

FLORIDA REAL ESTATE GUIDE

Sales Associate
Pre-License Text Book
Approved by the Florida Real Estate Commission

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PREFACE

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

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

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

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

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

David Collins

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CHAPTER ONE: INTRODUCTION TO THE REAL ESTATE BUSINESS



TALK THE TALK

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

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

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

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

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

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

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

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

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

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

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

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

AREAS OF CRITICAL CONCERN

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

1 **I. INTRODUCTION**

2 A. Overview: In Florida, the Florida Real Estate Commission (commonly
3 referred to as FREC) oversees and regulates the real estate license law and licensed
4 individuals who participate in the real estate business. FREC defines the term "real
5 estate business" as a vocation in which real property forms the stock in trade that is
6 bought, sold, leased, or rented.
7

8 Real estate represents a very large portion of the overall wealth of our
9 country, particularly in the State of Florida. Property values, mortgage markets, and
10 investment opportunities evidence the role of real estate and its impact in the nation's
11 economy. Other types of businesses and industries are also dependent upon real
12 estate activities, such as property management, appraisers, banking industry,
13 development, and construction businesses.
14

15 B. Real estate is a business of many specializations: A professional real
16 estate licensee should possess specialized knowledge in the following areas:
17

18 1. Property Transfer: A licensee needs to understand the
19 details of transferring legal title from one party to another. An interest in real
20 property can be transferred by deed, will, lease, or other legal methods.
21 Additionally, a licensee needs to understand the entire process from creation
22 of a real estate contract through final closing of title.
23

24 2. Market Conditions: A licensee should understand current
25 interest rates and the availability of financing, the relationship between real
26 estate supply and demand in his or her particular market area, and the history
27 of sold properties. The licensee should also have an understanding of future
28 market trends that will be the driving force of tomorrow's sales.
29

30 3. Sales and Marketing: Being a professional and effective real
31 estate licensee requires understanding the significance of past sales of
32 similar properties. By understanding past sales, licensees can establish a
33 price range that will ideally result in properties being bought and sold in the
34 shortest amount of time and for the best possible price. Once a licensee has
35 established the proper market value of a home (listing price), the next step is
36 to procure a purchaser through the various marketing techniques available.
37 These techniques include drafting effective advertisements, participating in
38 the Multiple Listing Service (MLS), offering open house presentations, and
39 effective showing of real estate to potential purchasers. There is an old
40 saying in the real estate business: "You have to circulate to percolate."
41
42

43 **II. BROKERAGES**

44 A **REAL ESTATE BROKERAGE** is a business that performs the actual day-
45 to-day operations of assisting the general public in one or more of the various real
46 estate areas and specialties. They include:
47
48
49

1 A. Sales and Leasing: For most Real Estate Brokerages, sales and
2 leasing comprise the bulk of their business activities. All Real Estate Brokerages
3 must have at least one active broker to be responsible for the daily activities of the
4 brokerage. Although many sales associates may work for a brokerage, it is
5 ultimately the broker who actually supervises and is legally responsible for all actions
6 of the sales associates and office employees.
7

8 The licensed associate is an agent of the broker and must not be directly
9 employed by members of the public. It is actually the broker who has the necessary
10 contractual relationship between the brokerage and a buyer or seller. It is important
11 to remember that although a sales associate works directly with the public, he or she
12 does this on behalf of the broker. Individuals working in a real estate brokerage
13 should possess expert information about real estate that is not commonly known by
14 the general public, for instance preparing contracts and understanding other complex
15 documents such as closing statements and mortgages.
16

17 Generally speaking, it is more efficient for a member of the public to employ a
18 real estate professional because the process of finding the right property to buy or
19 the process of selling and finding a qualified buyer is time consuming. A licensee
20 deals with these complex matters on a daily basis and, therefore, is better prepared
21 to make sales and closings a smoother process.
22

23 Many successful real estate licensees have chosen to specialize in a
24 particular area of their community, known as a **FARM AREA**. By utilizing the
25 process known as farming, licensees become familiar with the properties and the
26 property owners. Due to their continuing contact with the Farm Area, licensees are
27 prepared to immediately provide marketing and sales assistance upon request.
28 Being specialists in a particular neighborhood also allows the licensees to market
29 their personal expertise in addition to marketing the subject properties.
30



31 It is advisable that real estate licensees contact their clients
32 within a reasonable time after a closing. This type of contact, known as a
33 **FOLLOW-UP**, will promote goodwill between the client and the licensee and help
34 ensure client satisfaction.
35
36
37

38 There are five major areas of sales that a licensee may specialize in:
39

40 1. Residential: Defined as facilities where people live and
41 reside. The term "residential property" includes single-family homes,
42 condominiums, duplexes, and apartment complexes. The majority of real
43 estate licensees specialize in the sale and purchase of owner-occupied
44 residential properties.
45
46
47
48
49

1 2. Commercial: Practicing in commercial investment real estate
2 usually requires expert knowledge in investment analysis and cash flows.
3 These properties include shopping centers, warehouses, office buildings, and
4 others. Licensees should be cautious about representing themselves as
5 experts in this area unless properly qualified.

6
7 3. Industrial: Includes properties located in industrial parks or
8 properties otherwise zoned for industrial use, such as manufacturing and
9 distribution.

10
11 4. Agricultural: Includes farms and other agricultural land such
12 as citrus groves and timberland operations.

13
14 5. Businesses: Also called business brokerage or **BUSINESS**
15 **OPPORTUNITY BROKERAGE**, this area specializes in the marketing and
16 sales of up and running businesses (going concern operations). An
17 understanding of both tangible assets (e.g. inventory) and intangible assets
18 (e.g. goodwill or business reputation) is required.

19
20 B. Property Management: **PROPERTY MANAGEMENT** is defined as
21 the management of properties owned by others for compensation. A property
22 manager's goal is to generate the greatest amount of net income while at the same
23 time maintaining the property in good condition. Typically, a property manager will
24 be responsible for locating tenants, collecting rent, providing maintenance, and
25 handling landlord/tenant relationships. Property managers are paid a fee for their
26 services, typically a percentage of gross rent.

27
28 Recently, property management has become a growing industry in Florida
29 due to the increase of **ABSENTEE OWNERS** (individuals who own the subject
30 property but do not personally manage or reside on the property). Additionally,
31 property management has become popular because of the complex nature of
32 investment real estate.

33
34 C. Property Valuation: The process of estimating the value of real estate
35 is accomplished through the preparation of an **APPRAISAL**. The majority of
36 appraisals are performed at the request and insistence of mortgage lenders who
37 require an appraisal before they will approve a mortgage loan. Mortgage lenders
38 must have reliable assurances that the value of the property will provide sufficient
39 collateral (security) for the mortgage loan.

40
41 Although appraising is still considered to be a service of real estate, only
42 individuals who are state certified or licensed appraiser can perform this service for a
43 fee for banks. It is permissible for real estate licensees to provide valuation services,
44 but they must not misrepresent themselves as being either a state certified or
45 licensed appraiser.

46
47 **The UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL**
48 **PRACTICE (USPAP)** is the body of rules and guidelines that must be followed by
49 appraisers. Failure to abide by USPAP regulations when performing an appraisal
50 could subject the appraiser to disciplinary sanctions.

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

14
15 Appraisers are compensated on a flat-fee basis depending upon the difficulty
16 of their task and the amount of time involved in the appraisal's preparation. Pursuant
17 to USPAP ethics rules, appraisers are not compensated on a percentage of the
18 subject property's value to avoid a conflict of interest situation.

19
20 D. Financing: Financing is the business of providing funds for real estate
21 transactions. The majority of real estate transactions require the buyer to obtain
22 financing in order to have the necessary funds to purchase. There are several major
23 sources of lendable funds for real estate financing including commercial banks,
24 savings and loan associations, mortgage bankers, credit unions, and life insurance
25 companies. Licensees should have a general understanding of mortgage lending
26 practices in order to best serve their clients.

27
28 The Mortgage Brokerage Business is a separate industry that requires a
29 separate and distinct license. Mortgage brokers and mortgage bankers must be
30 licensed in the state of Florida.

31
32 E. Counseling: Real estate counseling has become an important part of
33 the real estate industry due to the complex nature of large scale commercial and
34 investment real estate. A Real Estate Counselor acts as a consultant by performing
35 research on the subject real property and its community location and making
36 recommendations about the subject property's ultimate value. Real Estate
37 Counselors are typically paid either on an hourly basis or a pre-determined fee based
38 upon the nature of the job and the counselor's experience and qualifications.
39 Typically, Real Estate Counselors will have extensive amounts of education,
40 knowledge, and, above all else, an abundance of experience.

41 42 43 **III. DEVELOPMENT AND CONSTRUCTION**

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

47
48 A. Land Acquisition: The first step in the process of development and
49 construction is to locate and acquire suitable land. In order for new development to
50 occur, land must be available at a reasonable price and has the capability of being

1 developed. Developers should always consider current zoning laws and
2 governmental planning policies before acquiring land.

3
4 B. Subdivision and Development: The next step in development and
5 construction is the process of preparing the land site by subdividing the parcel into
6 individual, smaller parcels. The developer will also typically install infrastructure
7 which is defined as the sewer, water, electrical, streets, and storm drains necessary
8 for the support of a development.

9
10 C. Subdivision Plat Map Recording: Prior to actual development and
11 construction, developers must submit a **SUBDIVISION PLAT MAP** of the proposed
12 project to the applicable local government. This Subdivision Plat Map, which must be
13 approved by the local government, will identify where streets and lots will be located.
14 Once approved, the Subdivision Plat Map is recorded in the public records of the
15 county where the subject property is located.

16
17 D. Dedication: Frequently after a development is completed, a
18 homeowner's association is charged with maintaining streets and other common
19 facilities. However, in some instances, the developer transfers ownership of the
20 streets and utilities to the applicable local government through the process of
21 **DEDICATION**. Afterwards, the local government is then responsible for maintenance
22 and upkeep.

23
24 E. Construction: There are three types of residential construction with
25 which licensees should be familiar:

26
27 1. Speculative: Constructing a speculative (spec) house in a
28 type of development wherein the builder actually owns the land, constructs a
29 house to the builder's tastes and satisfaction, and then offers the completed
30 construction for sale to the general public.

31
32 2. Tract: Tract house construction is a type of spec construction
33 which involves some input from the Buyer for design and layout of a particular
34 floor plan or model previously chosen by the developer. Typically, a buyer
35 will select his or her lot, and then choose from a number of floor plans that
36 have been approved for the particular subdivision.

37
38 3. Custom: Custom home construction is a type of development
39 which provides for the builder to consult with a landowner and construct a
40 home in accordance with the landowner's wishes and designs.

41 42 43 **IV. THE ROLE OF GOVERNMENT**

44 The role of government always impacts the way we do business, and real
45 estate is no exception. There are three entities of government which influence real
46 estate decisions:

47
48 A. Local Government: Without question, local government is the most
49 prominent form of governmental regulation concerning real estate. Local
50 governments implement zoning laws, building codes, and establish property taxes

1 through authority known as Police Powers. The local government is authorized to
2 enact laws to protect the health, safety, and welfare through its use of Police Powers.

3
4 B. State Government: The State of Florida has implemented many laws
5 protecting our environment and waterfront properties. The Department of
6 Environmental Protection (DEP) is the leading governmental agency in this area.

7
8 C. Federal Government: There are various federal agencies and
9 regulations that influence real estate ownership. They include the Department of
10 Housing and Urban Development (HUD), the Department of Veterans Affairs (VA),
11 the Federal Housing Administration (FHA), and Federal Reserve System (the "Fed").
12

13 14 **V. PROFESSIONAL ORGANIZATIONS**

15 Real estate licensees have the opportunity to join various real estate trade
16 organizations such as the National Association of REALTORS® (NAR), the Florida
17 Association of REALTORS® (FAR), and their local board association. Licensees are
18 prohibited from using the term REALTOR® unless they are current members in good
19 standing with local, state, and national associations of REALTORS®.
20

21 The National Association of REALTORS® (NAR) has established and
22 published a code of ethics which sets forth high standards of conduct that should be
23 followed by all of its members.
24



25 **SUMMARY**

- 26 ➤ The various activities of a real estate brokerage include sales and
27 leasing, property management, property valuation, financing, and
28 counseling.
- 29 ➤ The five major areas of sales specialty include residential,
30 commercial, industrial, agricultural, and businesses.
- 31 ➤ Property management has become important in Florida due to an
32 increase in absentee ownership.
- 33 ➤ Comparative Market Analysis, although an estimate of a property's
34 value, differs from a true appraisal in its complexity and depth. Real
35 estate licensees perform CMA's rather than appraisals.
- 36 ➤ Three phases of development and construction involve [1] land
37 acquisition, [2] subdividing and developing, and [3] construction.
- 38 ➤ In speculative building, the builder builds a home on his own land in
39 hopes of selling it. In custom building, on the other hand, the builder
40 builds a pre-arranged home on an owner's property.
- 41
- 42
- 43
- 44
- 45
- 46



1 **CHAPTER ONE QUIZ**

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

- 6
7 A. Custom
8 B. Tract
9 C. Speculative
10 D. Co-op
11

12
13
14 2. A local government acquires ownership of streets and other infrastructure
15 (e.g. storm sewers) and thereafter becomes responsible for maintenance of those
16 acquired items through the process of:

- 17
18 A. Dedication
19 B. Police Power
20 C. Eminent Domain
21 D. Condemnation
22

23
24
25 3. Sales associate Tom decides to focus primarily on selling properties located
26 in his own residential neighborhood. He constantly reviews current information about
27 past sales and present homes for sale. He tries to get new clients by sending them
28 direct mail information about the availability of his services. Tom is developing sales
29 and marketing skills through which type of procedure?

- 30
31 A. Farming
32 B. Exclusive right to sell
33 C. Mass media
34 D. Multiple Listing Service
35

36
37
38 4. Prior to constructing a subdivision, a developer must submit which of the
39 following for approval to the local government:

- 40
41 A. Subdivision Plat Map
42 B. Restrictive covenants
43 C. Topographical survey
44 D. Phase I soil test
45
46
47

CHAPTER ONE: INTRODUCTION TO THE REAL ESTATE BUSINESS

- 1 5. All of the following are sources of funds available for mortgage lending
2 except:
3
4 A. Life insurance companies
5 B. Commercial banks
6 C. Credit unions
7 D. Federal Reserve System
8
9
10
11 6. Is it permissible for a licensed sales associate to perform a CMA for a fee?
12
13 A. Yes, provided the sales associate calls it an "appraisal"
14 B. Yes, although it is usually performed as a marketing courtesy
15 C. No, the service must be done for free
16 D. No, only licensed appraisers can perform an appraisal for a fee
17
18
19
20 7. An individual who owns rental real estate in a location other than where they
21 reside is known as
22
23 A. prospect
24 B. absentee owner
25 C. property manager
26 D. investor
27
28
29
30 8. If an appraiser was paid on a percentage basis (for example, 1% of the
31 appraised value), how could this result in a conflict of interest?
32
33 A. The appraiser would only appraise properties that were very
34 expensive.
35 B. Payment on a percentage basis could lead to price fixing.
36 C. The appraiser might be more inclined to inflate the value of the
37 property to increase the appraisal fee.
38 D. Paying an appraiser on a percentage basis is not a conflict of interest.
39
40
41
42 9. The Florida state agency that is primarily involved with issues of real estate
43 development on coastal lands is:
44
45 A. Department of Business and Professional Regulation
46 B. Florida Real Estate Commission
47 C. Secretary of State
48 D. Department of Environmental Protection
49
50

CHAPTER ONE: INTRODUCTION TO THE REAL ESTATE BUSINESS

- 1 10. Uniform Standards of Professional Appraisal Practice (USPAP) must be
2 adhered to when the appraiser prepares which of the following:
3
4 A. Appraisal
5 B. Comparative Market Analysis
6 C. Survey
7 D. Investment Analysis
8
9
- 10 11. Which type of government is responsible for enacting zoning laws?
11
12 A. Local
13 B. State
14 C. Federal
15 D. The United Nations
16
17
- 18 12. All of the following are major areas of sales specialization except:
19
20 A. Industrial
21 B. Agricultural
22 C. Condominium
23 D. Residential
24
25
- 26 13. A supported, defended estimate of the value of property is known as:
27
28 A. Comparative Market Analysis
29 B. Dedication
30 C. Appraisal
31 D. Mortgage
32
33
- 34 14. A real estate counselor:
35
36 A. Is typically paid on a commission basis
37 B. Must have a college degree to be qualified
38 C. Acts as a consultant by performing research on the subject real
39 property
40 D. Usually holds a broker's license
41
42
- 43 15. Laws enacted to protect the public health, safety, or welfare are established
44 through authority known as:
45
46 A. Caveat Emptor
47 B. Police Powers
48 C. Res Judicata
49 D. Eminent Domain

1

CHAPTER TWO: REAL ESTATE LICENSE LAW AND QUALIFICATIONS

2

3



4

TALK THE TALK

5

Adjudication Withheld: When a criminal final judgment is withheld or not recorded in public record

6

7

Broker: One who is licensed by the State of Florida to carry on the business of dealing in real estate; a broker may receive a commission for his or her part in bringing together parties in a real estate transaction

8

9

10

Broker Associate: An individual qualified to be issued a broker's license but who operates as a sales associate in the employ of another

11

12

Caveat Emptor: "Let the buyer beware"

13

Compensation: Any form of remuneration, payment, or value

14

Florida Resident: A person who has resided in Florida for at least four months, or a person who is residing in Florida with an intent to remain for at least four months

15

16

License: A document issued by the Department of Business and Professional Regulation which certifies that the licensee is or was duly licensed on the effective date shown

17

18

Nolo Contendre: A plea of no contest entered in a criminal court of law

19

20

Prima Facie Evidence: Evidence that is valid and admissible on its face requiring no further proof of authenticity

21

22

Real Estate Services: Buy, advertise, rent, sell, auction, lease, and exchange (BAR SALE)

23

24

Registration: Authorization by the state to place an applicant on the register (record) of officially recognized individuals and businesses

25

26

Sales Associate: A licensed individual who, for compensation, is employed by a broker or owner/developer

27

28

29

AREAS OF CRITICAL CONCERN

30

31

32

- Identify the qualifications for a sales associate's license

33

- Describe the application requirements for licensure including nonresident application requirements

34

35

- Understand the importance of responding accurately to questions on the license application and understand the DBPR background check procedure

36

37

- Describe the education requirement for pre- and post-license education and continuing education

38

39

- Distinguish among the various license categories

40

- Identify services of real estate

41

- Recognize exemptions from real estate licensure

42

- Distinguish between registration and licensure

43

- Understand mutual recognition agreements

1 **I. HISTORY AND OBJECTIVES OF REAL ESTATE LICENSE LAWS**

2 In 1923, Florida enacted real estate license laws that were under the
3 jurisdiction of the courts. Two years later, the Florida Real Estate Commission was
4 created to give substance and direction to those laws. In 1941, Florida Statute,
5 Chapter 475, entitled the "Real Estate License Law", was created as a consumer
6 protection legislation. Under Chapter 475, the Florida Real Estate Commission
7 (FREC) was empowered to "protect the public and ensure minimal competence of
8 real estate practitioners."
9

10 Initially, Florida law adopted the philosophy of **CAVEAT EMPTOR** ("let the
11 buyer beware"), meaning that every buyer and seller was responsible for their own
12 wisdom and knowledge in real estate transactions. That policy later evolved into a
13 consumer protection attitude with the advent of requiring sellers (and their agents) to
14 disclose all known property defects in a residential transaction. The Florida Supreme
15 Court ruled in Johnson v. Davis that if a seller knows of a hidden material defect in a
16 residential transaction they must disclose this to a potential buyer prior to entering
17 into a contract to purchase.
18

19 Also involved in the governmental regulation of real estate practitioners is the
20 Florida Department of Business and Professional Regulation, Division of Real Estate.
21 Actually, the DBPR regulates all licensed professions throughout the state. The
22 Division of Real Estate (DRE) is part of the DBPR and works in conjunction with
23 FREC. Additionally, the DRE acts as a support system to the members of FREC.
24
25

26 **II. LICENSE CATEGORIES**

27 There are two types of real estate **LICENSE** issued in Florida. One type is
28 the **BROKER** license which entitles an individual to perform real estate services, for
29 compensation, for the public. The other type of real estate license is the **SALES**
30 **ASSOCIATE** license which entitles the licensee to perform real estate services, for
31 compensation, for the public, but does so under the direct supervision and control of
32 an active broker or owner/employer (developer). A sales associate can only place
33 his or her license with one employer at a time.
34

35 The sales associate license and the broker license are the only types of
36 licenses that are available. A real estate license, registered with the Division of Real
37 Estate, affords the privilege to practice real estate in Florida.
38

39 A **BROKER ASSOCIATE** is an individual who has a broker's license but has
40 chosen to work in real estate under the direct supervision and control of a broker or
41 owner/employer. Broker Associate is not a license rather a registration status.
42
43
44
45
46
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48
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50

1 **III. GENERAL LICENSURE PROVISIONS**

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

- 4
- 5 ✓ Be eighteen years of age or older
 - 6 ✓ Possess a high school diploma or equivalent (G.E.D.)
 - 7 ✓ Be honest, trustworthy, truthful, of good character, and have a
8 reputation of dealing fairly with others
 - 9 ✓ Disclose if under investigation for a crime, convicted of a crime or ever
10 entered a plea of nolo contendere (no contest)
 - 11 ✓ Disclose if ever declared mentally incompetent
 - 12 ✓ Disclose if he/she has ever had an alias or been known by any other
13 name
 - 14 ✓ Disclose if another state has either denied a real estate license
15 application or if such a license has ever been suspended or revoked
 - 16 ✓ Disclose if a license or registration to practice any regulated
17 profession has ever been denied
 - 18 ✓ Disclose if the applicant has been found guilty of any practice or
19 conduct that would have been grounds for suspension or revocation
20 under Florida Real Estate License Law (F.S. 475)

21

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

29

30

31 **IV. APPLICATION REQUIREMENTS**

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

39

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

47

48 Please note that there is no **FLORIDA RESIDENCY** or U.S. citizenship
49 requirement for an applicant. A non-resident applicant is required to be

1 knowledgeable in Florida real estate law, statutes, and administrative rules. They
2 must meet all educational and testing requirements as prescribed by Florida Statute.

3
4 Certain individuals are exempt from the requirement to attend a pre-license
5 class. Those types of individuals include:

- 6
- 7 1. College graduates in real estate (4 year degree or more)
- 8 2. Out-of-state licensees applying for a Florida real estate license under
- 9 mutual recognition procedures.
- 10
- 11

12 **V. SALES ASSOCIATE EDUCATION AND LICENSE REQUIREMENTS**

13 A. Pre-License Requirements: Sales associate applicants must
14 satisfactorily complete a FREC Course I which is a 63-hour sales associate pre-
15 license course. The pre-license course includes, but is not limited to, real estate law,
16 Florida real estate license law, principles and practices of real estate, and real estate
17 math. The pre-license course can be taken either through the internet (distant
18 learning) or in class. Students may not miss more than eight classroom hours in the
19 classroom presentation. Attorneys are exempt from taking the pre license course,
20 however are required to take the state exam.

21
22 A student/applicant must pass a 100-question final examination consisting of
23 45 questions on principles and practices, forty-five questions on real estate law, and
24 10 math questions. A grade of 70% or higher is necessary to satisfactorily pass the
25 examination. If the applicant does not attain a grade of se 70%or higher, the
26 student/applicant must wait at least thirty days before taking a different final
27 examination. If the student/applicant does not attain a grade of 70% or higher on the
28 second exam, the entire FREC Course I must be repeated.

29
30 Once the FREC Course I examination is passed, the student/applicant will
31 receive an end of course report which is valid for two years from the successful
32 completion date. If the student/applicant does not successfully complete the state
33 exam within that two-year period, the student/applicant must repeat the entire FREC
34 Course I. This report must be presented to the testing center at the time of
35 examination.

36
37 After receiving the end of course report (and notice of an approved
38 application), the student/applicant is qualified to take the state examination
39 administered by a private testing company. The student/applicant must arrange for
40 an appointment with a private testing company for a testing date. The state exam
41 contains 100 questions consisting of forty-five questions on principles and practices,
42 forty-five questions on real estate law, and ten math questions. The
43 student/applicant must receive a grade of 75% or higher to pass.

44
45 At the private testing center, the student/applicant will be directed to a user-
46 friendly computer based terminal. After a brief orientation, the student/applicant
47 should be quite comfortable with the testing equipment. The student will be given a
48 total of 3.5 hours to complete the examination.

49
50

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

5
6 B. Sales Associate Post-License Education Requirement: After
7 obtaining the initial sales associate license, the licensee must complete a 45-hour
8 post-license education course before the initial license expires. Failure to timely
9 complete and pass the post-license education course could result in the sales
10 associate's license being declared null and void when discovered by the Division.
11 The 14-hour Continuing Education is not required during the initial issue.

12
13 Every sales associate's license expires on either March 31st or September
14 30th, depending on when the state examination is passed. The initial license is valid
15 for a period of time greater than 18 months, but less than 24 months. For example, if
16 an applicant passed his or her state examination on July 1, 2015, the license would
17 expire on March 31, 2017 (22 months). Thereafter, each additional license period is
18 valid for a full two years (next expiration: March 31, 2019).

19
20 Once the applicant has passed the state examination, the DRE will issue the
21 initial license that contains an effective date (start date). The initial license will also
22 contain an expiration date (either March 31st or September 30th). The licensee must
23 successfully complete a 45-hour post license course before the initial license expires.
24 Post license courses can be taken through the internet or may also be attended in a
25 classroom setting and the student is allowed to miss up to 10% of the total classroom
26 hours. The student must pass an end-of- course final exam with a score of 75% or
27 better. If the student does not pass that exam, a period of thirty days must pass
28 before re-examination.

29
30
31 **VI. BROKER LICENSE REQUIREMENTS**

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

39
40 Broker applicants must complete the FREC Course II Broker Pre-License 72-
41 hour course. The FREC Course II may be started after 6 months of being an active
42 sales associate under the supervision of a broker. However, the state examination
43 can only be taken after complying with the 24-month experience requirement.
44 Attorneys are exempt from taking the pre license course, but must take the state
45 exam.

46
47 The end-of-course examination consists of 100 questions will be administered
48 and the student must score 70% or better to pass. A private computer-based testing
49 company administers the state exam that will consist of 100 questions. Students
50 must pass the state examination with a grade of 75%.

1
2 The state broker examination is graded immediately upon completion and the
3 applicant is notified of the results. If the applicant does not pass the examination,
4 arrangements must be made to retake the test at the applicant's convenience. The
5 applicant has the right to review only the incorrect questions and answers on the
6 examination.

7
8 When the broker license is issued, if that person is currently an active sales
9 associate, he or she can continue working under his or her current employer as a
10 broker associate without registering with the DBPR. Otherwise, any change of
11 license status will require the proper registration.

12
13 B. Broker Post-License Education Requirement: After obtaining the
14 initial broker's license, the licensee must complete sixty hours of post-license
15 education before the initial broker license expires. Failure to timely complete and
16 pass the post-license education course could result in the broker's license being
17 declared null and void when discovered by the Division.

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

25
26 Once the applicant has passed the state examination, the DBPR will issue the
27 initial license that contains an effective date (start date). The initial license will also
28 contain an expiration date (either March 31st or September 30th). The licensee must
29 successfully complete 60 hours of post-license education. The course work can be
30 done either through the internet or in class where the student is allowed to miss up to
31 10% of the total classroom hours. The student must pass an end-of-course final
32 exam with a score of 75% or better. If the student does not pass that exam, a period
33 of thirty days must pass before re-examination. The 14-hour Continuing Education is
34 not required during the initial issue of the new broker license.

35 36 37 **VII. MUTUAL RECOGNITION**

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

42
43 If the applicant moves to Florida before applying for a mutual recognition
44 status license, then the mutual recognition applicant no longer qualifies. However,
45 the applicant may obtain a Florida license under normal application and requirement
46 guidelines.

47
48 Florida has entered into mutual recognition with nine states: Alabama,
49 Georgia, Indiana, Mississippi, Nebraska, Tennessee, Arkansas, Oklahoma, and
50 Connecticut.

