Sherman Anti-Trust Laws*.
- Apartment Listing Service Requirements,** 14-58.
- Apparent Authority:** See *Ostensible Authority*, 3-6.
- Appellant:** Party who appeals to a higher court.
- Appraisal:** An estimate of property value, 15-1; process 15-11; of lease interests; 15-12.
- Appraiser:** A state certified or licensed individual capable of rendering an unbiased opinion of value of real and/or personal property.
- Appraisal Approaches:** Market data, 15-4; cost, 15-5; income (capitalization), 15-10;.
- Appraisal Report:** A written estimate, in narrative form, of the value of a property, 15-11.
- Appreciation:** Increased value of an investment, 19-1.
- Approaches to Value:** Three approaches used by an appraiser to form an opinion of value are cost, market comparison and income.
- Appurtenance:** A right or privilege included with ownership of land, such as an easement, 1-5.
- Appurtenant Easement:** Right of way for the use of an adjoining property, 4-5.
- Aquifer:** An underground layer of water-bearing permeable rock or unconsolidated materials (gravel, sand, or silt) from which groundwater can be extracted using a water well.
- Arbitrage:** The buying and selling of money or securities in different markets at a profit.
- Arbitration:** Resolution of disputes by a third party whose decision the parties agree to abide by.
- Architectural Barriers Act:** A 1968 Federal Law requiring federally altered, built, designed or leased facilities to be accessible to handicapped person.
- Arm's Length Relationship:** Two parties with opposing interests, as a buyer and seller, 3-8, 7-2.
- Artesian Well:** A well drilled into underground water which is under pressure and requires no pumping to make it rise to the surface.
- "As Is" Condition:** Acceptance of condition of property at time of sale or lease.
- Asbestos:** 11-2.
- Assemblage:** Joining two lots to achieve greater value, 15-4.
- Assessment:** Value given a property by a public official as a basis for taxation, 6-3; special, 6-4.
- Assets:** All things of value belonging to a company or an individual.
- Assignee:** Person to whom an interest in property is assigned.
- Assignment:** The transfer of rights under a contract to another, 7-8; of a mortgage, 8-7; of a lease, 10-3.
- Assignor:** Person who assigns.
- Assumption of Mortgage:** Taking of title wherein liability is assumed for payment of existing note secured by a mortgage. Original maker of note is not released from liability.
- Assumable Mortgage:** One which will not

B-2 Glossary and Index

become due when the collateral is transferred, 8-11.

Assume and Agree to Pay: Acceptance of the responsibility for full payment of an existing loan, 8-11.

Attachment: Seizure of property by court order, usually in anticipation of a judgment in a pending law suit, 6-1.

Attest: Affirm to be true or authentic.

Attorney-In-Fact: One authorized to act in another's behalf, 2-7.

Attractive Nuisance: Something that attracts children on a property but is dangerous to them.

Auction: A public sale of property to the highest bidder.

Automatic Extension clause: Extends the term of a lease unless either party gives notice to the contrary, 10-4.

Avulsion: The sudden removal of land by action of water, 2-3.

Axial Theory: A star shaped growth of a city following major highways, 13-8.

B

Backfill: Replacement of excavated soil against a structure or into a hole.

Balance: The principle that oversupply or undersupply of a property affects value (i.e. conformity, contribution, increasing and decreasing returns), 15-3.

Balance Sheet: A statement showing the assets and liabilities of a business at a particular time.

Balloon Note: A loan in which the final payment is larger than the preceding payments, 9-13.

Balloon Payment: The name given to the final payment on a balloon note, 8-3, 8-8.

Bank Commitment: A written statement by a lender as to the terms of a mortgage loan, 9-1. See **Letter of Commitment**.

Bankruptcy: When a company's liabilities exceed its assets, forcing the company to seek protection of the Federal bankruptcy courts, 2-1; effect on a mortgage foreclosure, 8-10.

Bargain and Sale Deed: A deed of title with no warranties, 2-5.

Base Line: Meridian, Latitude line used in government survey land descriptions, 2-14.

Base Rent: A minimum rent in a commercial lease which uses an average or percentage for additional rent.

Basis: The price paid for a property, for calculating taxable gain, 16-1. See **adjusted cost basis**.

Bearing Wall: A supporting wall or partition.

Bench Mark: A permanent U.S. Geological Survey marker indicating elevation above sea level often used by surveyors to locate parcels of land.

Beneficiary: One entitled to the benefit of a trust, 5-4; the lender on a deed of trust; deed of trust, 8-3.

Bequeath: A gift of real property, 2-2.

Bequest: Personal property received under a will, 2-2.

Betterment: A municipal improvement which increases property value, 6-4.

Biannual: Semiannual.

Biennial: Every 2 years.

Bilateral Contract: A promise in exchange for a promise, 7-4.

Bill of Sale: Receipt for sale of personal property, 1-2.

Binder: A receipt for an earnest money deposit of cash or check, 7-7.

Binding Contract: A valid or enforceable contract, 7-6 and 7-7.

Blacktop: Asphalt paving used in driveways, sidewalks, etc.

Blanket Mortgage: One mortgage covering several properties, 8-11.

Blended Rate Mortgage: A refinanced mortgage at less than prevailing rates but higher than the old rate.

Blind Advertising: Misleading advertising which does not identify the broker and contains only a post office box, street address, or telephone number, 14-15.

Blockbusting: Illegally producing panic selling in a neighborhood for personal gain, 12-2; 12-4, 12-5, 12-8 and 12-13. License violation, 14-3, 14-19.

Blue Sky Laws: federal and state laws regulating registration and sale of investment securities.

Bona Fide: In good faith.

Bond: See **Surety Bond**. 14-59.

Boot: Cash or other consideration, other than real estate, given in an exchange of properties, 16-3, 19-5.

Boundary: A separation marking division of two abutting properties; lines, 2-10; description, 2-12.

Breach of Contract: Failure to fulfill an obligation or perform a duty, 7-5.

Breakdown Method: A method of determining depreciation by assigning a dollar value to the three causes of depreciation, 15-9; example, 15-10.

Breezeway: an open-sided covered porch connecting house and garage.

Bridge Loan: A second mortgage on seller's home to raise cash for purchase of a new home pending sale of the present home, 8-11.

Broker: A natural or legal person licensed by the state to represent others, for a fee, in real estate transactions, 14-1-4.

Broker-Salesperson Relationship, 3-6, 14-1-4.

Buffer Zone: A strip of land separating one land use from another, 13-4.

Building Code: Ordinances regulating building construction, 13-4.

Building Permit: Governmental permit for the construction of new buildings or improvements, 13-4.

Bulkhead: the door or doors, generally inclined, which cover the stairway exit from the basement to the exterior.

Bundle of Rights: Rights of ownership in fee under the allodial system, 1-8.

Business, Conduct of, 14-15; certificate, 14-17; name, 14-17; place of, 14-18; regulations, 14-19; change of address of, 14-19; corporations, 14-41.

Buy-Down Mortgage: A cash payment to a lender so as to reduce the interest rate a borrower must pay, 9-13.

Buyer's Market: When demand is less than the supply of goods offered for sale.

Buyer's Agent (Broker): a broker who represents only the buyer, 14-32.

Bylaws: Rules governing the running of an

owner's association, 5-3.

C

Call: the angle and distance of a given line or arc used in a metes and bounds description.

Canvassing: acquiring listings in a given area by making telephone calls or door-to-door solicitation.

Cape Cod Type: 5-6

Cap: a limit on the interest rate or rate changes on an adjustable rate mortgage.

Capital: Wealth, preservation of, 19-1; improvement, 16-1.

Capital Gain: The taxable profit from the resale of a capital asset. If owned for more than 12 months, the gain is long-term and short-term if 12 months or less. The profit on the sale of an asset based upon the difference between the net sale price and the adjusted cost basis, 16-1, Taxes 16-2, 19-5; capital loss, 16-1.

Capitalization: To convert annual net operating income to current value, 15-10.

Capital Expenditures: investments of cash for improvements to remain in a business, such as equipment.

Capitalization Method: An appraisal approach whereby the net income of an investment is capitalized to determine its value, 15-10.

Capitalization Rate: The ratio between the net income from an investment and its value, 15-10.

Capture, Law of: Allows a land owner to remove minerals from underground reserves that extend beyond the owner's boundaries, 1-6.

Carrying Charges: Expenses necessary for holding property, such as taxes, on idle property.

Cash Flow: Annual income from investment property, 16-4-5, 19-3.

Cash-On-Cash: Cash flow divided by cash required to purchase property.

Caveat Emptor: "Let the buyer beware." A warning that the buyer acts at his/her own risk, 3-7.

Certificate of Eligibility: Obtained by a veteran to be eligible for a (GI) loan, 9-10.

Certificate of No Defense: See **Estoppel**.

Certificate of Occupancy: A certificate issued by a local building inspector indicating a building meets conditions for occupancy.

Certificate of Reasonable Value (CRV): Appraisal for VA or certificate issued denoting maximum value for a VA loan, 9-10.

Certificate of Title: Evidence of ownership issued by the Land Court to registered owner, 2-10.

Certified International Property Specialist (CIPS): A professional designation of the International Section of the National Association of Realtors for brokers marketing and selling property to foreigners.

Certified Property Manager (CPM): The highest designation a professional

- property manager can earn from the Institute of Real Estate Management of the National Association of Realtors.
- Certified Residential Brokerage Manager (CRB):** The highest residential designation of the National Association of Realtors.
- Cession Deed:** A deed used to transfer street rights of an abutting owner to a municipality.
- Chain of Title:** Recorded history of ownership of property from original source to present owner, 2-8.
- Change:** The principle that value is affected by constant changes, (i.e., integration, equilibrium, disintegration), 15-4.
- Chattel:** An item of personal property, 1-2.
- Chattel Real:** A personal property interest in real property, such as a lease or mortgage.
- Chattel Mortgage:** Use to secure a lien of a property, mortgage on personal property, 8-12.
- City Planning,** 13-1.
- Civil Rights Act of 1866,** 12-1; definition; 12-2; enforcement of, 12-3.
- The Civil Rights Act of 1964,** prohibited discrimination in public accommodations and in employment, 12-1, 12-7-8.
- Civil Rights Act of 1968,** 12-1; 1988 amendments, 12-1; enforcement of, 12-3.
- Civil Rights Act, Mass. C151B,** 12-4; enforcement, 12-16.
- Clear Title:** A title free of encumbrances.
- Client:** One who hires another as his agent for a fee; a principal.
- Closed Mortgage:** A mortgage which imposes a penalty for pre-payment, 8-7.
- Closing:** The day on which title is conveyed, 17-1; documents, 17-2-3; procedure, 17-4; costs, 17-4-5.
- Closing Statement:** An accounting of funds involved in the transaction given to the parties at the closing, 17-5; sample, 17-7; HUD closing statement, 17-10-13.
- Cloud on Title:** An apparent defect in title, 2-9.
- Code:** A systematic body of law which is given statutory force.
- Clustering:** The grouping of housing units on undersized lots, 13-6.
- Codicil:** Modifies a will, 2-2.
- Co-Insurance:** Division of risk between insured and insurance company, 18-6, 18-7.
- Collateral:** Property that secures a loan, 8-1.
- Collusion:** An agreement between persons to defraud another.
- Colonial Type:** 5-4.
- Color of Title:** Something having the appearance of ownership, but may or may not be true title, 2-9.
- Commercial Banks:** As financing sources, 9-4.
- Commingling:** The mixing of client's funds with broker's personal funds, 14-3; interest bearing, 14-18.
- Commercial Property:** A property intended for use of stores, office building, service establishment, hotel, etc.
- Commission:** Fee or compensation earned in real estate transactions, 3-1; when earned, 3-5; rates, 3-8; bonus 14-15; sharing, 14-16; payable 14-19; right to sue for, 3-5; negotiate, 14-55.
- Commitment:** A pledge or firm agreement. See *Mortgage Commitment*.
- Common Area:** Area owned and shared by condominium, co-op (cooperative) or PUD owners, 5-9.
- Common Expenses:** Costs shared by owners to maintain a condo or co-op, 5-12.
- Common Law:** Law that develops from custom and usage, 4-1-2, tenancy, 5-1-2, liens, 6-1, mortgage, 8-1 landlords, 10-6.
- Community Property:** Equal ownership of property by spouses.
- Community Reinvestment Act:** Enacted in 1977 to encourage financial institutions to help meet the credit needs of the communities, 9-32.
- Comparables:** Similar properties used to estimate value, 15-1, and 15-3.
- Comparison Method:** Appraising property by comparing the subject property to recently sold comparable properties, 15-4.
- Competent Parties:** Persons considered legally competent to enter into contracts, 7-1, legal capacity, 7-2.
- Competition:** The principal that the success or prosperity of a new development will attract competition and thus affect value, 15-3.
- Competitive Market Analysis:** A method of devaluating homes by looking at recent sales, current listings, and previous listings that did not sell, 15-13.
- Compensatory Damages:** Money awarded to an injured party by a court to pay for loss suffered.
- Competent:** Legally qualified.
- Compound Interest:** Interest paid both on original principal and on interest accrued from the time it fell due.
- Concurrent Estates:** Estates held by two or more persons, such as, tenancy in common, 5-1, 5-2, joint tenancy and tenancy by the entirety 5-2.
- Concurrent Ownership:** Ownership by two or more persons at the same time, 5-1.
- Condemnation:** The legal action in eminent domain procedure, 1-7.
- Condemnation Value:** To estimate market value of a property as a whole before a taken of property, 15-2.
- Conditional Commitment:** A commitment of a definite loan amount for a future unknown buyer with satisfactory credit.
- Conditional Sales Contract:** See *Installment Contract*, 7-8.
- Condominium:** Individual ownership of property with shared ownership in common elements. To finance a purchase of 5-10; owners, 5-13; formation of, 5-13; taxes & insurance; 5-14, bylaws, 5-15; fees, 5-15: governing, 5-14; Unit Deeds, 5-14; Conversions, 5-15, 14-46; sanitary code; 14-8; restrictions, 13-6; Rules & Regulations, 13-7.
- Condominium Conversions,** 5-15, 14-46.
- Condominium Fee:** The monthly fee a condo owner pays for upkeep and maintenance.
- Conformity:** An economic principle that, for maximum value, neighborhood homes should conform in age, size, style, condition, etc.
- Congruous:** In appraisal, a property which conforms to the area.
- Consideration:** A lawful act or promise of legal value given in exchange for something, 7-1; in a deed, 2-6.
- Construction Loan:** A short term loan wherein money is advanced as construction is performed, 8-7.
- Construction Mortgage:** Financing for the construction of a new building, 8-12.
- Constructive Eviction:** Tenant vacates or terminates a lease because of landlord's failure to maintain the premises fit for intended use, 10-6.
- Constructive Notice:** Legal notice which the public is charged with knowing, 2-6, 8-6, 10-3.
- Consumer Protection Laws:** Chapter 93A Mass., 11-1, 11-5, 14-26.
- Contemporary Type:** 5-5.
- Contiguous:** Adjoining or touching.
- Contingent:** Dependent upon a stated event happening within a stated time period before a contract becomes binding.
- Contract:** A legally enforceable agreement to do or not to do certain things, 7-1; bilateral, 7-4; breach of, 7-5; executed, 7-4; executory, 7-4; expressed, 7-4; implied, 7-4; purchase and sale, 7-6; unilateral, 7-4; unenforceable, 7-3; valid, void 7-2; voidable, 7-2-3; competent parties, 7-2; consideration, 7-1; contract in writing, 7-5; (GI) Agreement, 7-10, lawful objective, 7-2; mutual agreement, 7-1; installment, land sales and conditional sale, 7-8.
- Contract for Deed:** A method of selling and financing the sale of real estate whereby the buyer receives possession and the seller retains title, 7-8, and 9-15.
- Contract Rent:** The amount of rent specified in a lease, 15-12-13.
- Contract of Sale:** A written agreement wherein buyer agrees to buy and seller to sell upon terms and conditions set forth therein.
- Contribution:** The principle that the value of an improvement to property is measured by its contribution to the net return of the property rather than its actual cost, 15-3.
- Conventional Loan:** A mortgage that is not insured by FHA nor guaranteed by the VA, 9-17-18; take-over, 8-11.
- Conversion to Condominiums:** The conversion of rental units to private ownership, 5-15; regulation of, 14-46.
- Conveyance:** A transfer of legal title in land by an instrument in writing, such as a deed or mortgage; fraudulent, 2-6.
- Cooling-Off Period:** A right of rescission.
- Cooperative Apartment:** An apartment in which a buyer becomes a stockholder in the corporation and receives a proprietary lease.
- Cooperating Brokers,** 3-7
- Cooperative:** A building owned by a corporation which leases space to its shareholders, 5-12.
- Cooperative Bank:** As a source of financing, 9-4.
- Corner Influence:** A change in value

B-4 Glossary and Index

- because of a corner location.
- Cornice:** An ornamental projection over a window or at the top of a wall.
- Co-ownership:** Ownership by two or more persons or entities, 5-1-2
- Corporation:** A business owned by stockholders, 5-3.
- Corporeal:** Visible and tangible, 1-2; hereditament, 1-5.
- Correlation Process:** An appraisal step wherein the appraiser weighs the comparables to determine which one most closely matches the subject property, 15-12; See *Reconciliation*.
- Cost Approach:** Method of appraising by adding the depreciated value of the improvements to the value of the land, 15-5.
- Cost Recovery:** Allowable depreciation for tax purposes, 16-3; methods, 16-4.
- Cost of Reproduction:** Normal cost of exact duplication of a property with similar materials.
- Counter Offer:** An offer made in response to an offer, 7-7; rejection, 7-8.
- Country:** A geographic division within a state usually encompassing several cities or towns.
- County Recorder's Office:** A place for recording documents affecting title to real estate, 2-6.
- Courses and Distances:** A method of describing or locating real property giving a starting point and direction and lengths of lines to be run. *Similar to metes and bounds.*
- Covenant:** A written agreement or promise in a contract, 2-3; mortgage, 8-5; leases, 10-3.
- Covenant of Warranty of Title:** The grantor promises to pay for the cost of defending the grantee's title, 2-4.
- Covenant Against Encumbrances:** Guaranty that there are no encumbrances except those stated in the deed, 2-4.
- Covenant of Further Assurance:** Grantor's promise to do whatever is necessary to make good the grantee's title, 2-4.
- Covenant of Quiet Enjoyment:** The right to the undisturbed use of leased or granted property, as in a deed, 2-4; in a lease, 10-5.
- Covenant of Seisin:** Grantor's assurance that he/she owns the property and has a right to sell it, Freehold interest 2-4.
- Crawl Space:** A promise or guarantee—usually contained in a deed.
- Creative Financing:** Term used to describe a variety of innovative financing techniques; often used in periods of "tight money" 8-15; financing, 9-12.
- Credit Reporting,** 9-27
- Credit Score:** 9-27.
- Credit Unions:** As sources of financing, 9-4.
- Crops, Annual:** See *Emblements*, 1-3, 2-5
- Cross-Defaulting Clause:** Provision in a junior mortgage which stipulates that a default in one mortgage triggers default in the junior mortgage.
- Cul De Sac:** A street closed at one end with a circular turn around.
- Curable depreciation:** Depreciation that can be fixed at reasonable cost, 15-9.
- Curtesy:** A husband's right to a portion of his deceased wife's estate, 4-2, 4-3.
- ### D
- Damages:** Estimated monetary reparation for sustained injury.
- Datum:** Any point, line, or surface from which a distance, vertical height, or depth is measured.
- DBA:** Abbreviation for "doing business as."
- Debenture:** Bonds issued without security.
- Debt Service:** Annual payment of principal and interest required to amortize a loan, 19-3.
- Declining Balance Method:** Form of accelerated depreciation for tax purposes, 16-5.
- Decedent:** A deceased person.
- Declaration Restriction:** These have the same legal effect as a deed restriction, 13-6.
- Declaratory Relief:** A court determination of rights and duties of parties before actual damages occur.
- Decree:** Judgment of a court of equity.
- Dedication:** The voluntary conveyance of private land to the public, 2-2.
- Deed:** A written instrument that when properly executed and delivered conveys title to land, 2-2; bargain and sale, 2-4; general warranty, 2-4; special warranty, 2-4; quitclaim, 2-4; restrictions, 13-6.
- Deed of Trust:** A document that conveys legal title to a neutral third party as security for a debt; used in place of a mortgage, 8-3.
- Deeds, Special Purpose:** Sheriff, 2-5; fiduciary, 2-5; timber, 2-5; crops and farm produce 2-5.
- Deed Restriction:** See *Restrictive Covenants*.
- Deed Tax Stamps:** 14-42.
- Default:** Breach of contract, 7-5; on a mortgage, 8-5; remedies for, 7-6
- Defeasance Clause:** The term in a mortgage stating that the mortgage is defeated if the accompanying note is repaid on time, 8-4.
- Defeasible Fee:** Ownership subject to restrictions which, if broken, can cause forfeiture of the title to the grantor or his/her heirs, 4-1.
- Defendant:** The party called upon to answer in any suit, action or proceeding. See *Plaintiff*.
- Deferred Maintenance:** Existing but unfulfilled requirements for repairs and rehabilitation.
- Deferred Payments:** Money payments to be made at a future date.
- Deferred Purchase Money Mortgage:** See *Purchase Money Mortgage*, 8-11, 9-13.
- Deficiency:** That part of a debt, secured by mortgage, not realized from the sale of the mortgaged property.
- Deficiency:** Borrower's obligation, after foreclosure sale, to pay the mortgagee the difference between the sale price and the balance due on the mortgage, 8-9; due after sale, 8-5.
- Definitive Plans:** Final plans filed for subdivision approval, 13-5.
- Delivery:** Legal act of transferring ownership.
- Demise:** Conveyance of a use, such as a lease or tenancy at will.
- Department of Housing and Urban Development (HUD),** 9-19
- Department of Veterans' Affairs (DVA):** The federal government agency which administers the benefits for which veterans of military service are eligible. Formerly Veterans' Administration (VA), 9-10.
- Deposit:** See *Earnest Money*.
- Deposit Insurance:** See *FDIC*, 9-32.
- Deposit Receipt:** A form (binder) used to accept earnest money to bind an offer for the purchase of property, 7-8.
- Depreciation:** (1) A loss of value brought about by age, economic obsolescence, or functional obsolescence, 15-5.
- Depreciation:** (2) For income tax purpose, an annual loss which is deductible from income. See *Cost Recovery*, 16-3; accelerated; 16-3, declining balance, 16-5; straight line, 16-5; example, 15-9.
- Depreciation Accrued:** See *Accrued Depreciation*.
- Depreciation Allowance:** Amounts claimed or allowed for depreciation, often used in income tax purposes.
- Depth Table:** An appraiser's table showing value attributable to additional depth.
- Dereliction:** The gaining of land from the recession of water.
- Deterioration:** Impairment of condition caused by wear and tear.
- Descent:** The passage of property to heirs, 2-3.
- Devise:** A gift of real estate by will, 2-2.
- Devisee:** A recipient of a gift of real estate by will.
- Direct Reduction Loan:** An amortized loan payable in periodic installments with each payment credited first to interest and then to principal, 9-11.
- Discharge:** Final pay-off of a mortgage.
- Disclaimer:** A statement attempting to limit liability in event information is incorrect.
- Disclosure, Agency:** Any statement or notice required by law to be given to prospective sellers and buyers by licensees regarding agency relationship, 3-7, 14-1, 14-28, 14-29, 14-30.
- Disclosed Dual Agency:** An agency created when an agent acts for seller and buyer with disclosed consent of both. Consensual, 14-29.
- Disclosure, Conflict of Interest:** 14-18, 14-34, 14-34.
- Discount Points:** Charges made by lenders to adjust the effective rate of interest on a mortgage, 9-2, 9-18.
- Discrimination:** Prohibitive practices, 12-1, 12-3, 12-6; exemptions; 12-4, 12-5, 12-6; license violation, 14-3.
- Disintermediation:** The sudden diversion of savings from lending institutions resulting in a scarcity of mortgage money.
- Dispossess:** To deprive a person of possession or use of real property.
- Divest:** To take away.
- Dockominium:** Application of condo concept to piers and docks in a waterfront property.
- Documentary Tax Stamps:** 2-6; 14-42.

Domicile: Place where one has his permanent residence.

Dormer: A roof projection, to permit more usable space on a second story, in which windows are set.

Dominant Tenement: Property benefiting from an easement over adjoining land, 4-5; servient tenement, 4-6.

Dower: Widow's interest in land of deceased husband, 4-2, 4-3.

Down Payment: Cash paid over and above mortgages and encumbrances.

Down Zoning: Rezoning of land from a higher density use to a lower density use, 13-4.

Dual Agency: One broker representing both parties in the same transaction, 3-8, 14-2, 14-28, 14-33, 14-35; disclosed, 14-54.

Due-On-Sale Clause: A clause in a mortgage giving the lender the right to call the entire loan balance due if the property is sold or otherwise conveyed, 8-6.

Duplex: A house having accommodations for two families on two or more floors.

Duress: Unlawful force used to compel a person to do something against his/her will, 7-3.

E

Earnest Money: Cash or check with an offer to show good faith, 7-1, 7-6, 7-7, 7-8; handling by broker, 14-18.

Easement: A right, liberty, advantage or privilege which one individual has in lands of another, falling short of ownership or possession, 4-5; appurtenant, 4-5; by necessity, 4-6; by servient, 4-5; by dominant, 4-5; discovery of, 4-7; express, 4-5; in gross, 4-5; for light and air, 4-5; implied, 4-5; prescriptive, 4-5; prevention of, 4-7; termination of, 4-7.

Economic Base: A community's ability to manufacture, export, and purchase consumer goods, 13-8.

Economic Life: The useful life of a property, 15-9; example, 15-10.

Economic Obsolescence: Loss of value from causes beyond the property itself, such as increased traffic on an adjacent street, 15-9.

Economic Principles Affecting Value, 15-2.

Economic Rent: Monthly rent a property could get in the open market, 15-13.

Effective Age: Age estimated by condition rather than actual age.

Effective Gross Income: Annual gross rents less vacancy loss and legal fees, 15-11.

Effective Life: The difference between the economic life and the actual remaining life, 15-9; example, 15-10.

Effective Yield: The return to a lender on an investment over a given period of time, 9-2.

Egress: Right to return from a tract of land.

Ejectment: Legal action to regain possession of property, 10-6.

Emblements: Annual plantings that require cultivation, 1-4, 2-5.

Eminent Domain: The right of government

to take private property for public purposes, provided fair compensation is paid, 1-7, 2-1.

Encroachment: A building or structure which partly or wholly intrudes on another's land, 4-7.

Encumbrance: A claim lien, charge, or liability, attached to and binding upon real property, such as a tax lien, 6-1; an easement, 4-5.

Endorsement: The signing of one's name on the back of a note or check with or without further qualification; approval.

End Loan: Final loan made to buyers for purchase of newly constructed residential buildings, 8-12.

Engineer's Survey: The process of measuring and determining area and boundary lines, 4-7.

Environmental Impact Statement: A report showing the effect a proposed building project will have on the environment, 13-5.

Environmental Protection Laws, 13-5, 14-10, 14-24.

Equitable Right of Redemption: Borrower's right to repay the balance due on a delinquent mortgage loan prior to foreclosure sale, 8-9; mortgagors equitable, 8-10.

Equal Credit Opportunity Act (ECOA): prohibits lenders and others who grant and arrange credit to consumers from discrimination against credit applicants, 9-31.

Equitable Title: The buyer's interest in property purchased under a land sales contract or installment contract, giving the buyer the right to receive legal title upon payment of the purchase price, 7-8; installment sale, 9-14.