1 **VIII. THE LICENSE**

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

7
8
9 **IX. REGISTRATION**

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

18
19
20 **X. CONTINUING EDUCATION REQUIREMENT**

21 During the first renewal period after initial license issue, and all renewals
22 thereafter, the licensee is required to complete 14 hours of continuing education for
23 each 2-year license period thereafter. Attorneys, however, are exempt from the 14
24 hour continuing education requirement.

25
26
27 **XI. SERVICES REQUIRING REAL ESTATE LICENSURE**

28
29 **REAL ESTATE SERVICES** include the following (**A BAR SALE**):

- 30
31 1. **Appraising**
32 2. **Buying**
33 3. **Advertising**
34 4. **Renting** (or rental information list)
35 5. **Selling**
36 6. **Auctioning**
37 7. **Leasing**
38 8. **Exchanging**

39
40
41 Who must have a real estate license?

42
43 Answer: Anyone who performs

- 44
45 1. any service of real estate,
46 2. in the state of Florida,
47 3. for someone else, and
48 4. for compensation or the mere expectation of compensation
49

1 must possess a valid and current real estate license unless they are exempt by law.
2 Compensation can mean anything of value such as money, reimbursement of
3 expenses, or other consideration of value. If any of these four requirements are not
4 fulfilled then no real estate license is required. In addition, the unlicensed practice of
5 real estate is a 3rd degree felony.
6
7

8 **XII. EXEMPTION FROM LICENSURE**

9 Certain types of individuals are exempt from licensure although technically it
10 could be argued that they are performing real estate services for another, in the state
11 of Florida, for someone else, and for compensation.
12

13 Those types of exempt individuals include the following:
14

15 1. Any salaried employee of the owner of an apartment building
16 or complex when renting units from an on-site rental office and he or she is
17 not being paid a commission
18

19 2. A salaried manager of a condominium or co-operative when
20 leases do not exceed one year and he or she is not being paid a commission
21

22 3. Employees of the state of Florida when performing real estate
23 services for the state
24

25 4. Attorneys when performing duties within the scope of their
26 attorney-client relationship
27

28 5. Persons who have been given a power of attorney (attorney in
29 fact) are exempt for signing documents only
30

31 6. CPAs when performing duties that fall within the scope of their
32 respective profession.
33

34 7. Anyone who is court appointed
35

36 8. Persons who rent mobile home lots or recreational vehicle lots
37 in mobile home or travel trailer parks
38

39 9. An employee of a real estate developer when paid a salary
40 only and no commission
41

42 10. An employee of a corporation involved in buying or selling
43 company owned property as long as it is incidental to his or her employment
44

45 11. A partner in a real estate partnership who receives no more
46 than his or her normal pro-rata share of profits
47

48 12. Persons selling cemetery lots
49

CHAPTER TWO: REAL ESTATE LICENSE LAW AND QUALIFICATIONS

1 13. Television and radio announcers and persons in public
2 relations and advertising media provided the service performed is incidental
3 to their employment in advertising

4
5 14. Hotel and motel clerks for short-term rentals

6
7 15. Property managers may pay up to \$50.00 to unlicensed
8 individuals for rental referrals

9
10 16. Out of state brokers, provided they have an active broker's
11 license and do not come to Florida and participate in the transaction

12
13
14



15 **SUMMARY**

- 16
17
18 ➤ In order to be qualified as a sales associate, the applicant must meet
19 certain qualifications which include being eighteen years of age or
20 older, high school diploma or equivalent, and having good character.
21
22 ➤ An application must be filled out in proper form with proper fee. It is
23 important that an applicant respond accurately to questions about past
24 criminal activities.
25
26 ➤ Sales associates are required to complete a 63-hour pre-license
27 course and a 45-hour post-license course within the initial license
28 period. Brokers are required to complete a 72-hour pre-license course
29 and 60 hours of post-license education within the initial license period.
30
31 ➤ There are two types of licenses issued by the DBPR. They include a
32 sales associate license and a broker license. A person who is
33 registered as a broker associate possesses a broker's license but
34 chooses to work under a licensed broker in a sales associate's
35 capacity.
36
37 ➤ Licensure is a privilege. Registration is the process of placing
38 information on record with the DRE. Individuals are licensed; entities
39 and their representatives are registered.
40
41 ➤ Florida has entered into a mutual recognition agreement with a
42 number of states that allow licensees of those states (who reside in
43 those states) to obtain a Florida license of equal status by taking and
44 passing a 40-question law exam.
45
46
47



1 **CHAPTER TWO QUIZ**

- 2 1. An applicant must possess all of the following except:
3
4 A. Be eighteen years of age or older
5 B. Be a Florida resident
6 C. Have a high school diploma or equivalent
7 D. Possess good character
8
9
10
11 2. A fully completed application for a Florida real estate license is submitted to:
12 A. Florida Real Estate Commission
13 B. Department of Business and Professional Regulation
14 C. Florida Department of Law Enforcement
15 D. Florida Association of Realtors
16
17
18
19 3. All of the following are services of real estate except:
20
21 A. Mortgaging
22 B. Buying
23 C. Renting
24 D. Exchanging
25
26
27
28 4. What is the passing score for the final exam given for the FREC Course I?
29
30 A. 60%
31 B. 65%%
32 C. 70%
33 D. 75%
34
35
36
37 5. What is the minimum age for the issuance of a Florida real estate license?
38
39 A. 18
40 B. 20
41 C. 21
42 D. 22
43
44
45

CHAPTER TWO: REAL ESTATE LICENSE LAW AND QUALIFICATIONS

- 1 6. If Carla is issued a Florida real estate license on July 22, 2012, when will her
2 initial license expire?
3
- 4 A. March 31, 2014
5 B. July 22, 2014
6 C. September 30, 2014
7 D. March 31, 2015
8
9
10
- 11 7. How long is the license period for each license issued after the initial renewal
12 period?
13
- 14 A. six months
15 B. one year
16 C. two years
17 D. four years
18
19
20
- 21 8. Which of the following must be submitted with the Department of Business
22 and Professional Regulation application?
23
- 24 A. Testing fee
25 B. Passport style photographs
26 C. Application fee
27 D. Copy of driver's license
28
29
30
- 31 9. Shirley has failed the end-of-course exam for the FREC Course I. Which of
32 the following apply to Shirley's situation?
33
- 34 A. She must repeat the entire course.
35 B. She must retake the test within thirty days.
36 C. She must wait at least thirty days before retaking the test.
37 D. She is not qualified to receive a sales associate's license.
38
39
40
- 41 10. Which of the following is required before an applicant can be issued a Florida
42 real estate sales associate license?
43
- 44 I. Florida resident
45 II. U.S. citizen
46
- 47 A. I only
48 B. II only
49 C. I and II
50 D. Neither I nor II

CHAPTER TWO: REAL ESTATE LICENSE LAW AND QUALIFICATIONS

- 1 11. Once a student pass the FREC Course I, how long is that certificate good for?
2
3 A. one
4 B. two
5 C. three
6 D. four
7
8
9
- 10 12. What will happen if a Florida real estate licensee fails to timely complete the
11 post-license education requirement?
12
13 A. Automatic suspension
14 B. Cancellation
15 C. Null and void
16 D. Involuntary inactive
17
18
19
- 20 13. How long does a person have to obtain their license before an approved
21 application expires?
22
23 A. Two
24 B. Three
25 C. Four
26 D. Five
27
28
29
- 30 14. What is the experience requirement for a sales associate applying for a
31 Florida broker license?
32
33 A. Must have worked as a licensed sales associate for an active real
34 estate broker(s) for twenty-four months of the preceding five years
35 B. Must have worked for an active real estate broker for two year
36 C. Must have worked for either a broker or owner/developer for twenty-
37 four months of the preceding five years
38 D. Must have held an active sales associate's license for two year
39
40
- 41 15. Which of the following statements best describes who must hold a Florida real
42 estate license?
43
44 A. Anyone that wants to work for a broker
45 B. Anyone who performs any service of real estate, in the state of
46 Florida, for someone else, and for compensation, unless they are
47 exempt by law
48 C. Anyone who wants to sell real estate
49 D. None of the above

1 **CHAPTER THREE:**
2 **REAL ESTATE LICENSE LAW AND FREC RULES**
3



4 **TALK THE TALK**

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

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

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

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

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

19 **Void:** When a license is either revoked or expired

20 **Voluntary Inactive:** When a licensee chooses not to have an active license or files
21 the proper form with the DRE requesting inactive status
22
23
24

25 **AREAS OF CRITICAL CONCERN**
26

- 27 • Describe the composition, appointment, and member qualifications of the Florida
- 28 Real Estate Commission
- 29 • Understand the powers and duties of the Florida Real Estate Commission
- 30 • Distinguish between active and inactive license status
- 31 • Understand the regulations regarding involuntarily inactive status
- 32 • Explain the purpose of multiple and group licenses
- 33 • Distinguish between void and ineffective licenses
- 34 • Identify situations that cause a license to cease to be in force
35
36
37

38
39
40
41

1 **I. REGULATION BY THE DBPR**

2 The Department of Business and Professional Regulation (DBPR), under
3 Florida Statute Chapter 455 (F.S. 455), regulates most licensed professions
4 throughout the state of Florida. The chief administrator of the DBPR is the Secretary
5 of the DBPR who is appointed by the Governor. Contained within the DBPR are the
6 following divisions:
7

- 8 ■ Division of Technology, Licensure, and Testing
- 9
- 10 ■ Division of Regulation (legal and investigative authority)
- 11
- 12 ■ Division of Professions (regulates state boards and commissions)
- 13
- 14 ■ **Division of Real Estate** (provides support to FREC)
- 15

16 The Director of the Division of Real Estate is appointed by the DBPR
17 Secretary and is responsible directly to the Secretary. The main DBPR office is
18 located in Tallahassee, Florida, and the Florida Real Estate Commission is located in
19 Orlando, Florida.
20

21 Because real estate licensees are classified as a professional, they are
22 regulated by 455 F.S. (Professions) and 475 F.S. (Real Estate License Law).
23
24

25 **II. FLORIDA REAL ESTATE COMMISSION**

26 The Florida Real Estate Commission was created as a consumer protection
27 agency to ensure the minimal competence of real estate practitioners.
28

29 A. Composition: FREC is composed of seven members. By law, five
30 members of FREC must be real estate licensees and two members must be
31 unlicensed. Of the five licensed members, four (4) members must be licensed
32 brokers with at least five (5) years of experience as a broker. The other licensed
33 member must be a broker, broker associate, or sales associate with at least two (2)
34 years of licensed experience. At least one member of FREC must be at least 60
35 years of age.
36

37 FREC members are appointed to four-year terms but may not serve more
38 than two consecutive terms. Members are appointed by the Governor and confirmed
39 by the Florida State Senate. If the Senate rejects the Governor's appointment, the
40 Governor should make another selection. Each year, the members of FREC appoint
41 a chairperson and vice chairperson to oversee the activities of the Commission while
42 in session.
43

44 FREC members are not paid a salary, but they do receive \$50.00 per day
45 while conducting FREC business. In addition, FREC members are paid for their per
46 diem (per day) expenses. FREC meetings are held in Orlando once a month.
47 Minutes of all meetings are taken and kept by the DRE. All FREC meetings and
48 minutes of meetings are open to the public in accordance with Florida Sunshine laws.
49

CHAPTER THREE: REAL ESTATE LICENSE LAW AND FREC RULES

1 B. Powers and Duties: In general, FREC has three basic types of
2 powers and duties to implement and administer the real estate license law:
3

- 4 1. Executive Powers (to regulate and enforce)
- 5 2. Quasi-Legislative (to enact rules and regulations)
- 6 3. Quasi-Judicial (to determine violations and administer penalties)
- 7

8 More specifically, the FREC is empowered to do the following:
9

- 10 1. Adopt a Seal to authenticate official documents
- 11 2. Educate members of the profession
- 12 3. Enact rules and regulations, and decide questions of practice
- 13 4. Inspect and audit licensees and their records
- 14 5. Discipline licensees for violations
- 15

16 Therefore, any complaint with probable cause (alleging a criminal violation)
17 submitted to the Division of Real Estate must be promptly reported to the State
18 Attorney's Office for consideration of criminal prosecution. Additionally, FREC must
19 inform the Division of Florida Land Sales, Condominiums, and Mobile Homes when
20 disciplinary action is taken by FREC against any real estate licensee.
21

22 **III. DIVISION OF REAL ESTATE**

23 The Division of Real Estate (DRE) is a division of the Florida Department of
24 Business and Professional Regulation (DBPR) that is chiefly empowered to provide
25 administrative assistance and support to FREC. For example, DRE is empowered to
26 administer the license application and testing process. Additionally, the DRE is
27 responsible for maintaining records on all licensees and applicants.
28

29 Funding for the DRE is provided by funds generated from real estate license
30 applications, fees, fines, and publication sales. The DRE is staffed by employees of
31 the DBPR and are not appointees. The DRE works in conjunction with the Division
32 of Technology, Licensure, and Testing to supervise testing for all applicants and
33 licensees.
34

35 There is an application fee for sales associates and brokers that is paid
36 directly to the DRE. In addition, there is a testing fee paid to the company which
37 actually administers the test at various locations throughout the state of Florida.
38

39 The DRE has a very strict policy concerning any license obtained by fraud,
40 misrepresentation, or concealment. Any person obtaining a license in this manner
41 will most likely result in the license being revoked.
42
43
44
45
46
47

1 **IV. LICENSE ISSUES**



2 Every real estate license (and registration) expires on either March
3 31st or September 30th, depending on the license's effective date. Prior to
4 expiration, each licensee is expected to complete a renewal application and confirm
5 that all educational requirements have been met.
6

7 A. Active vs. Inactive: When an applicant passes the state examination,
8 the initial license status is voluntary inactive. In order to activate this new license, the
9 licensee must submit the proper form either at the time of testing at the testing site,
10 or his or her broker submits the proper form to the DRE. For a broker to become
11 active, he or she can either continue to practice under his or her current employer as
12 a broker/sales associate without submitting the proper form or if they choose to
13 change status to an active broker, by submitting a completed form with appropriate
14 information and signatures.
15

16 A license becomes active when all the necessary information and forms are
17 received by the DRE.
18

19 If a person's license is inactive, he or she is prohibited from performing real
20 estate services for a fee. A sales associate's active license becomes inactive if
21 either:
22

- 23 1. His or her license expires prior to proper renewal, or
- 24 2. Licensee requests inactive status by filing with the DRE
25

26 B. Voluntary vs. Involuntary: A sales associate may choose to have his
27 or her license converted to inactive status. To do so, the sales associate's broker of
28 record files the proper form, but the sales associate should continue to comply with
29 all education requirements, and pay the appropriate renewal fee. A licensee can
30 remain voluntary inactive indefinitely. Such a person is said to have his or her
31 license on **VOLUNTARY INACTIVE** status.
32

33 However, if a sales associate:

- 34 1. fails to submit a renewal application, or
- 35 2. fails to pay the appropriate renewal fee, or
- 36 3. does not complete 14 hours of continuing education, or
- 37 4. is registered with a broker whose license is suspended or revoked
38

39 his or her license automatically becomes Involuntary Inactive. An involuntary inactive
40 license under conditions 1, 2 or 3 can remain in effect for 2 years, after which time
41 the license becomes null and void.
42
43
44
45

CHAPTER THREE: REAL ESTATE LICENSE LAW AND FREC RULES

1 If a license is involuntary inactive under conditions 1, 2 or 3 the licensee may
2 elect to convert his or her license to active status as follows:

3
4 1. If the license has been Involuntary Inactive for 12 months or
5 less, then the licensee must submit the proper renewal form, pay the
6 appropriate fees (including late fee), and confirm that the continuing
7 education requirements have been fulfilled.

8
9 2. If the license has been Involuntary Inactive for more than
10 twelve months but less than twenty-four months, then the licensee must
11 submit the proper renewal form, pay the appropriate fees (including late fee),
12 and show completion of a 28-hour, in-class education (reactivation credit).

13
14 C. License Renewal Exception of Armed Forces Members: When a
15 licensee is in good standing with the DRE and is inducted into active military duty, all
16 renewals or license requirements are excused for the period of active duty and up to
17 an additional six months after active duty terminates.

18
19 In order for this exception to apply, the licensee must not actively participate
20 in real estate during the exemption period. Otherwise, all renewal requirements must
21 be fulfilled.

22
23 A licensee who is a spouse of a member of the Armed Forces of the U.S. is
24 exempt from all renewal requirements (provided the spouse is on active duty) and
25 remains exempt for an additional period of six months after the spouse's military
26 discharge. To be eligible for the exemption, the licensee must not engage in the
27 practice of real estate activities for profit and does not reside in Florida.

28
29 D. Types of License Status: Real estate licensees can have the
30 following types of status:

31
32 1. Effective: When the proper form has been submitted and
33 received by the DRE, the licensee has a current and valid (active or voluntary
34 inactive) license.

35
36 2. Ineffective: A person with an **INEFFECTIVE** license means
37 he or she holds a license but is prohibited from using it.

38
39 a. Cancelled: Anytime that a broker resigns, dies, or fails
40 to renew his or her license, the registration of all licensees
41 under that broker are cancelled if a replacement broker is not
42 appointed within fourteen days.

43
44 b. Suspended: A temporary penalty issued against a
45 licensee, not to exceed ten years. During the time of
46 suspension, the licensee may not practice real estate.

CHAPTER THREE: REAL ESTATE LICENSE LAW AND FREC RULES

- 1 c. Involuntary Inactive: When a broker has his or her
2 license either suspended or revoked, licensees registered with
3 that broker are **INVOLUNTARY INACTIVE**. Also, when a
4 licensee fails to properly renew his or her license, the license
5 will be involuntary inactive. A license can remain involuntary
6 inactive for up to two years, at which point it will become null
7 and void.
8
- 9 d. Cease to be in force: If a broker changes her or his
10 business address, or if a real estate school changes its
11 business address, or if a sales associate, broker associate, or
12 real estate instructor changes employer, the DRE must be
13 notified within ten days. If the DRE is not notified within ten
14 days, then the appropriate license shall **CEASE TO BE IN**
15 **FORCE**.
16
- 17 3. Void: When a license has either been revoked or has expired
18 it becomes **VOID**.
19
- 20 a. Revoked: A permanent loss of the license ordered by
21 FREC
22
- 23 b. Expired: Fail to properly renew license (also defined as
24 involuntary inactive). License becomes null and void two years
25 after original expiration date.
26
- 27 E. Reporting Requirements: A licensee must notify the DBPR/Division
28 of Real Estate within 30 days of being convicted of any crime. Failure to do so could
29 lead to revocation of the license.
30
- 31 F. Multiple Licenses: An active broker may be issued a **MULTIPLE**
32 **LICENSES** that allows a broker to be the broker of record for more than one
33 brokerage entity, provided the broker can demonstrate a genuine business need and
34 demonstrate that no conflict of interest exists among the brokerage entities.
35
- 36 G. Group License: Sales associates and broker associates who are
37 employed by an unlicensed owner of real estate (such as a developer) may be
38 issued a **GROUP LICENSE** which will entitle the licensee to work for separate sales
39 projects provided the licensee can demonstrate that the same person(s) is the driving
40 force behind both projects. A licensee possessing a group license is still considered
41 to have only one employer. Additionally, a person holding a group license can only
42 market the product owned by that unlicensed owner-employer.
43
- 44 H. Real Estate Schools: Real Estate Schools, and their instructors, must
45 be licensed. Recruiting activities by prospective employers during classroom hours
46 are prohibited. Real Estate Schools may not offer a refund to any student who does
47 not pass an examination.
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SUMMARY

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- The FREC is comprised of 7 members (2 laypersons and 5 licensees). The Governor appoints FREC members with confirmation by the state Senate for a 4-year term, not to exceed 2 consecutive terms.
- The powers and duties of FREC are administrative and include executive (to regulate), quasi-legislative (to make rules), and quasi-judicial (disciplinary).
- In order to perform any service of real estate in the state of Florida, for someone else, and for compensation, a person must have an active real estate license, unless they are otherwise exempt. If a person has an inactive license, whether voluntary or involuntary, he or she is prohibited from practicing real estate. Failure to timely renew a license can cause a person to become involuntary inactive for a period not to exceed two years.
- Active brokers can be issued a multiple license that, in effect, allows them to be the broker of record for more than one brokerage. Sales associates and broker associates working for an owner-employer can be issued a group license.
- A void license is a license that has been either revoked or has expired. An ineffective license is a license that is either cancelled, suspended, involuntary inactive (expired), or ceases to be in force.
- A license "ceases to be in force" when a broker or real estate school changes its business address, or if a real estate licensee or real estate instructor changes employer without notifying the DRE within ten days.
- A sales associate or broker associate's license becomes involuntarily inactive when the licensee fails to timely renew or an employing broker's license is suspended or revoked.



1 **CHAPTER THREE QUIZ**

2 1. How does a person become a member of the Florida Real Estate
3 Commission?

- 4
5 A. Appointed by the Florida Legislature
6 B. Elected by popular vote
7 C. Appointed by the Governor and confirmed by the Florida Legislature
8 D. Appointed by the Governor and confirmed by the Florida Senate
9

10
11
12 2. Criminal prosecution for any violation of Chapter 475 is handled by:
13

- 14 A. Florida Real Estate Commission
15 B. Division of Real Estate
16 C. State Attorney's office
17 D. Local Sheriff
18

19
20
21 3. Sales associate Donna has moved from Port St. Lucie, Florida, to Destin,
22 Florida and started working with a new broker. Which of the following statements is
23 correct?
24

- 25 A. Donna must inform the Division of Real Estate of her change of
26 address within ten days.
27 B. Donna must inform the Division of Real Estate of her change of
28 address within sixty days.
29 C. It is the responsibility of Donna's new broker to inform the Division of
30 Real Estate of Donna's new address.
31 D. Donna does not have to inform the Division of Real Estate if she files
32 for a new homestead.
33

34
35
36 4. Randy has just passed his state real estate exam. His initial license status
37 will be:
38

- 39 A. Active
40 B. Voluntary inactive
41 C. Involuntary inactive
42 D. Current
43
44
45
46
47

CHAPTER THREE: REAL ESTATE LICENSE LAW AND FREC RULES

- 1 5. If a license has been involuntary inactive for 15 months, what must the
2 licensee do in order to reactivate his or her license?
3
- 4 A. Submit the proper renewal form, pay the appropriate fees (including
5 late fee), and confirm that the continuing education requirements have
6 been fulfilled
7 B. Submit the proper renewal form and pay the appropriate fees
8 C. Submit the proper renewal form, pay the appropriate fees (including
9 late fee), and show completion of 28 hours, in-class education
10 reactivation credit
11 D. A license cannot be reactivated after 15 months
12
13
14
- 15 6. How many Florida Real Estate Commission members hold a real estate
16 license?
17
- 18 A. eight
19 B. seven
20 C. six
21 D. five
22
23
24
- 25 7. A license is ineffective when it is:
26
- 27 I. Null and Void
28 II. Suspended
29 III. Cease to be in force
30 IV. Revoked
31
- 32 A. I and II
33 B. I and III
34 C. II and III
35 D. I, II, III and IV
36
37
38
- 39 8. A license is void when it is:
40
- 41 I. Revoked
42 II. Suspended
43 III. Expired
44 IV. Cancelled
45
- 46 A. I and III
47 B. I, III, and IV
48 C. II and IV
49 D. III and IV
50

CHAPTER THREE: REAL ESTATE LICENSE LAW AND FREC RULES

- 1 9. Which of the following will allow a broker to be the broker of record for more
2 than one brokerage entity?
3
4 A. Group license
5 B. Multiple licenses
6 C. Complex license
7 D. Developer license
8
9
10
11 10. Which of the following is an example of the Florida Real Estate Commission's
12 quasi-legislative powers?
13
14 A. Make rules
15 B. Enforce rules
16 C. Discipline licensees
17 D. Regulate licensees
18
19
20
21 11. A group license
22
23 A. is used for large real estate brokerages
24 B. allows licensees to work for various properties owned and developed
25 by the same unlicensed individual(s), although the properties are
26 owned in the name of different interlocking or affiliated entities
27 C. allows brokers to be the broker of record for more than one real estate
28 brokerage
29 D. is available when a licensee chooses not to have an active license
30 and files a 400.5 form requesting a group license
31
32
33
34 12. Bill works for Broker Jeff, but Broker Jeff's license has just been suspended
35 for a year. Bill's license status will now be considered:
36
37 A. Cease to be in force
38 B. Void
39 C. Cancelled
40 D. Involuntary inactive
41
42
43
44 13. The Florida Real Estate Commission is located in:
45
46 A. Orlando
47 B. Miami
48 C. Tallahassee
49 D. Gulf Breeze
50

CHAPTER THREE: REAL ESTATE LICENSE LAW AND FREC RULES

- 1 14. If a brokerage has its only broker of record resign, how many days does the
2 brokerage have to appoint a replacement and avoid cancellation?
3
4 A. Fourteen days
5 B. Fourteen business days
6 C. Fifteen days
7 D. Fifteen business days
8
9
10
11 15. Tommy holds a voluntary inactive license while he is on active duty in the
12 U.S. Air Force and stationed in Guam. If Tommy wishes to practice real estate after
13 his discharge from the Air Force, he will be required to renew his license:
14
15 A. Every two years
16 B. Every four years
17 C. Within six months after discharge from active duty
18 D. Tommy is not required to renew his license
19
20

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2

1 **CHAPTER FOUR:**
2 **AGENCY RELATIONSHIPS, DUTIES,**
3 **AND DISCLOSURES**
4



5 **TALK THE TALK**

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

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

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

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

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

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

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

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

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

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

26 **Principal:** A party employing the services of a single agent

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

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

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

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

35 **Transaction Broker:** A broker who provides limited representation to either the
36 seller or the buyer or both in a real estate transaction (no fiduciary requirements)
37
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AREAS OF CRITICAL CONCERN

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

I. CONCEPT OF AGENCY

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

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

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

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

Today a Transaction Broker is permitted to work for both the buyer and the seller in the same transaction in a limited representative capacity. Dual Agency was repealed and is no longer a valid method of agency in Florida. The FREC has also authorized real estate brokers to work in a non-agency capacity. That is, a licensee can work with either the buyer or the seller and have no fiduciary duties at all.

CHAPTER FOUR: AGENCY RELATIONSHIPS, DUTIES AND DISCLOSURES

1 Agency relationships were first created under common law (case law) and
2 then later were also created under statutory laws enacted by the legislature.
3

4 By definition, the **PRINCIPAL** is the entity or person who has given power to
5 the **AGENT** to act on the Principal's behalf. The Agent is then authorized to perform
6 acts specified by the Principal. In real estate, a Principal is defined as the person
7 who has employed the broker to perform services of real estate in a fiduciary
8 capacity.
9

10 A **CUSTOMER** is a person who is or may be a seller or buyer of real property
11 and may or may not be represented by a licensee.
12

13 B. Types of Agents: A **SPECIAL AGENT** is an agent who is authorized
14 to perform only a specific duty or task. In real estate, a broker employed by a seller
15 to locate a buyer is considered to be a Special Agent.
16

17 If a person is given power of attorney, he or she is known as an attorney-in-
18 fact and is authorized to sign documents for someone else. A limited power of
19 attorney authorizes someone to sign only specific documents for a specific
20 transaction. The limited power of attorney is not an authorization to negotiate on the
21 principal's behalf, but only an authorization to sign documents. A general power of
22 attorney, however, authorizes the attorney-in-fact to sign documents, negotiate, and
23 use his or her best judgment while representing the principal.
24

25 A **GENERAL AGENT** is an agent who is authorized to perform duties and
26 tasks related to a specific business or employment. In real estate, a property
27 manager who handles leases, maintenance, and tenant relations for a Principal
28 would be considered a General Agent.
29

30 C. Fiduciary Relationship: Florida law defines **FIDUCIARY** as a broker
31 in a relationship of trust and confidence between the broker as the agent and the
32 seller or buyer as a Principal. A fiduciary relationship begins when a broker accepts
33 employment as a single agent with either the seller or the buyer, but not both at the
34 same time.
35

36 The concept of Caveat Emptor ("let the buyer beware") has been eliminated
37 to protect consumers from undisclosed material defects of a property. Now a seller,
38 or his or her agent, must disclose all known material defects to all potential buyers.
39

40 **SUB-AGENCY** can describe the relationship between two brokers who are
41 representing the same Principal (acting as co-brokers) and it can also describe the
42 relationship between a broker and a sales associate working for that broker; the
43 sales associate is considered to be a sub-agent of the broker.
44

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

1 **II. DISCLOSURE REQUIREMENTS**

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

8
9 The disclosure requirements do not apply to the following situations:

10
11 1. When a licensee knows that a potential seller or buyer is
12 represented by a single agent or transaction broker,

13
14 2. When an owner is selling new residential units built by the
15 owner and the circumstances or setting should reasonably inform the
16 potential buyer that the owner's employee or single agent is acting on behalf
17 of the owner, whether because of the location of the sales office or because
18 of office signage, placards, or identification badges worn by the owner's
19 employee or single agent,

20
21 3. Non-residential transactions or leasing of real property (unless
22 an option to purchase is given with a residential property lease),

23
24 4. A bona fide "open house" or model home showing that does
25 not involve eliciting confidential information, the execution of a contractual
26 offer or an agreement for representation, or negotiations concerning price,
27 terms, or conditions of a potential sale,

28
29 5. Auctions, and/or

30
31 6. When acting as a Transaction Broker.

32
33
34 **III. AUTHORIZED TYPES OF BROKERAGE RELATIONSHIPS**

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

40
41 A. No Brokerage Relationship: The first type of authorized relationship
42 is also called **NON-REPRESENTATION**. Although buyers and sellers have the right
43 to representation, they can simply choose to represent themselves or work with a
44 broker in a very limited capacity. Real estate brokers must provide a written "No
45 Brokerage Relationship Notice" to all persons being represented in this manner prior
46 to showing property. This form of representation carries the least amount of legal
47 liability for the broker. Although the customer is asked to sign the disclosure form,
48 his or her signature is not mandatory.

CHAPTER FOUR: AGENCY RELATIONSHIPS, DUTIES AND DISCLOSURES

1 The following duties are owed to the customer by the broker under the **NO**
2 **BROKERAGE** relationship:

- 3
- 4 1. Dealing honestly and fairly,
- 5
- 6 2. Disclosing all known facts that materially affect the value of the
7 residential real property which are not readily observable to the buyer, and
8
- 9 3. Accounting for all funds entrusted to the licensee.
- 10

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

17

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

- 20
- 21 1. To deal honestly and fairly,
- 22
- 23 2. Loyalty: To look out for the Principal's best interest over all
24 other parties, including the broker,
- 25
- 26 3. Confidentiality: Not to disclose any information that could be
27 harmful to the Principal, even after the relationship has terminated,
- 28
- 29 4. Obedience: To obey all lawful instructions or otherwise resign,
- 30
- 31 5. Full Disclosure: Disclose all facts and rumors related to the
32 property or a possible sale,
- 33
- 34 6. Accounting for all funds: Holding in trust all deposits given to
35 the broker,
- 36
- 37 7. Skill, care, and diligence, and
38
- 39 8. Present all offers and counteroffers (oral and written) in a
40 timely manner up until the time of closing, unless the Principal instructs
41 otherwise.
- 42

43 The Single Agent Notice Disclosure Form must be presented to a prospective
44 Principal before, or at the time of, entering into a listing agreement or an agreement
45 for representation or before the showing of property, which ever occurs first.
46 Although the customer is asked to sign the disclosure form, his or her signature is not
47 mandatory.

48

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

6
7 C. Transaction Broker Relationship: A **TRANSACTION BROKER** refers
8 to a broker who provides **LIMITED REPRESENTATION** (non-fiduciary) to a buyer, a
9 seller, or both, in a real estate transaction but does not represent either in a fiduciary
10 capacity or as a single agent.

11
12 The following duties are owed to the customer by the broker under the
13 **TRANSACTION BROKER** relationship:

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

29
30 Florida Statute presumes that a real estate broker is considered to be acting
31 as a transaction broker unless a written contract has been entered into as a single
32 agency or no brokerage relationship is agreed upon. Therefore, the Transaction
33 Broker Disclosure Notice is not required to be given. Licensees should be mindful in
34 their daily dealings that, although the notice is not required, they are still obligated to
35 the responsibilities.
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1 **IV. TRANSITION FROM SINGLE AGENT TO TRANSACTION BROKER**

2 A situation can arise that requires a broker, acting as a single agent for the
3 seller or buyer, to withdraw his or her representation as a single agent and assume
4 the duties of a transaction broker. This situation will typically arise when a broker (or
5 sales associate working for the broker) wishes to show a brokerage in-house listing
6 to a buyer who has entered into a Single Agent agreement with the same brokerage.
7 All single agents of a principal (both seller and buyer) must transition to transaction
8 broker. This will allow the broker to continue to work with both parties with limited
9 representation. However, under some circumstances a broker could represent one
10 as a Single Agent and the other in a No Brokerage Relationship.
11

12 To accomplish the transition, the single agent must provide the Principal with
13 the **CONSENT TO TRANSITION** form, which must be signed by the Principal to be
14 effective. The Consent to Transition is the only disclosure form that must be signed.
15

16 The Transaction Broker disclosure notice, given prior to signing the consent
17 to transition document, must be in writing and submitted to the Principal either as a
18 separate and distinct document or included as part of another document such as a
19 listing agreement or other agreement for representation.
20

21
22 **V. DESIGNATED SALES ASSOCIATE**

23 In a non-residential transaction, at the request of the buyer and seller, both of
24 whom must have at least one million dollars in assets, a broker may have two
25 separate sales associates under his or her employ acting as single agents for both
26 the buyer and seller. Under this arrangement, known as **DESIGNATED SALES**
27 **ASSOCIATE**, the broker participates as an advisor to the sales associates, not as an
28 advisor to the buyer and/or seller.
29

30 A Designated Sales Associate disclosure form must be provided to the
31 prospective buyer or seller prior to entering an agency relationship or before being
32 shown property, whichever occurs first.
33

34
35 **VI. DISCIPLINE FOR FAILURE TO ABIDE BY DISCLOSURE LAWS**

36 Failure to provide proper and timely disclosures could result in disciplinary
37 actions against the licensee that could result is suspension, revocation, fine, or other
38 disciplinary actions.
39

40
41 **VII. TERMINATION OF AGENCY RELATIONSHIP**

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

- 43 1. Performance of agent's duties,
- 44 2. Mutual agreement to terminate,
- 45 3. Expiration of agency agreement,
- 46 4. Agent resignation,
- 47 5. Revocation by the Principal,
- 48 6. Death of the Principal or agent,
- 49 7. Destruction of the property (including condemnation), and/or
- 50 8. Bankruptcy of Principal.

1 **VIII. RECORDKEEPING**

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

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9 **SUMMARY**

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- The Brokerage Relationship Disclosure Act applies to residential real estate sales only. A residential real estate sale is defined as improved residential properties up to four units, the sale of unimproved residential property intended for construction of up to four units, and the sale of agricultural property up to ten acres.
- When a broker represents a buyer or a seller with full fiduciary duties, a Single Agency relationship exists. When a broker works with a buyer, or seller, with limited representation, a Transaction Broker relationship exists. Buyers and sellers can choose to have no representation if they desire.
- Both Single Agents and Transaction Brokers have duties and responsibilities. However, only Single Agents have a duty of full disclosure, loyalty, obedience, and confidentiality (FLOC). Transaction Brokers have a duty of limited confidentiality.
- Broker disclosure forms must be given timely. The "No Brokerage Relationship Notice" must be provided before showing property. The "Single Agent Notice" must be provided before, or at the time of, entering into a representation agreement or before showing property, whichever occurs first. Although the customer is asked to sign the various disclosure forms, his or her signature is not mandatory except for the Transition to Transaction Consent Form which must be signed.
- Designated sales associates working for the same broker are allowed to represent buyers and sellers as single agents in a nonresidential transaction when the parties each have assets of one million dollars or more.
- Real Estate brokers are considered to be transaction brokers unless contracted otherwise.



1 **CHAPTER FOUR QUIZ**

- 2 1. Which type of agency is a fiduciary relationship?
3
4 A. Dual agent
5 B. Single agent
6 C. Transaction broker
7 D. Designated sales associate
8
9
10
11 2. Which of the following would be considered a residential sale?
12
13 I. Single family home
14 II. 5 acre farm
15 III. Vacant land zoned residential
16 IV. Duplex
17
18 A. I and III
19 B. I and IV
20 C. II and III
21 D. I, II, III, and IV
22
23
24
25 3. When should the "No Brokerage Relationship Notice" be given to a
26 prospective buyer or seller?
27
28 A. At first contact
29 B. Prior to showing property
30 C. Prior to showing property or entering into a contract, whichever
31 happens first
32 D. Prior to signing a contract
33
34
35
36 4. Broker Rita accepts a listing from Seller Bill who instructs Rita not to show his
37 house to any prospective buyers before 9:00 a.m. One day, Rita has a potential
38 buyer, but he wants to see the house at 8:00 a.m. because he is leaving town that
39 morning. How should Rita handle this situation?
40
41 A. Rita should inform the buyer that she can't show the house until 9:00
42 A.M.
43 B. Rita should show the house because it might lead to a full price offer.
44 C. Rita can show the house at 8:00 A.M. because Bill's instructions were
45 not in writing.
46 D. Rita can show the house at 8:00 A.M. if Bill is not at home.

CHAPTER FOUR: AGENCY RELATIONSHIPS, DUTIES AND DISCLOSURES

- 1 5. When should the Single Agent Notice be provided to a prospective seller or
2 buyer?
3
4 A. At first contact
5 B. Prior to showing property
6 C. Prior to showing property or entering into a contract, whichever
7 happens first
8 D. Prior to signing a contract
9
10
11 6. Which type of disclosure form must be signed?
12
13 A. The No Brokerage Relationship Notice
14 B. The Single Agent Notice
15 C. The Transaction Broker Notice
16 D. Consent to Transition to Transaction Broker
17
18
19 7. Which type of agency relationship has the duty of loyalty?
20
21 A. Single Agent
22 B. Transaction Broker
23 C. Dual Agent
24 D. All of the above
25
26
27 8. Which type of agency relationship has been repealed in Florida?
28
29 A. Dual agent
30 B. Special agent
31 C. General agent
32 D. Universal agent
33
34
35
36 9. Seller Carl has agreed to let Broker Stephen transition to transaction broker.
37 What document must Carl receive and sign in order for the transition to be completed?
38
39 A. No Brokerage Relationship Notice
40 B. Single Agent Notice
41 C. Transaction Broker Notice
42 D. Consent to Transition to Transaction Broker
43
44
45 10. Agency relationships can be terminated in all of the following ways except:
46
47 A. Agent resignation
48 B. Bankruptcy of the agent
49 C. Mutual agreement
50 D. Death of principal or agent
51

CHAPTER FOUR: AGENCY RELATIONSHIPS, DUTIES AND DISCLOSURES

- 1 11. In order for agents working for the same broker to operate as designated sales
2 associates, which of the following must apply:
3
4 A. The transaction must be non-residential
5 B. The buyer and seller must have assets of one million dollars or more
6 C. Both A and B
7 D. Neither A or B
8
9
10
11 12. A property manager is an example of what type of agent?
12
13 A. Dual agent
14 B. Special agent
15 C. General agent
16 D. Universal agent
17

1 **CHAPTER FIVE:**
2 **REAL ESTATE BROKERAGE ACTIVITIES**
3



4 **TALK THE TALK**

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

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

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

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

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

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

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

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

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

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

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

27 **Limited Liability Company:** A business entity that may operate a real estate
28 brokerage having characteristics similar to a partnership and a subchapter "S"
29 corporation

30 **Limited Liability Partnership:** An alternative, hybrid business entity with the
31 combined characteristics and benefits of both limited partnerships and "S"
32 corporations

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

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

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

41 **Sole Proprietorship:** Operating as an individual in business

42 **Trade Name:** Any adopted or fictitious name used to designate a business concern
43

1 **AREAS OF CRITICAL CONCERN**

- 2
- 3 • Identify the requirements for real estate brokerage office(s) and the types of
 - 4 business entities that may register
 - 5 • Explain what determines whether a temporary shelter must be registered as a
 - 6 branch office
 - 7 • List the requirements related to sign regulation
 - 8 • List the requirements related to the regulation of advertising by real estate brokers
 - 9 • Explain the term *immediately* as it applies to earnest money deposits
 - 10 • Describe the four settlement procedures available to a broker who has received
 - 11 conflicting demands or who has a good-faith doubt as to who is entitled to
 - 12 disputed funds
 - 13 • Explain the rule regarding the advertisement of rental property information lists
 - 14 • Describe the obligations placed on a sales associate who changes employers
- 15

16

17 **I. BROKERAGE OFFICES**

18 All sales associates must be registered and work from an active broker's

19 office or branch office. Sales associates may not work for themselves unless they

20 acquire a broker's license. Every active broker must have a registered office,

21 although the office does not have to be located in Florida. By definition an "office"

22 must be at least one enclosed room of stationary construction where negotiations

23 take place and records are kept.

24

25 Every brokerage office and branch office must have an official sign on or

26 about the entrance. The contents of the sign must include the following:

27

- 28 1. The name of the brokerage entity (if any)
 - 29 2. The name of the broker (as it appears on their license)
 - 30 3. The words "Licensed Real Estate Broker"
- 31

32

33 **WILDERNESS REALTY, INC.**

34 **DAVID CROCKETT**

35 **LICENSED REAL ESTATE BROKER**

36

37

38 Every word must be spelled out in its entirety, except that the word "Licensed"

39 or the word "Incorporated" can be abbreviated.

40

41 Sales associate's names are not required to appear on the official sign.

42 However, their names may appear on the official sign provided their names and

43 license types are separate and distinguishable from the broker.

44

45 The sign must be located where it is readily and easily visible to anyone

46 entering the office.

47

48

49

1 **II. BRANCH OFFICE**

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



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

11
12 Students should be careful not to confuse the concept "**temporary shelter**"
13 with the term branch office. A temporary shelter is a location where a broker
14 operates although it is used for other necessary functions. For example, a
15 construction trailer where agents talk to customers and give out brochures while at
16 the same time it is used to store construction equipment and other vital information
17 belonging to the contractor is not considered to be a branch office.

18
19
20 **III. ADVERTISING**

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

24
25 Anyone in a real estate office can advertise. However, all advertisement must
26 be under the direct control and supervision of the broker because advertising is
27 considered to be a broker activity. No matter who advertises from the real estate
28 office, the broker is ultimately responsible. In fact, any licensee who is involved in
29 false and misleading advertising can be held responsible.

30
31 All advertising must be worded so that a reasonable person knows that the
32 advertiser is a real estate licensee. The minimum requirement for any brokerage real
33 estate advertisement is that it must contain the name of the brokerage. Although a
34 sales associate's name is not required to appear in an advertisement, it may be
35 included provided the public is not led to believe that the sales associate is in fact the
36 broker. If a sales associate uses his or her name in an advertisement, it must utilize
37 his or her last name as registered with the Division of Real Estate.

38
39 Any advertisement that fails to indicate the licensed name of the brokerage
40 firm is considered to be a **BLIND ADVERTISEMENT** which is a violation of the real
41 estate license law therefore illegal.

42
43 If a brokerage elects to advertise on the internet, the advertisement must
44 contain a **POINT OF CONTACT INFORMATION** area. The Point of Contact
45 Information area must contain the name of the brokerage, address (both physical and
46 mailing), e-mail address, and telephone numbers.



1 Licensees need to be cautious of "cold-calling" individuals who have
2 registered their names on the "No Solicitation" list. Telephoning
3 individuals whose names appear on the list can subject the violator to
4 a fine. The U.S. Government as well as state governments have very
5 restrictive laws regarding "cold-calling." To be safe real estate
6 practitioners should refrain from this activity and use other techniques
7 to contact potential clients and customers.

8
9 B. State and Federal Do Not Call Lists: Licensees need to be cautious of
10 "cold-calling" individuals who registered their telephone number on a "No Solicitation"
11 list. There is a Federal list and a Florida list, each with different sets of rules.

12
13 1. Federal Law: In 2003, the Federal Communications Commission
14 (FCC) established a national "Do Not Call" Registry consisting of consumers
15 who do not want to be contacted by telemarketers. This list is managed and
16 enforced by the Federal Trade Commission. Violators can be fined up to
17 \$11,000.

18
19 2. Exceptions to Federal Rules: Political organizations, charities,
20 telephone surveys, and companies that have an existing business
21 relationship, consumers who have made an inquiry or submitted an
22 application may be telephoned within three months or transacted business
23 within the past eighteen months without penalty. However, if the consumer
24 requests the company not to call again, the request must be honored to avoid
25 future penalty.

26
27 3. Florida Law: The Federal Do Not Call law has not affected the
28 long-standing laws under Florida's "No Call" Rules. Consumers who have
29 placed their phone number on the Florida list may not be telephoned for
30 solicitation purposes unless the consumer is a former client. Also, For Sale
31 by Owners may be telephoned without penalty. Violators can be fined up to
32 \$10,000.

33
34 4. Calling For Sale by Owners: Calling a For Sale by Owner (FSBO)
35 for purposes of soliciting a listing is a violation of the Federal Law but not a
36 violation of Florida Law. The licensee should double check both lists since
37 most Florida consumers are registered on both the state and federal lists.

38
39
40 **IV. HANDLING OF DEPOSITS**

41 A. Earnest Money Deposits: From time to time, licensees are entrusted
42 with **EARNEST MONEY DEPOSITS** for the purchase of real estate. An **ESCROW**
43 **ACCOUNT** is a place where other people's money is kept for safekeeping. Escrow
44 accounts can be maintained at commercial banks, savings associations, credit
45 unions, title companies, and attorneys (with trust powers), all of which must be
46 located within the state of Florida. Real estate brokers are not required to have an
47 escrow account. However, if the broker elects to accept an earnest money deposit,
48 then that money must be placed in an escrow account and the broker may not
49 **COMMINGLE** the funds with the broker's regular business accounts. Otherwise, the

1 broker could be guilty of **CONVERSION**, defined as the unauthorized use or control
2 of another's property. A broker may maintain, however, up to \$5,000 of personal or
3 brokerage funds in a property management escrow account or up to \$1,000 in a
4 sales escrow account.

5
6 Although a broker only has to maintain one escrow account for all deposits
7 accepted, prudent business practice suggests that the broker should keep a separate
8 account for sales deposits and a separate account for lease deposits. Sales
9 associates cannot maintain an escrow account in their name. If an earnest money
10 deposit check is made payable to the sales associate, the sales associate should
11 endorse the check and deliver it to the broker "immediately."

12
13 Whenever a sales associate is given an earnest money deposit for
14 either the purchase or lease of real estate, that earnest money deposit must
15 be turned over to the broker or brokerage business "immediately." For sales
16 associates, immediately means by the end of the next business day
17 (Saturday, Sunday, and government holidays are excluded). If the check is
18 made out in the name of the associate, the associate can either ask that a
19 new check be written in the name of the broker or the associate can endorse
20 the check over to his or her broker "immediately." Once the broker is in
21 possession of the earnest money deposit, the broker must place those funds
22 into the escrow account "immediately", which for brokers means within 3
23 business days of the acceptance of the deposit by the sales associate.

24
25 For example, if a sales associate accepts an earnest money deposit on
26 Tuesday, June 5th, the sales associate must deliver the deposit to the broker no later
27 than 5:00 p.m., Wednesday, June 6th. Thereafter, the broker must deposit the check
28 into an escrow account no later than 5:00 p.m., Friday, June 8th.

29
30 When a Broker uses a title company or an attorney they have ten business
31 days to request a verification of deposit. This does not mean they are not required to
32 deliver into that escrow within 3-business days.

33
34 Licensees may accept post-dated checks with the seller's permission. A
35 sales associate should still deliver the post-dated check to his or her broker by the
36 end of the next business day. In addition, if a check is returned because of
37 insufficient funds and the broker followed the proper procedures, the broker has no
38 legal liability. The broker should, however, notify the seller and get direction.

39
40 B. Escrow Account Management: A broker's escrow account can either
41 be interest bearing or non-interest bearing. If the account is interest bearing, the
42 broker must receive specific instructions about who is entitled to the interest.
43 Surprisingly, the broker can receive the interest but only if all parties knowingly
44 consent to the arrangement. If the broker has an interest bearing escrow account, he
45 or she must also have a non-interest bearing account that deposits must go through
46 prior to delivery to the closing agent so that the interest accrual terminates on or
47 before the closing date.

1 C. Conflicting Demands for Deposit: Prior to the acceptance of a bona
2 fide offer to purchase real estate, the earnest money deposit (EMD) still belongs to
3 the buyer (offeror). At any time prior to acceptance, the purchaser has the right to
4 request a return of the deposit. Once the offer has been accepted and
5 communication of the acceptance has been received by the offeror, a contract is
6 formed and the earnest money deposit is beyond the control of either the buyer or
7 seller. The broker is literally holding the deposit "in trust" for both the buyer and
8 seller.

9
10 Even though a legal contract exists, sometimes the buyer and seller are
11 motivated to withdraw from the contract or attempt to claim that the other party has
12 defaulted. In the event both parties to the contract make a demand to receive the
13 deposit, the broker has **CONFLICTING DEMANDS** that give rise to an actual dispute
14 over who is to receive the money. The broker is not allowed to disburse the funds to
15 either party, regardless of the broker's opinion. There are two situations when a
16 broker may release escrow funds without the consent of all parties: (1) If a
17 condominium buyer has placed a deposit then the deposit can be refunded provided
18 that the rescission request has been made in a timely manner, and (2) If a buyer is
19 unable to obtain financing according to the terms of the contract.

20
21 If parties and the broker are unable to voluntarily resolve the dispute, the
22 broker must notify FREC within 15-business days from the date the last person
23 demands the deposit. In addition, the broker should continue attempts to voluntarily
24 resolve the dispute. However, Florida law allows the broker no more than 30-
25 business days from the date of the last demand to resolve the dispute otherwise one
26 of four settlement procedures must be taken. This rule only applies if the broker is
27 holding escrow and it is not being held by a title company or an attorney.

28
29 The four settlement procedures are:

30
31 1. Escrow Disbursement Order: Many brokers choose to
32 request that FREC provide guidance concerning the delivery of disputed
33 escrow money. FREC, through its legal counsel, will review the contracts and
34 other important documents and issue an Escrow Disbursement Order that the
35 broker must follow. Depending on the circumstances, FREC may elect not to
36 issue a requested Escrow Disbursement Order. In that event, the broker
37 must utilize one of the other settlement procedures. If the dispute is resolved
38 prior to the issuance of a requested Escrow Disbursement Order, the broker
39 must notify the commission within ten days of the resolution.

40
41 2. Mediation: A third-party mediator meets with the parties and
42 attempts to help them reach a voluntary settlement. If there is no mediated
43 settlement within ninety days (from the date of the last demand), another
44 settlement procedure must commence.

45
46 3. Arbitration: This process utilizes a trained arbitrator(s) to
47 consider the arguments of all parties and render a decision as to the
48 disposition of the deposit. Typically, the result of the arbitrator is binding.

1 Arbitration generally results in a quicker resolution than utilizing the court
2 system.

3
4 4. Litigation: The court system can be utilized to resolve the
5 party's dispute over the deposit through the legal procedure known as
6 **INTERPLEADER**. Basically, the case is filed with the court, the disputed
7 funds are deposited in the court registry, the broker is excused from the
8 remainder of the case, and, thereafter, the parties argue in court as to who
9 should receive the money. If interpleader is not utilized, the parties (and the
10 broker if the broker believes he or she is entitled to part of the money) file an
11 action known as a Declaratory Judgment that permits the Judge to "declare"
12 the various rights of all the parties.

13
14 Regardless of the settlement procedure utilized, the broker must notify FREC
15 within 10 days and inform them of the result.

16
17 D. Good Faith Doubt: Sometimes a broker will not receive actual
18 demands from the parties, but, based on the circumstances of the transaction, the
19 broker has an understanding that something is wrong. For example, if a contract's
20 closing date passes without the closing actually occurring because financing still isn't
21 obtained, the broker would have a good faith doubt. In a way, **GOOD FAITH DOUBT**
22 is equivalent to conflicting demands. The broker is, therefore required to follow the
23 same time deadlines as if he had received conflicting demands.

24 25 26 **V. RENTAL INFORMATION**

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

30
31 1. The prospective tenant must be provided a receipt that states
32 his or her rights to a refund under certain circumstances.

33
34 2. If any information contained in the rental list is inaccurate, the
35 prospective tenant is entitled to a 100% refund provided the demand for
36 refund is made within thirty days of the rental list purchase.

37
38 3. If the prospective tenant does not lease any properties through
39 the assistance of the licensee, for any reason whatsoever, the prospective
40 tenant is entitled to a 75% refund provided that a demand for refund is made
41 within thirty days of the rental list purchase.

42
43 Violation of Florida rental list laws is a first-degree misdemeanor punishable
44 by a fine up to \$1,000 and/or up to one year in jail.

45 46 47 **VI. BROKERS AND SALES ASSOCIATES ROLE AS EXPERTS**

48 Brokers and sales associates should not hold themselves out to be an
49 "expert" in areas of real estate that are unfamiliar to them. A licensee should never

1 give opinions of title or other types of legal advice. Licensees are allowed to give
2 opinions of value by way of a comparative market analysis (CMA). However, they
3 are not allowed to represent themselves to be a state certified or a licensed
4 appraiser. Exaggerations of value when soliciting a listing may be construed as
5 misrepresentation and must be avoided.