Equity: Market value of a property less mortgage debt, 8-4; loans for mortgage, 8-12; bridge, 8-12, participation, 8-12.

Equity Buildup: The increase in value of a property due to mortgage reduction and appreciation, 19-2.

Equity Loan: See *Shared Appreciation Mortgage*.

Equity Mortgage: A line of credit made against the equity in a person's home, 8-11.

Equity Participation Mortgage: See *Participation loan*, 8-12.

Equity of Redemption: Original owner's right to reclaim property sold through foreclosure by repayment of debt, interest and costs.

Equity Sharing: An agreement whereby the lender gets a portion of the ownership, 8-15, 9-14.

Erosion: Gradual loss of soil by action of water, 2-3.

Errors and Omission Insurance: A form of insurance covering liabilities (except fraud) for errors, mistakes and negligence in the usual activities of a real estate firm.

Escalator Clause: A contract clause providing for upward or downward adjustment of certain items to cover specified contingencies.

Escheat: A reversion of property to the state when a person dies with no will or heirs, 1-4, 2-2

Escrow: Depositing of funds or documents with a neutral third party, such as the delivery of a deed in escrow, 2-7, 14-1, 14-8, 14-18, 14-19, 14-55; tax & insurance, 8-7.

Escrow Account, 7-6, 14-1, 14-19, 14-44, 14-55.

Estate: The extent of one's real or personal property, 2-1; degree of ownership in realty or personality, 4-1.

Estate for Years: A lease for a fixed period of time.

Estate in Reversion: Residue of an estate left in the grantor to commence in possession after termination of some particular estate granted by him.

Estate of Sufferance: Estate in land arising when tenant wrongfully holds over after expiration of his term.

Estoppel Certificate: A document in which a borrower verifies the balance due and the interest rate, 8-8.

Ethics: That branch of moral science which treats of the duties which a member of a profession or craft owes to the public, his clients and other members of the profession.

Eviction: A legal proceeding to recover possession of real property following a default or breach of condition of a tenancy or lease, 10-6.

Exception: A clause in a deed which excludes a portion of the property.

Exchange: Minimizing taxable profits by exchanging investment properties, 16-3, and 19-5.

Excise Stamps, 14-42.

Exclusive Agency Listing: A listing given to one broker for a definite time period with the owner reserving the right to sell the property directly without owing a commission, 3-1; termination of 3-2.

Exclusive Buyer Agency: The practice of representing only buyers in a transaction.

Exclusive Right to Sell: A listing given to one broker, exclusive of everyone, for a definite time period with the agreement that the broker is entitled to a commission regardless who sells the property, 3-1; listing, 3-8.

Exculpatory Clause: A clause in a lease intended to relieve the landlord from liability for personal injury of a tenant in common areas and from property damage.

Execution: The carrying out of some act or course of conduct to its completion. In the case of attached property, execution means the selling of the property, under the auspices of the court, to raise the money to satisfy a judgment.

Executed Contract: A contract that has been completed, 7-4.

Executor: A person named in a will to carry out the testator's wishes, 2-2.

Executory Contract: A contract that has not been completely performed, 7-4.

Existing Mortgage: Mortgage contract in effect at present time.

Expansible Attic: Attic planned for future and economical addition of rooms.

Express Grant: Creation of an easement, 4-6.

Expressed Contract, 7-4.

B-6 Glossary and Index

Extender Clause: Clause in an exclusive listing agreement protecting the broker for an extended period beyond expiration if a sale is made to a prospect he obtained during original listing period.

Extension of Agreement: Agreed to continuation of agreement beyond original termination date.

F

Facilitator: An intermediary who renders mutual assistance to buyer and seller without representing either.

Fair and Accurate Credit Transaction Act: Referred to as the FACT Act, amended the federal Fair Credit Reporting Act, 9-28; security and disposal, 9-29.

Fair Credit Reporting Act: Federal law giving one the right to see his credit report so that errors may be corrected, 9-27.

Fair Housing Laws: State and Federal laws which prohibit discrimination in housing, generally, Chap. 12; 12-1 summary and clarification on 12-16 and 12-17.

Fair Market Value: The most probable price a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller acting prudently, knowledgeably assuming the price is not affected by undue stimulus. 15-11. See *Market Value*, 15-1.

Familial Status: Adults with minor children who are protected by housing discrimination laws, 12-3.

Fannie Mae: Federal National Mortgage Association, 9-16, 9-17, 9-18.

Farmer's Home Administration (FmHA) A federal agency making loans to low and moderate income families in rural areas of 20,000 or less population, 9-6.

Federal Consumer Protection Act (Truth in Lending Act), 9-21.

Federal Deposit Insurance Corp (FDIC): Insures all bank savings accounts against loss of deposits in member banks up to \$100,000, 9-7.

Federal Discount Rate: The rate charged by the Federal Reserve Bank for loans to its member banks.

Federal Government: 8-2.

Federal Home Loan Bank Board (FHLBB): Regulates federally chartered savings and loan associations, 9-7.

Federal Home Loan Mortgage Corporation (Freddie Mac): Buys and sells mortgages in secondary mortgage market, 9-19, and 9-20.

Federal Housing Administration (FHA): Part of HUD; Insures loans, 9-7, 9-8.

Federal Information Reporting: Required reporting of sales prices in real estate transactions, 16-6, 17-5 and 17-7.

Federal National Mortgage Association (FNMA Fannie Mae): a privately owned but quasi-governmental agency foremost in the secondary mortgage market; buys and sells mortgages, 9-17.

Federal Reserve Board (FED): Governing board of the nation's central bank, 9-7.

Fee Simple Absolute: An inheritable estate with no limitations or conditions, 4-1.

Fee Simple Defeasible: An inheritable

estate in which title may be lost or defeated by the occurrence or non-occurrence of a specified event, 4-1.

Fee Simple Determinable: A type of estate with a condition which, if violated, causes automatic reversion to the former owner, *helpful hint* 4-2.

Fee Upon Condition: A type of estate with a condition which, if violated, gives the former owner the right, but not automatically, to reclaim the estate, 4-1.

Feudal System: Land ownership rests in the name of the king, 1-5.

FHA: Federal Housing Administration, a federal government agency that insures mortgage loans and its part of HUD.

FHA/VA Mortgage Comparison, 9-11.

FHLMC: Federal Home Loan Mortgage Corporation (Freddie Mac) is authorized to buy conventional, FHA, or VA single-family mortgages from institutions whose deposits are insured by the federal government and to pool them into marketable securities.

Fiduciary: One in a position of trust and confidence, as a broker with respect to a principal, 3-6.

Fiduciary's Deed, 2-5

Finance Companies: Are financial institutions that specialize in making higher-risk loans, 9-5.

Financial Institutions Reform, Recovery and Enforcement Act (FIRREA): Monitors and regulates the savings and loan industry, 9-7.

Fines for License Violations, 14-3.

Firm Commitment: An FHA commitment to insure a mortgage on a specified property with a specified mortgagor.

First Mortgage: The mortgage loan with the highest priority for repayment in event of foreclosure, 8-1; vs second, 8-10.

First Refusal: See *Right of First Refusal*, 5-13.

Fixed Disbursement Plan: Pays a percentage of funds at a set time, 8-13.

Fixed Rate Mortgages: The initial amortization schedule with a written notice of cancellation date and automatic termination date, 9-26.

Fixture: An object that has been attached to land so as to become real estate, 1-3; tests of, 1-3; trade, 1-4.

Flashing: Metal trips around roof openings to give water tightness, 15-8.

Flipping: To describe purchasing a revenue-generating asset (house) and quickly reselling (or "flipping") it for profit, 9-36.

Floor Plan: Layout of the whole or part of a building showing size of rooms and purpose. See *house types*, 5-7.

Floor Space: Interior square footage measured from the inside walls.

FNMA: Federal National Mortgage Association (Fannie Mae), See *Fannie Mae*, 9-17.

Footings: Vertical concrete piles poured in the ground upon which the building foundation rests.

Foreclosure: Procedure to terminate the borrower's right to redeem after default, 8-1; by power of sale, 8-9; judicial, 8-9; statutory, 8-9; power of, 8-9; deficiency due after sale, 8-10; deed in lieu, 8-10;

bankruptcy effect, 8-10.

Foreign Investment in Real Property Tax Act: An IRS regulation requiring purchaser of a US property from a foreign person to withhold 10 Percent of gross sales price unless an exemption applies, 16-3.

Forfeiture: Loss of anything of value due to non-performance.

Foreshore: Land which lies between the high and low water marks.

Foundation: Masonry walls on footings below ground which support the building, 15-8.

Four Unities of Joint Tenancy: Time, title, possession and interest, 5-1.

Fraud: An act intended to deceive for the purpose of inducing another to give up, 7-3.

Frauds, Statute of: Law which requires certain contracts to be in writing in order to be enforceable, 7-5.

Freddie Mac: Federal Home Loan Mortgage Corporation, 9-19 and 9-20.

Free and Clear: Property against which there are no liens.

Freehold Estate: An estate in land that includes title, 4-1.

Front Foot: One linear foot along the street side of a lot.

Functional Obsolescence: Depreciation resulting from inadequate improvements or improper design for today's needs, 15-9.

Fungible: Freely substitutable; land is non-fungible.

G

GAA: "General Accredited Appraiser," a designation awarded by the National Association of Realtors to a general appraiser who meets education and experience requirements beyond those needed for state licensure and certification.

Gable Type: A protrusion from the roof, generally containing a window, 5-5.

Gable Roof: A pitched roof sloping down from a ridge line.

Gambrel Type: 5-7.

Gambrel Roof: a two-section roof having a steep lower slope and a flatter one above.

Gain, Capital: Profit realized from the sale of an investment, 16-1, 16-2; tax, 19-5.

Garrison Type: 5-8.

Gender Identity: Class one protected class, MA Fair Housing Laws, 12-4.do

General Agency: An agency wherein the agent has the power to bind the principal in a particular trade or business, 3-6.

General Lien: A lien on all of a person's property, 6-1.

General Partner: A business partner who shares losses as well as gains, 5-3.

General Warranty Deed: Provides best guarantee of title, 2-4.

G.I. Bill of Rights, 9-10.

G.I. Loan: See *VA Mortgage*, 9-10 and 9-11.

Gift: Title transfer without valuable consideration. See *Love and affection*.

Ginnie Mae (GNMA): See *Government*

National Mortgage Association: 9-19.

Good and Marketable Title: Un-encumbered title, 4-5, and 17-1.

Government National Mortgage association (Ginnie Mae): A government agency that creates a secondary mortgage market by sponsoring mortgage-backed securities program and providing low-income housing subsidies, 9-19.

Government Survey: A system for surveying land by use of latitude and longitude lines as references, 2-6 and 2-14.

Graduated Lease: A lease providing for a stipulated rent for an initial period, followed by an increase or decrease in rent over stated periods.

Graduated Payment Mortgage (GPM): A fixed interest rate loan wherein the monthly payment starts low and then increases, 8-12 and 9-13.

Gramm-Leach-Bliley Act (GLB Act): The Financial Modernization Act of 1999, provisions for Title V in protecting and regulating the disclosure of consumers' personal financial information, 9-29.

Grant: The act of conveying ownership, 2-2; deed, 2-5.

Grantee: The person named in a deed who acquires ownership, 2-2; conveyance of 2-6.

Granting Clause: Indication of intent to convey title, 2-3.

Grantor: The person conveying title, 2-2; conveyance of 2-6.

Grantor-Grantee Index: Separate index books for grantors and grantees maintained in the county registry of deeds, so that a document, such as a deed, can be located by searching under either name.

Great Ponds: Natural ponds having an area of more than ten acres.

GRI: Graduate Realtor Institute; one who successfully completes a ninety-hour program given by the Realtor state association.

Gross Income (Rents): Total annual income from a fully occupied investment property. See **Gross Income Multiplier**, 15-11.

Gross Income Multiplier: A number that is multiplied by a property's gross annual rent to produce a value estimate, 15-11.

Gross Lease: The tenant pays a fixed rent and the landlord pays all property expenses, 10-1.

Gross Rent Multiplier: A number that is multiplied by gross monthly rent to appraise a single family residence, 15-11.

Ground Annual Rent: Rent paid to occupy a lot of land, 10-2.

Ground Lease: The lease of land alone, 10-2.

Groundwater: Underground non-following water.

Group Boycott: An illegal practice in which two or more real estate brokers engage in splitting commissions with another one, usually a discount broker, 3-11.

Guaranteed Sale Program: A service in which the broker offers to pay a predetermined price to the seller if a

property is not sold within a specified time.

Guardian: A person appointed by the probate court to act in behalf of a minor or mental incompetent, 7-2.

H

Habendum Clause: The "to have and to hold" clause in a deed, 2-6

Habitability: Fit for human habitation.

Header: A beam over a door or window.

Handicapped: Physically or mentally handicapped persons who are protected by discrimination laws, 12-3; modification for, 12-3 and 12-15.

Handling of Documents by Licensees, money, 14-19; offer, 14-19; purchase and sale agreement, 14-19.

Hazardous Materials: Harmful substances found in residential structures which must be disclosed and/or removed to protect the health of the occupants, 11-1, 11-2; disclosure of 11-3, 11-4.

Hazardous Waste Affidavit: Form "21E" required to be signed by buyer and seller at a closing involving a federally related mortgage; it certifies that the premises are free of all hazardous material, 17-4.

Hearings: Required by license law to determine violations, 14-2, 14-13, 14-21.

Heirs: Persons entitled by law of descent to inherit property of a deceased intestate, 2-3.

Hereditaments: Real or personal property which passes at death, 1-5.

Heterogeneous: Appraisal term for an area with buildings of varied styles and uses.

Hiatus: A gap in the chain of title.

Highest and Best Use: Use of a parcel of land which will produce the greatest current value, 15-12.

Hip Roof: Pyramid roof with four sloping sides rising to a ridge.

Hiring: A listing agreement, 3-3.

Holdover Tenant: A tenant who stays beyond the lease, 4-4

Holographic Will: A will prepared in the testator's handwriting, 2-2.