6
7 Misrepresentation of value by a licensee may amount to:

- 8
9 1. Fraud if the misrepresentation was intentional
10 2. Breach of contract
11 3. Breach of fiduciary duty
12

13 14 **VII. COMMISSIONS**

15 A. Overview: There are federal and state laws that prevent price fixing
16 of real estate commissions. The Sherman-Clayton Anti-Trust Act prohibits two or
17 more brokers joining together to set commission rates in an anti-competitive manner.
18 It should also be understood that if two or more brokers boycott or refuse to show
19 properties of a "discount" broker, their actions will be considered anti-competitive and
20 a form of price fixing.
21

22 A sales associate's commission can only be paid directly by the employer
23 (broker) and not directly by a member of the public. In addition, a sales associate
24 can only sue his or her broker for an unpaid commission and may not sue the
25 broker's principal. The only exception is at a closing when the broker has given
26 written permission to the closing agent to pay the associate directly. In this case, the
27 broker will still be responsible to the associates 1099 for income taxes.
28

29 Real estate brokers are prohibited from placing liens on property for the non-
30 payment of a commission prior to performance without written permission from the
31 property owner. The only exception is when a broker has entered into a listing
32 agreement or a lease agreement for a commercial property. Florida allows the
33 broker to file the agreement on public record with the subject property as a means of
34 insuring payment of any commissions earned.
35

36 B. Kickback: The term **KICKBACK** refers to payment for a task
37 performed in a real estate transaction but usually involves payment for a non-real
38 estate service. In order for a kickback to be legal, four conditions must be fulfilled:
39

- 40 1. The kickback must not violate any existing federal or state law,
41
42 2. All parties to the transaction must be fully informed about the
43 kickback,
44
45 3. The person receiving the kickback must have actually
46 performed the service, and
47

1 4. The person receiving the kickback must be properly licensed if
2 a license is required to perform the service (i.e. a mortgage broker paid a
3 kickback must hold a valid mortgage broker license).
4 Kickbacks are not permitted for title or casualty insurance transactions.
5

6 It is unlawful to share a commission with an unlicensed person unless the
7 shared commission is in the form of a rebate to a buyer or seller involved in the
8 subject transaction. Additionally, it is unlawful for a licensee to pay any unlicensed
9 person for performing real estate services except \$50.00 referral fees by property
10 managers.
11

12 C. Sharing Commissions: Brokers can determine commission fees for
13 the brokerage and establish commission splits with agents. However, the general
14 rule is that every listing contract involves a negotiated real estate commission
15 between the broker and the principal at the time the listing contract is signed.
16

17 Any real estate commission agreement between brokers and sales
18 associates should be specified in the policy manual of the company as well as the
19 independent contractor agreement between the broker and sales associate. If a
20 broker fails to pay a commission that is legally due to a sales associate, the broker
21 could be found guilty of **Failure to Account**. In order for this to occur, however, a
22 judgment must be entered by a court of law.
23

24

25 VIII. CHANGE OF EMPLOYER

26 In order for a sales associate to change employers, the new employer must
27 notify the DRE by filing the proper form and indicate the name, address, and
28 signature of the new employer. Notice of employer change must be given to the
29 DRE within 10 days.
30

31 The sales associate should remember that he or she have fiduciary
32 obligations with his or her employer and that any information that could be harmful to
33 the employer may not be used for the benefit of the sales associate or to the
34 disadvantage of the employer, even after the employment terminates.
35

36 All original documents are the property of the employer and should not be
37 removed by the sales associate after termination of employment. Unauthorized
38 removal of original documents from a previous employer is considered to be a crime
39 (larceny). Sales associates should be careful about taking copies without the
40 permission of the employer. Such conduct is considered to be bad faith if done for
41 the purpose of taking listings to a new employer.
42



43 *Authors' Note: The unauthorized display of names or insignia of real*
44 *estate organizations or associations is prohibited by FREC rules. For*
45 *example, if a licensee uses the term REALTOR® in an advertisement*
46 *when, in fact, the licensee is not a current member of the National*
47 *Association of REALTORS®, Florida Association of REALTORS®, or*
48 *local board of REALTORS®, this practice would be considered*
49 *prohibited.*

1 **IX. CHANGE OF ADDRESS**

2 If a broker changes his or her main business address, the DRE must be
3 notified within ten days. Failure to provide the change-of-address information could
4 result in a citation and cause the license to "cease to be in force" until the proper
5 change of address is submitted.
6

7 In addition, if a licensee changes brokers the new employing broker must
8 notify the DRE within ten days of the change. Failure to provide the change-of-
9 address information could result in a citation and cause the license to "cease to be in
10 force" until the proper change of address is submitted.
11

12 The DRE requires that all licensees and brokerages provide their current
13 physical and mailing addresses. Current mailing address is defined as a licensee's
14 physical address where mail is received or a post office box number if mail is not
15 delivered to the licensee's residence. If a licensee changes their mailing address
16 they are required to notify the DRE within ten days. Failure to make proper
17 notification could result in a fine up to \$500.
18

19
20 **X. PERMITTED BROKERAGE BUSINESS ENTITIES**

21 There are several business entities that can broker real estate.
22

23 A. Sole proprietorship: A business owned by one person is a **SOLE**
24 **PROPRIETORSHIP**. In order to offer real estate services to the public, the sole
25 proprietor must be an active real estate broker. This person is personally liable for
26 the business and the acts of the agents working for the brokerage.
27

28 B. General Partnership: A business owned by two or more individuals
29 who share in the profits and losses is called a **GENERAL PARTNERSHIP**. No
30 formal document must be signed or filed to create a general partnership although
31 good business practice suggests that partners should sign a "Partnership
32 Agreement" which outlines their respective duties, rights, and obligations. In order
33 for a General Partnership to offer real estate services to the public, at least one of the
34 partners must be an active real estate broker.
35

36 A General Partnership may register with the DRE to broker real estate with
37 the following conditions:
38

39 1. At least one of the partners must be an active Florida real
40 estate broker,
41

42 2. Sales associates and broker associates cannot be a partner of
43 the brokerage General Partnership, and
44

45 3. Any unlicensed individuals acting as a partner (they must not
46 provide real estate services) must register their names and addresses with
47 the DRE.
48
49
50

CHAPTER FIVE: REAL ESTATE BROKERAGE ACTIVITIES

1 When partnership is created out of circumstances and not choice, this is
2 considered an **OSTENSIBLE PARTNERSHIP**. If the public perceives two or more
3 persons to be partners, and the "partners" are responsible for that perception, then
4 the courts may deem them to actually be partners.

5
6 For example, a real estate broker opens up an office and places his or her
7 official sign on or about the entrance of the office. A second broker moves into the
8 same office building but fails to post the required official sign. If that second broker
9 defrauds the public, the law may consider them to be ostensible partners rendering
10 both brokers liable for the fraud.

11
12 C. Corporation: In Florida, a **CORPORATION** is formed by filing articles
13 of incorporation with the Florida Department of State, Division of Corporations. A
14 corporation is owned by stockholders who are liable only to the extent of their
15 investment. Stockholders elect a Board of Directors who acts as "goal-setters" for
16 the corporation. The Board of Directors hires the officers, such as the President and
17 Vice President, to handle the day-to-day activities of the corporation.

18
19 Both corporations for profit and not-for-profit can register with the DRE to
20 broker real estate with the following conditions:

- 21
22 1. At least one of the officers must be an active Florida real
23 estate broker
24
25 2. Sales associates and Broker associates cannot participate as
26 officers or directors of the brokerage corporation
27
28 3. Any unlicensed individual acting as an officer or director (he or
29 she must not provide real estate services) must register his or her name and
30 address with the DRE
31
32 4. Anyone, including sales associates and broker associates, can
33 be a stockholder in a real estate corporation provided he or she do not act in
34 the capacity of a Director or Officer
35

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

42
43 D. Limited Partnership: In Florida, a **LIMITED PARTNERSHIP** is
44 formed by filing articles with the Florida Department of State. A Limited Partnership
45 consists of one or more limited partners and one or more general partners. Limited
46 partners are investors only and do not participate in the daily operations of the
47 business. The general partner acts as not only the "goal-setter" for the business but
48 is also responsible for all business operations.
49

1 A Limited Partnership can register with the DRE to broker real estate with the
2 following conditions:

3
4 1. At least one General Partner must be an active Florida real
5 estate broker.

6
7 2. Sales associates and broker associates cannot participate as
8 general partners.

9 3. Any unlicensed individual acting as a general partner (he or
10 she must not provide real estate services) must register his or her name and
11 address with the DRE.

12
13 4. Anyone, including sales associates and broker associates, can
14 be a limited partner provided they do not act in the capacity of a General
15 Partner

16
17 E. Limited Liability Partnership: A **LIMITED LIABILITY PARTNERSHIP**
18 is a business entity that protects the partners from personal liability against the acts
19 of the partnership. However, limited liability partners are responsible for their own
20 acts, or the acts of others under their direct supervision and control. Limited Liability
21 Partnerships are created by filing with the Florida Department of State.

22
23 F. Limited Liability Company: A **LIMITED LIABILITY COMPANY** is a
24 business entity that combines some of the best features of a corporation and
25 partnership into one entity. The members are protected against personal liability but
26 the IRS regards the Limited Liability Company as a partnership for tax purposes.
27 Limited Liability Companies are created by filing with the Florida Department of State.

28 29 30 **XI. TRADE NAMES**

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

36
37 Sales associates and broker associates cannot operate under a trade name
38 and must operate using their legal names, as they appear on their licenses. They
39 can, however, operate as a professional corporation (PC), limited liability company
40 (LLC), or professional limited liability company (PLLC) provided it is in their legal
41 name.

42
43 Brokerage entities that have registered their name with the DRE are exempt
44 from the Florida Fictitious Name Act. For example, if Broker Dave wants to operate a
45 sole proprietorship entitled "Dave's House of Real Estate", he simply registers that
46 trade name with the DRE, and he has satisfied his legal requirements to use that
47 trade name.

48
49

1 **XII. BUSINESS ENTITIES THAT MAY NOT REGISTER TO BROKER**
2 **REAL ESTATE**

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

5
6 A. Corporation sole: A religious (ecclesiastical) organization. No formal
7 documents are required. Title to church property is held by a senior church member
8 (e.g. bishop) and title passes to the successor in office.

9
10 B. Joint Venture: Like a general partnership, a joint venture consists of
11 two or more people doing business together to share in the profits and losses, but
12 only for one specific transaction. Each joint venturer is responsible for the acts of the
13 other joint venturers. If two brokers enter into a co-brokerage arrangement, it is
14 technically a joint venture. These individuals are already licensed brokers, therefore,
15 additional registration is not required.

16
17 C. Business Trust: Also known as a syndicate, the business trust is
18 owned by unit holders (similar to stockholders of a corporation). Title is held in the
19 name of a trustee. The business trust is created by filing a declaration of trust with
20 the Florida Secretary of State.

21
22 D. Cooperative Association: A cooperative association is a type of
23 business entity authorized to engage in limited forms of commercial activity. Usually,
24 cooperative associations are organized by a group of business individuals to
25 effectively market a product or service (e.g. Destin Fisherman's Co-operative).

26
27 E. Unincorporated Association: An unincorporated association is
28 created when two or more individuals come together for a common purpose but do
29 not form a traditional business organization. For example, a homeowner's
30 association that fails to incorporate itself by filing articles with the Secretary of State
31 would be considered an unincorporated association.

32
33



34 **SUMMARY**

- 35
- 36 ➤ A real estate brokerage office consists of at least one enclosed room
37 of stationary construction where negotiations can take place and
38 records are kept. Every office has to have an official sign on or about
39 its entrance that contains the name of the brokerage entity (if any), the
40 name of the broker, and the words "licensed real estate broker."
 - 41
 - 42 ➤ A temporary shelter is not considered to be a branch office and need
43 not be registered. If its exclusive use is an office then it is deemed to
44 be a main office or branch office and must be registered.

45
46

- 1 ➤ Brokers are responsible for all brokerage advertising regardless of
2 who places the advertisement. All ads must contain the name of the
3 brokerage entity; otherwise, it is considered a blind advertisement
4 which is prohibited.
5
6 ➤ When dealing with earnest money deposits, the term “immediately” for
7 sales associates means by the end of the next business day. For
8 brokers, “immediately” means by the end of the third business day
9 following acceptance of the deposit by the sales associate.
10
11 ➤ In the event of a dispute over the earnest money deposit, the broker
12 must commence one of four settlement procedures within 30-business
13 days of the last demand or upon good faith doubt. The four settlement
14 procedures are [1] Escrow Disbursement Order, [2] Mediation, [3]
15 Arbitration, and [4] Litigation.
16
17 ➤ Rental information lists can be sold provided that the prospective
18 tenant is entitled to a 100% refund if the list contains any inaccurate
19 information or a 75% refund if no property is rented by the prospect.
20
21 ➤ If a sales associate changes employers, his or her new employer must
22 notify the DRE through the proper form within 10 days of the change.
23
24
25
26

27

CHAPTER FIVE QUIZ



- 28 1. By definition, a real estate broker's office:
29
30 A. Must be located in Florida
31 B. Must be at least one enclosed room of stationary construction where
32 negotiations take place and records are kept
33 C. May not be in the broker's home
34 D. All of the above
35
36
37
38 2. The official sign on or about the entrance to a real estate brokerage must
39 include all of the following except
40
41 A. name of the broker
42 B. name of the sales associates, if any
43 C. name of the brokerage entity, if any
44 D. licensed (or Lic.) real estate broker
45
46

CHAPTER FIVE: REAL ESTATE BROKERAGE ACTIVITIES

- 1 3. Which of the following may appear on a brokerage official sign?
2
3 A. Name of the broker
4 B. Names of all sales associates
5 C. Names of all broker associates
6 D. All of the above
7
8
9
- 10 4. Main office and branch office registrations with the DRE are valid for how
11 long?
12
13 A. six months
14 B. one year
15 C. two years
16 D. three years
17
18
19
- 20 5. Every Saturday, Broker Kathy has an open house for one of her listings. In
21 order to provide protection from the sun and rain and to attract people who drive by,
22 Kathy has a large colorful tent set up in front of the house. There are tables and
23 chairs under the tent but no phone lines or electricity. Does Kathy have to register
24 this structure (tent) as a branch office?
25
26 A. Yes, because she has furniture located there
27 B. Yes, because she is conducting business there
28 C. No, because it is only a temporary shelter
29 D. No, because she already has a main office
30
31
32
- 33 6. Who is ultimately responsible for advertising done by a real estate brokerage?
34
35 A. The person placing the advertisement
36 B. The sales associate, but only if they actually placed the advertisement
37 C. The broker, but only if the broker actually placed the advertisement
38 D. The broker
39
40
41
- 42 7. A blind advertisement is a real estate advertisement that does not include
43 which of the following?
44
45 A. The address of the subject property
46 B. The price of the subject property
47 C. The name of the real estate brokerage
48 D. The address of the real estate brokerage
49

CHAPTER FIVE: REAL ESTATE BROKERAGE ACTIVITIES

1 8. Sales associate Bob sees a "For Sale by Owner" sign on his way to work.
2 When he arrives at the office, he calls the owner to request a listing appointment.
3 When Bob identifies himself as a real estate licensee, the owner gets angry and tells
4 Bob that he shouldn't be calling because the owner's name is on the Federal "No
5 Solicitation List". Has Bob broken the law by calling the owner?

- 6
7 A. Yes, Bob should have checked the Federal "No Solicitation List"
8 before calling.
9 B. Yes, it is always a violation for licensees to call anyone that is on any
10 "No Solicitation List".
11 C. No, the "No Solicitation List" rules do not apply to real estate
12 licensees.
13 D. No, the "No Solicitation List" rules do not apply to "For Sale by
14 Owners" who advertised their telephone number.
15
16
17

18 9. Broker Alan accepts an earnest money deposit from a buyer. Instead of
19 depositing the money in his escrow account, Alan deposits the money into his
20 personal account. Alan could be criminally charged with which of the following:
21

- 22 A. Culpable negligence
23 B. Conversion
24 C. Breach of fiduciary duties
25 D. Breach of trust
26
27
28

29 10. Sales associate Karen receives an earnest money deposit from a buyer on
30 Tuesday. What is the deadline for her to get the money to her broker?
31

- 32 A. End of the day Tuesday
33 B. Within 24 hours
34 C. End of the day Wednesday
35 D. As soon as possible
36
37
38

39 11. Sales associate Sandy receives an earnest money deposit from a buyer on
40 Monday. What is the deadline for the broker to properly deposit the funds into an
41 escrow account?
42

- 43 A. End of the business day Monday
44 B. End of the business day Tuesday
45 C. End of the business day Wednesday
46 D. End of the business day Thursday
47
48
49

CHAPTER FIVE: REAL ESTATE BROKERAGE ACTIVITIES

- 1 12. After a broker has received conflicting demands for escrowed funds, if holding
2 the escrow the broker must notify the Florida Real Estate Commission within how
3 many days?
4
- 5 A. Fifteen days
 - 6 B. 15-business days
 - 7 C. Thirty days
 - 8 D. 30-business days
- 9
10
11
- 12 13. In order to resolve a dispute over an earnest money deposit, a broker can
13 request an Escrow Disbursement Order from which of the following:
14
- 15 A. Division of Real Estate
 - 16 B. Department of Business and Professional Regulation
 - 17 C. Florida Real Estate Commission
 - 18 D. Florida Association of REALTORS®
- 19
20
21
- 22 14. Ed purchased a rental list from a Florida broker for \$100.00. After visiting all
23 the rental properties stated on the list, Ed decided not to move from his present
24 apartment. The next day, Ed verbally requested a 100% refund. Which of the
25 following statements best describes Ed's legal rights?
26
- 27 A. Ed is entitled to a 100% refund.
 - 28 B. Ed is entitled to no refund if the list was accurate.
 - 29 C. Ed is entitled to a 75% refund.
 - 30 D. Ed is entitled to a 50% refund.
- 31
32
33
- 34 15. If a buyer makes an earnest money deposit check payable to a broker
35 associate, how should the broker associate handle this situation?
36
- 37 A. Deposit the check into the broker associate's personal account, and
38 write a new check payable to the broker.
 - 39 B. Deposit the check into the broker associate's trust account.
 - 40 C. The broker associate should endorse the check and deliver it to his or
41 her broker immediately.
 - 42 D. Licensees are not allowed to accept earnest money deposit checks
43 made payable to the licensee.
- 44
45
46
47

1 **CHAPTER SIX:**
2 **LICENSE LAW VIOLATIONS, PENALTIES, AND**
3 **PROCEDURES**
4



5 **Talk the Talk**

6 **Breach of Trust:** Licensee fails to honor rules that could lead to culpable negligence

7 **Citation:** A minor infraction of the license law that generally results in a small fine

8 **Complaint:** A charge or accusation that a licensee has committed a specified
9 offense

10 **Conversion:** Moving or using another money or other property without permission

11 **Culpable Negligence:** Acting in a reckless manner that cause harm to another

12 **Final Order:** Considered to be FREC's final decision as to guilt or innocence of the
13 licensee

14 **Formal Complaint:** An outline of charges brought by the DBPR against an applicant
15 or licensee after a finding of probable cause

16 **Legally Sufficient:** When the initial complaint alleges a violation of any Florida
17 Statute, DBPR rule, or FREC rule

18 **Moral Turpitude:** Operating contrary to moral standard that is also illegal

19 **Notice of Non-Compliance:** A warning that allows a licensee 15 days to correct a
20 minor infraction without consequence

21 **Probable Cause:** Reasonable grounds or justification for prosecution

22 **Recommended Order:** A final report prepared by an Administrative Law Judge
23 containing finding of facts, conclusions, and suggested penalties, if any.

24 **Subpoena:** A legal process of ordering a witness to appear and testify before a
25 court of law or formal administrative hearing

26 **Summary Suspension:** Emergency or immediate suspension of a license
27
28

29 **AREAS OF CRITICAL CONCERN**
30

- 31 • Explain the procedures involved in the reporting of violations, the investigation of
- 32 complaints, and the conduct of hearings
- 33 • Describe the elements of a valid complaint
- 34 • Describe the composition of the probable-cause panel
- 35 • Recognize events that would cause a license application to be denied
- 36 • Recognize actions that would cause a license to be suspended or revoked
- 37 • Identify individuals who would be eligible and the procedure to seek
- 38 reimbursement from the Real Estate Recovery Fund
- 39 • Identify individuals who are not qualified to make a claim for recovery from the
- 40 Real Estate Recovery Fund
- 41 • Describe the monetary limits imposed by law on the Real Estate Recovery Fund

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

- 1 • Explain the penalty for a first and second degree misdemeanor and which real
2 estate activities are first degree misdemeanors
3 • Provide examples of unlicensed practice of law and the presumptions associated
4 for a licensee
5
6

7 **I. DISCIPLINARY PROCEDURE**

8 License law violations are based on the principal that a person is innocent
9 until proven guilty through the legal process that is afforded each applicant and
10 licensee. Disciplinary actions are considered to be quasi-judicial and are governed
11 by Florida statutes and the rules of the Florida Administrative Code. (F.A.C.).

12 Those Florida statutes include:

13

14 Chapter 120:	Administrative Hearing Rules and Procedures
15 Chapter 455:	Division of Professions and Occupations
16 Chapter 475:	Real Estate License Law

17

18 In addition, sections of the Florida Administrative Code (F.A.C.) that apply
19 include:

20

21 Rule 61J2:	FREC Rules and regulations
22 Rule 60Q:	Division of Administrative Hearings

23

24 Sometimes people feel that they have been mistreated in a real estate
25 transaction and desire to attain some level of satisfaction regarding the person who
26 has allegedly injured them. The complaint process is the vehicle that the public can
27 pursue in an attempt to rectify injustices committed by licensees. It must be
28 understood that the FREC only has authority and jurisdiction over applicants and
29 licensees. However, violations of Florida Statute 455 and 475 are criminal events
30 and can be prosecuted by the Florida State Attorney through criminal proceedings.
31 The FREC can discipline any licensee who has been found guilty of crimes other
32 than those referenced above.

33
34 Every license is entitled to due process and the opportunity to be heard and
35 respond to a complaint. The disciplinary process contains seven steps:

- 36
- 37 1. Complaint
 - 38 2. Investigation
 - 39 3. Probable Cause Panel
 - 40 4. Formal Complaint
 - 41 5. Informal Conference or Formal Hearing
 - 42 6. Final Order
 - 43 7. Appeal
- 44
45
46
47
48

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

1 **STEP ONE:** The Complaint

2
3 The process begins when a signed, written **COMPLAINT** is submitted to the
4 Department of Business and Professional Regulation, Division of Real Estate (DRE).
5 The complaint is **LEGALLY SUFFICIENT** if it alleges that a violation of Florida real
6 estate law, FREC rule, or DBPR rule has been committed. The allegations in the
7 complaint do not have to be real estate related. For example, a person could file a
8 complaint against a licensee because he or she believes that the licensee did not
9 properly deposit earnest money.

10
11
12 **STEP TWO:** The Investigation

13
14 Once a complaint is determined to be legally sufficient, the DBPR will investigate the
15 complaint. The investigators will typically speak with all the parties involved and
16 collect as much evidence and information as possible. At the conclusion of the
17 investigation, a report will be prepared and delivered to the Florida Real Estate
18 Commission to determine if probable cause exists or not. The Chairperson of FREC
19 will appoint two members to serve on the Probable Cause Panel.

20
21
22 **STEP THREE:** The Probable Cause Panel

23
24 The **PROBABLE CAUSE PANEL** is assigned the task of determining if there exists
25 probable cause in the subject case. The panel consists of two members of FREC.
26 One of the members may be a former active member of FREC, and one of the
27 members must hold a real estate license. The probable cause panel must decide if
28 probable cause exists which will warrant a continuation of the complaint process. If
29 the panel decides that probable cause does not exist, it may elect to draft a "Letter of
30 Guidance" informing the licensee that although no technical violation may have
31 occurred, the licensee may want to handle this type of situation with more care in the
32 future.

33
34
35 **STEP FOUR:** The Formal Complaint

36
37 If probable cause is found to exist, the next step is the drafting, filing, and service of a
38 **FORMAL COMPLAINT** that specifies the alleged violation. The Formal Complaint is
39 drafted by the DBPR and is served on the licensee who has 20 days to file a written
40 response that either admits or denies each allegation. In the event a written
41 response is not filed, a default (legal forfeit) will be entered against the licensee and
42 his or her license will usually be revoked. In response to the complaint, the licensee
43 will request either an informal conference or formal hearing.

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

1 **STEP FIVE:** Informal Conference or Formal Hearing

2
3 If the licensee's response indicates that all parties agree on the facts, then the
4 licensee can ask for an informal conference to be heard directly by the FREC. All
5 evidence is admitted by stipulation since there is no disagreement about the facts. At
6 the conclusion of the informal conference, the FREC will issue a Final Order.

7
8 If the facts are in dispute, a formal hearing is appropriate. A formal hearing is
9 similar to a trial. All parties must be given reasonable prior notice of the date, time,
10 and place of the hearing. The parties can make an opening statement, present
11 evidence, elicit testimony from witnesses, conduct cross-examination, and present
12 closing arguments.

13
14 An Administrative Law Judge (ALJ) presides over the hearing. The ALJ has
15 authority to issue a **SUBPOENA** which commands a witness to appear at the hearing
16 in person for the purpose of giving testimony, presenting documents, or both. Failure
17 to obey a subpoena could subject the individual to contempt of court proceedings
18 and ultimately be fined or imprisoned.

19
20 The Administrative Law Judge will prepare a **RECOMMENDED ORDER** that
21 will contain findings of fact, conclusions, and a recommended penalty, if any. The
22 Recommended Order is submitted to FREC for its consideration. If there is any
23 objection by the DBPR or licensee, the objection must be filed within 10 days. This is
24 known as a Written Exception.

25
26
27 **STEP SIX:** Final Order

28
29 After the hearing process, the matter is submitted to FREC for final review and
30 disposition. Members of the FREC (excluding the probable cause panel members in
31 the subject case) will review the matter and issue a **FINAL ORDER** ending the quasi-
32 judicial process. The Final Order is considered to be FREC's final decision as to guilt
33 or innocence of the licensee. The Final Order becomes effective 30 days after it has
34 been entered.

35
36 A licensee has the right to practice real estate through the complaint process
37 and 30 days after the final order has been issued. If, however, the DBPR or the
38 FREC believes the licensee could be of danger to the public, a **SUMMARY**
39 **SUSPENSION** can be issued temporarily preventing the licensee from practicing real
40 estate until the complaint process has ended.

41
42
43 **STEP SEVEN:** Appeal

44
45 A licensee has the right to challenge a Final Order by filing a Notice of Appeal with
46 the District Court of Appeals within 30 days. In order for a licensee to continue
47 practicing real estate during the appeal process, a request to stay the enforcement of
48 the final order should be considered. Otherwise, the final order will take effect in 30

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

1 days. To obtain a stay of the final order, a court must issue a Writ of Supersedes
2 until the appeal process is concluded.

3
4 When an appeal is filed, the appellant is requesting the court to issue a Writ
5 of Certiorari which means the court has certified the appeal.

6
7
8 **II. VIOLATIONS AND PENALTIES**

9 A. Administrative remedies (FREC):

10
11 1. Deny a license application: Applications can be denied
12 because the application is deficient in some way such as failing to completely
13 fill out the application, failing to submit the proper fee, failing to correct an
14 application after it has been returned by the DPBR, failing to pass the state
15 exam within two years after a completed application is received, or failing to
16 pass the state exam within two years of completing FREC course I. An
17 application will also be denied if the applicant does not meet the necessary
18 minimum qualifications, does not possess good character, was guilty of prior
19 acts that would be grounds for revocation or suspension, or cheated on a final
20 exam.

21
22 2. Refuse to renew a license: Renewal applications can be
23 denied if the applicant has not completed his or her post-license or continuing
24 education requirement or if the applicant is unable to demonstrate good
25 character.

26
27 3. Suspend a license for up to 10 years: License suspension is
28 a temporary penalty. During the time of suspension, the licensee may not
29 practice real estate. Any violation or Florida statute, FREC rule, or DBPR rule
30 can be grounds for suspension, but usually a more serious offense or
31 repeated offense is required.

32
33 4. Revoke a license: The most severe penalty of all is revocation
34 of licensee which is permanent. Although in some cases a licensee may be
35 able to apply for reinstatement after 5 years, it is difficult to be reinstated after
36 a revocation. Technically, any act that could result in suspension could also
37 result in revocation although, usually, the act is quite serious if revocation in
38 imposed.

39
40 5. Citation: Issue a **CITATION** for minor infraction.

41
42 6. Fine: Impose a fine of up to \$5,000 per violation of F.S. 475
43 (DBPR may impose separately a fine of up to \$5,000 for a violation of F.S.
44 455).

45
46 7. Probation: Impose probation which allows the licensee to
47 continue to practice real estate under the guidance of FREC.

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

1 8. Notice of Non-compliance: First time minor violations may result
2 in the issuance of a **NOTICE OF NON-COMPLIANCE** if the violation does
3 not endanger the health, safety, or welfare of the public. The licensee has
4 15 days to correct the infraction with no consequence. Failure to abide by a
5 notice of non-compliance will result in additional disciplinary procedures. For
6 example, a broker fails to have copies of all licenses of agents working for
7 that brokerage.

8
9 9. Letter of Reprimand: This carries no discipline other than a
10 letter that is placed in the licensee's file for future reference.

11
12 B. Judicial Remedies (imposed by a court of law):

13
14 1. Second degree misdemeanor (punishable up to \$500 fine
15 and/or up to 60 days in jail).

16
17 2. First degree misdemeanor (punishable up to \$1,000 fine
18 and/or up to 1 year in jail). Violating Rental Information laws and false
19 advertising are first degree misdemeanors.

20
21 3. Civil penalties: A licensee could be denied the right to a sales
22 commission by a court. In addition a licensee could be sued in civil court for
23 any monetary damages caused by their actions.

24
25 4. Third degree felony can be imposed on any person who
26 operates as a licensee without being the holder of a current active and valid
27 license commits a third degree felony punishable by a fine of up to \$5,000
28 and possible prison time.. It is a third degree felony for the unlicensed
29 practice of law. The unlicensed practice of law is deemed to be any act which
30 must be performed by a Florida attorney.

31
32 In addition, if an unlicensed person advertises property for sale or lease for
33 another and does not have a real estate license then it is presumed that they
34 are acting as a real estate licensee without a license. This basic presumption
35 would apply is a person did anything to lead the public to believe that he or
36 she is licensed. If this occurs then the burden to show that the person has
37 not violated the law would be the burden of the individual and not the State. It
38 must be remembered, however, for a person to be required to hold a real
39 estate license they must perform a service of real estate, in the state of
40 Florida, for someone else and for some form of compensation.

41
42 C. DBPR: A licensee may also be fined up to \$5,000 by the Department
43 of Business and Professional Regulation for any violation of Chapter 455, F.S. It is
44 important to remember that a real estate licensee is categorized as a "professional"
45 therefore falls under the jurisdiction of the Department of Business and Professional
46 Regulation.