Home Equity Loan: See **Shared Appreciation Mortgage**.

Home Mortgage Disclosure Act: (HMDA) Enacted in 1975 to provide loan data that can be used by the public for their needs, 9-33.

Home Office, Taxes On, 16-6.

Home Ownership: 5-5.

Home Ownership & Equity Protection Act: (HOEPA): A 1994 amendment to the Truth in Lending Act, 9-32-34.

Home Seller Program: A plan whereby the FNMA will buy mortgages from individual home seller, 9-21.

Homeowner Policy: A combined property and liability policy designed for residential use, 18-7.

Homestead Protection: A Massachusetts statute or state laws which allows a homeowner to exempt from attachment by creditors up to \$500,000 of the value of his primary residence, or up to \$600,000 if elderly or disabled or to protect against the forced sale of a person's home, 4-3; release of home-

stead, 4-3; in Mass., 14-47, 14-48, 14-49, 14-50, 14-51, 14-52, 14-53; Act of 1998 (HPA) 9-26.

Homogeneous: Appraisal term for an area with properties of similar styles and uses.

House Types & Styles: 5-5.

Housing & Economic Recovery Act of 2008 (HERA): Is a major housing law designed to assist with the recovery and the revitalization of America's residential housing market, 9-34.

Housing for the Elderly: Project designed for persons 62 years or over which provides living accommodations and social facilities.

HUD: Department of Housing and Urban Development, 9-8; interstate land sales, 13-5.

Hundred Percent Locations: A downtown business location which commands the highest land value.

Hypothecate: To use property to secure a debt without giving up possession, 8-1.

I

Imply: To suggest or indicate by words, actions or conduct which leads to a logical inference.

Implied Authority: Agency authority arising from industry custom, common usage, and conduct of the parties involved, 3-6.

Implied Contract: A contract created by the actions of the parties involved, 7-4.

Implied Easement: An easement by necessity implied by law for access, 4-6.

Improvements: Any form of land development such as buildings, roads, fences, pipelines, 1-1.

Imputed Interest: Interest created by the IRS when an installment contract fails to set a rate or sets a rate below the IRS minimum which prevents deferred payments from being treated as wholly attributable to principal.

Inchoate Right: An expectant right, such as dower or curtesy, 4-2.

Income Approach: A method of valuing property based on the monetary returns that a property can be expected to produce, 15-10.

Income Statement Example, 19-3.

Incorporeal: Intangible, 1-3; hereditaments, 1-5.

Increment: An increase, generally in land value.

Incurable Depreciation: Depreciation that cannot be fixed and simply must be lived with, 15-9 and 15-10.

Indefeasible Title: Title which is guaranteed by the court under the Torrens system or Registered Land system, 2-11.

Indenture: An agreement or contract

Independent Contractor: One who contracts to do work according to his/her own methods and is responsible to his/her employer only, for the results of that work, 18-6.

Index Lease: A lease which provides for rent adjustments based on a price index.

Informed Consent: Approval based on a full disclosure of facts.

Ingress: Access to enter a tract of land.

B-8 Glossary and Index

Injunction: A court order to cease and desist from doing an unjust act.

Inflation: An increase in wholesale and retail prices, while the value of money decreases, 19-1.

Inspection: Buyer's right to inspect for lead hazards, 11-4, 11-5; buyer's right to inspect premises prior to closing (walk-through), 17-2.

Installment Land Contract: An agreement to buy property upon an installment basis, whereby the seller retains legal title until the total purchase price is paid, 7-8, 9-14, equitable title, buyer's default, 9-15, advantages & disadvantages, 9-15.

Installment Note: A loan requiring monthly payments of a fixed amount of principal, plus interest on the unpaid balance, 9-11.

Installment Sale: Selling property on terms rather than for cash so as to spread out the payment of income, 16-3, and 19-5.

Insurance: An agreement by an insurance company for a premium, to reimburse the insured for losses resulting from the occurrence of stipulated events, 18-5; casualty, 18-6; condominium, 5-14; hazard, 18-6; homeowner's, 18-7; liability, 18-6; workers compensation, 18-6.

Instrument: Written legal document created to effect rights of the parties.

Insurable Value: Based on the concept or replacement and/or reproduction cost in the market value of property, 15-2.

Insurance: Indemnification against loss.

Insurance Companies: As sources of financing, 9-6.

Intangible Personal Property: Stocks, bonds, checks, 1-2.

Inter Alias: Between other persons.

Interest: Money paid like rent for the use of borrowed money, 8-8.

Interest Rate: The percentage of the principal sum charged for its use.

Interim Financing: Temporary financing usually for construction.

Interpleader: A legal proceeding enabling a broker to compel parties making the same claim, such as for a deposit, to litigate the matter between themselves.

Interstate Land Sales Full Disclosure Act: Sales of land to a buyer in another state, 13-5.

Interval Ownership: Timesharing, 5-17.

Intestate: Without a will, in which case, estate descends to next of kin or heirs, 2-3.

Intestate Distribution: Distribution of an intestate's property to heirs according to law of descent, 2-3.

Intrinsic Value: Value created by individual choices and preferences.

Invalid: Of no legal force, void, 7-2.

Investment: The outlay of money or something of value for income or profit; something in which money is invested for the purpose of making a profit, 19-1.

Investment Property: Real estate purchased for annual income and appreciation, 19-1.

Involuntary Lien: A statutory or equitable lien arising by law, (i.e. real estate taxes, mechanic's liens, and

attachments), 6-1.

Involuntary Transfer: Foreclosure sale, tax sale, sheriff's sale, 2-1.

J

Jalousie: Slatted shutter or blind used on exterior of a building to control ventilation, sunlight and protect against rain.

Joint and Several Liability: One action brought against all parties or an action brought against one party for an entire debt of all.

Joint Tenancy: A form of property co-ownership that features the right of survivorship, 5-1.

Joint Venture: An association of two or more persons or firms to carry out a single business project, 5-3.

Joists: Horizontal structural members supporting a floor or ceiling, 15-7.

Jones v. Mayer: 12-7.

Judgment: A final determination by a court upon respective rights and claims of the parties to a law suit, 6-2.

Judgment Lien: A claim against assets in favor of the holder of a court-ordered judgment, 6-2.

Junior Mortgage: Subordinate in priority to a senior loan, 8-9.

K

Kick-Out Clause: A provision in an Offer or Purchase and Sale Agreement whereby the parties acknowledge that the property will continue to be marketed and should another offer be received, the first buyers have a specified time period to improve their offer or have the seller accept the second offer.

Key Lot: A lot that adjoins the side or rear property line of a corner lot.

L

Labor Lien: A statutory, involuntary lien that attaches automatically to property to assure payment for labor performed on the property, See **Mechanic Liens**, 6-2.

Laches: Delay or negligence in asserting one's rights, 7-5.

Land: Earth in its natural state, including mineral rights, surface rights, and air rights, 1-1; physical 1-2; descriptions, 2-6, 2-12; lot and block, 2-13.

Land Contract: Contract for purchase of real estate on installment basis - at last installment payment, deed is delivered to purchaser.

Land Court: A Mass. court which registers land and issues certificates of title, 2-10.

Land Lease: See **Ground Lease**.

Landlocked: Property without access because of surrounding property and no easement.

Landlord: One who rents property to another or fee owner of a leased property, 10-3; responsibilities of, 10-6.

Land Residual Technique: An appraisal method to determine land value by deducting value of income from improvements from the value of total income of the property.

Land Sales Contract: See **Contract for a Deed**, 7-7, 9-9

Land Use Controls: A broad term that describes any legal restriction on the use of land, such as zoning or deed restrictions, 1-5, 13-1, 13-6.

Late Charge: An additional charge for late payment, 8-6.

Latent Defect: A hidden structural defect not discovered by ordinary inspection.

Lateral Support: The right to have land supported by the adjoining land, or soil beneath the adjoining land.

Lath: Wooden, wire screen or cement-like substance used as support for plaster.

Latitude Lines: East-west reference lines that circle the earth, 2-14.

Lawful Consideration: See **Legal Consideration**, 7-1.

Lawful Objective: A legal act required in an enforceable contract, 7-2.

Lead Paint Hazard, 11-1, 11-2; disclosure, 11-3.

Lead-Based Paint Hazard Reduction Act of 1992 (LBPHRA): requires disclosure of known lead paint hazards, 11-1.

Lease: A contract conveying the right to use property for a specified period of time, in receipt for payment of rent, 10-1; types of, 10-1; assignment of, 10-3; covenants in, 10-3; essentials of a valid lease, 10-2; termination of, 10-5, 14-44, recording requirements, 10-2, 14-44; writing requirement, 14-44.

Leased Fee: The landlord's interest in leased property, 10-1, and 15-12.

Leasehold Estate: Possession of land without ownership, 4-1, appraisal of, 15-12, Improvements: improvements made by the tenant (lessee).

Leases, Types of: gross, 10-1; graduated, 10-1; ground, 10-2; net, 10-1; percentage, 10-1; reappraisal, 10-1; sandwich, 10-3; step-up, 10-1; straight, 10-1; sublease, 10-3.

Lease with Option to Buy: Allows the tenant to buy the property at a preset price within an agreed time period, 10-3.

Legacy: Personal property received under a will, 2-2.

Legal Capacity: Being of legal age and competent to enter into a binding contract, 7-1, 7-2.

Legal (Lawful) Consideration: Required for a binding contract, 7-1.

Legal Description: A description of land necessary for a valid deed, usually containing the lot number, metes and bounds description, and reference to prior recorded documents, 2-6, 2-13, easements 4-7.

Legal Notice: Notice given by law which the public is charged with knowing. See **Constructive Notice**.

Legal Objective: See **Lawful Objective**.

Legal Title: Ownership, 7-8.

Legatee: A person who receives personal property under a will, 2-2.

Lessee: The tenant, a person who holds possession of property by virtue of a lease.

Lessor: The landlord, grants a lease.

Letter of Adornment: Grantor's letter to a tenant advising of sale of property and directing rent be paid new owner.

- Letter of Commitment:** A lender's statement given to a borrower upon approval of a loan, 9-1.
- Letter of Intent:** Expression of intent to act without creating a legal obligation to do so.
- Leverage:** Use of borrowed money to finance the purchase of investment property, 19-4.
- Levy:** To assess.
- Liability:** Claim against assets, responsibility.
- Liability Insurance:** Owner's protection for personal injury and property losses resulting from personal negligence, 18-6.
- License:** Revocable permission to use property, 4-4.
- License, Real Estate:** See *Real Estate License*.
- Lien:** A claim against property, 4-4, 6-1; contractor's, 6-2; creditor's, 6-1; discharge of, 6-3; equitable, 6-1; Federal tax, 6-3; general, 6-1, special, 6-1; government, 6-3; involuntary & voluntary, 6-1; judgment, 6-2; labor, 6-2; mechanic's, 6-2; notice of, 6-1; priority of, 6-3; property tax, 6-1, 6-4.
- Lien Certificate:** A statement issued by the town or city clerk indicating the status of municipal liens against a property, 6-4.
- Lien Theory:** The theory that a mortgage is a lien on real estate, 8-4.
- Life Estate:** A fee simple determinable estate for the balance of a named person's life, 4-2; in remainder, 4-2; per autre vie, 4-2; reversionary, 4-2.
- Life Tenant:** Owner of a life estate, 4-2.
- Life Time Exclusion on the Gain or Sale of a Home:** 16-2.
- Light and Air, Easement for:** 4-6.
- Limited Common Elements:** Special elements in a condominium reserved for use of one or more units to the exclusion of the remainder.
- Limitation on Ownership:** Government, 1-7; private, 1-8.
- Limited Partner:** A partner who provides capital, but does not take personal financial responsibility or participate in management, 5-4.
- Limited Partnership:** Type of ownership in which a general partner assumes full liability and management responsibilities, while limited partners assume passive roles with their liabilities limited to the amount of their investments, 5-4, 16-5, 19-4, limited; 14-20; disciplinary, 14-5; board fees, 14-17.
- Limited Warranty Deed:** A deed in which the grantor's guarantee of title is limited to claims arising only during the grantor's period of ownership, 2-4.
- Lineal:** A distance measurement.
- Liquidated Damages:** An amount of money specified in a contract to be paid to the non-defaulting party in case of breach, 7-6, and 7-7.
- Liquidation Value:** A price accepted by owner when property's sale must occur during changeable market exposures, 15-2.
- Lis Pendens:** A recorded statement that a suit is pending, 6-1; 8-9.
- Listing:** An agreement between a broker and an owner that the broker may sell or lease the real estate and be paid a commission for same.
- Listing Contract:** Written or oral authority for an agent to negotiate the sale or lease of an owner's property, 3-1; termination of, 3-1; agreement, 3-5; Inter-Broker, 3-9.
- Listing Types:** Exclusive agency, 3-1; exclusive right to sell, 3-1; multiple listing, 3-1; net, 3-2; open, 3-1.
- Listor:** A real estate person who lists a particular property.
- Litigation:** A contest in a court to determine a right.
- Littoral Right:** The right of an owner to use and enjoy the water of a lake or sea bordering the owner's land, 1-7.
- Load Bearing Wall:** An interior wall which supports floors or roof.
- Loan Application:** Contains information for the lender to base a decision to make a loan, 9-3 and 9-25.
- Loan Commitment:** See *Mortgage Commitment*.
- Loan Correspondent:** One who negotiates loans for lenders and who may subsequently service the loan.
- Loan Fees:** Mortgage originator's charges for processing a loan, 9-2.
- Loan Point:** A loan fee equal to one percent of the mortgage, 9-2.
- Loan Servicing:** The task of collecting monthly payments on a mortgage and day-to-day handling delinquencies, taxes, insurance, payoffs, and releases, 9-22.
- Loan-To-Value Ratio (LTV):** A percentage reflecting what a lender will lend divided by the market value of the property, 9-1; Front end & Back end, 9-2.
- Location:** A key factor affecting appreciation and value, 19-1.
- Lock Box:** A special lock on a property's door enabling co-brokers to show the property without first obtaining keys from the listing office.
- Lodger:** One who has possession, without exclusive control of egress. See *Licensee*, 4-4; notice to terminate in Mass., 14-43.
- Longitude Lines:** North-south reference lines that circle the earth, 2-14.
- Long-Term Capital Gain:** For tax purposes, profit realized from the sale of an asset which was owned for a designated time period, 16-1 and 16-2.
- Loss Factor:** A commercial leasing term which expresses the square foot difference between rentable and usable areas expressed as a percentage.
- Lot-and-Block System:** method of legal description in a plat map filed in the public records of the county, 2-12.
- Lot Line:** A legally defined line separating one lot from another.
- Love and Affection:** A consideration valid only where a "valuable" consideration is not required, such as a gift.
- Lump Sum Payment:** Repayment of a loan in one payment, including principal and accrued interest.
- Maggie Mae:** A nonfederal secondary market in which Mortgage Guarantee Insurance Corporation (*MGIC*) mortgages can be sold.
- MAI:** "Member Appraisal Institute," a professional designation earned through the Appraisal Institute.
- Maintenance Fee:** Condominium unit owner's fee to cover cost of upkeep of the common elements, 5-15.
- Majority:** Age of legal capacity, 7-2.
- Management:** Professional supervision of rental property for a fee, 18-1; contract, 18-7; fees, 18-7.
- Mandamus:** A writ or court order prohibiting a specific activity.
- Mansard Roof:** Roof with two slopes on each of four sides, the lower steeper than the upper.
- Manufactured Type:** 5-8.
- Market Data Approach:** A method of appraising property by adjusting comparable sales data to more readily reflect the subject property's value, 15-4; rating chart example, 15-4.
- Market Price:** The amount paid for a property, 15-2.
- Market Rent:** Rent a property would command on the open market.
- Market Value:** A sales price of a property reasonably exposed to the market, agreed to between a fully informed buyer and seller, neither being unfairly compelled to act, 15-1.
- Marketable Title:** Clear of all encumbrances, except as represented, 17-1.
- Massachusetts Home Mortgage Finance Agency:** 14-47.
- Massachusetts Housing Finance Agency (MIFA):** An independent public agency with statutory authority to issue bonds, insure loans and make direct loans to spur private investment in the state, 14-4-7.
- Master Deed:** Required for formation of a condominium project, 5-13.
- Master Plan:** A comprehensive guide to a community's growth, 13-1.
- Material Man's Lien:** Protection for those providing building materials for the repair or construction of a building, 6-2.
- Master Switch:** An electrical switch controlling all power in a building.
- Mechanic's Lien:** Protection for those who perform labor in the erection or repair of a building, 6-2.
- Mediation:** See *Arbitration*.
- Meeting of the Minds:** An offer and acceptance and mutual understanding as to the terms of a binding contract, 7-7.
- Meridians:** North-south (longitudinal) imaginary lines used in government survey description, 2-14.
- Message:** A dwelling house, together with the adjacent buildings.
- Metes and Bounds:** A method of land description by the use of boundaries with reference to distances and compass bearings, 2-12.
- MGIC:** Mortgage Guarantee Insurance Corporation, 9-8.
- Mile:** 5,280 feet or 1,760 yards, 2-9.
- Mill:** Property tax rate of one tenth of one

B-10 Glossary and Index

- cent (.001), 6-4.
- Minor:** A person under the age of majority, 2-6 and 7-2.
- Misrepresentation:** A false or misleading statement of fact which induces a party to act to his harm or detriment, 7-3; license violation, 14-2, 14-19, 14-30; substantial, 3-7, 14-2; case law, 14-27, 14-46.
- Modular Type:** A house constructed of prefabricated components (modules) assembled at the site on a permanent foundation, 5-9.
- Money Flow in Home Mortgage Financing:** For Primary & Traditional Markets, 9-16.
- Monument:** An iron pipe, stone, tree or other fixed point used in surveying land, 2-12.
- Mortgage:** A document pledging property as security for the repayment of a loan, 8-1; adjustable rate, 9-12 and 9-26; blanket, 8-11; bridge, 8-12; buy-down, 9-13; chattel, 8-12; construction, 8-12; conventional, 9-8; end loan, 8-12; equity, 8-12; equity sharing, 8-14 and 9-14; FHA, 9-8; G.I., 9-10; government backed, 9-9; graduated payment, 8-12 and 9-13; open end, 8-13; junior, 8-7 and 8-10; package, 8-13; permanent construction loan, 8-13; privately-backed, 9-8; purchase money or subordination clause, 8-13; release or partial clause, 8-11; reverse annuity, 8-13; rollover, 9-13; second, 8-10 and 9-6; shared appreciation, 8-14; take-over & effects, 8-11; wrap-around, 8-14; undischarged, 2-9.
- Mortgage Backed Security:** Certificates that pass through principal and interest payments to investors, 9-18.
- Mortgage Bankers:** Correspondent representing mortgage loan investors originates and services loans, 9-4.
- Mortgage Banking Companies:** Are institutions that function as intermediaries between borrowers and lenders, 9-5.
- Mortgage Brokers:** Arranges mortgage loans for a fee but does not service them, 9-5.
- Mortgage Commitment:** written statement to the borrower, approving the loan and describing the repayment terms, 9-1, and 17-1.
- Mortgage Company:** A business firm that makes mortgage loans for sale to investors, 9-3
- Mortgage Correspondent:** Negotiates loans for conventional lenders, 9-6.
- Mortgage Foreclosure:** See *Foreclosure*.
- Mortgage Guaranty Insurance Corporation (MGIC):** Largest insurer of conventional real estate loans, a private corporation that will insure the top 5 to 20 percent of the mortgage principal made to a qualified applicant by an approved borrower. 9-8.
- Mortgage Insurance:** Insurance protecting the mortgage lender against loss incurred by a mortgage default.
- Mortgage Loan Correspondent:** One who brings together a lender with investment capital and a borrower with a need for same.
- Mortgage Note:** A written promise to pay a mortgage debt.
- Mortgage Revenue Bonds:** Affordable housing programs with reduced interest, targeted at first time buyers.
- Mortgage Take-Over:** Buying property subject to a mortgage, 8-11, and 9-13.
- Mortgagee:** Lender; the creditor or person making the loan and taking conditional title to the property as security.
- Mortgagee in Possession:** Creditor who takes over the income from the mortgaged property when the debtor defaults.
- Mortgagor:** Borrower; the owner who gives his property as security for money borrowed (debtor-borrower)
- MRA:** "Massachusetts Real Estate Appraiser," a professional designation offered by the Mass. Board of Real Estate Appraisers.
- Multiple Listing:** An exclusive or exclusive-right-to-sell listing distributed to cooperating brokers in a multiple listing service.
- Multiple Listing Service:** An organization that allows member brokers to share and exchange information on listings, 3-1.
- Municipal Lien Certificate:** A certificate obtained from the city or town clerk to ascertain the status of real estate taxes and other municipal charges, 6-4, 17-1.
- Mutual Assent:** See *Meeting of the Minds*.
- Mutual Mortgage Insurance Fund:** An FHA insurance fund into which FHA insurance premiums are paid and from which losses are taken.
- Mutual Savings Bank:** As sources of financing, a bank owed by depositors found predominantly in the Northeastern U.S. which is governed by state charter, invests much of its assets in residential mortgages and pays dividends instead of interest, 9-4.
- N**
- Naked-Title:** The interest of a trustee in a deed of trust, 8-3.
- Narrative Report:** A complete appraisal report presenting all information pertinent to a property and which gives an appraiser's opinion of value based upon approaches used.
- National Association of Realtors:** A trade organization of real estate practitioners, also known as REALTORS.
- National Association of Real Estate Brokers:** An organization dedicated to the role of Afro-Americans in the real estate industry and which has adopted the term "Realist" for its members.
- National Do Not Call Registry:** Applies to any plan, program, or campaign to sell goods or services through interstate phone calls, 3-12-13.
- National Housing Act of 1934:** Created the Federal Housing Administration (FHA), 9-7.
- Negative Amortization:** Occurs when a loan payment is insufficient to pay the interest due and the excess is added to the balance owed, 9-33.
- Negative Cash Flow:** A condition wherein the cash paid out exceeds the cash received, 19-3.
- Negotiable Instrument:** A promissory note or other written evidence of a debt signed by a maker or drawer which can be passed from one person to another, 8-2.
- Neighborhood Analysis:** The study of a neighborhood to determine its affect upon the value of a property.
- Neighborhood Association:** a group of residents or property owners who advocate for or organize activities within a neighborhood, 13-7.
- Negative Amortization:** An easement that prohibits the owner from a use.
- Negotiable:** Transferable in the ordinary course of business.
- Negotiable Instrument:** A written instrument which contains a promise to pay a sum of money which can be passed from one person to another.
- Neighborhood:** An area with common characteristics.
- Net Income:** See *Net Operating Income*.
- Net Lease:** Tenant pays operating expenses as well as rent, 10-1.
- Net Listing:** A listing in which the commission is the difference between the selling price and a minimum price set by the seller; prohibited by most license laws, 3-2, 14-3, 14-19.
- Net (Annual) Operating Income:** Annual gross income, less vacancies, collection losses, and operating expenses, 15-11, 16-3, 19-3.
- Net Net Net (Triple Net) Lease:** A lease in which a tenant, in addition to rent pays all fixed and operating expenses and mortgage interest.
- Net Worth:** Value remaining after liabilities are deducted from assets.
- Nonconforming Use:** A permissible use which is inconsistent with current zoning regulations, 13-2.
- Non-Freehold Estates:** Leaseholds, 4-1, 4-3.
- Non-Judicial Foreclosure:** Foreclosure under the power of sale provision of a mortgage or trust deed.
- Non-homogeneity:** No two parcels of land are alike, 1-2; also referred to as heterogeneity.
- Nonrecourse Loan:** A loan for which the borrower is not personally responsible in case of default, 8-6.
- Nonresident Real Estate Licensing,** 14-14.
- Notarize:** To attest to the validity of a signature, 2-7.
- Notary Public:** Person commissioned to attest to validity of signatures.
- Note:** A written acknowledgement of a promise to pay.
- Notice to Quit:** A notice to a tenant to vacate a rented property.
- Notice:** See *Actual Notice and Constructive Notice*.
- Novation:** The substitution of a new contract or new party for an old one, 7-9; in mortgage assumption, 8-11.
- Nuisance:** Conduct which interferes with another's quiet enjoyment.
- Null and Void:** Having no legal effect, force or worth.

Nuncupative Will: A will made orally in the presence of witnesses, 2-2.

O

Obligations of the Mortgagor: 8-5.
Obligee: The person to whom a debt or obligation is owed.
Obligor: The person responsible for paying a debt or obligation
Obsolescence: Impairment of desirability and usefulness brought about by economic or functional changes, 15-9.
Occupancy Permit: A city or town agency permit which establishes habitability of a property.
Offer: A written proposal to enter into a sales contract, 7-1; offer to purchase 7-6.
Offer and Acceptance: Creates a meeting of the minds and a binding contract, 7-1; counteroffer, 7-8.
Offeree: The party who receives the offer, 7-1.
Offeror: The party who makes an offer, 7-7.
Offer to Purchase: A written statement signed by the prospective buyer offering to buy specific real estate at a set price. The acceptance and signature of present owner may complete the contract, 7-11.
Open End Mortgage: A loan that can continuously be extended by reborrowing or drawing down against a fixed commitment, 8-13.
Open House: A property which can be inspected without appointment at specified times.
Open Listing: A non-exclusive listing, a listing with a broker which does not preclude other brokers from selling the property, or the owner selling on his own, 3-1.
Open Mortgage: A mortgage which may be prepaid without penalty, 8-7.
Operating Expenses: Costs of operating; income property, 15-11
Option: The right at some future time to purchase or lease a property at a predetermined price, 7-8; to purchase, 10-3; to renew a lease, 10-4.
Optionee: The party receiving the option (buyer, lessee).
Optionor: The party giving the option (seller, lessor).
Oral Contract: A verbal agreement not reduced to writing, 7-4; enforceable.
Ordinary Income: Income from rents, wages, dividends, etc., as opposed to capital gain which is profit realized from the sale of an asset, 16-1.
Orientation: Positioning of a house on a lot with regard to protection from prevailing winds, outside noise and privacy.
Origination Fee: A lender's charge for making a loan, 9-2.
"Or More" Clause: A provision for making prepayment of a mortgage without penalty.
Ostensible Authority: Results when a principal gives a third party reason to believe that another person is his agent even though that person is unaware of the appointment. See **Apparent Authority**, 3-6.

Out-Of-State land Sales Registration: in Mass., 14-21.

Overall Rate: The percentage ratio between annual net income and sales price; arrived at by dividing net income by price.

Over-Improvement: Improvement not in keeping with the property's "highest and best use" or in excess of local conditions. Usually implies the owner would not get a comparable return upon sale of property.

Override: A commission paid to managerial personnel on sales made by subordinates.

P

Package Mortgage: A mortgage secured by a combination of real and personal property, 8-13.

Panic-Peddling: See **Blockbusting**.

Parcel: A specific portion of a larger tract of land.

Parole Evidence Rule: Permits oral evidence to augment a written contract in certain cases, 7-9.

Partial Release: A release of a portion of a property from a mortgage, 8-6.

Partial Taking: A part of privately owned property taken for public use.

Participating Broker: A cooperating broker who obtains a prospect or buyer for a property listed by another.

Participation: Lender involvement in profit generated by a property as well as interest on the loan.

Participation Loan: One that requires interest plus a percentage of the income and profits, 8-12; equity, 8-15.

Partition: To divide jointly held property into distinct portions so that each co-owner may hold his/her proportionate share in severalty, 5-2; court action, 2-1.

Partnership: A form of co-ownership for business purposes, 5-3; general, 5-3; limited, 5-4.

Party Wall: A fence or wall erected along a property line for the mutual benefit of both owners, 4-7, 14-43.