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

1 **III. REAL ESTATE RECOVERY FUND**

2 A. Overview: The Florida Real Estate Recovery Fund was established
3 to reimburse individuals who were financially injured by a licensee. In order for a
4 person to collect from the recovery fund, he or she must show proof of an unpaid
5 judgment establishing compensatory damages (not punitive damages) and conduct
6 an asset search demonstrating that the licensee has insufficient assets to pay the
7 judgment. If the licensee has assets or partial assets to cover the judgment, the
8 plaintiff must first look to those assets for payment.
9

10 B. Persons not qualified to make a claim: The following individuals are
11 not eligible to make a claim to the Real Estate Recovery Fund:
12

13 1. A licensee who participated in the subject transaction as an
14 agent is not entitled to make a claim for an unpaid commission
15

16 2. A licensee who participated in the subject transaction as an
17 agent and the licensee owned or controlled the subject property
18

19 3. Anyone who bases a claim against a licensee who did not hold
20 a valid and current license at the time of the transaction
21

22 4. A spouse of the judgment debtor or the spouse's personal
23 representative
24

25 5. If the judgment is against a business entity such as
26 corporation, partnership, limited liability company, or limited liability
27 partnership
28

29 C. Payment from Fund: If money is paid from the recovery fund because
30 of licensee's misconduct, the licensee will be automatically suspended indefinitely
31 until the money is repaid plus interest. If the broker obeys an Escrow Disbursement
32 Order that later results in litigation and a payment being made from the real estate
33 recovery fund, then FREC will take no action against the broker and will reimburse
34 the broker for all cost and attorney's fees.
35

36 If the recovery fund balance is reduced below \$500,000, a fee of \$1.50 per
37 year for sales associates (\$3.50 per year for brokers) is added to all new license
38 application fee and renewal applications.
39

40 D. Authorized Fund limits: The recovery fund will pay up to \$50,000 per
41 single judgment and not more than \$150,000 for multiple judgments. Once again the
42 recovery fund will only pay actual damages and not punitive.
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CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES



SUMMARY

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- The complaint procedure is a seven-step process involving a complaint, investigation, probable cause panel, formal complaint, informal conference or formal hearing, final order, and appeal.
- A valid complaint must be in writing. It is legally sufficient if it alleges a violation of any Florida statute, DBPR rules, or FREC rules.
- The probable cause panel consists of two FREC members. At least one of the members must hold a valid real estate license. Former FREC members can serve on a probable cause panel, but there must always be at least one current member.
- A license application can be denied because of errors and omission in the application or because the applicant lacks the necessary good character.
- The Real Estate Recovery Fund is available to certain individuals who have been financially harmed by a Florida real estate licensee. The injured party must first obtain a judgment against a licensee and attempt to convert the judgment into cash. If the injured party is unable to be paid on his or her judgment, the fund will pay up to \$50,000 of the uncollected portion per judgment with a maximum payment of \$150,000 if the injured party has multiple judgments against the same licensee.
- Certain categories of individuals are not eligible to receive payment from the Real Estate Recovery Fund, including a licensee who participated in the subject transaction as an agent, anyone who bases a claim against a licensee who was unlicensed at the time of the transaction, a spouse of the judgment debtor or the spouse's personal representative, or anyone who did not get a judgment against an actual person.
- Any violation of Chapter 475 is a second degree misdemeanor (punishable by a fine of up to \$500 and/or up to 60 days in jail). Violating Rental Information laws is a first degree misdemeanor (punishable by a fine of up to \$1,000 and/or up to one year in jail). Violation of rental list rules is a first degree misdemeanor. The unlicensed practice of real estate is now a third degree felony.

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES



1 **CHAPTER SIX QUIZ**

2 1. Which agency is responsible for investigating complaints filed against a real
3 estate licensee?
4

- 5 A. Florida Real Estate Commission
6 B. Department of Business and Professional Regulation
7 C. State Attorney
8 D. Division of Real Estate
9

10
11 2. The probable cause panel is comprised of how many Florida Real Estate
12 Commission members?
13

- 14 A. 2
15 B. 3
16 C. 4
17 D. 5
18

19
20
21 3. If a licensee does not timely respond to a formal complaint, what will the
22 result be?
23

- 24 A. Default
25 B. Continuance
26 C. Summary judgment
27 D. Unanimous verdict
28

29
30 4. Who prepares the Recommended Order?
31

- 32 A. Department of Business and Professional Regulation
33 B. Florida Real Estate Commission
34 C. Administrative Law Judge
35 D. Attorney for the licensee
36

37
38
39 5. How many Florida Real Estate Commission members participate in the Final
40 Order process?
41

- 42 A. 5
43 B. 6
44 C. 7
45 D. All members who did not serve on the Probable Cause Panel

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

- 1 6. Someone files a complaint against Broker Katrina because her official sign is
2 not readily visible. What will the DBPR's probable response be if this is Katrina's first
3 complaint?
4
- 5 A. Letter of reprimand
6 B. Notice of non-compliance
7 C. Citation
8 D. Probation
9
- 10
11
12 7. To obtain a stay of a Final Order while an appeal is pending, what type of writ
13 must be entered?
14
- 15 A. Mandamus
16 B. Habeas Corpus
17 C. Supersedes
18 D. Execution
19
- 20
21 8. An application for a real estate license may be refused for all of the following
22 reasons except:
23
- 24 A. Failing to completely fill out the application
25 B. Failing to submit the proper fee
26 C. Applicant is not a U.S. citizen
27 D. Applicant does not possess good character
28
- 29 9. What will happen to a real estate licensee if the Real Estate Recovery Fund
30 has to make a payment in response to a claim made against that licensee?
31
- 32 A. Probation
33 B. Suspension until the money is repaid, plus interest
34 C. Revocation
35 D. Letter of reprimand
36
37
38
- 39 10. A real estate license may be suspended for a maximum of:
40
- 41 A. 1 year
42 B. 2 years
43 C. 5 years
44 D. 10 years
45
46
47
48

CHAPTER SIX: LICENSE LAW VIOLATIONS
PENALTIES, AND PROCEDURES

- 1 11. What are the penalties for a first degree misdemeanor?
2
3 A. One year in jail and a \$1,000 fine
4 B. Up to one year in jail and up to a \$1,000 fine
5 C. Up to one year in jail and/or up to a \$1,000 fine
6 D. Up to one year in jail and/or a \$1,000 fine
7
8
9
- 10 12. Which of the following is a first degree misdemeanor?
11
12 A. Violation of agency disclosure rules
13 B. Failure to account
14 C. Violation of rental fee rules
15 D. Violation of fiduciary duties
16
17
18
- 19 13. Alice obtains a \$79,000 judgment against Broker Derek and is unable to
20 collect any money on the judgment. If she applies to the Real Estate Recovery Fund,
21 how much money will she receive?
22
23 A. \$50,000
24 B. \$75,000
25 C. \$79,000
26 D. \$150,000
27
28
29
- 30 14. A complaint is legally sufficient if it contains any violation of a:
31
32 A. Florida real estate law
33 B. Florida Real Estate Commission rule
34 C. Department of Business and Professional Regulation rule
35 D. All of the above
36
37
38
- 39 15. Which step comes after the filing of a complaint?
40
41 A. Investigation
42 B. Probable cause panel
43 C. Informal hearing
44 D. Formal complaint

1
2

1 **CHAPTER SEVEN:**
2 **STATE AND FEDERAL REAL ESTATE LAWS**
3



4 **Talk the Talk**

5 **Blockbusting:** The illegal practice of inducing homeowners to sell their property by
6 making misrepresentations regarding the entry or prospective entry of minority
7 persons in order to cause a turnover of properties in the neighborhood; discriminatory
8 acts against sellers

9 **Familial Status:** Refers to the status of a pregnant woman or a family with children
10 under 18 years of age

11 **Handicap Status:** Federal or state status for an individual unable to perform mental
12 or physical functions under normal conditions

13 **Lottery:** Inducing a person to purchase with the hopes to win something. Brokers
14 are prohibited from offering lotteries.

15 **Property Report:** A brief summary of a subdivision property

16 **Public Accommodation:** A hotel, motel, or other facility to which the general public
17 has access

18 **Redlining:** A lending institution's illegal refusal to make mortgage loans in certain
19 areas

20 **Subdivision:** A tract of land partitioned into lots for homes or other uses and
21 improved by roads, water and sewage systems, etc.

22 **Steering:** The illegal practice of directing buyers to or from certain neighborhoods
23 based on minority status; prohibited by federal, state, and local fair housing laws
24
25
26

27 **AREAS OF CRITICAL CONCERN**
28

- 29 • List the groups protected under the 1968 Fair Housing Act
- 30 • List the property exempt from the 1968 Fair Housing Act
- 31 • Describe the types of discriminatory acts that are prohibited under the 1968 Fair
32 Housing Act
- 33 • Explain the significance of the Jones vs. Mayer court case
- 34 • Describe the HUD process for handling a complaint under the 1968 Fair Housing
35 Act
- 36 • Describe the objectives and major provisions of the Americans with Disabilities
37 Act
- 38 • Describe the major provisions of the Florida Residential Landlord and Tenant Act
- 39 • Describe the major provisions of the Interstate Land Sales Disclosure Act and the
40 Florida Uniform Land Sales Practices Act
41
42
43

CHAPTER SEVEN: STATE AND FEDERAL REAL ESTATE LAWS

1 I. FEDERAL LAWS

2 The real estate industry is highly regulated. Not only do licensees need to
3 understand the real estate license laws in Florida, they must also be familiar with
4 federal laws regulating the housing industry.

5
6 A. Civil Rights Act of 1866: The Civil Rights Act of 1866 was enacted
7 after the Civil War in an effort to abolish discrimination based on race. The Civil
8 Rights Act of 1866 is still good law and in full force. As this law relates to real estate,
9 it assures that every citizen is entitled to all rights in real property regardless of his or
10 her race. In 1968, the United States Supreme Court upheld this law in the Jones vs.
11 Mayer case.

12
13 B. Civil Rights Act of 1964: This Act expanded the 1866 Law to include
14 race, color, religion, sex, and national origin in voting, jobs, and public
15 accommodations.

16
17 C. Civil Rights Act of 1968: In 1968, new legislation was enacted that
18 strengthened the concept of non-discrimination in real property. The Civil Rights Act
19 of 1968 includes the Fair Housing Act which expanded prohibited housing
20 discrimination based on race, color, religion, sex, and national origin. This law
21 applies not only to the sale or leasing of real estate but also financing and any other
22 real estate related industries.

23
24 The types of real estate transactions covered by the 1968 Fair Housing Act
25 include:

26
27 1. Single-Family Residences:

- 28
29 a. Residential property that is not privately owned
30
31 b. Privately owned residential properties if a real estate
32 licensee is involved in a sale or rental
33
34 c. Owns four or more residential units, then all of those
35 properties are covered under the law
36
37 d. Sells two or more homes within the past two years in
38 which they did not reside in at the time of sale

39
40 2. Multi-family Housing:

- 41
42 a. Any multi-family dwelling with five or more units
43
44 b. Any multi-family dwelling with four units or less, if the
45 owner does not occupy any of those units
46

47 In 1988 Congress passed an amendment to the 1968 Fair Housing Act that
48 expanded the law's jurisdiction to include handicapped individuals and families with
49 children. To have **HANDICAP STATUS**, a person must have physical or mental

CHAPTER SEVEN: STATE AND FEDERAL REAL ESTATE LAWS

1 impairments that interfere with day-to-day activities. **FAMILIAL STATUS** includes
2 families with minors (persons under the age of 18) and pregnant women.

3
4 Although discrimination based on familial status is outlawed, exemptions
5 apply to federal or state approved retirement communities if:

6
7 1. All the residents are age 62 or older, or;

8
9 2. A development has 80% or more of the homes occupied by
10 someone age 55 years or older. Additionally, the development must provide
11 activities that are inherent with senior citizen lifestyle such as line dancing or
12 water aerobics.

13
14 The following groups are not considered to be a "protected class" and are,
15 therefore, not covered by the 1968 Fair Housing Act:

16
17 1. Marital status

18 2. Occupation

19 3. Age

20
21 It should be remembered that individuals who reside in their homes and are
22 marketing the property on their own behalf ("For Sale by Owner") are generally
23 excluded from the dictates of the 1968 Fair Housing Act. When an individual owns
24 multiple units or hires a real estate broker to assist in marketing, then the 1968 Fair
25 Housing Act does apply. However, a "For Sale By Owner" or "For Rent By Owner"
26 may not discriminate based on race because the Civil Rights Act of 1866 applies.

27
28 The following actions taken by property owners or brokers representing
29 property owners are prohibited under the 1968 Fair Housing Act:

30
31 1. Refusing to sell or lease or to negotiate to sell or lease to
32 persons who are protected under the Fair Housing Act

33
34 2. Quoting different terms, conditions, or prices to persons who
35 are protected under the Fair Housing Act

36
37 3. **STEERING**: Directing a member of a protected class to or
38 from a property based upon discriminatory reasons

39
40 4. **BLOCKBUSTING**: Inducing a person to sell or lease a
41 property because the area is becoming "transitional"

42
43 5. Denying access to the Multiple Listing Service (MLS) or other
44 private marketing systems or discriminating in any advertising

45
46 6. Making false statements regarding the availability of certain
47 properties for sale or lease
48

CHAPTER SEVEN: STATE AND FEDERAL REAL ESTATE LAWS

1 7. **REDLINING**: Denying mortgages or other real estate services
2 (such as insurance) located in certain geographical areas because of
3 discriminatory reasons
4

5 Enforcement of the 1968 Fair Housing Act falls under the jurisdiction of the
6 U.S. Department of Housing and Urban Development (HUD). Complaints must be
7 filed, and it will be the complainant's responsibility to prove that discrimination has
8 occurred. The 1968 Fair Housing Act is federal law and, therefore, the federal court
9 system has jurisdiction of any alleged violation.
10

11 Real estate licensees must be very careful not to engage in any discussions
12 which might be construed to be discriminatory. If a person wants to see a particular
13 home, show it to them. Do not assume that he or she would prefer an area because
14 of his or her race, color, religion, sex, national origin, family status, or handicap.
15

16 Although age is not a protected category under the 1968 Fair Housing Act,
17 the Equal Credit Opportunity Act includes age as a protected class in lending
18 transactions. If a person has the willingness and ability to repay the debt, he or she
19 should not be denied the opportunity to borrow money because of age.
20

21 The 1968 Fair Housing Act requires businesses in the housing industry to
22 prominently display an Equal Housing Opportunity poster that affirms their desire to
23 extinguish discrimination in real estate.
24

25 D. Additional Federal Legislation: The amendment to the Fair Housing
26 Act in 1988 encouraged Congress to take further steps to strengthen laws
27 concerning handicapped persons. In 1990, **The Americans with Disabilities Act**
28 (ADA) was passed to insure that handicapped individuals are afforded access to
29 public transportation, commercial facilities, and other **PUBLIC ACCOMMODATIONS**.
30 All new construction and renovations must meet strict ADA codes. Examples of ADA
31 requirements include grab rails or bars in bathrooms and wider doors for wheelchair
32 accessibility.
33

34 The Interstate Land Sales Full Disclosure Act requires that a **PROPERTY**
35 **REPORT** be provided to all prospective purchasers at least three days prior to
36 entering into a purchase agreement if the subject development consists of 25 lots or
37 more. The prospective buyer has seven days to rescind the contract if the property
38 report was given in a timely manner. In the event the property report is not timely
39 delivered, the buyer has up to two years to rescind the contract with a full deposit
40 refund.
41

42 II. **STATE LAWS**

43 A. Overview: The Florida Fair Housing Law was enacted to run in
44 conjunction with the 1968 Fair Housing Act but to be oriented to particular needs of
45 Florida residents. In the event of a conflict, it should always be remembered that
46 federal laws will supersede state laws.
47
48

CHAPTER SEVEN: STATE AND FEDERAL REAL ESTATE LAWS

1 The Florida Americans with Disabilities Accessibility Implementation Act was
2 created to give enforceability to the already existing Federal ADA. As with most
3 laws, enforcement is far more effective on a local level.
4

5 B. Landlord/Tenant Law: The Florida Residential Landlord and Tenant
6 Act was designed and created to bring about a balance and fairness for both
7 landlords and tenants. This law regulates residential properties which are defined as
8 any property where a person or persons live. Landlords are prohibited from imposing
9 "unconscionable" rental provisions while at the same time insuring the landlord's
10 rights to inspect and/or enter the property with proper notification.
11

12 Under the Florida Residential Landlord and Tenant Act, the landlord is
13 required to maintain security deposits and advanced rents in a safe, secure, and
14 otherwise equitable location on the tenant's behalf. If the landlord is acting on his or
15 her own behalf, one of the following procedures must be followed:
16

17 1. Place the deposit in a separate non-interest bearing escrow
18 account, or;

19 2. Place the deposit in a separate interest bearing account. The
20 landlord owes the tenant either 5% simple interest or 75% of the interest
21 actually earned (landlord choice), or;

22 3. Landlord may co-mingle the deposit with his own funds
23 provided the landlord posts a surety bond with the clerk of court in the amount
24 of the deposit or \$50,000 (whichever is less) and pay the tenant 5% simple
25 interest.
26
27
28

29 In the event the landlord is acting in the role of a licensed real estate agent or
30 if the landlord has hired a broker to act as an agent, the Florida Landlord and Tenant
31 Act no longer applies as it pertains to deposits and is replaced with the Florida Real
32 Estate License Law (F.S. 475) or other state laws that are appropriate.
33

34 The landlord has an obligation to maintain the premises in normal working
35 order including hot water, heat, and pest control. The tenant is required to maintain
36 the property in a clean and sanitary condition consistent with ordinary wear and tear.
37

38 Upon termination of a rental agreement, the premises may or may not require
39 repairs. If the security deposit is to be utilized for repairs or damage, the landlord
40 must notify the tenant within 30 days of the termination date by certified mail of the
41 intention of use some or all of the deposit. The landlord gives up any claim to the
42 deposit if these procedures are not followed. If the landlord is uncertain as to where
43 the certified mail is to be delivered, it should be delivered to the tenant's last known
44 address. If no repairs are required all security deposits must be returned within 15
45 days of termination.
46

47 In the event the tenant breaches the lease agreement, the landlord can have
48 the tenant evicted. If the landlord breaches the lease agreement, the tenant, through

CHAPTER SEVEN: STATE AND FEDERAL REAL ESTATE LAWS

1 the proper legal channels, can seek rent reduction or pay rent directly to the clerk of
2 the court while litigation is pending.

3
4 C. Florida Uniform Land Sales Practices Act: Under this law (Chapter
5 498, F.S.), the Division of Land Sales, Condominiums, and Mobile Homes regulates
6 the sale of **SUBDIVISION** lots in Florida if the subdivision contains 50 or more lots.
7 This law requires delivery of a public offering statement and provides a prospective
8 buyer with a seven-day rescission period after entering into a contract to purchase.

9
10 D. Lotteries: A **LOTTERY** occurs when a person is induced to
11 purchase something with the hopes of winning something. Although the state of
12 Florida can legally operate a lottery, brokers are prohibited by law. An example
13 might be if a broker advertises a drawing for a free hot-tub for the first ten buyers. It's
14 okay to give a hot-tub to the first ten buyers, but not a drawing where one out ten will
15 win the hot-tub.



SUMMARY

- The Fair Housing Act of 1968, as amended, prohibits discrimination in housing or housing related practices based of race, color, religion, sex, national origin, handicap, or familial status as it pertains to the sale or lease of single-family homes and multi-family housing.
- Examples of prohibited discriminatory acts include blockbusting, steering, and redlining.
- The Civil Rights Act of 1866, which prohibits discrimination in real estate based upon race, was upheld by the U.S. Supreme Court in the landmark case of Jones v. Mayer (1968).
- HUD prosecutes complaints filed by individuals claiming that a violation of the Fair Housing Act has been committed.
- The major provisions and protections afforded under the 1990 Americans with Disabilities Act include access to public transportation, commercial facilities, and public accommodations.
- The Florida Uniform Land Sales Practices Act applies to developments of 50 lots or more and requires meaningful disclosure (public offering statement) that accurately describes all important facts about the property and the development.
- The 1968 Fair Housing Act provides limited exemptions that allow a person to discriminate the sale or rental of his or her single-family residence as long as a licensee is not involved. However, 1866 Civil Rights Act prohibits discrimination in housing based on race.

1
2 CASE STUDY
3

4 Department of Business and Professional Regulation,
5 Division of Real Estate,
6 Petitioner,
7

8 vs.
9

10 Respondent
11

12 Administrative Complaint:
13

14 The Petitioner seeks disciplinary action against the Respondent and against
15 her license to practice real estate. In the aftermath of Hurricane Andrew, John
16 Johnson and Kim Jones sought to rent a place to live until repairs could be made to
17 their home. Johnson responded to a newspaper advertisement placed by the
18 Respondent and her brokerage firm on behalf of the owners, The Martins. The
19 Respondent, a licensed real estate sales associate, showed Johnson and Jones the
20 house, and they indicated they wished to rent it. Before finalizing the rental, the
21 Respondent called the Martins to discuss the agreement. Ms. Martin proceeded to
22 inquire of the Respondent regarding race and ethnic background of Johnson and
23 Jones. The conversation included, in part:
24

25 Ms Martin: Are they Hispanic?

26 Respondent: No

27 Ms. Martin: Are they Black?

28 Respondent: Yes

29 Ms. Martin: No, I cannot rent the house to black people
30 because I live in part of the house and because
31 of what the neighbors will say about something
32 like that.

33 Respondent: We are not supposed to discriminate
34 that way.

35 Ms. Martin: Look for someone else.
36

37 The Respondent contacted Johnson and Jones and informed them that the
38 owners did not want persons of color in their house. The Respondent
39 recommended that Johnson and Jones retain a lawyer. Ultimately, the Martins were
40 found guilty of discrimination by the HUD and ordered to pay a \$10,000 fine and
41 damages of \$35,000 each to Johnson and Jones. HUD also fined the Respondent
42 (licensee) \$100 and required her to attend fair housing training. The FREC voted, in
43 its separate disciplinary case, to suspend the sales associate's license for two years
44 and impose a \$1,000 fine. The Ruling was, however, overturned on appeal on the
45 grounds that FREC did not have the disciplinary guidelines in place for the type of
46 violation charged. Following this case, Rule 61J2-24.001, FAC was amended.
47

48 Class discussion
49



1 **CHAPTER SEVEN QUIZ**

2 1. Racial discrimination was outlawed by the:

- 3
4 A. Civil Rights Act of 1866
5 B. Civil Rights Act of 1964
6 C. Civil Rights Act of 1968
7 D. Johnson v. Mayer case
8
9

10 2. All of the following are protected classes covered by the Civil Rights Act of
11 1968 except:

- 12
13 A. Race
14 B. Religion
15 C. Age
16 D. National origin
17
18

19 3. "For Sale By Owners", although typically not covered by the Civil Rights Act
20 of 1968, are still prohibited from racial discrimination under the:

- 21
22 A. Civil Rights Act of 1964
23 B. Civil Rights Act of 1866
24 C. Johnson v. Mayer case
25 D. Common law
26
27

28 4. Directing a member of a protected class to or from a property based upon
29 discriminatory reasons is known as

- 30
31 A. steering
32 B. blockbusting
33 C. redlining
34 D. channeling
35
36

37 5. Broker Wang has a listing on a home, but the owner is instructing Wang not
38 to sell the property to "anyone of color." How should Wang handle this situation?

- 39
40 A. Not show the property to anyone of color
41 B. Explain that the instruction is illegal and refuse to follow the instruction
42 or withdraw from the listing relationship
43 C. Show the property to only people Wang thinks will please the owner
44 D. Consult with the Florida Real Estate Commission
45
46

CHAPTER SEVEN: STATE AND FEDERAL REAL ESTATE LAWS

- 1 6. Landlord Larry accepts a \$1,000 damage deposit from a tenant. Larry may
2 lawfully handle the deposit in all of the following ways except:
3
4 A. Place the deposit in a separate non-interest bearing escrow account
5 B. Place the deposit in a separate interest bearing account and pay the
6 tenant either 5% simple interest or 75% of the interest actually earned
7 C. Place the money in his personal account and pay the tenant 5%
8 D. Co-mingle the deposit with his own funds and post a \$1,000 surety
9 bond with the clerk of court and pay the tenant 5% simple interest
10
11
12 7. If Landlord Larry wants to impose a claim on the damage deposit, he must
13 notify the tenant within how many days after the lease is over?
14
15 A. 5
16 B. 10
17 C. 15
18 D. 30
19
20
21 8. Which agency is responsible for prosecuting alleged violations of the Fair
22 Housing Act of 1968?
23
24 A. Florida Real Estate Commission
25 B. DBPR
26 C. Housing and Urban Development
27 D. U.S. Attorney General
28
29
30 9. The Civil Rights Act of 1866 was upheld by which U.S. Supreme Court case?
31
32 A. Jones v. Mayer
33 B. Roe v. Wade
34 C. Miranda v. Arizona
35 D. Johnson v. Mayer
36
37
38 10. The Florida Uniform Land Sales Practices Act applies to subdivisions of 50 or
39 more lots and requires which of the following:
40
41 A. Estimation of closing costs
42 B. Delivery of a public offering statement
43 C. Provide a prospective buyer with a ten-day rescission period after
44 entering into a contract to purchase
45 D. Notice of Non-Representation

1 CHAPTER EIGHT:

2 PROPERTY RIGHTS



3 TALK THE TALK

4 **Condominium:** Single unit ownership in a multiple unit dwelling

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

7 **Declaration:** The recorded document that creates a condominium

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

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

12 **Fixture:** Personal property that is permanently attached to real property

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

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

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

18 **Land:** Actual surface of the subject property

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

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

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

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

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

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

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

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

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

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

38 **Tenancy by the Entireties:** Ownership of real property by husband and wife only

39 **Tenancy in Common:** Ownership of real property whereby the co-owners may or
40 may not have acquired title at the same time, may or may not have the same interest
41 and right of use, and do not have the right of survivorship

42

1 **AREAS OF CRITICAL CONCERN**

- 2
- 3 • Define *real property* based on the definition in Chapter 475, F.S.
 - 4 • List and explain the physical components of real property
 - 5 • Explain the four tests courts use to determine if an item is a fixture
 - 6 • Distinguish between real and personal property
 - 7 • Describe the bundle of rights associated with real property ownership
 - 8 • List the principal types of estates (tenancies) and describe their characteristics
 - 9 • Describe the features associated with the Florida homestead law
 - 10 • Distinguish between cooperatives, condominiums, and time-shares and describe
 - 11 the four main documents associated with condominiums
- 12
- 13

14 **I. LAND, REAL ESTATE, AND REAL PROPERTY**

15 A. Overview: **LAND** is regarded as the actual surface of the subject

16 property. Land can be either vacant or developed. **REAL ESTATE** is defined as the

17 land plus all permanent improvements, such as buildings or trees.

18

19 **REAL PROPERTY**, however, includes the physical components of real estate

20 plus the intangible assets ("bundle of rights") inherent with ownership.

21

22 Under Florida Law, real property is technically defined as any interest or

23 estate in land and any interest in business enterprise or business opportunities,

24 including any assignment, leasehold, sub-leasehold, or mineral right. However, the

25 term does not include any cemetery lot or right of burial in any cemetery nor does the

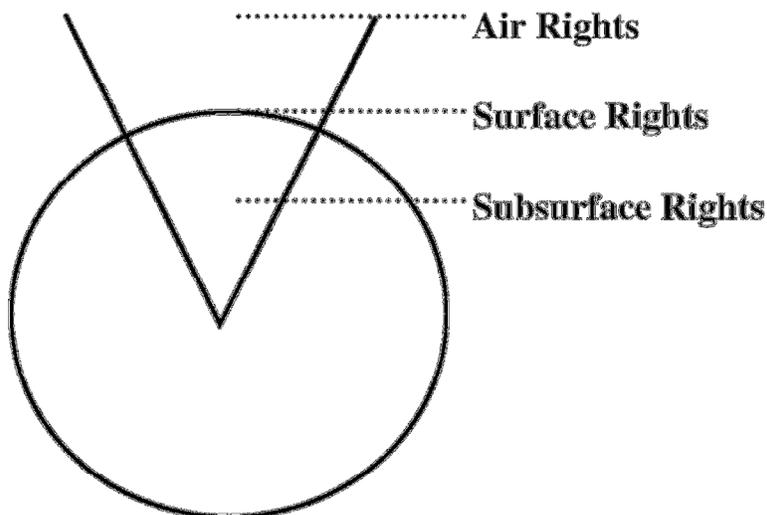
26 term include the renting of a mobile home lot or recreational vehicle lot in a mobile

27 home park or travel park.