Passive Investor: One who invests only capital in a project and plays no active role in building, managing, etc; Opposite of an active investor.

Passive Loss: A loss, such as depreciation, which cannot be deducted from other income to reduce tax liability, 16-5; exceptions 16-5.

Pass-Through Securities: Certificates that pass mortgage principal and interest payment on to investors, 9-16.

Patent: Public grant, 2-2.

Patriot Act: Federal legislation designed to curb terrorist activities, 9-30.

Payee: The receiver of a promissory note, check, etc.

Payment Cap: A limit on how much a borrower's payments can increase 9-12.

Pension Funds: As sources of financing, 9-6.

Permanent Construction Loan: A special type loan where there is only one loan and one closing, 8-12.

Per Annum: Yealy.

Per Autre Vie: A life estate based upon a

life of a person other than the life owner, 4-2.

Percentage Lease: Rent is based on the tenant's gross sales, 10-1.

Percent of Common Ownership: In a condominium, the ratio of the square footage of an individual unit to the total of all unit square footage expressed as a percent.

Percolating Water: Underground water not confined to a defined underground waterway.

Percolation (Perk) Test: A test of soil for its water absorption capacity.

Per Diem: Daily.

Perennials: Trees and shrubs which do not have to be planted annually, 1-4, 2-5.

Periodic Tenancy, See Tenancy from Period to Period. 4-4.

Perpetuity: Forever.

Personalty: All articles of personal property, goods and chattels.

Personal Property: All things of value not classified as real estate, 1-2.

Physical Deterioration: Loss of value from wear and tear and the action of nature, 15-9.

Physical Life: Actual age or life span of a structure.

Pitch: The slope of a roof.

PITI Payment: A loan payment which includes principal, interest taxes, and insurance premium, 8-7.

Placement Fee: A mortgage brokers fee for negotiating a loan.

Place of Business: nonresident, 14-15; display of license, 14-16; maintenance, 14-19; license terms, 14-15; sole, 14-40; corp, partnerships etc, 14-41.

Plaintiff: The complaining party in a suit. See **Defendant**.

Planned Unit Development (PUD): Maximizes open space to produce high density of dwellings, 13-3.

Plans and Specifications: Building drawings together with written instructions.

Plat: A recording map or plan indicating lot boundaries and dimensions, 2-13.

Plat Book: A record book of maps or plans of subdivisions of property, drawn to scale showing location, size and owners at the time drawn.

Pledge: To give up possession of mortgaged property, 8-1.

Pledged Account Mortgage (PAM): A program whereby monthly withdrawals from a savings account pay part of a monthly mortgage payment.

Plottage Value: The result of combining two or more parcels so that the one large parcel has more value than the sum of the individual parcels, 15-9.

Point: One percent of a mortgage loan. See **Loan Points**.

Police Power: The right of government to enforce laws for the protection of its citizens, 1-7, Land Use Controls, 13-7.

Portable Mortgage: A mortgage for the repeated or refinancing homebuyer which simplifies the origination process.

Portfolio Lenders: Are financial institutions that make real estate loans they keep and service in-house, avoiding the secondary market for selling, 9-5.

B-12 Glossary and Index

Positive Cash Flow: Occurs when operating expenses and debt service are less than income, 19-3.

Post Listing Protection (Safety Clause): A listing provision which gives a broker a limited period of time after listing termination to earn a commission if a specified prospect the broker introduced to the property should buy it.

Potable Water: Safe drinkable water.

Power of Attorney: (1) A written authorization to another to act on one's behalf, such as signing a deed, 2-6, 2-7; (2) authorization given to the attorney general by a non-resident licensee to accept service of process, 14-15; bond, 14-59.

Power of Sale: A mortgage clause authorizing the mortgagee to sell the property if the mortgagor defaults.

Power of Sale Foreclosure: A non judicial method of foreclosing a mortgage by public auction, 8-4; foreclosure, 8-9.

Prefab: A prefabricated house manufactured and sometimes partially assembled before delivery to the site.

Preliminary Plans: Plans filed by a builder/developer for subdivision approval, 13-5.

Premises: The subject property, or the property which is deeded or leased.

Prepaid Items: In prorating adjustments between buyer and seller, charges which have been paid in advance by the seller, 17-6.

Prepayment Penalty: A fee charged by a lender for prepaying a mortgage, 8-7.

Prepayment Privilege: Right to pay off a mortgage before its' due date and without penalty.

Prescription: Acquiring of title to property by adverse possession or continuous, open and notorious use for 20 years. *See Squatter's Rights.*

Prescriptive Easement: An easement acquired by prolonged use, 4-6.

Prescriptive Right: A right obtained through prolonged use; adverse possession, 2-1, 4-7.

Prevailing Rate: The average interest rate currently charged by lenders on mortgage loans.

Price Fixing: Under the Sherman Anti-Trust Laws the agreement to inhibit price competition by raising, depressing, fixing, or stabilizing prices, 3-10.

Primary Mortgage Market: Banks and other lenders that originate mortgages, 9-3, 9-7.

Principal: Amount due on a loan, 9-11.

Prime Rate: The lowest interest rate charged by commercial banks on short term loans to their clients with highest credit ratings.

Prime Tenant: Major tenant in a building or shopping center.

Principal: The person who gives authority to an agent or attorney to do some act or acts for him. In a mortgage, the sum on which interest is paid.

Principal and Agent: Two parties in an agency relationship, 3-6.

Principal Indexed Mortgage: A mortgage whose monthly payments and outstanding loan balance are adjusted

for inflation according to a government index to accommodate a lower interest rate. *See ARM.*

Principal Meridian: A north-south line which designates one side of a township, as used in a government survey, 2-9

Principles (Economic) Affecting Value: Anticipation, change, competition, conformity, diminishing returns, highest and best use, substitution, supply and demand, 15-2; economics, 15-9.

Private, Individual Lenders: Individuals private financing, 9-6.

Principal Note: The promissory note secured by the mortgage deed.

Priority of Liens, 6-3.

Private Mortgage Insurance: Insurance paid by the buyer on a mortgage with less than 20% down payment covering the lender against loss in event of default, 9-8. *See MGIC.*

Probate Court: Oversees settlement and distribution of proceeds of estate to creditors, heirs and legatees, 2-2, 2-3.

Procuring Cause: Acts of a broker or salesperson directly resulting in the sale or lease of a property, 3-3.

Profit and Loss Statement: An accounting record showing net profit or loss over a cumulative period.

Progression: An appraisal theory which considers that the presence of higher value properties favorably affects the value of a lesser property.

Pro Forma Statement: A projection of future income and expenses.

Promissory Note: A written promise to pay a debt, 8-2, 8-7.

Property Manager: Operation of real property including leasing of space, rent collection, tenant selection, repair and maintenance of building and grounds; function of, 18-1, types of, 18-1.

Proprietary Lease: A lease issued by a cooperative corporation to its resident shareholders, 5-12.

Prorate: To adjust proportionately between buyer and seller at closing, such as taxes, fuel, rents, etc.

Proration: Division of expenses between the parties at a closing, 17-6, 17-7; rules for, 17-7; examples, 17-7; adjustments, 17-8.

Prospect: One who may be interested in buying or leasing.

Prospectus: A document or advertisement published by a business concern setting forth the objects and nature of a particular offering to the public, and inviting the public to purchase.

Puffing: Exaggerated comment or opinion not made as fact.

Punitive Damages: Court awarded damages to an injured party which is intended to punish the guilty party.

Pur Autre Vie: *See Per Autre Vie,* 4-2

Purchase Money Mortgage: Financing all or part of a sale by the seller, 8-13; deferred 9-13.

Purchase and Sale Agreement: Written contract for the sale of real estate, 7-6; condo form, 7-12; P&S, 7-16.

Pyramiding: Increasing one's holdings of investment property through the use of leverage or financing, 19-2.

Q

Quadrangle: A tract of land in the U.S. Governmental survey system measuring 24 miles on each side of the square.

Quadrant: Quarter section of a circle.

Qualified Fee Estate: A fee simple estate subject to certain limitations imposed by the grantor, 4-1.

Quantity Survey: Method of cost estimating in appraising, 15-6.

Quarter Section: Used in connection with the government (rectangular) survey of land measurement (2,640 ft. X 2,640 ft. or 160 acres).

Quiet Enjoyment: The right to the undisturbed use of leased or granted property, 1-5, 10-5; A covenant in a deed assuring the grantee freedom from third party interference, 2-4.

Quiet Title: A legal action to settle claims against title, 2-9.

Quitclaim Deed: Transfer of grantor's rights to real estate with no warranties or covenants of title, 2-5.

Quit Notice: A notice to a tenant to vacate.

Quotient: The result obtained when one quantity is divided by another.

R

RAA: "Residential Accredited Appraiser," a designation awarded by the National Association of Realtors to a residential appraiser meeting requirements beyond those needed for state licensure or certification.

R-Factor: Resistance value of insulation.

R-Value: A factor which rates the insulating quality of certain insulating products.

Radon Gas: 11-2.

Rafters: A series of sloped structural members (beams) that extend from the ridge or hip to the wall-plate, 15-7.

Ranch Type: 5-10.

Range: A six mile wide strip of land running north and south, used in government survey system.

Rate of Return: Annual percentage of return on income property.

Ratification: Approval of something done by another without authority.

Ratify: To accept or to confirm, such as a minor's contract, 7-2.

Raw Land: Unimproved land.

Ready, Willing, and Able: A buyer who is ready to buy at a price and terms acceptable to the owner, 3-3, and 3-4.

Real Estate: Land with all its physical (natural and man-made) improvements, 1-1; transfer, 2-2; lien against, 2-10, descriptions of, 2-12, 2-13; interests in, 4-2.

Real Estate Cycle: Listing, qualifying the buyer, showing, closing, offer, purchase and sale agreement, financing and passing papers.

Real Estate Board of Registration, Mass., 14-1; duties and powers, 14-1.

Real Estate Broker: *See Broker.*

Real Estate Investment Trust (REIT): An association of real estate investors for the purpose of investing in real estate, 5-4, 19-4.

- Real Estate Licensing Requirements:** business organizations, 14-4, 14-14; brokers; 14-4, 14-14; reciprocal, 14-5; exemptions, 14-15; non-residents, 14-14; salespersons, 14-14; temporary, 14-14; continuing education, 14-5; display of 14-16.
- Real Estate Mortgage Trust:** Buys and sells mortgages, 19-4.
- Real Estate Salesperson:** See *Salesperson*.
- Real Estate Settlement and Procedures Act (RESPA):** 9-24, 9-25, 17-7.
- Real Property:** Land with all its physical improvements as well as the incidents of ownership known as the "bundle of legal rights," 1-5.
- Reality of Consent:** Legally competent parties to a contract acting voluntarily, and with full knowledge of the vital facts, 7-2, 7-3.
- REALTOR:** A registered trademark of a professional in real estate who subscribes to a code of ethics as a member of the **National Association of REALTORS** and its chartered state and local real estate associations or boards.
- REALTOR Associate:** A licensed salesperson affiliated with a REALTOR who is a member of the state and local real estate boards and the National Association of REALTOR.
- Realty:** Synonymous with Real Estate.
- Reappraisal Lease:** Requires periodic appraisals of leased premises for rent adjustments, 10-1.
- Rebate:** A return of part of money paid, such as a tax rebate.
- Reciprocity:** Mutual exchange of privileges.
- Reconciliation:** Weighing the three approaches for a final value estimate, 15-12.
- Recording:** Filing documents with public records or registry of deeds, 2-13; as constructive notice, 2-8; deeds, 2-6, 2-7; mortgage, 8-4; leases, 10-3.
- Recording Protected Class Status:** A violation of the fair housing act which bars the noting or recording of a person's race, national origin, age, etc., 12-4, 12-17.
- Rectangular (Government) Survey:** A method of describing land by meridians and baseline, 2-14.
- Red Flag:** Indication of a possible problem.
- Redemption:** The act of buying back one's property after tax sale or notice of foreclosure, 6-5, 8-9; equitable right of, 8-9; statutory right of, 8-9.
- Redlining:** An illegal practice of lenders refusing to make real estate loans in areas of a city known as "high risk" areas.
- Referral:** Act of referring a prospect to another broker or service.
- Reference:** A method of describing land by reference to publicly recorded documents, 2-12.
- Refinance:** Paying off an existing loan with proceeds from another.
- Reformation:** Court action to correct written instruments in cases of fraud or mistake.
- Rights of the Mortgagee:** In case of default, the mortgagee has the right to sue the borrower for the amount due on the note or to sell the property at foreclosure, 8-5.
- Rights of the Mortgagor:** 8-5.
- Registered Land:** In Massachusetts, title which has been certified by the Land Court under the **Torrens System**, 2-10.
- Registry of Deeds:** In Massachusetts, the county recording office, 2-8; the county office in which deeds, mortgages, liens and other title related documents are recorded and filed.
- Regression:** An appraisal theory which considers that the presence of lesser value properties adversely affects the worth of a better property. See *Progression*.
- Regulation X:** Final rule implements Dodd-Frank Act sections addressing servicers' obligations to correct errors asserted by mortgage loan borrowers, 9-25.
- Regulation Z:** Another name for the Federal truth-in-lending act, 9-21, 9-22.
- REIT:** Real Estate Investment Trust, 5-5.
- Relation Back Doctrine:** A deed placed in escrow to be delivered after the grantor's death is deemed to transfer title as of the date of the original delivery in escrow, 2-7.
- Release:** To discharge or give up a claim, such as a mortgage, 8-5; a certificate given by a lender when the loan has been repaid, 8-13; partial release, 8-8.
- Reliction:** Land acquired by water receding, 2-3.
- Relocation Service:** An organization that aids a person in selling a property in one area and buying one in another area.
- Remainder Estate:** An estate created at the same time as another, but limited to begin upon the termination of the other companion estate.
- Remainder Interest:** A future interest in real estate held by a remainder person, 4-3.
- Remainder Person:** One who is entitled to take an estate in remainder, 4-2.
- Renegotiable Rate Mortgage (RRM):** A loan that must be renewed periodically at current interest rates, 9-12; a conventional mortgage written for a series of short terms (3-5 years) with amortization over 25-30 years.
- Rent:** Money paid for the use of another's land, 18-2, 8-3.
- Rent Control:** Government imposed restrictions on maximum rent and eviction proceedings, 14-23.
- Replacement Cost:** In appraising, the cost of reconstructing an older building or improvement using modern construction practices and design, 15-6.
- Reproduction Cost:** The cost, at today's prices, of constructing an exact replica of the subject improvement using the same or very similar materials, 15-6 See *Cost of Reproduction*.
- Rescission:** Legal remedy to terminate a contract, 7-8; three day right of, 9-22.
- Reservation:** A right reserved by the owner in the sale, lease or grant of a property, such as an easement.
- Resident Manager:** A manager of an apartment project who lives on the property and need not be licensed, 18-1.
- Residuary Estate:** That which remains of an estate after deduction of debts, etc.
- RESPA:** Real Estate Settlement and Procedures Act, 17-7, 9-24; requiring disclosure of closing costs in sale of family residences.
- Respondent Superior:** Responsibility of a seller for wrongful acts of an agent or sub-agent; vicarious liability, 3-6.
- Restitution:** Return of consideration from a rescinded contract.
- Restriction:** Public or private control of the use of land through zoning or deed restriction; granting clause, 4-4; deed, 13-6.
- Restrictive Covenants:** Clauses in deeds and leases to control how future owners and lessees may or may not use the property, 10-3.
- Retaining Wall:** A wall used to hold back materials, such as dirt.
- Revaluation:** Re-estimating value of a property for tax purposes.
- Revenue Stamps:** State excise tax or revenue stamps affixed to a deed when recorded, based upon selling price.
- Reverse Annuity Mortgage (RAM):** The lender makes monthly payments to a homeowner who later repays in a lump sum, 8-13; primarily for older retired, based upon a percentage of equity which requires no payment until maturity date or death of the borrower, whichever comes first.
- Reversion:** The right to future enjoyment of property presently possessed or occupied by another, 10-1, 10-3, and 15-12.
- Reversionary Life Estate:** A life estate in which title reverts to the original grantor, 4-2.
- Revocation:** The nullification of an offer prior to acceptance, 7-8; the recall or voidance of a real estate license, 14-2, 14-3, 14-55.
- Rider:** An annexation to a document made part of the document by reference.
- Right of First Refusal:** The right to match another offer and buy property, 5-13, 5-15; in a lease, 10-4.
- Right of Rescission:** The right of a borrower to cancel a financing agreement within 3 days after receipt of a disclosure statement from the lender.
- Right of Survivorship:** Right to acquire the interest of a deceased joint owner.
- Right-of-Way:** The right of a person to pass over the estate of another; a form of easement. See *Easement*.
- Riparian Right:** Rights of a landowner bordering a body of water, 1-7 See *Littoral Rights*.
- Risk Management:** Minimizing property losses through maintenance and insurance, 18-5.
- Rollover Mortgage:** A balloon mortgage which allows for interest adjustments based upon periodic reviews of current interest rates, 9-13.
- Rules and Regulations:** When applied to condos, rules governing every day conduct, such as pool use, parking, rubbish disposal, etc.
- Running with the Land:** Covenant or rights which bind or benefit successive owners.
- Rural:** Country as opposed to city.

S

- SAFE Act:** or the Secure and Fair Enforcement for Mortgage Licensing Act, a key component of HERA designed to enhance consumer protection and reduce fraud by requiring states to establish national minimum standards mortgaging training, 9-34, 9-35.
- Sales Contract:** See *Agreement of Sale*.
- S Corporation,** 5-3.
- Sale and Leaseback:** Owner/occupant sells property and then remains as a tenant, 10-2.
- Salesperson:** An individual natural person licensed by the state to be employed by a licensed broker to perform any of the acts listed in the license law, 14-5, 14-13.
- Sanctions:** Disciplinary action for license violations or complaints, 14-1; display of license, 14-16; hearing, 14-2; fines, 14-3; case law, 14-27; grounds for chapter 93A, 14-46; tenant 14-44; 14-39, 14-40, 14-42.
- Sandwich Lease:** A leasehold in which the "sandwich party" leases from the owner and sublets to the tenants in possession, and maintains his position in the middle.
- Satisfaction of a Mortgage:** Synonymous with mortgage release or discharge, 8-5.
- Satisfaction Piece:** A certificate from the lender stating that the loan has been repaid, 8-5; an instrument which acknowledges and records the payment and satisfaction of a mortgage or other debt; a discharge.
- Savings and Loan Associations:** As mortgage lenders, 9-2.
- Scarcity:** An economic principle that attaches value to real estate such as land because it cannot be manufactured and influences supply.
- Scope of Authority:** Degree or limit of authority given to an agent by his/her principal, 3-6.
- Seal:** A hot wax, paper, or embossed seal, or the word "seal" or the letters "L.S."; an impression or stamp made to attest execution of an instrument.
- Second Mortgage:** One which ranks immediately behind the first mortgage in priority, 8-10.
- Secondary Mortgage Market:** A market where loans can be sold, such as Fannie Mae, 9-15, 9-16.
- Section:** A one square mile parcel of land; 640 acres, 2-13, 2-14.
- Securities and Exchange Commission (SEC):** A market for the purchase and sale of existing mortgages designed to provide liquidity for originating lenders.
- Security:** Property pledged by a borrower to protect a lender's interest.
- Security Deposit:** Money held by landlord to assure performance of the lease or tenancy agreement, 10-4, 14-44, 14-45.
- Seisin:** Possession of land by one who claims title, either rightfully or wrongfully; covenant of, 2-4.
- Seller-Broker Relationship,** 3-6
- Seller's Market:** A market with more buyers than sellers which puts sellers in a stronger position price-wise.
- Separate Property:** Property owned by a married person in his or her own right during marriage. The spouse has no rights in it.
- Septic Tank:** An underground sewage disposal tank in which solids are converted to liquids through bacterial action.
- Service a Loan:** Collecting monthly payments, handling payoffs, releases and delinquencies by the mortgage originator after a mortgage has been sold, 8-7, 9-18.
- Serviceman's Readjustment Act of 1944:** G.I. Bill of Rights, 9-10.
- Servient Estate:** The land on which an easement exists in favor of an adjacent property (dominant estate).
- Servient Tenement:** The land on which an easement exists in favor of a dominant tenement, 4-5.
- Setback:** Minimum distance required between structures and the property line, 13-1, 13-2.
- Settlement (Closing) Statement:** An accounting statement at closing that shows each item charged or credited, to whom and for how much, 17-2; HUD Uniform Settlement Statement, 17-7, 17-8; closing settlement statement, 17-10; RESPA requirement for, 17-7, 9-24.
- Severalty:** Ownership by one person or origination; sole ownership, 5-1.
- Severance:** The act of removing something from land, 1-2.
- Severance Damage:** Loss of value to the remainder caused by a partial taking of property by eminent domain.
- Sewage Disposal Systems:** Title V & Septic Tank Issues in Wastewater treatments, 11-3, 14-24, Disposal, 14-24; title 5, 14-24..
- Shared Appreciation Mortgage (SAM):** A mortgage loan wherein the borrower gives the lender a portion of the property's appreciation in return for a lower rate of interest, 8-15.
- Sheathing:** A layer of boards or of other wood or fiber materials applied to the outer studs, joists, and rafters of a building, 15-7.
- Sheriff's Deed:** A deed issued as a result of court ordered foreclosure sale, 2-5.
- Sherman Anti-Trust Act:** Prohibits monopolies, 3-11.
- Side Line:** The lot line on either side of a building.
- Signed, Sealed and Delivered:** A phrase stating that everything necessary has been done by the grantor to convey.
- Single Agency:** The practice of representing buyer or seller but never both in the same transaction.
- Situs:** Refers to the preference by people for a given location; position, situation.
- 6-D Certificate:** An affidavit of a condominium association certifying that there are no outstanding assessments or condo fees on a particular unit being sold, 5-15, 17-4.
- Smoke Detector Regulations,** 14-26; certificate, 17-4.
- Snob Zoning:** Refers to Massachusetts law which allows an aggrieved party to obtain an immediate review of an unfair, arbitrary, or capricious decision of a local appeal board, 13-4.
- Solar Heating:** Heating by use of sun's energy.
- Soldiers and Sailors Relief Act:** Bars a mortgage foreclosure against a person in active military service, 8-10.
- Sole Ownership:** Ownership by one person or organization. See *Severalty*, 5-1.
- Special Agency:** An agency created for the performance of a specific act, 3-6.
- Special Assessments:** Charges levied to provide publicly built improvements that will benefit a limited geographical area, 5-15; 6-3.
- Special Lien:** A lien on a specific property, 6-1.
- Special Purpose Financing:** Includes a variety of mortgages and innovative financing methods, 8-9.
- Special Purpose Property:** A building so designed that it cannot be used for other than its original purpose.
- Special Permit:** A decision of the zoning board of appeal to grant a building permit provided the builder meets certain additional requirements, 13-3.
- Special Warranty Deed:** A deed in which the seller's guarantee is limited to his/her period of ownership, 2-4.
- Specific Performance:** A court ordered performance of a contract according to the precise terms agreed upon, 7-6.
- Split Level Type:** 5-10.
- Spot Zoning:** The rezoning of a small area of land in an existing neighborhood, 13-3.
- Square Foot Method:** An appraisal technique that uses square foot construction costs of similar structures as an estimating basis, 15-6.
- Squatter's Rights:** Rights to occupancy of land by virtue of long and undisturbed use but without legal title. See *Adverse Possession; Prescription*.
- Stable (Blended) Mortgage:** A mortgage that combines adjustable and fixed interest rates and provides for a lower income to quality has a lower initial interest rate and a stable loan payment.
- Standing Mortgage:** A mortgage loan in which only interest payments are made and the principal is paid at maturity, 9-11.
- State Lending Agencies:** 14-47.
- Statute:** A law established by act of the legislature.
- Statute of Descent:** Law of intestate distribution, 2-3.
- Statute of Frauds:** A law requiring that certain types of contracts be written in order to be legally enforceable, 7-5, 7-6; leases, 10-2.
- Statute of Limitations:** A legal limit on the amount of time to seek aid of a court in obtaining justice, 7-5.
- Statutory Deed:** A short form deed, the wording of which has been determined by statute, such as a Massachusetts statutory quitclaim deed, 2-4.
- Statutory Right of Redemption:** The statutory right to regain title after foreclosure sale, 8-9, 8-10.

- Steering:** The illegal practice of directing minority members to or away from certain neighborhoods, 12-2: 12-4, 12-13.
- Step-Up Rental:** A lease that provides for agreed upon rent increases, 10-1.
- Stigmatized Property:** A property which has the potential to cause emotional or psychological discomfort to a potential buyer, example, ghost or murder.
- Storm Drain:** Drain carrying off rain water.
- Straight-Line Age-Life Depreciation,** 15-6; example, 15-5.
- Straight-Line Depreciation:** Depreciation in equal amounts each year over the life of the asset, 16-4
- Straight Loan:** See *Standing Mortgage*, 9-11.
- Straight Mortgage:** A mortgage with interest payments only, and no reduction in principal, 9-11.
- Straw:** A principal acting to hide the identity of another.
- Stretch Mortgage:** A variable rate mortgage, the monthly payments of which stay the same and the term is lengthened or shortened to suit the changing rate.
- Studs:** A wall stud is a vertical member in the light frame construction techniques called balloon framing and platform framing of a building's wall, 15-8.
- Sub-Agent:** An agent acting for another agent in performing functions undertaken for a principal.
- Sub-Chapter S Corporation,** 5-3.
- Subdivision:** A tract of land divided into lots for residential or business development, 13-1, 13-4.
- Subjacent Support:** Support the land surface receives from the underlying ground.
- Subject to a Mortgage:** Buyer takes over seller's existing mortgage, 8-11; liability remains with original mortgagor.
- Sublease:** A lease given by the lessee, 10-3.
- Sublessee:** The person who rents from a lessee, 10-3.
- Sublessor:** The person who rents to a sublessee, 10-3.
- Sublet:** To transfer only a portion of one's lease rights, 10-3.
- Subletting:** A leasing by a lessee to a third person of a whole or part of the premises during a portion of the lessee's unexpired term.
- Subordinate:** To voluntarily accept a lower mortgage priority than one would otherwise be entitled to, 8-7; to make junior to or subject to.
- Subordinate Clause:** A clause in a mortgage or lease in which the holder will allow a subsequent mortgage or lease to take priority, 8-7.
- Subordinated Lien,** 6-4.
- Subordination Agreement:** An agreement between lien holders to make one lien superior to another, 6-4
- Subrogation:** The right of an insurer to assert a claim of the insured against the party causing the damage or injury, 18-6.
- Subsidized Mortgage:** See *Buy-Down Mortgage*, 9-13.
- Substitution:** The principle that one should pay no more for a property than what it would cost to obtain a property of equal desirability and utility, 15-3; principle of market data approach, 15-4, 15-5.
- Subsurface Rights:** Mineral rights, 1-6.
- Succession:** Transfer of ownership by inheritance, 2-1.
- Sufferance:** See *Tenancy at Sufferance*
- Sump Pump:** An automatic pump used in a basement to keep it dry.
- Sunday Laws,** effect of, 7-2.
- Supply and Demand:** The principle that value increases when demand exceeds supply, 15-3.
- Surety Bond:** A promise by an insurance company, for a fee, to pay an aggrieved party for losses incurred as a result of a broker's misuse of escrow money, 14-4, 14-14, 14-20; bond, 14-59.
- Surface Rights,** 1-6.
- Surrender:** Mutual Agreement of lessor and lessee to end a lease.
- Survey:** See *Engineer's Survey*, 4-7, 17-2.
- Survivorship:** The right of a surviving co-owner of real estate, 5-1.
- Sweat Equity:** An expression for a buyer who works on a property instead of making money payment.
- Swing Loan:** A short term loan enabling purchase of a new property on strength of the equity of a property being sold.
- Syndication:** A form of ownership for the purpose of raising venture capital for investment purposes, 5-4, 16-5, 19-4.
- Sum of the Years Digits:** An accelerated depreciation method computed by formula.