28

29 B. Physical Components: There are three physical components

30 that describe real property:



CHAPTER EIGHT: PROPERTY RIGHTS

1 1. Surface rights: Includes the land and everything that is
2 permanently attached thereon. For example: trees, buildings, fences and
3 waterways.

4
5 2. Subsurface rights: Includes items that are located below the
6 immediate surface. For example: oil, gas, and minerals.

7
8 3. Air rights: Includes the rights that an owner has over the area
9 directly above the property. For example, if a tree limb overhangs across
10 another person's property, this is considered an encroachment.

11
12 C. Water Rights and Restrictions: Florida is located on thousands
13 of miles of waterways and shorelines, and anytime a person owns real property that
14 borders on water, there are two categories of legal rights that may apply:

15
16 1. Riparian rights are those rights that affect land that abuts more
17 rapid flowing bodies of water such as rivers and streams.

18
19 2. Littoral rights are those rights that affect land that abut tidal
20 bodies of water such as lakes, bays, oceans and gulfs.

21
22 Over the course of time, the land that abuts a body of water changes its
23 shape. Sometimes land is washed away through the process of **erosion**.
24 Sometimes, the land can gradually increase in size due to a build-up of displaced
25 land from another location. This process is known as **accretion**. The wash or flow
26 of water against the shore is known as **alluvion**. The gradual change of the water
27 line that gives the owner more dry land is known as **reliction**.

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

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

37
38 A **FIXTURE** is an item that was once personal property but is legally
39 considered to be real property after attachment. For example, a ceiling fan that is still
40 in a box is considered to be personal property. Once installed, it then becomes part
41 of the real property and is considered to be a fixture.

42
43 Under the law, any item that is a fixture is included as part of the real property
44 that is being transferred or sold. If a fixture is not specifically excluded in a real
45 estate sales contract, all fixtures are considered part of the real estate and included
46 in the sale. Severance occurs when real property is converted to personal property.

CHAPTER EIGHT: PROPERTY RIGHTS

1 B. Legal Determination: It is sometimes difficult, however, to decide if an
2 item is personal property or a fixture. The law provides for certain tests to determine
3 the item's status:

4
5 1. Intent of the parties: The law seeks evidence of the parties'
6 intent on whether an item is classified as a fixture. Examples of such
7 evidence include the contract terms, oral discussions, or other reasonable
8 inferences and assumptions made between the parties. When the parties
9 have a contract that specifies whether an item is a fixture or not, the language
10 in the contract will control. Also, when the parties discussed whether an item
11 is a fixture or not, that discussion could be evidence of their intent.

12
13 2. Method of Attachment: The more permanent and substantial
14 the attachment to the real estate, the more likely the item will be classified as
15 a fixture. For example, an item that is bolted to a wall will more likely be
16 considered a fixture than an item that is taped.

17
18 3. Agreement of the Parties: If the parties have specifically
19 defined in their contract that certain items are fixtures, the terms of the
20 contract will control. For example, a chandelier that is attached to the ceiling
21 would ordinarily be classified as a fixture and would be included with the sale
22 of the property. By specifying in their contract that the chandelier is not a
23 fixture, it is not included or expected to be part of the sale.

24
25 4. Adaptation of the Item: If an article is custom made for a
26 particular use (such as custom drapes) or built and installed to particular
27 specifications and dimensions (built-in wine rack), the article will likely be
28 considered a fixture.

29
30 Disputes and misunderstandings about the status of possible fixtures can be
31 avoided with a well-written contract. Licensees should take great care to explicitly
32 include all items that could possibly be subject to interpretation. A contract's
33 "inclusion clause" will specify items that are included in the purchase and an
34 "exclusion clause" will specify items that are not included.

35
36 A trade fixture is an item that has been installed at a business location for
37 business use, such as shelving, display cases, or appliances necessary for a
38 business operation. The law provides that a commercial tenant may remove these
39 trade fixtures at the termination of the lease even though the trade fixtures were
40 permanently attached. However, the tenant is responsible for restoring the premises
41 to its original condition.

42 43 44 **III. BASIC PROPERTY RIGHTS**

45 The allodial system of property rights provides for individual ownership of real
46 property. Individual ownership of real property is based on the theory that not only
47 do you own the land and the building, but you have certain rights that are inherent
48 with that ownership.

CHAPTER EIGHT: PROPERTY RIGHTS

1 We often refer to the rights inherent with the allodial system as a "bundle of
2 rights" that include the following characteristics:

3
4
5 **Disposition:** The right to sell, give, or transfer after death
6 **Enjoyment:** The right to "quiet enjoyment" without interruption or disturbance by
7 others
8 **Exclusion:** The right to restrict access to others (e.g. "No Trespassing")
9 **Possession:** The right to occupy the premises within the limits of the law
10 **Control:** The right to use and/or improve the property, subject to private and
11 governmental restrictions.

12
13 THINK "D.E.E.P.C."
14

15 16 **IV. FREEHOLD ESTATES**

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

23
24 B. Types of Ownership: There are two types of Freehold Estates:

25
26 1. Fee Simple Estate: The **FEE SIMPLE ESTATE** is the most
27 common type of ownership. It contains the entire "bundle of rights" that is
28 available for private ownership under the allodial system. It would almost be
29 more appropriate to describe it as "Fee Complex" because the owner gets the
30 most comprehensive amount of legal rights. The overwhelming majority of
31 estates in Florida are fee simple.

32
33 2. Life Estate: The **LIFE ESTATE** is similar to the fee simple
34 estate except the duration of the estate ends when a named person dies. A
35 person who owns a life estate has the entire "bundle of rights" (DEEPC),
36 except there is no right to transfer that estate after death. That means that a
37 person with a life estate can sell it, lease it, or mortgage it subject to the terms
38 and conditions of the life estate.

39
40 The life estate terminates when someone dies. The life estate names a
41 person whose lifetime will control, and that person can be anyone, not just the person
42 who owns the life estate.

43
44 When the designated person dies, the life estate is immediately terminated,
45 and ownership is transferred to a person named in the life estate. If title reverts back
46 to the original grantor, the original grantor has a reversionary estate. If title is
47 transferred to a designated third party, that third party is known as a
48 **REMAINDERMAN**.

49
50

1 **V. NON-FREEHOLD ESTATES**

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

5
6 B. Types of Non-ownership Rights: There are three types of leasehold
7 estates:

8
9 1. **ESTATE FOR YEARS**: A lease that has a definite beginning
10 date, has a termination date, and in writing. There are no duration
11 requirements, so technically a written lease for six months is still considered
12 to be an estate for years.

13
14 2. **TENANCY AT WILL**: A lease that has a beginning date but
15 no fixed termination date, such as a month-to-month rental agreement. A
16 tenancy at will can be oral or in writing. As long as the tenant pays the rent
17 and the landlord accepts the rent, the relationship continues.

18
19 A tenancy at will is terminated by death of either party, sale of the
20 property, or by giving proper notice prior to the end of the rental term, as
21 defined by Florida law: Residential tenants on a week-to-week require a 7-
22 day notice while residential tenants on a month-to-month require a 15-day
23 notice.

24
25 3. **TENANCY AT SUFFERANCE**: This type of non-freehold
26 estate exists when a tenant's rental agreement has expired but the tenant
27 remains in possession without an agreement. Tenants at sufferance are also
28 referred to as "holdover" tenants and their occupancy can be terminated
29 without notice.

30
31
32
33 **VI. HOMESTEAD**

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

45
46 Under homestead laws, if a married person dies and the family homestead
47 was titled in that deceased person's name only, then by operation of law (which will
48 super cede a provision in a will), the surviving spouse receives a life estate and the
49 children receive a remainder estate. If there are no children, the surviving spouse
50 receives title to the homestead in fee simple.

51

1 Homestead protections are limited to 160 acres if a property is located
2 outside a city or up to 1/2 acre if the property is located within a city. Additionally,
3 homestead properties are provided with a tax exemption that allows \$25,000 of
4 assessed value to be exempt from real property taxation plus an additional \$25,000
5 exemption if the homestead is assessed from \$50,000 to \$75,000 but only on non-
6 school taxes.
7
8

9 **VII. SPECIFIC TYPES OF REAL PROPERTY OWNERSHIP**

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

11
12 A. Estate in Severalty: When property is titled in one person's name.
13

14 B. Tenancy by the Entireties: The **TENANCY BY THE ENTIRETIES**
15 interest is available only to husbands and wives who own property together. Florida
16 law considers property titled in this manner actually owned by the marriage rather
17 than the individuals. In the event one spouse dies, the surviving spouse
18 automatically receives sole ownership of the property regardless of any "last will and
19 testament" provisions. Neither spouse can legally sell or mortgage the property
20 separately. Any property owned prior to the marriage, however, is considered
21 separate property.
22

23 C. JOINT TENANCY: This type of ownership interest between two or
24 more parties with the **RIGHT OF SURVIVORSHIP** (when one joint tenant dies, the
25 other joint tenants absorb the decedent's interest). The right to survivorship must be
26 stated specifically in the deed by expressly using the words "Joint Tenants with Right
27 of Survivorship." If the survivorship provision is not expressly stated, a tenancy in
28 common will result. Additionally, the joint tenancy with right of survivorship interest
29 requires that the property be acquired under the four unities of possession, interest,
30 time, and title (PITT). The interests must be obtained simultaneously from the same
31 source and in the same conveyance instrument (deed).
32

33 The ownership interest between the joint tenants ("co-owners") must be equal
34 (e.g. 50-50 or 1/4 each). All joint tenants have equal rights to possession and use
35 of the subject property. Upon the death of a joint tenant, the decedent's interest in
36 the subject property does not pass according to the joint tenant's will or estate, but
37 rather the surviving joint tenants will equally absorb the decedent's ownership
38 interest. If a joint tenant sells his or her interest, the new co-owner will not be
39 considered a joint tenant with the other co-owners, but rather will be deemed a tenant
40 in common. However, the original joint tenants shall remain as joint tenants with right
41 of survivorship amongst themselves.
42

43 D. Tenants in Common: **TENANTS IN COMMON** is an interest in real
44 property owned by two or more persons that may or may not have equal interests or
45 may or may not have taken title at the same time. Their ownership interest may be
46 equal (e.g. 50/50) or unequal (e.g. 80/20). Tenants in common have equal rights to
47 possession and use of the property, regardless of the ownership share. A co-tenant
48 may sell or transfer his or her interest.
49
50

1 **VIII. COOPERATIVES, CONDOMINIUMS AND TIME SHARES**

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

10
11 **Florida Statute Chapter 719** specifies that prior to the sale of a cooperative,
12 a prospective purchaser must be provided with copies of the articles of incorporation,
13 by-laws, and rules and be informed of a 15-day contractual right of rescission from
14 the date of contract (or receipt of the required documents, whichever happens last) if
15 purchasing from a developer, or a 3-business-day right of rescission if purchasing
16 from a private individual.

17
18 B. Condominium: A **CONDOMINIUM** is individual ownership within a
19 multiple unit dwelling. Unlike cooperatives, condominiums are typically owned in fee
20 simple. In addition to unit ownership, condominium owners also own an undivided
21 fractional share of the common elements which include all portions of the
22 condominium property other than the individual units. Property taxes are levied upon
23 each individual unit rather than the entire condominium. Transferring ownership of a
24 condominium is generally achieved through the use of a deed.

25
26 Condominiums are created by recording a state approved "Declaration of
27 Condominium" (**DECLARATION**) in the county public records. In addition, a
28 developer will also establish a homeowners' association that will abide by rules and
29 By-Laws that are also recorded in the county public records. The condominium map
30 locates and describes each condominium unit. The condominium conveyance
31 transfers title to individual units as well as an undivided interest in the shared
32 common elements.

33
34 Together, these documents comprise the "Condo Docs" which outline and
35 describe the rights and obligations of condominium owners. **F.S. 718** requires that all
36 prospective purchasers be given copies of the condominium documents, a copy of
37 the homeowner association budget, and any rules pertaining to the unit's resale.

38
39 There are certain disclosure requirements which must be fulfilled prior to the
40 purchase of a condominium. Anyone purchasing a condominium must be provided a
41 set of the condominium documents. Anytime a new condominium is being sold by
42 the developer, the purchaser must be provided with a disclosure stating that the
43 purchaser has a 15-day right of rescission after the receipt of the condominium
44 documents (or the signing of the sales contract, whichever happens last). When a
45 private owner resells a condominium, the purchaser must be provided with a
46 disclosure giving a 3-business-day rescission period.

47
48 C. Time Share: Time Share units have taken the concept of
49 condominiums one step further by selling condo units to multiple owners. The basic
50 principle behind time share is to sell a condominium to different owners with an
51 agreement for use. Owning a time share entitles the owner to a right of occupancy

CHAPTER EIGHT: PROPERTY RIGHTS

1 for a specified interval of time, typically a specific week of each year (e.g. 28th week
2 of each year).

3
4 There are two types of legal formats for time share projects to follow:

5
6 1. Interval ownership: Actually taking legal title to the property
7 (fee simple) as a tenant in common with other interval owners.

8
9 2. Right to use (Vacation Lease): A person leases the time
10 share unit for a prescribed period of time after which sole right of possession
11 is then transferred back to the developer.

12
13 The Florida Real Estate Time Share Act (**F.S. 721**) applies to time share
14 plans consisting of more than seven time share periods over a span of no less than 3
15 years and in which the time share facilities or accommodations are physically located
16 in Florida.

17
18 A prospective time share purchaser must be provided with a public offering
19 statement (prospectus) and a disclosure statement notifying the prospect that a time
20 share sales contract may be cancelled within 10 days of signing the sales contract or
21 receipt of the public offering statement, whichever happens last.

22
23 Homeowner's Associations, **Chapter 720 F.S.**, are corporations formed to
24 provide rules and guidance to the operations of certain condominiums, subdivisions,
25 mobile home parks, and Time share. This includes, but is not limited to, design,
26 maintenance, use of personal and common space, and the cost to operate.

27
28 The Community Development District, **Chapter 190 F.S.**, is an alternative to
29 municipal incorporation for managing and financing infrastructure required to support
30 development of a community.

31



SUMMARY

32

33

34

35

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47

- Real property includes both the physical components of real estate (land and improvements) plus the intangible assets known as the "bundle of rights."
- The physical components of real property include surface rights, sub-surface rights, and air rights.
- The law will utilize four separate tests to determine if an item is a fixture. They are
1) Intent of the parties, 2) Method of Attachment, 3) Agreement of the parties, and 4) Adaptation of the article.
- Personal property is considered to be all properties other than real property.

CHAPTER EIGHT: PROPERTY RIGHTS

- 1 ➤ The basic property rights ("bundle of rights") can be remembered as
2 "DEEPC" (Disposition, Enjoyment, Exclusion, Possession, Control)
3
4 ➤ The principle types of estates include 1) Estate in Severalty
5 (individual), 2) Tenancy by the Entireties (husband and wife), 3) Joint
6 Tenancy (Right of Survivorship/ "PITT"), 4) Tenants in Common.
7
8 ➤ Florida homestead laws provide certain types of protection and
9 benefits. Homestead property is exempt from judgment foreclosure,
10 is limited in size depending on geographical location, and provides a
11 \$25,000 tax exemption from the assessed value of the property plus
12 an additional \$25,000 if the property is assessed from \$50,000 to
13 \$75,000 and on non-school taxes.
14
15 ➤ Properties that were owned prior to a marriage are considered
16 separate from properties acquired during the marriage.
17
18 ➤ Cooperatives are corporations owned by stockholder/residents with a
19 proprietary lease for occupancy and use.
20
21 ➤ Condominiums are individual ownership within a multiple unit dwelling.
22
23 ➤ Time shares are considered interval ownership with multiple owners of
24 a single property unit with an agreement to the right of use.
25
26
27
28

29

CHAPTER EIGHT QUIZ



- 30 1. An item that was once personal property but is now considered to be part of
31 the real property is called a
32
33 A. chattel
34 B. fixture
35 C. intangible asset
36 D. appurtenance
37
38
39
40 2. Land, together with all the permanent improvements thereon, is technically
41 called:
42
43 A. Land
44 B. Real estate
45 C. Real property
46
47 D. Tenancy in common

CHAPTER EIGHT: PROPERTY RIGHTS

- 1 3. The physical components of real property include:
2
3 A. Subsurface rights
4 B. Surface rights
5 C. Air rights
6 D. All of the above
7
8
9
- 10 4. Legal rights that affect land that abuts rapid flowing bodies of water such as
11 rivers and streams are called:
12
13 A. Littoral rights
14 B. Aquarian rights
15 C. Riparian rights
16 D. Irrigation rights
17
18
19
- 20 5. The following are examples of an interest in real property for an indefinite time
21 period except:
22
23 A. Joint estate
24 B. Estate for years
25 C. Estate in severalty
26 D. Tenancy by the entireties
27
28
29
- 30 6. Which type of ownership interest includes the right of survivorship?
31
32 I. Estate in severalty
33 II. Tenancy in common
34 III. Joint tenancy
35 IV. Tenancy by the entireties
36
37 A. I only
38 B. II and III
39 C. II and IV
40 D. III and IV
41
42
43
- 44 7. Which type of multiple-unit dwelling provides for right of possession through
45 rights granted under a proprietary lease?
46
47 A. Time share
48 B. Cooperative
49 C. Condominium
50 D. Apartment
51

CHAPTER EIGHT: PROPERTY RIGHTS

- 1 8. A purchaser of a new developer condominium has how many days to rescind
2 the sale and purchase contract after receipt of the condominium documents:
3
4 A. 3
5 B. 7
6 C. 10
7 D. 15
8
9
10
11 9. Rules and regulations for a condominium can be found in the:
12
13 A. Bylaws
14 B. Condo docs
15 C. Declaration
16 D. Question and answer sheet
17
18
19
20 10. All of the following are components of the “bundle of rights” granted under the
21 allodial system, except:
22
23 A. Disposition
24 B. Enjoyment
25 C. Possession
26 D. Construction
27
28
29
30 11. Which of the following statements about Florida Homestead laws is incorrect?
31
32 A. A minimum of \$25,000 may be deducted from the assessed value of a
33 homestead property for tax purposes.
34 B. Homestead laws will prevent foreclosure by most judgment liens.
35 C. An owner may protect up to 160 acres if the homestead is within a
36 city.
37 D. Homestead laws and protections are provided by the Florida
38 Constitution.
39
40
41
42 12. Which type of ownership requires that the property be acquired under the four
43 unities of possession, interest, time, and title (PITT)?
44
45 A. Tenancy in common
46 B. Joint tenancy
47 C. Tenancy by the entirety
48 D. All of the above
49
50
51

CHAPTER EIGHT: PROPERTY RIGHTS

- 1 13. An ownership interest in real property that will terminate upon the death of an
2 individual is called a:
3
4 A. Estate for years
5 B. Fee simple estate
6 C. Life estate
7 D. Remainder
8
9
10
11 14. Which of the following is an example of tenancy at sufferance?
12
13 A. Holdover tenant
14 B. Life estate
15 C. Time share
16 D. Homestead
17

1 **CHAPTER NINE:**
2 **REAL PROPERTY OWNERSHIP**

3



4 **TALK THE TALK**

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

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

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

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

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

17 **Certificate of Title:** Issued by Clerk of Courts after a foreclosure sales

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

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

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

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

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

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

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

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

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

34 **Grantee:** The person or party receiving the deed

35 **Granting Clause:** Words of conveyance found in the premises clause

36 **Grantor:** The person or party giving the deed

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

39 **Ground Lease:** A lease on the land only

40 **Guardian's Deed:** Utilized when the grantor is less than 18 years of age

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

42 **Intestate:** When a person dies without a will

1 **Lien:** An encumbrance against a property for money, either voluntary or involuntary

2 **MORE TALK THE TALK**

3
4 **Marketable Record Title Act:** If a continuous chain of title has existed for at least
5 30 years, any potential title defect more than thirty years old is considered cured

6 **Net Lease:** A lease in which the tenant pays a specified rent plus a portion of typical
7 landlord costs

8 **Patent Deed:** A special deed used to convey title of real estate from the United
9 States government to individuals

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

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

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

16 **Seisen:** A statement of ownership or title to real property

17 **Sublease:** A tenant who transfers less than the entire leasehold estate

18 **Testate:** A person that dies with a will

19 **Title:** The evidence one has of ownership to real property

20 **Variable Lease:** The tenant pays rent based on a pre-determined index

21
22
23 **AREAS OF CRITICAL CONCERN**

- 24
25
26 • Differentiate between voluntary and involuntary alienation
27 • Explain the various methods of acquiring title to real property and describe the
28 conditions necessary to acquire real property by adverse possession
29 • Distinguish between actual notice and constructive notice
30 • Distinguish between an abstract of title and a chain of title
31 • Explain the different types of title insurance
32 • Describe the parts of a deed and the requirements of a valid deed
33 • List and describe the four types of statutory deeds and the legal requirements for
34 deeds
35 • List and describe the various types of governmental and private restrictions on
36 ownership of real property
37 • Distinguish among the various types of leases

38
39
40 **I. CONCEPT OF TITLE**

41 A. Overview: **TITLE** refers to the concept of real property ownership.
42 When a party's name appears on a deed, that person has "title" to the property.
43 Having title to real property includes ownership of a certain "bundle of rights"
44 associated with the type of ownership estate (i.e.: whether title is in fee simple or a
45 life estate). Title to real property is transferred (conveyed) from one owner to another
46 on a voluntary or an involuntary basis.
47

CHAPTER NINE: REAL PROPERTY OWNERSHIP

1 B. Voluntary Alienation: When real property is transferred according to
2 the actual desires and intent of the owner, the title is being transferred through
3 voluntary alienation. There are two voluntary alienation methods:

4 1. Deed: The **DEED** is a written document evidencing transfer
5 of ownership by either sale or gift. Conveying property by deed is the most
6 common method of transferring title from one individual or group to another.
7

8 2. Will: A valid last will and testament that specifies a real
9 property transfer through the decedent's estate is considered to be a
10 voluntary alienation. When a person dies with a will (**TESTATE**) the real
11 property is transferred according to terms stated in the will.
12

13 The person who dies (decedent) leaving a will is called either a testator
14 (male) or testatrix (female). A party named in a will to receive real property is called
15 a devisee and is entitled to inherit a devise. A party named in a will to receive
16 personal property is called a beneficiary and is entitled to inherit a bequest.
17

18 A person who leaves a will must be of legal age (eighteen years of age or
19 older) and must be mentally competent.
20

21 C. Involuntary Alienation: When property is transferred without the
22 specific intent of the owner, we refer to the conveyance as involuntary alienation.
23 There are four methods of involuntary alienation:
24

25 1. Descent and distribution: Whenever a person dies without a
26 valid will, they have died **INTESTATE**. All real and personal property will
27 transfer to the decedent's heirs or closest known relatives, if any.
28

29 2. Escheat: Whenever a person dies without a will (intestate)
30 and has no heirs, all real and personal property will transfer to the state of
31 Florida through the process of **ESCHEAT**.
32

33 3. Eminent Domain: **EMINENT DOMAIN** is the right of
34 government (or a quasi-government agency) to take property from individuals
35 anytime that government feels it is necessary. Examples of quasi-
36 government agencies include railroads and utility companies. This is
37 sometimes referred to as "government land snatching" and is accomplished
38 through the process of condemnation.
39

40 4. Adverse possession: When a property owner allows another
41 to take possession of his or her property and fails to take legal action to have
42 that person (**ADVERSE POSSESSION**) removed, the true owner may lose
43 his or her rights or interests to the adverse possessor. There are several
44 requirements necessary to acquire property through adverse possession.
45 There are two important conditions:
46

47 a. Adverse possession must continue for seven or more
48 consecutive years without the true owner's consent.
49

1 2. Lender's Policy: The lender's title insurance policy, also referred
2 to as the mortgagee's policy, is required by the lender if a property is
3 mortgaged. This policy will cover the lender's investment. A lender's policy
4 is transferable.
5

6 In practice, the mortgagee's policy covers the bank's investment while the
7 owner's policy covers the owner's equity up to the original purchase price. A property
8 owner may subsequently increase the face amount of his or her title insurance by
9 paying an additional premium.
10

11 **IV. DEEDS**

12 A. Parties: A deed conveys title from one party to another. There are
13 two parties to a deed:
14

15 1. Grantor: The **GRANTOR** is the person or group who is giving
16 title to another. In most cases, the owner is the grantor. The Grantor must be
17 at least 18 years of age and mentally competent/
18

19 2. Grantee: The **GRANTEE** is the person or group who is
20 receiving title from another. The Grantee is NOT required to be either
21 mentally competent or of legal age to receive title to real estate.
22

23 B. Deed Elements: There are various elements that make up a deed.
24 Some elements are required while others are simply needed for clarity. There are
25 nine important elements to a deed:
26

27 1. The deed must contain the names of the grantor and grantee.
28 The grantor must be of legal age and mentally competent. The grantee,
29 however is not.
30

31 2. There must be a recited consideration. Although no specific
32 dollar amount needs to be stated, the recited consideration can be the actual
33 purchase price or might be stated as "\$10.00 and other good and valuable
34 consideration".
35

36 3. There must be words of conveyance found in the **GRANTING**
37 **CLAUSE**. Typically a deed will recite that the grantor hereby "conveys,
38 transfers, remises" or other words of conveyance.
39

40 4. The **HABENDUM CLAUSE** describes the type of estate that is
41 being conveyed (either fee simple or life estate). For example, a deed may
42 state that the grantee is to "have and to hold in fee simple forever."
43

44 5. The Reddendum clause describes any reservations or
45 restrictions that run with the land, such as a deed restriction.
46

47 6. When stated in a deed, an appurtenance refers to other
48 physical improvements on the property besides the main purpose of the sale
49
50

CHAPTER NINE: REAL PROPERTY OWNERSHIP

1 7. The complete legal description. The physical address is not
2 important or required. The legal description should be obtained from a deed
3 or clerk of courts/public record. Licensees should be careful of obtaining the
4 legal description from the county appraiser's office. These legal descriptions
5 are used for taxing and should not be relied upon for accuracy.
6

7 8. For title to legally transfer, the deed must be delivered to and
8 voluntarily accepted by the grantee.
9

10 9. A valid deed must be signed by a competent grantor with two
11 witnesses. A deed does not have to be **ACKNOWLEDGED** (notarized) or
12 recorded to be valid. However, a deed must be acknowledged to be
13 recorded. If a person fails to record his or her deed he or she may be
14 estopped from ownership under certain conditions.
15

16 C. Deed Requirements: In order for a deed to be legally valid, it must
17 adhere to the following requirements:
18

19 1. Must be in writing
20

21 2. Must contain the names of the grantor and grantee
22

23 3. Must recite the consideration
24

25 4. Must contain a granting clause (words of conveyance)
26

27 5. A habendum clause define the type of estate
28

29 6. There must be a complete legal description
30

31 7. The competent grantor must sign the deed with two
32 subscribing witnesses
33

34 8. In order to accomplish the conveyance, the deed must be
35 delivered to and accepted by the grantee
36

37 D. Statutory Deeds: There are four types of statutory deeds. Each of
38 these deeds transfers title. The difference, however, depends on how much the
39 grantor is willing to defend the quantity and quality of title being conveyed.
40

41 1. Quit Claim Deed: The **QUIT CLAIM DEED** is utilized to cure
42 title defects or lawsuits to quiet title. In addition, a quit claim deed can be
43 used in a divorce. The grantor makes no warranties, guarantees, or promises
44 of actual ownership of title.
45

46 2. Bargain and Sale Deed: This type of deed contains no
47 warrants or covenants other than the warrant of **SEISEN** (a statement of
48 ownership).
49

CHAPTER NINE: REAL PROPERTY OWNERSHIP

1 3. Special Warranty Deed: With this type of deed, the grantor
2 provides a warrant of seisen and a warranty of title against any acts that were
3 performed by the grantor or the grantor's agents. The grantor promises to
4 defend any title defects that allegedly arose during the period of time that the
5 property was owned by the grantor. The Special Warranty Deed is often used
6 by banks for properties that have been taken back through foreclosure.
7 Typically, banks do not want to warrant good title for the time period before
8 the foreclosure.
9

10 4. General Warranty Deed: The **GENERAL WARRANTY DEED**
11 is the most common type of deed used in real estate conveyances and it
12 contains the following warrants and covenants:
13

14 a. Covenant of Seisen is a statement of ownership. The
15 grantor warrants that it has the quantity and quality of title
16 being conveyed ("I promise I own it and I promise I have the
17 right to sell it").
18

19 b. Covenant against encumbrances guarantees that there
20 are no other claims or liens against the property being
21 conveyed other than those already known by the grantee. The
22 grantor takes full responsibility for any and all claims,
23 regardless of when the claim occurred up to the day the
24 grantee accepted title.
25

26 c. Covenant of quiet enjoyment assures the grantee that
27 there will be no other claims of ownership or any other interest
28 claim on the property being conveyed.
29

30 d. Covenant of Further Assurance provides that the
31 grantor will produce or sign any legal documents necessary
32 after closing to perfect good title.
33

34 e. Covenant of warranty forever insures that the grantor
35 will do whatever is necessary to protect and defend good title
36 forever.
37

38 5. Guardians Deed: A **GUARDIANS DEED** is used to convey
39 title of a minor. It should be remembered that a minor can receive title to real
40 property through any standard deed (general warranty deed). But to sell or
41 transfer title the legal guardian will be required to execute the process.
42

43 6. Committees Deed: A **COMMITTEES DEED** is used to convey
44 title of someone mentally incompetent. They may receive title but in order to
45 sell or transfer title to real property an appointed person must execute the
46 process.
47

1 7. Tax Deed: This type of deed is used to convey title to real
2 property that has been foreclosed by a court order for nonpayment of real
3 estate taxes. In Florida, a special warranty deed is also known as a tax deed
4 when it is used by a city or county to convey a tax title or to convey title of city
5 or county property.
6

7 8. Deed of Trust: Used in some states to convey title or an
8 equitable interest in property to a third-party trustee to be held as security for
9 a debt or obligation owed by the mortgagor (borrower) to the mortgagee
10 (lender). Once the debt has been satisfied, the trustee returns the title to the
11 borrower through a re-conveyance deed.
12

13 14 **V. OWNERSHIP LIMITATIONS AND RESTRICTIONS**

15 From the very beginning of the allodial system of property ownership, a
16 person was said to own a "bundle of rights." Since that time, the "bundle of rights"
17 has undergone a great deal of restricted change. Originally, the right of the individual
18 property owner was paramount. Today, individual property rights are not absolute.
19 There are two distinct areas of property ownership limitations and restrictions:
20

21 A. Governmental Restrictions: The federal, state, and local
22 governments restrict and limit what we can do, or not do, with our property. There
23 are three categories of governmental limitations:
24

25 1. The government has the right to enact laws and regulations to
26 protect the health, safety, and welfare of the public through the exercise of its
27 **POLICE POWERS**. Examples of Police Power include zoning laws that divide
28 areas of a community into various uses (residential, commercial, industrial,
29 etc.) and building codes that set guidelines for construction specifications and
30 quality.
31

32 2. Eminent Domain is the right of government to take real
33 property owned by individuals and convert it to whatever use or non-use has
34 been chosen. If the property owner disputes the amount of financial
35 compensation being offered, the owner is entitled to a legal determination of
36 value through the court system.
37

38 3. Taxation is a governmental restriction because owners must
39 pay property taxes to continue their property ownership. The non-payment of
40 real estate taxes can cause liens or even a forced public sale of the property.
41

42 B. Private Restrictions: Restrictions on the use of real property can be
43 imposed by the private sector. Unlike governmental restrictions, private limitations
44 are often negotiated between parties involved with the restrictions. There are two
45 categories of private restrictions that are used:
46

47 1. **DEED RESTRICTIONS** allow the seller of real estate to place
48 limitations on the property's future use. Prior to zoning, the only way property
49 values could be protected was through restricting property use by new

1 owners. Many developers still use restrictive covenants which are a form of
2 deed restriction.

3
4 2. An **EASEMENT** is a form of conveyance that gives a party the
5 right to enter or use another's property. Most easements are given through
6 negotiations between the parties involved. Easement examples include utility
7 easements and ingress/egress easements given for the purpose of gaining
8 access. There are, however, some easements that are granted through the
9 courts, such as an Easement by Necessity or Easement by Prescription. An
10 Easement by Necessity is given when a property is landlocked with no means
11 of ingress/egress. Easement by Prescription is granted if the easement has
12 been in uninterrupted use for twenty or more years. Some easements can be
13 terminated through agreement or may exist in perpetuity and only the party
14 owning the easement may terminate its use.

15
16 3. A lease is the right that a person or group has to occupy and
17 use a property even though they do not hold title. The property owner that
18 gives the lease is known as the lessor while the tenant receiving the lease is
19 known as the lessee. There are five primary types of leases:

20
21 a. **GROSS LEASE**: The tenant pays a fixed rent and the
22 landlord pays all property costs, such as taxes and insurance

23
24 b. **NET LEASE**: The tenant pays a fixed rent, plus the
25 property costs

26
27 c. **PERCENTAGE LEASE**: The tenant pays a rent
28 based on its gross sales

29
30 d. **VARIABLE LEASE**: The tenant pays a rent that is
31 related to an index, such as the consumer price index. If the
32 index increases, the rent increases also.

33
34 e. **GROUND LEASE**: The tenant pays rent for the
35 ground only and builds upon the leased property.

36
37 Anytime a party has a lease and desires to let another party take over
38 the entire lease in full prior to its expiration, the parties will execute a lease
39 **ASSIGNMENT**. If a party wishes to give up only a portion of his or her
40 existing lease, he or she will execute a **SUBLEASE**. For example, if a tenant
41 would like to rent out one of several bedrooms to another.

42
43 4. **Liens**: A **LIEN** is a document stating that a party is owed
44 money, and ultimately that party may seek a forced judicial sale of the
45 property if the debt is not satisfied. The creditor is the lienor while the debtor
46 is known as the lienee. A general lien, such as a recorded judgment,
47 attaches to all the lienee's real property located in the county where the lien is

CHAPTER NINE: REAL PROPERTY OWNERSHIP

1 recorded. A specific lien, such as a mechanic's lien, attaches to only one
2 particular property.

3
4 Liens are created either voluntarily or involuntarily. Different types of liens
5 include the following:

6
7 a. Mortgage liens are created when a person borrows
8 money from a bank and pledges real estate as collateral for
9 the loan. The collateral instrument is known as a mortgage.
10 When the lender records the mortgage, giving public notice of
11 the debt, it becomes a mortgage lien. Once the debt is repaid,
12 a satisfaction of mortgage is recorded releasing the property
13 as collateral. Mortgage liens are voluntary liens.

14
15 b. Judgment liens are court judgments recorded in the
16 public records. Once recorded, these judgment liens become
17 a lien on all of the debtor's real property located in the county
18 where the judgment is recorded. Judgment liens are
19 involuntary.

20
21 c. Mechanic's liens are utilized whenever a party has
22 work performed on a property and does not pay for that work
23 or the materials used. The party performing the work (or the
24 party supplying materials) can file a mechanics lien. The lien
25 can only attach to the property where the work was performed,
26 must be recorded within 90 days of the completion of the work,
27 and is valid for one year. A mechanics lien is involuntary and
28 its priority in a foreclosure sale is retroactive to the date the
29 work was first performed or materials were first delivered.

30
31 d. Real estate tax liens become effective January 1st of
32 each year, even though the tax bill does not become due until
33 November of the same year. Real estate tax liens are
34 involuntary.

35
36 e. Federal Income Tax liens (IRS) are general tax liens
37 and are levied on anything and everything that a person owns
38 for the non-payment of income taxes. IRS liens are
39 involuntary.

40
41 f. Special Assessment liens occur as a result of the
42 property owner's failure to pay a special assessment. A
43 special assessment is a one-time tax levied to pay the cost of
44 a public improvement that directly benefits the assessed
45 property. Special assessment liens are involuntary.

46
47 Most liens establish priority based on the date they were recorded although
48 mechanic's liens date back to the date materials were first delivered or the date work

1 was first performed. Real estate tax liens, special assessment liens, and federal
2 estate tax liens are considered to be superior liens. That means they will take a
3 higher priority than any other lien regardless of the recording date. Although Federal
4 Income Tax liens are not defined as “Superior”, they must be dealt with when title
5 transfers and cannot be foreclose or eliminated through bankruptcy.
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11



12 SUMMARY

- 13
- 14 ➤ A voluntary lien is given out of choice. An involuntary lien is recorded
15 for the non-payment of a debt.
- 16
- 17 ➤ There are six methods of acquiring title to real property:
- 18
- 19 1. Deed: The most common means of conveying title
 - 20 2. Will: A person leaves his or her estate to others upon his or
21 her death
 - 22 3. Descent and distribution: Transfers a person's estate when
23 there is no will
 - 24 4. Escheat: Title reverts to the state of Florida when a person
25 dies without a will and with no heirs
 - 26 5. Eminent domain: Government land taking with or without the
27 owner's permission
 - 28 6. Adverse possession: Open and hostile possession doing the
29 normal things a true property owner would do for seven or
30 more years
- 31
- 32 ➤ Actual notice is physically reading a person's deed, being told by the
33 owner that they have acquired title, or by observing a person's actual
34 possession and control of a property and inferring some interest in the
35 property. Constructive notice, also known as legal notice, is created
36 by recording in the public records any interest in real estate that might
37 be owned.
- 38
- 39 ➤ A chain of title is a history of ownership. An abstract is a complete
40 history of a property, which includes title, liens, and any other
41 document recorded.
- 42
- 43 ➤ There are two types of title insurance. The owner's policy covers the
44 owner's equity in a property while the lender's policy (mortgagee's
45 policy) covers the banks investment in a property.

CHAPTER NINE: REAL PROPERTY OWNERSHIP

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- 48
- The important parts of a deed are the names of the grantor and grantee, consideration, words of conveyance, estate being conveyed, restrictions and reservations, appurtenances, legal description, signature of the grantor with two witnesses, and the deed delivered and accepted.
 - The four types of statutory deeds are quitclaim, bargain and sale, special warranty, and general warranty deeds. In order for title to transfer, the grantor must deliver the deed, and the grantee must accept the deed.
 - There are two methods of restrictions on property:
 1. Governmental restrictions include police powers, eminent domain, and taxes.
 2. Private limitations include deed restrictions, easements, leases, and liens.
 - There are five types of leases:
 1. Gross Lease
 2. Net Lease
 3. Percentage Lease
 4. Variable Lease
 5. Ground Lease
 - There are two ways that a lessee can transfer its rights to a lease:
 1. An assignment of lease gives up everything owned remaining in a lease.
 2. A sublease gives up less than everything owned in a lease.



1 **CHAPTER NINE QUIZ**

2 1. Rights to real property can be voluntarily conveyed through the use of

- 3
4 A. deed
5 B. will
6 C. eminent domain
7 D. both A and B
8
9

10
11
12 2. If a person dies with a valid will in effect, that person has died:

- 13
14 A. Testate
15 B. Intestate
16 C. In trust
17 D. In probate
18
19

20
21
22 3. If a person dies with no heirs or beneficiaries, his or her estate will pass to the
23 state of Florida through the process of:

- 24
25 A. Inheritance
26 B. Escheat
27 C. Taxation
28 D. Probate
29
30

31
32
33 4. If the government wishes to seize private land for the purpose of widening an
34 existing road, it can acquire the land through

- 35
36 A. taxation
37 B. escheat
38 C. police power
39 D. eminent domain
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CHAPTER NINE: REAL PROPERTY OWNERSHIP

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48
5. Recording a deed in the public records achieves:
- A. Constructive notice
 - B. Actual notice
 - C. Probate notice
 - D. Judicial notice
6. The type of title insurance that is non-transferable and typically has a face amount equal to the purchase price is the:
- A. Owner's policy
 - B. Lender's policy
 - C. Mortgagee's policy
 - D. None of the above
7. The words of conveyance in a deed are contained in the:
- A. Habendum clause
 - B. Granting clause
 - C. Reddendum clause
 - D. Premises clause
8. Which type of statutory deed is used primarily to clear defects to title?
- A. Quitclaim deed
 - B. Bargain and sale deed
 - C. Special warranty deed
 - D. General warranty deed
9. Which type of deed offers the greatest protection for a buyer?
- A. Quitclaim deed
 - B. Bargain and sale deed
 - C. Special warranty deed
 - D. General warranty deed

CHAPTER NINE: REAL PROPERTY OWNERSHIP

- 1 10. The government has the right to enact laws and regulations to protect the
2 health, safety, and welfare of the public through the exercise of it's:
3
4 A. Sovereign immunity
5 B. Police powers
6 C. Executive privilege
7 D. Eminent domain
8
9
10
11
12 10. Which of the following is a non-governmental limitation on title?
13
14 A. Zoning
15 B. Planning
16 C. Condemnation
17 D. Deed restriction
18
19
20
21
22 12. Which type of lease provides that the tenant will pay a fixed rent plus the
23 property's operating expenses?
24
25 A. Net lease
26 B. Gross lease
27 C. Variable lease
28 D. Percentage lease
29
30
31
32
33 13. Which of the following is an example of a voluntary lien?
34
35 A. Construction lien
36 B. Mortgage lien
37 C. Special Assessment lien
38 D. Judgment lien
39
40
41
42
43 14. Real estate tax liens become effective on:
44
45 A. December 31st of the tax year
46 B. January 1st of the tax year
47 C. January 1st of the proceeding tax year
48 D. April 1st of the proceeding tax year

CHAPTER NINE: REAL PROPERTY OWNERSHIP

- 1 5. Which provides clear title to property after 30 years of continuous ownership?
2
3 A. Marketable Records Title Act
4 B. Title Theory
5 C. Lien Theory
6 D. General Warranty Deed
7
8
9
10

1 **CHAPTER TEN:**
2 **LEGAL DESCRIPTION**
3



4 **TALK THE TALK**

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

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

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

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

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

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

18 **Point of Beginning:** The reference point that is the starting place for all metes and
19 bounds legal descriptions

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

23 **Section:** A one-mile square found within a township

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

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

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

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

31 **Township Line:** The horizontal lines six miles apart that border a township (tier)
32
33
34
35
36

1 **AREAS OF CRITICAL CONCERN**

- 2
- 3 • Describe the purpose of legal descriptions
 - 4 • Distinguish among the three types of legal descriptions
 - 5 • Locate a township by township line and range
 - 6 • Locate a particular section within a township
 - 7 • Understand how to subdivide a section
 - 8 • Calculate the number of acres in a parcel based on the legal description and
 - 9 convert to square feet
 - 10 • Explain the use of assessor's parcel numbers
 - 11 • Apply the measurements associated with checks, townships, and sections
 - 12 • Describe the process of creating a legal description using the metes-and-bounds
 - 13 method
- 14

15

16 **I. PURPOSE OF LEGAL DESCRIPTIONS**

17 Every parcel of real estate is unique and has its own distinctive boundary

18 identification known as a **LEGAL DESCRIPTION**. Although a physical address is in

19 most cases useful, it is not the way real estate is legally defined. To be acceptable in

20 a court of law, we need to be able to identify real estate precisely as possible.

21

22

23 **II. TYPES OF LEGAL DESCRIPTIONS**

24 There are three types of legal description methods:

25

26 A. Metes and Bounds: The most accurate method to describe both

27 regular and irregular shaped parcels of real estate is the **METES AND BOUNDS**

28 legal description method. In every Metes and Bounds description, the surveyor must

29 first identify a starting point known as the **POINT OF BEGINNING** (P.O.B.). The

30 POB is often established by a predetermined marker (**MONUMENT**) placed in the

31 ground. The term "metes" refers to distances, such as feet and inches. "Bounds"

32 refer to compass bearing direction in degrees, minutes, and seconds.

33

34 A surveyor divides a circle into four equal sections, known as quadrants,

35 containing 90 degrees each. By using quadrants, finding directions is made easy.

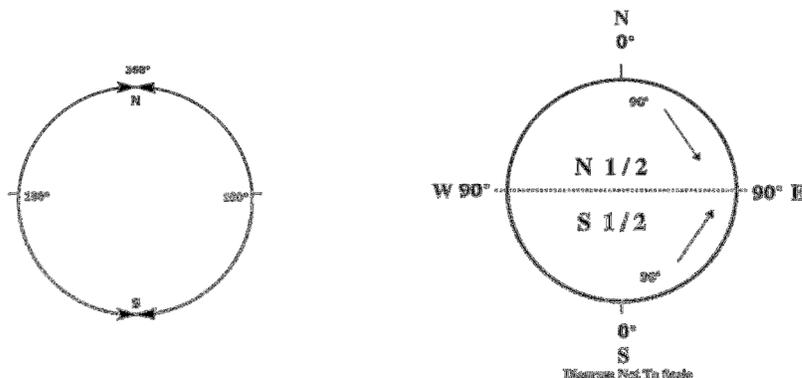
36 Directions are given in degrees (°), minutes ('), and seconds ("). For example,

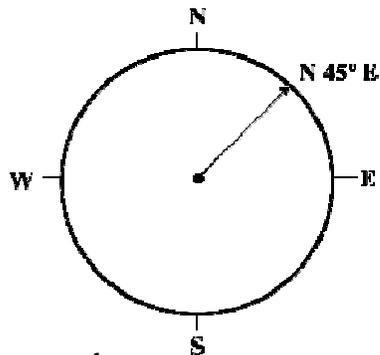
37 N45°25'20"E refers to "North 45 degrees, twenty-five minutes, 20 seconds East.

38

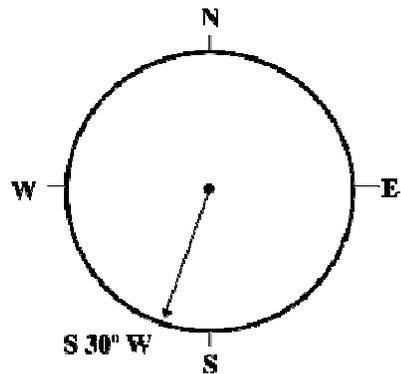
39 Example:

40





This means from
North go 45 degrees
East



This means from
South go 30 degrees
West

12
13 B. Government Survey System: The **GOVERNMENT SURVEY**
14 **SYSTEM** was developed by the federal government and is utilized in all states
15 except the original thirteen states plus Tennessee, Kentucky, West Virginia, and
16 Texas. Essentially, the Government Survey System divides a state into a
17 checkerboard pattern with each square identified. If you can imagine placing a sheet
18 of transparent graph paper over a map of the state of Florida, you have an idea of
19 how the Government Survey System looks.

20
21 Florida's Government Survey System uses a legal monument marker in
22 Tallahassee that is the axis for lines that run north and south and east and west
23 throughout the state.

24
25 1. Meridian and Base Line: The **PRINCIPAL MERIDIAN** is an
26 imaginary line that runs north and south through the legal monument located
27 in Tallahassee, and it is the beginning point for establishing ranges east and
28 west of Tallahassee. A **RANGE** is a six-mile wide strip of land running the
29 entire distance of the state in a north-south direction. Additional lines running
30 north and south parallel to the Principal Meridian are known as **RANGE**
31 **LINES**. These Range Lines establish ranges to the east and west of
32 Tallahassee.

33
34 The **BASE LINE** is an imaginary line that runs east and west through the
35 legal monument located in Tallahassee and is the beginning point for
36 establishing Townships (also referred to as a **TIER**). A Township is a six-mile
37 wide strip of land running the entire distance of the state in an east-west
38 direction. Additional lines running east and west parallel to the Base Line are
39 known as **TOWNSHIP LINES**. These Township Lines establish Townships to
40 the north and south of the monument in Tallahassee.

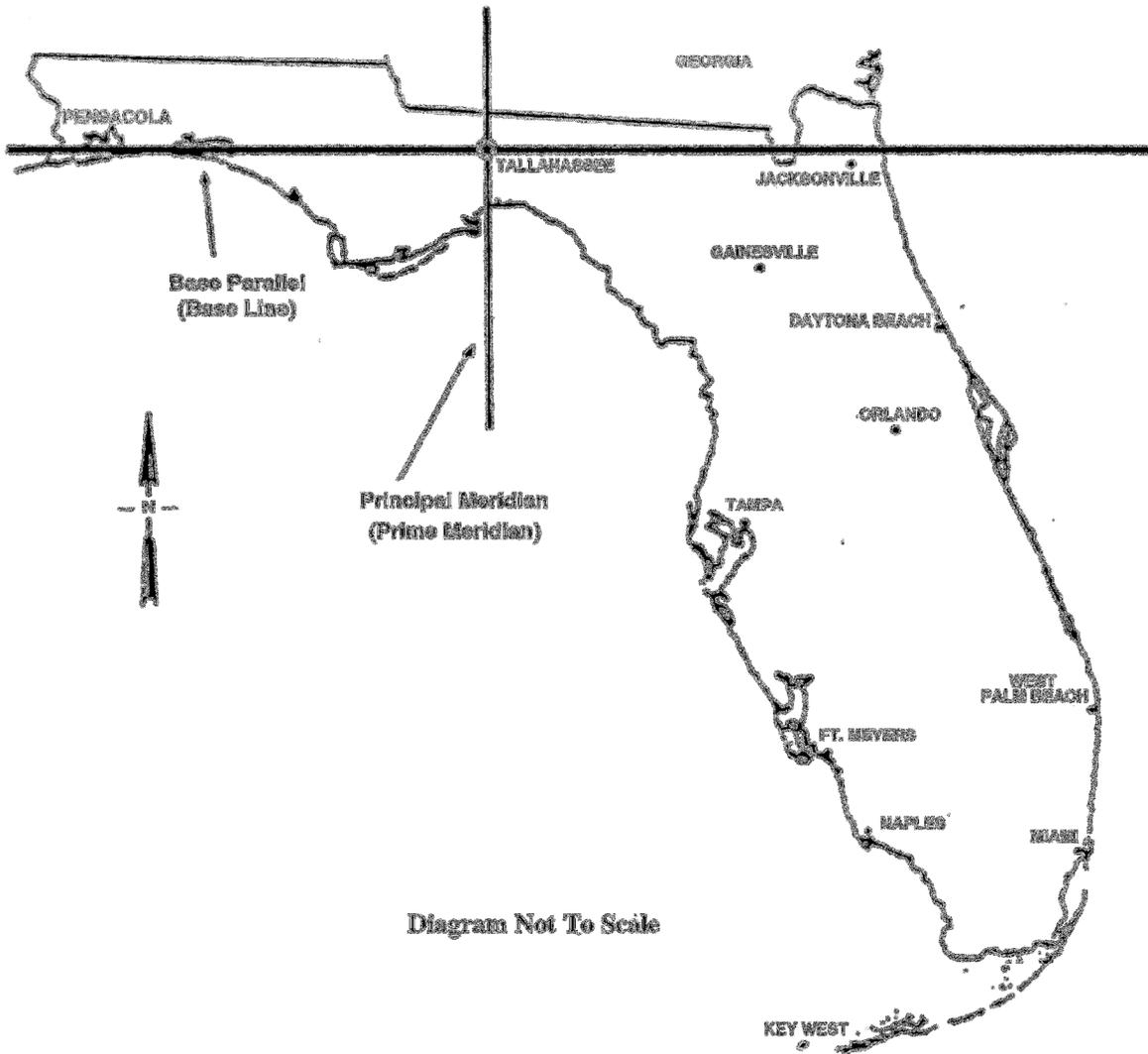
CHAPTER TEN: LEGAL DESCRIPTION

1 Meridian and Base Line:

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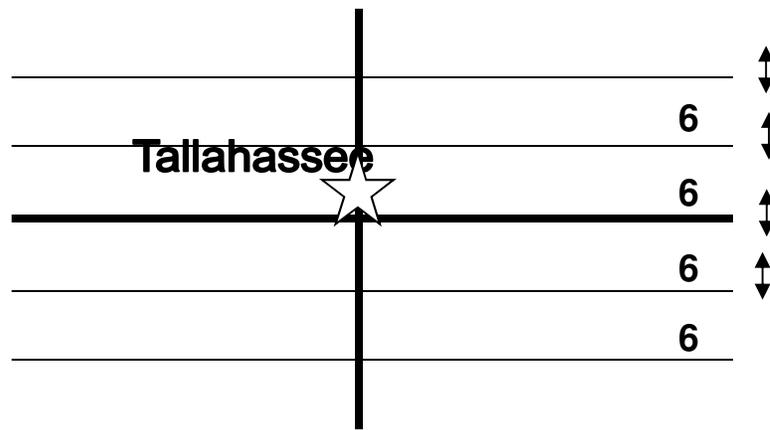
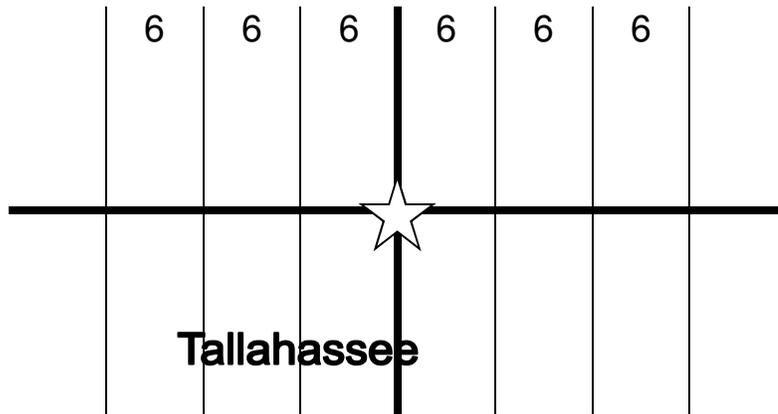
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CHAPTER TEN: LEGAL DESCRIPTION

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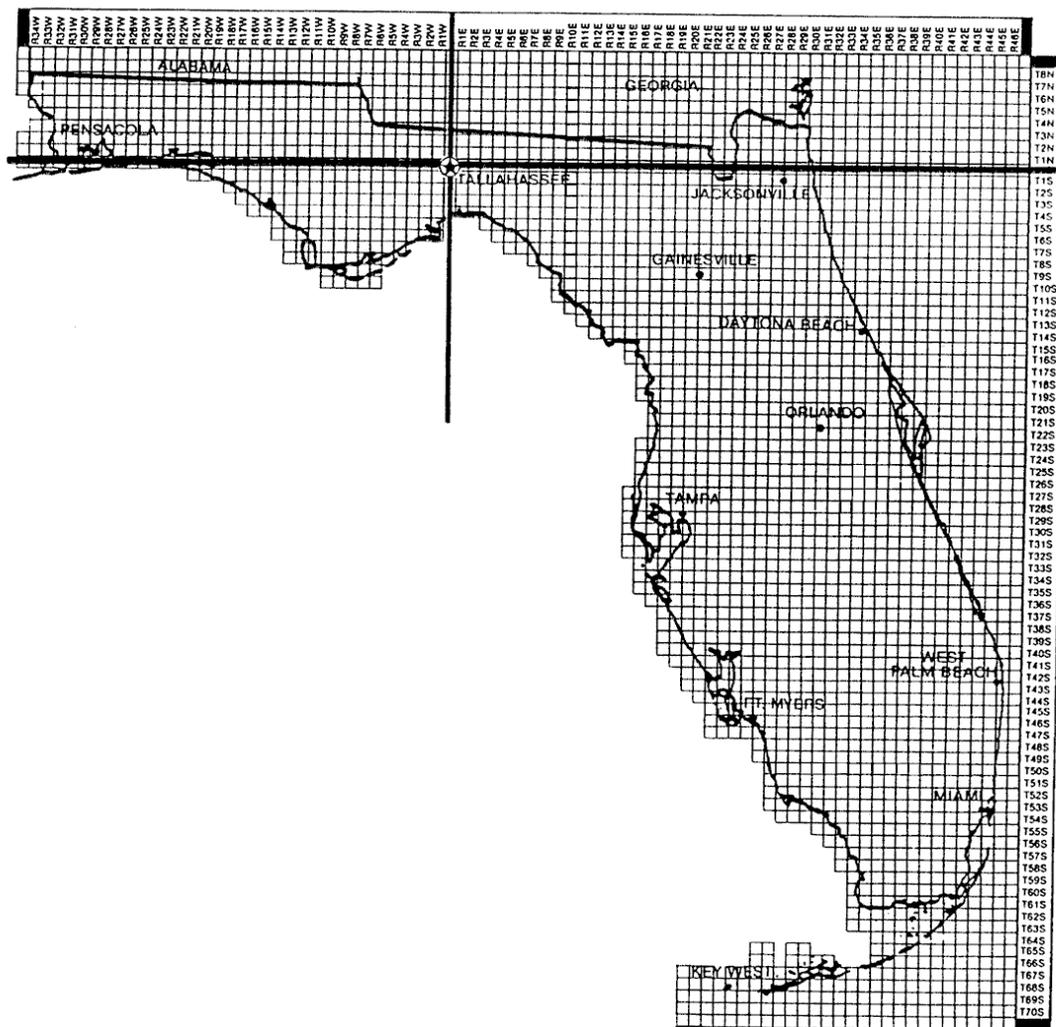
CHAPTER TEN: LEGAL DESCRIPTION

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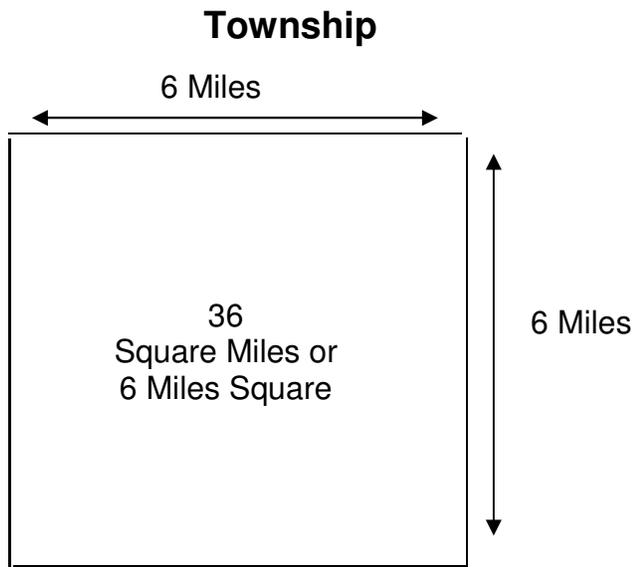
R3W	R2W	R1W	R1E	R2E	R3E	
						T1N
						T1S
				6 M SQ		T2S
						T3S

When a Township strip of land intersects with a Range strip of land, this results in the formation of a parcel of land measuring six miles on each side, or 6 miles square. This 6-mile square parcel is known as a **TOWNSHIP**.