T

- Tacking:** Adding successive periods of continuous occupation or use to establish adverse possession or an easement, 2-2, 4-6.
- Take-Out-Loan:** A permanent loan arranged to replace a construction loan, 8-12.
- Take-Over Mortgage:** A mortgage which remains when property is transferred, 8-11.
- Tandem Plan:** A plan in which, during periods of tight money and high discount rates, Fannie Mae and Ginnie Mae can join forces.
- Tangible:** Having substance, 1-2.
- Tax:** Charge for the cost of operation of government; deed tax, 2-4, 14-42; property tax, 6-4, 14-44, 14-45; income tax, 16-4, 14-42; tax lien, 6-4; redemption, 6-5; abatement, 6-4, 14-45; exemptions, 14-45; rights & obligations, 14-45.
- Tax Abatement:** Reduction of property taxes, 6-4.
- Taxation:** A government right to levy charges against a property owner for services rendered, such as fire and police protection.
- Tax Credit:** Reduction of taxes due for cost of renovating older buildings or low and moderate income housing, 19-5.
- Tax Deed:** Conveys title to property purchased at a tax sale, 6-4.
- Tax Deferred Exchange:** An exchange of "like for like" investment property where only money (boot) received to even off the exchange is taxable. See *Boot*, 16-3, 19-5.
- Tax Deferral on Gain from Sale of a Residence,** 16-2.
- Tax Escalation Clause:** Requires a tenant or lessee to pay additional rent to cover a tax increase, 10-5.
- Tax Exclusion on Gain from Sale of Residence,** 16-2.
- Tax Lien:** A charge or hold by the government against property to insure the payment of taxes, 6-3; Federal, 6-3; enforcement, 6-4.
- Tax Rate:** The rate set by cities and towns which is applied to the assessed value to arrive at the annual property tax.
- Tax Sale:** A sale of property for delinquent tax payments.
- Tax Reform Act of 1986,** 16-4, 16-5, 19-2, 19-3, and 19-5.
- Tax Shelter:** An investment which produces losses that may be used to offset taxes on income from other sources, 16-3, 16-4, 19-2, 19-5.
- Tax Title:** Title acquired at a tax sale.
- Temporary License:** A real estate broker's license issued to the representative of a deceased sole proprietor, 14-13, 14-41, 14-42.
- Tenancy:** The nature of a right to hold, possess, or use property as by lease or ownership, 4-4.
- Tenancy at Sufferance:** One who remains in possession after a lease or tenancy has been terminated, 4-4, 10-5.
- Tenancy at Will:** Possession for an unspecified period of time with landlord's consent, 4-4.
- Tenancy by the Entirety:** Co-ownership by husband and wife, 5-2, 14-45.
- Tenancy for Years:** A lease, 4-4; tenancy for a specific term with a specific end date.
- Tenancy From Period to Period (Periodic Tenancy):** A tenancy of uncertain duration with no specific end date and renews itself at the end of each period until one of the parties takes action to end it, 4-4.
- Tenancy in Common:** Co-ownership of property without right of survivorship, 5-2.
- Tenancy in Severalty:** Sole tenancy.
- Tenant:** One who holds or possesses property by lease or rent, 4-4; responsibilities of, 10-6; protection laws, 10-7.
- Tenant at Sufferance:** A tenant who keeps possession after expiration of a lease without the owner's permission.
- Tenements:** Property rights of a permanent nature, 1-5.
- Term:** Length of Time.
- Term loan:** See *Straight Loan*, 9-11.
- Termites:** Ant-like insects which destroy wood in a building.
- Testamentary Trust:** A trust which takes place after death, 5-4.
- Testate:** To die with a last will and testament, 2-3.
- Testator:** A person who makes a will, 2-2.
- Three-Day Right of Rescission,** 9-22.
- Threshold:** Wooden strip under an outside

B-16 Glossary and Index

- door.
- Tier:** A six-mile wide strip of land running east and west as determined by government survey.
- Time is of the Essence:** A phrase meaning that the time limits of a contract must be faithfully observed or the contract is voidable, 7-9.
- Time Sharing:** The exclusive use of a property for a specified number of days each year, 5-17; ownership of real estate which permits multiple purchases to buy undivided interests in real property with a right to use the property for a fixed or variable time period; 14-47, MA Time Share Act.
- Title:** The right to, or ownership of property; evidence of ownership such as a deed or bill of sale, 2-5; certificate of, 2-10; chain of, 2-8; cloud on, 2-5; color of, 2-2; insurance, 2-8; search, 2-8, 17-1; theory, 8-4.
- Title by Adverse Possession:** Acquired by occupation and recognized as against the paper title holder. See **Prescription; Adverse Possession**.
- Title Insurance:** Protection of a property owner against losses resulting from defective title, 2-8; mortgagee's 2-9; owner's, 2-9.
- Title Reference:** The book and page number stamped on a deed to indicate where recordation may be found in the county registry of deeds.
- Title Search:** Examination of the chain of ownership in the public records to discover possible defects in title, 2-6, 17-1.
- Title Theory:** Theory that a mortgage is a transfer of title to secure a loan and not just a lien, 8-4.
- Title 5:** The state Department of Environmental Protection Title 5 regulations for sewerage systems, 11-3, 14-24.
- Topography:** Configuration of the land surface.
- Torrens System:** A state sponsored method of registering land titles. See **Registered Land**, 2-10. See **Certificate of Title**.
- Townhouse:** Generally a two-floor dwelling separated from adjoining units by party walls. Owners have title to their units and the land underlying. Surrounding land is owned in common with others.
- Township:** A six square mile division of land using the rectangular survey system, 2-14.
- Tract:** Subdivision.
- Trade Fixtures:** Business or trade-related articles attached to a rental building by a business tenant, 1-4
- Trade In:** Agreement by a builder or broker to accept a designated property as part of the purchase price of another property.
- Treble Damages:** Triple damages as in an antitrust or consumer protection case.
- Trespass:** Wrongful intrusion on another's property.
- Traditional Mortgage Market:** Making mortgage loans from money obtained by savings account depositors, 9-16.
- Trigger Words:** Words in real estate ads which require disclosure of finance terms, such as the annual percentage rate (APR), 9-23.
- Tristram's Landing v. Wait**, 3-4, 3-5.
- Trust Account:** A separate account for holding client's and customer's money. See **Escrow Account**, 14-1, 14-18.
- Trust:** Ownership by a trustee for the benefit of another, 5-1; business trust, 5-3; estate planning trust, 5-3; investment trust, 5-4, 19-4.
- Trustee:** One who holds property in trust for another, 5-4, 8-3; a third-party who holds a trustor's (borrower's) title for a beneficiary (lender). See **Beneficiary**.
- Trustee's Deed:** A three-party (trustor, beneficiary, trustee) instrument used in place of a mortgage in some parts of the country, 2-5.
- Trust Agreement:** a legal document that contains instructions to the trustee, 5-4; deed, 8-4..
- Trustor:** One who creates a trust, 5-4, 8-3; a borrower who deeds his property to a trustee as security for the beneficiary. See **Beneficiary**.
- Truth-in-Lending Act:** Federal Consumer Credit Act of 1968; 9-21, 9-23, mortgage lenders, three day right of rescission, advertising, 9-23; See **Regulation Z**.
- Two-Step Mortgage:** A thirty year FNMA mortgage which carries a below-market interest rate for seven years, then adjusts upward once no more than six points for the twenty-three year balance of the term.
- Tying Arrangements:** This occurs when a seller conditions the sale or lease of one product or service on the customer's agreement to take a second product or service.
- 21-E Form:** See **Hazardous Waste Affidavit**, 11-3, 17-4.
- U**
- Unconscionable:** Unfair or unjust.
- Underground Storage Tanks**, 11-3.
- Undisclosed Dual Agency:** A relationship in which a real estate agent represents both seller and buyer without their knowledge and consent (illegal).
- Undivided Interest:** Indistinguishable rights of co-owners of real estate, 5-13.
- Undue Influence:** Taking unfair advantage another to obtain a contract, 7-3.
- Unearned Increment:** An increase in value of real estate due to no effort on the part of the owner, such as a public improvement, or population increase. See **Betterment**, 6-4.
- Unencumbered:** Free and Clear.
- Unenforceable Contract:** A contract that cannot be ordered to be completed by a court of law, 7-5.
- Unfair and Deceptive act:** Conduct by a real estate licensee that violates the consumer protection law, 3-7.
- Unfair Inducements**, 14-19.
- Uniform Commercial Code**, 8-12. See **chattel mortgage**.
- Uniform Settlement Statement, (HUD):** 12-8, 9-25, 17-7, 17-8.
- Unilateral Contract:** Results when a promise is exchanged for performance, 7-4.
- Unimproved Land:** Land in its natural state, as an investment, 19-2.
- Unit Deed:** Transfers title to a condominium unit, 5-13, and 5-14.
- Unit-In-Place Method:** A process for estimating the cost of erecting a building by estimating the cost of each component part, such as foundations, and floors, 15-6.
- Unities, The Four:** Interest, possession, time, title, 5-1.
- Universal Agency:** Authorization to act for a principal in all areas.
- Unlawful Detainer:** Legal proceeding for eviction.
- Upset Price:** Minimum price which can be accepted at a foreclosure sale.
- Urban Development Theories:** Concentric, axial, sector, multiple nuclei, 13-5
- Urban Renewal:** Process of rehabilitating by demolishing, repairing, remodeling or rebuilding.
- Urea Formaldehyde Foam Insulation (UFFI):** A blown-in-place urea formaldehyde foam insulation declared illegal in Massachusetts because of its alleged harmful effects upon humans, It is legally accepted nationally.
- Useful Life:** The recovery period allowed by IRS for annual deduction for loss of value of an asset, 16-1, 16-4.
- U.S. Government Survey System:** Method of describing or locating property by reference to the governmental survey, See **Base and Meridian**.
- Usury:** The charging of more than the legal rate of interest, 8-8.
- Utilities:** Services such as electricity, gas, water, telephone, etc.
- Utility:** A concept that property must have a use in order to have value.
- Utility Room:** A room used for heating equipment, laundry, etc.
- V**
- Vacancy Factor:** Allowance for estimated un-rented units.
- VA Loans:** The Servicemen's Readjustment Act of 1944 (G.I. Bill of Rights), 9-10.
- Valid:** Legally sufficient and enforceable.
- Valid Contract:** A contract that meets all requirements of law and is binding and enforceable in a court of law, 7-5; essentials of, 7-1.
- Valid Conveyance:** A legally enforceable transfer of title by deed, 2-6.
- Valuable Consideration:** Consideration sufficient to support a contract.
- Valuation:** Estimation of value.
- Value:** A property's worth in exchange or use; characteristics of value, 15-1; compared to market price or cost, 15-2; elements of value, 15-1; forces creating value, 15-1; market value, 15-1; types of, 15-2, estimate of, 15-4.
- Variable Interest Rate:** See **Adjustable Rate Mortgage**.
- Variable Rate Mortgage:** A mortgage in which the interest rate rises and falls with changes in prevailing interest rates, 9-12.
- Variance:** Allows an individual landowner to vary from zoning requirements, 13-3.

Vendee: The buyer; the one to whom title is transferred.

Vendor: The seller; the person who transfers title.

Vested: Un-revocable ownership rights bestowed upon someone.

Vicarious Liability: A legal theory in which a principal may be held liable for the acts of his agent and sub-agents. See *Respondent Superior*.

Victorian Type: 5-11.

Void: Not enforceable; to cancel.

Void Contract: An unenforceable contract by either party, 7-2.

Voidable: Capable of being voided by one party.

Voidable Contract: A contract which is binding upon one party but may be rescinded by the other, 7-3, 7-4; grounds for rescission of, 7-3.

Voluntary Alienation: Transfer of title to another by deed or will, 2-2.

Voluntary Lien: A lien placed on property with consent of, or as a result of voluntary act of the owner, such as a mortgage.

Voucher System: Requires contractor or borrower to pay own bills and submit receipts to lender for reimbursement, 8-14, 8-15.

W

Waiver: The act of surrendering or giving up a right, 7-9.

Warehousing: the intentional or voluntary relinquishment of a known right.

Walk-Through: Buyer's right to inspect the property prior to closing, 17-2.

Warranty Deed: A deed which usually contains the covenants of seisin, quiet enjoyment, clear title, further assurance and promise to defend the title, also called a **general warranty** deed, 2-4.

Warrant System: Lender directly pays bills presented by various suppliers and laborers on project, 8-15.

Waste: Abuse or destructive use of property; commissive or passive, 10-5.

Water Rights: See *Riparian Rights*.

Water Table: Distance above or below ground at which natural level of water is located.

Wear and Tear: Gradual physical deterioration.

Will: A formal document designating the distribution of an estate, 2-4.

Worker's Compensation Insurance: Reimburses employees for injuries sustained in the course of their

employment, 18-5, 18-6.

Wrap-Around Mortgage: A second mortgage which includes the mortgagee's obligation to pay the first, 8-14, and 9-14.

Writ of Execution: Court order to remove a tenant, 6-2.

Y

Yankee Classic: 5-11.

Yield, Effective: The rate of return expected or earned on an investment, 9-2.

Z

Zoning: Public regulations that control the specific use of land, 13-6; enforcement, 13-3; land use restrictions, 13-6; city planning, 13-1; board of appeal, 13-3; subdivisions, 13-4; permit, 13-3; spot zoning, 13-3, special, 13-3; downzoning, 13-4..

Zoning Map: A map of a community showing zones of use permitted by zoning ordinances, 2-14.

Zoning Ordinance: A municipal regulation controlling the character and use of property, 13-7.