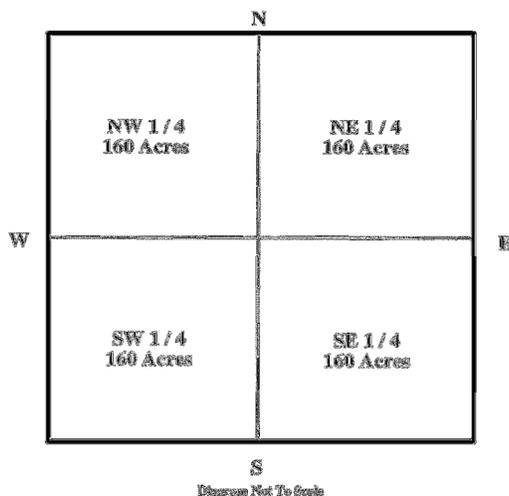
CHAPTER TEN: LEGAL DESCRIPTION



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CHAPTER TEN: LEGAL DESCRIPTION



1 Each section can be sub-divided into sub-sections in equal proportions.

2
3 3. Calculating Size: The size of any parcel utilizing the
4 government survey method can be calculated as follows:

5
6 Enter 640 into your calculator, and then simply divide by each of the
7 denominators (bottom numbers) in the legal description.

8
9
10 **Example:** NW¹/₄ of the NW¹/₄ of the SE¹/₄
11 640 ÷ 4 ÷ 4 ÷ 4 = 10 acres

12
13
14 Sometimes the legal description contains the word "and." When that happens,
15 separately calculate the size of the legal description on either side of the "and."

16
17
18 **Example:** NW¹/₄ of the SE¹/₄ and the SE¹/₄ of the SW¹/₄
19 640 ÷ 4 ÷ 4 = 40 acres and 640 ÷ 4 ÷ 4 = 40 acres
20 40 acres + 40 acres = 80 acres

21
22
23 C. Lot and Block Method: When a parcel is contained within a
24 subdivision that is defined by a subdivision plat map, we describe each parcel in the
25 subdivision according to the plat map when we utilize the **LOT AND BLOCK** method.
26 For example, when referring to lot #2 in a subdivision named Regatta Plantation, the
27 legal description would be:

28
29 Lot 2, Block B, Aspen Plantation subdivision, according to the plat thereof
30 recorded in the Official Records of Sunshine County, Florida at Official Records Book
31 9999 at page 99
32

CHAPTER TEN: LEGAL DESCRIPTION

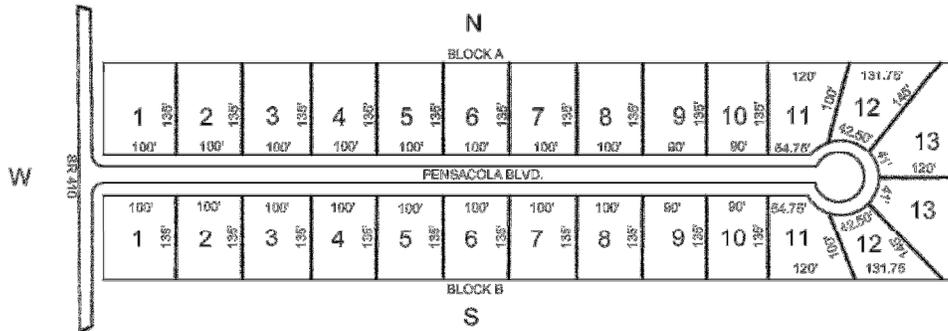


Diagram Not To Scale

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III. PROPERTY ASSESSMENT

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

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



1 **SUMMARY**

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- Legal descriptions are utilized because of the need to precisely identify the boundary lines of all properties.
- The three methods of legal description are Metes and Bounds, Government Survey System, and Lot & Block Method.
- When a Range intersects with a Township (Tier), it creates a 6-mile square known as a Township.
- There are thirty-six sections in a Township that are numbered in an "S" pattern.
- Sections are divided into sub-sections (NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$).
- To calculate the number of acres contained in a Government Survey System legal description, divide 640 by all the denominators in the legal description (*Remember when the legal description contains the word "and", there is more than one legal description).
- The Property Assessor's parcel I.D. number is used to identify real property.



32 **CHAPTER SIX QUIZ**

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

CHAPTER TEN: LEGAL DESCRIPTION

- 1 2. Which method of legal description is the most accurate?
2
3 A. Metes and Bounds
4 B. Lot and Block
5 C. Governmental survey system
6 D. Boundary method
7
8
9
- 10 3. Which type of legal description method requires a point of beginning
11 (P.O.B.)?
12
13 A. Metes and Bounds
14 B. Lot and Block
15 C. Governmental survey system
16 D. Boundary method
17
18
19
- 20 4. When utilizing the government survey system, a strip of land six miles wide
21 running in a north-south direction is called:
22
23 A. Township
24 B. Range
25 C. Section
26 D. Tier
27
28
29
- 30 5. Which section number is directly north of Section 7?
31
32 A. Section 14
33 B. Section 1
34 C. Section 21
35 D. Section 6
36
37
38
- 39 6. How many acres are in each section?
40
41 A. 160
42 B. 360
43 C. 180
44 D. 640
45
46
47
48

CHAPTER TEN: LEGAL DESCRIPTION

- 1 7. How many acres are contained in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of
2 Section 21?
3
4 A. 160
5 B. 80
6 C. 10
7 D. 40
8
9
10
11 8. How many acres are contained in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the S $\frac{1}{2}$ of the
12 SE $\frac{1}{4}$?
13
14 A. 40
15 B. 120
16 C. 160
17 D. 5
18
19
20
21 9. Parcels of land in a subdivision are usually described by which method?
22
23 A. Lot and block
24 B. Metes and bounds
25 C. Government survey
26 D. All of the above
27
28
29
30 10. Which county office is responsible for assigning parcel I.D. numbers?
31
32 A. Tax collector
33 B. Property appraiser
34 C. Clerk of court
35 D. County Commission
36
37
38
39 11. What is the name of the area of land six miles wide running north and south
40 that is directly west of Tallahassee?
41
42 A. Range 1 West
43 B. Range 2 West
44 C. Township 1 West
45 D. Township 2 West
46
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CHAPTER TEN: LEGAL DESCRIPTION

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12. What is the name of the Township due west of Tier 1 North, Range 1 East?
- A. Tier 1 North, Range 1 West
 - B. Tier 1 North, Range 2 East
 - C. Tier 1 South, Range 1 West
 - D. Tier 1 South, Range 2 East
13. What is the opposite direction of North 17° East
- A. North 73° East
 - B. South 17° West
 - C. East 17° North
 - D. South 73° West
14. How large is a Township?
- A. 640 square miles
 - B. 36 miles square
 - C. 6 miles square
 - D. 1 square mile
15. What is the name of the Range due east of Range 17 West?
- A. Range 17 East
 - B. Range 16 East
 - C. Range 18 West
 - D. Range 16 West

1 **CHAPTER ELEVEN:**
2 **REAL ESTATE CONTRACTS**
3



4 **Talk the Talk**

5 **Bilateral Contract:** A contract in which both parties enter into mutual promises

6 **Competency:** Having the mental and age capacity to enter into a contract

7 **Contract:** An agreement between two or more competent parties, supported by
8 consideration, to do, or not to do, a certain legal act

9 **Exclusive Agency Listing:** Listing agreement whereby the seller may find a buyer
10 without owing a commission although the seller agrees not to list the property with
11 any additional brokers

12 **Exclusive Right of Sale:** Listing agreement whereby the broker earns a
13 commission no matter who procures the buyer

14 **Liquidated Damages:** A specific dollar amount of damages to be paid by a
15 breaching party as specified in the contract

16 **Meeting of the Minds:** An agreement and understanding between the parties
17 concerning the intent of their contractual terms

18 **Net Listing:** A listing agreement whereby the broker keeps any funds over a definite
19 net amount to be received by the seller

20 **Novation:** Substitution of a contract and a party for another contract and another
21 party

22 **Open Listing:** Listing agreement whereby the seller promises to pay a broker a
23 commission if that broker procures a buyer; the seller may sell the property without
24 owing a commission, and the seller may enter an open listing with several different
25 brokers simultaneously

26 **Option:** A right, given as a continuing offer, to purchase real property upon specific
27 terms within a given period of time

28 **Statute of Frauds:** Body of law that states that certain types of contracts must be in
29 writing to be enforceable

30 **Statute of Limitations:** Establishes time limits for filing litigation

31 **Unenforceable:** Status of a contract when it violates the Statute of Frauds

32 **Unilateral Contract:** A contract whereby only one party undertakes a promise or
33 obligation

34 **Void:** A contract the law will not recognize under any circumstances

35 **Voidable:** Contract involving a minor or other incompetent party wherein the
36 incompetent part has a choice to enforce or rescind the contract
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1 AREAS OF CRITICAL CONCERN

- 2
- 3 • List and describe the essentials of a contract
- 4 • Distinguish among the various classifications of contracts
- 5 • Describe the various ways in which an offer is terminated
- 6 • Describe the various methods of terminating a contract
- 7 • Explain the remedies for breach of a contract
- 8 • Describe the effect of the Statute of Frauds and the Statute of Limitations
- 9 • Describe the elements of an option
- 10 • Differentiate among the various types of listings
- 11 • Describe the various disclosures required in a real estate contract
- 12
- 13

14 **I. CONTRACTS IN GENERAL**

15 A. Contracts Defined: A **CONTRACT** is an agreement that is a mutual

16 meeting of the minds. It is supported by consideration in which one party or more

17 than one party agrees to perform, or not to perform, a specific act, and the

18 agreement is enforceable by law if certain requirements are fulfilled. Those

19 requirements can include legal subject matter, **COMPETENCY** of the parties (age or

20 mental competency), and, in some cases, whether the contract is in writing.

21

22 B. Preparation of Contracts: Contracts can be either oral (also known

23 as a parol contract) or written. Real estate licensees are permitted to prepare three

24 types of contracts:

25

26 1. Sale and Purchase Contract: The contract between a buyer

27 and a seller of real property

28

29 2. Listing Agreement: An employment agreement between a

30 broker and a seller (principal) to perform a real estate service

31

32 3. Option Contract: A contract in which a potential seller gives

33 an **OPTION** to a potential buyer granting the right to purchase property upon

34 terms and conditions stated in the option

35

36 Licensees are not permitted to prepare deeds, mortgages, contracts for

37 deeds, or other legal documents. Leases should be prepared by an attorney

38 although licensees are permitted to fill in the blanks on Florida Supreme Court pre-

39 approved lease forms that do not exceed one year.

40

41 C. Statute of Frauds: The **STATUTE OF FRAUDS** is a body of law

42 which requires that certain types of contracts be in writing in order to be enforceable.

43 Examples of types of contracts that must be in writing in order to be enforceable

44 include:

45

- 46 1. Sale and Purchase Contracts
- 47 2. Option Contracts
- 48 3. Leases for more than one year
- 49 4. Exclusive Right to Sell Listing Contract

CHAPTER ELEVEN: REAL ESTATE CONTRACTS

1 The general rule is that if these types of contracts are not in writing, they are
2 not enforceable. However, there are exceptions to the general writing requirement
3 rule:

4
5 1. Partial Performance Doctrine: In a Sale and Purchase
6 Contract, if the Buyer has paid part of the purchase price to the Seller and
7 has either (1) taken possession of the premises or (2) commenced repairs or
8 improvements, then the Statute of Frauds requirement does not apply.

9
10 2. Full Performance Doctrine: In a Sale and Purchase Contract,
11 if the parties go to closing, the purchase price is paid, and title is conveyed to
12 the Buyer, then the Statute of Frauds does not apply and cannot be raised as
13 a defense after the sale.

14
15 D. **STATUTE OF LIMITATIONS**: Every potential legal action to enforce
16 a contract must be filed before the time deadline expires. The time period for filing
17 legal action to enforce contractual rights vary depending if the subject contract is
18 written or oral. If the contract is written, the time period deadline is 5 years. If the
19 contract is oral, the time period deadline is 4 years.

20
21 E. Void, Voidable, and Unenforceable Contracts: A **VOID** contract is one
22 that the law will not recognize. For example, if the subject matter of the contract is
23 illegal, such contracting to purchase illegal drugs, the agreement is void under the
24 law. Also, a legal contract that has terminated or expired properly is also considered
25 to be void.

26
27 A **VOIDABLE** contract occurs when one of the parties is incompetent, either
28 because of mental incapacity or because they are under age. In Florida, a person
29 under 18 years of age is considered to be incompetent. The law states that the
30 incompetent party may choose to enforce the contract, or they may choose to have
31 the contract declared void. The competent party has no choice and is obligated to
32 abide by the incompetent party's decision.

33
34 An unenforceable contract is one that has not met the requirements of the
35 statute of frauds or has gone beyond the legal time limit provided by the statute of
36 limitations.

37
38 F. Power of Attorney: Power of attorney is a legal document that
39 allows another person to perform certain contractual duties. Specific or special
40 power of attorney will allow a person to sign certain legal documents that are pre-
41 determined and understood whereas the general power of attorney may even allow
42 an individual to negotiate contracts. The person who has the power of attorney is
43 known as an attorney in fact.

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1 **II. CONTRACT ESSENTIALS**

2 There are four essential elements to a contract:

3
4 A. Contractual capacity of the parties: In order for a person to enter into
5 a valid contract, he or she must be at least 18 years of age and mentally competent.
6 If an incompetent party enters into a contract, the contract is voidable only by the
7 incompetent party.

8
9 B. Meeting of the Minds: Every contract must have a mutual agreement
10 (**MEETING OF THE MINDS**) between the parties. This mutual agreement is
11 demonstrated through the presentation of an **offer**, the **acceptance** of the offer, and
12 **communication** of the acceptance to the party presenting the offer.

13
14 C. Legality of Object: The contract must have a legal subject matter. If
15 the subject matter is illegal, no valid contract exists.

16
17 D. Consideration: Consideration refers to the "force" that encourages
18 the parties to perform the terms of their agreement. It may be either valuable
19 consideration (money or even a promise) or "good" consideration (love and
20 affection).

21
22
23 **III. REAL ESTATE CONTRACTS**

24 In order for a real estate contract to be enforceable, it should be in writing and
25 signed by the parties. It does not need to be notarized or witnessed.

26
27 Every real estate contract must contain some type of consideration.
28 Typically, a real estate buyer will tender an earnest-money deposit at the time of
29 contract. A promise, however, in exchange for another promise is sufficient
30 consideration without the earnest-money deposit.

31
32 Actual title to real property exists when a party owns real estate. Equitable
33 title exists when a party has an interest in real estate that is less than outright
34 ownership. For example, when a Buyer contracts to purchase property, the Seller
35 has legal title and the Buyer has equitable title.

36
37
38 **IV. CLASSIFICATION OF CONTRACTS**

39 A. Bilateral vs. Unilateral Contracts: A **BILATERAL CONTRACT**
40 exists when the promise of one party is given in exchange for the promise of the
41 other party (a promise is given for a promise). For example, in a Sale and Purchase
42 Contract the Seller promises to sell and the Buyer promises to buy.

43
44 A **UNILATERAL CONTRACT** exists when only one party has made a
45 promise to perform. For example, in an option contract the Seller makes the promise
46 to sell upon terms and conditions stated in the option. The Buyer has made no
47 promise and is under no obligation to buy.

48

1 B. Expressed vs. Implied Contracts: An expressed contract exists when
2 all of the details are understood by the parties, whether oral or in writing. An implied
3 contract exists when some of the terms and conditions are not stated but rather are
4 inferred by the nature of the transaction or the conduct of the parties. For example,
5 if a "For Sale by Owner" knowingly accepts the services of a real estate licensee and
6 the licensee is the procuring cause of the sale, a real estate commission would
7 probably be due the licensee even though an actual expressed listing contract did
8 not exist.

9
10 C. Executed vs. Executory: Anytime there is something remaining to be
11 done under a contract, its status is considered to be executory. For example, a duly
12 signed Sale and Purchase Contract is executory because the closing has not yet
13 occurred. An executed contract is one in which all the terms and conditions agreed
14 upon have been completed. For example, after a real estate closing is completed,
15 the Sale and Purchase Contract has been executed.

16
17 D. Formal vs. Informal: A formal contract is one that is in writing and
18 under seal (under seal does not mean notarized). However, the presence or
19 absence of a seal has no effect on the legality of a contract. An informal contract is a
20 contract that does not meet all the requirements of a formal contract (oral or not
21 under seal). An oral contract is also known as a parol contract.

22 23 24 **V. CONTRACT NEGOTIATION**

25 A. Parties to an Offer: In negotiating any real estate contract, it must
26 be understood that all terms and conditions of the contract are negotiated between
27 the parties. There are at least two parties in every contract negotiation. The **offeror**
28 is the party who is making the offer. The **offeree** is the party who considers the offer.
29 Remember, "OR's" are givers and "EE's" are receivers.



31 *Author's Note: Since the Statute of Frauds requires real estate Sale and*
32 *Purchase contracts to be in writing, the preferred practice is for real estate*
33 *offers to be in writing as well. Then, if the offer is accepted, the offeree can*
34 *sign the written offer, and an enforceable real estate contract can be*
35 *established.*

36
37 In all contract negotiations, in order for there to be a contractual meeting of
38 the minds, there must be an offer, acceptance, and then the acceptance must be
39 communicated to the person making the offer. If the acceptance is not
40 communicated to the offeror (or its agent), then technically under the law a contract
41 has not been formed. Licensees should present all offers (written and oral) unless
42 otherwise instructed in writing by the client.

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1
2 **Example:** Broker Dave lists an office building for First Mutual Bank. An offer
3 was presented that was \$20,000 less than the asking price. Broker Dave presented
4 the offer to the Bank at 4:00 p.m. on Monday. The Bank accepted the offer within an
5 hour and notified its agent, Broker Dave, of its acceptance. Broker Dave, thinking
6 that the contract was now formed, did not notify the purchaser immediately but
7 planned on calling the Buyer the next morning. When the next morning arrived,
8 Broker Dave received a message from the Buyer that he had changed his mind and
9 was withdrawing his offer. Result: Although both buyer and seller had signed the
10 contract (indicating an offer and acceptance), there was no communication of the
11 acceptance prior to the offeror's withdrawal, and no contract was legally formed.
12

13
14 B. Terminating an Offer: There are a number of ways that an offer can
15 terminate:
16

17 1. Acceptance: Accepting the offer (plus communicating the
18 acceptance to the offeror) terminates the offer and creates a contract.
19

20 2. Withdrawal: If an offer is withdrawn prior to notification of
21 acceptance, then the offer is terminated. Unless otherwise stated, an offer
22 may be withdrawn at any time before notification of its acceptance.
23

24 3. Rejection: If an offeree rejects the offer or part of the offer,
25 the original offer is terminated. For example, Buyer makes an offer to
26 purchase a house for \$100,000. The Seller initially rejects the offer but an
27 hour later changes her mind and attempts to accept the \$100,000 offer. In
28 this case, she is too late because her initial rejection terminated the offer.
29

30 4. Counteroffer: A counteroffer is a rejection of the original offer
31 followed by a new offer. Under these conditions, the original offeree now
32 becomes an offeror, and the original offeror is now an offeree. In a
33 counteroffer, the original offer is terminated.
34

35 5. Lapse of time: Offers are considered to be open for a
36 reasonable amount of time. If the offer contains an expiration date, then that
37 specified date will control. The term "reasonable amount of time" is
38 deliberately vague so that Judges can use their discretion on a case-by-case
39 basis.
40

41 6. Destruction of the Subject Property: If the subject property is
42 destroyed (e.g. fire), an offer will be considered terminated.
43

44 7. Death or Insanity: The death or insanity of the offeror or
45 offeree will terminate an offer.
46
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1 **VI. TERMINATION OF CONTRACTS**

2 A. Methods of terminating contracts: Like offers, contracts can be
3 terminated under a variety of methods:

4
5 1. Performance: Each party is obligated to perform under the
6 terms of the contract. Once performance has been concluded, then the
7 contract terminates.

8
9 2. Mutual Rescission: If both parties agree, they can elect
10 between themselves to terminate (cancel) their contract. In real estate, there
11 may still be outstanding issues concerning whether a real estate licensee is
12 entitled to compensation.

13
14 3. Destruction of the Subject Property: If the subject property is
15 destroyed during the executory time period, the contract will be terminated.

16
17 4. Breach: If one of the parties fails to satisfy its contractual
18 obligations, the non-breaching party may terminate the contract and
19 commence legal proceedings.

20
21 B. Remedies for Breach: A non-breaching party has a number of
22 remedies available under the law:

23
24 1. Liquidated Damages: When a contract specifies a fixed
25 dollar amount that may be claimed by a non-breaching party, the fixed dollar
26 amount is known as **LIQUIDATED DAMAGES**. If the buyer breaches a
27 contract, typically the seller claims the earnest money deposit as liquidated
28 damages. In addition, the broker can receive compensation provide the
29 compensation does not exceed the normal commission that would have been
30 paid had the transaction gone to closing.

31
32 2. Specific Performance: If a party does not want money
33 damages, he or she has the option to seek specific performance through
34 judicial proceedings. A judge can order a party to perform in accordance with
35 the contract terms. A non-breaching party typically has a choice of either
36 accepting liquidated damages (earnest money deposit) or specific
37 performance but may not choose both.

38
39 3. Unliquidated Damages: These are compensatory money
40 damages that cannot be determined from the contract but rather are
41 determined by a court after presenting evidence in court.

42
43 4. Rescission: A non-breaching party may be entitled to
44 rescission of the contract by having a court of law cancel the contract.
45 Typically under rescission, the non-breaching party is entitled to a return of
46 any monies paid under the contract

47
48
49

1 5. Declaratory Judgment: If either of the parties is unsure about
2 his or her rights and obligations, he or she may ask a judge to clarify or
3 interpret the contract through the judicial process of construction. Once the
4 legal determination has been made, the court will issue a declaratory
5 judgment that will define and determine the parties' obligations.
6

7 C. Assignment of Contracts: If a person desires to transfer his or her
8 legal rights under a contract, an assignment of the contract can be made. The party
9 transferring his or her rights is called the assignor. The party receiving the
10 contractual rights is called the assignee. Most contracts are assignable, unless there
11 is language in the contract that limits this right. Be aware that because a party has
12 assigned a contract to someone else, that fact does not relieve the assignor of legal
13 responsibility. If the assignee breaches the contract, the assignor and assignee are
14 responsible for the breach.
15

16 Rather than assign a contract, the parties may elect to execute a **NOVATION**
17 which is the substitution of a contract for another contract. Under a novation, the
18 original party to the contract is released from liability.
19

20

21 **VII. IMPORTANT REAL ESTATE CONTRACTS**

22 A. Authority to Prepare Contracts: The preparation of contracts is an
23 important function and responsibility of a real estate licensee. Licensees are
24 specifically authorized to prepare Sales and Purchase Contracts, listing agreements,
25 option contracts, and certain pre-approved residential lease forms. The preparation
26 of any other type of real estate contract or conveyance instrument could be
27 considered the unauthorized practice of law which is prohibited.
28

29 B. Listing Agreements: The contract between a seller of real property
30 and the broker is called the Listing Agreement. The sales associate is employed by
31 the broker and is working on behalf of the broker when negotiating listing contracts.
32 A sales associate cannot directly enter into a listing agreement with a potential seller,
33 but the sales associate may sign the listing agreement on behalf of the broker. Most
34 types of listing agreements can be oral or written although the written agreement is
35 preferred.
36

37 A well-drafted listing agreement will include the names of the parties,
38 expiration date, seller's disclosure of known property defects, legal description,
39 amount of the commission, the listing price of the property plus any other conditions
40 agreed upon by the seller, and the conditions which establish when a commission
41 has been earned. In addition, a copy of the listing contract must be furnished to the
42 principal within 24 hours after the written agreement is obtained.
43

44 If the listing agreement requires the licensee to "find a purchaser", the
45 commission is earned when the licensee finds a purchaser who is ready, willing, and
46 able at a price and terms acceptable to the seller. If a price and terms contract
47 according to the listing agreement is presented, the broker has performed even if the
48 seller rejects the offer.
49

CHAPTER ELEVEN: REAL ESTATE CONTRACTS

1 If the listing agreement requires the licensee to "effect a sale", the
2 commission is earned only if the prospective buyer actually closes on the property.

3
4 C. Types of Listings: There are three types of Listing Agreements
5 available:

6
7 1. Open Listing: In an **OPEN LISTING**, the seller promises to
8 pay a commission if the broker successfully performs by finding a purchaser
9 for the property. The seller reserves the right to sell the property him or
10 herself without owing the listing broker a commission. In addition, the seller
11 reserves the right to list the property with other brokers paying only the broker
12 who procures the sale. In an oral open listing agreement if the seller accepts
13 the fruits of a broker's efforts and accepts a contract which ultimately closes,
14 the seller will owe the broker a commission, subject to a court ruling.

15
16 2. Exclusive Agency Listing: In an **EXCLUSIVE AGENCY**
17 listing, the seller promises to list with only one broker and promises to pay a
18 commission if that broker successfully performs by finding a purchaser for the
19 property. The seller reserves the right to sell the property him or herself
20 without owing the listing broker a commission.

21
22 3. Exclusive Right of Sale Listing: In an **EXCLUSIVE RIGHT**
23 **OF SALE** listing, the seller promises to pay a commission to the broker
24 regardless of who procures the sale of the property during the listing period. A
25 seller may have the power to revoke a listing contract, but may not have the
26 legal authority. If the seller cancels an exclusive right of sale listing contract
27 and relist with another broker, the seller may owe two separate commissions
28 if the property sells during the first broker's listing period. The Exclusive Right
29 of Sale listing is the most advantageous for the broker because the broker
30 gets paid regardless of who finds the buyer. This type of listing agreement
31 must be in writing to be enforceable and is considered to be a bilateral
32 contract.

33
34 D. Multiple Listing Service: The MLS is a computerized, data bank
35 system that allows brokers to cooperate and share listing information. Licensees can
36 access current information on all MLS listings.

37
38 Occasionally, sellers may be confused over the type of listing contract they
39 have signed. Due to the nature of the Multiple Listing Service, sellers often think they
40 have signed an exclusive right of sale listing and an open listing because other
41 brokers have the ability to sell and show their property. That is not the case. Sellers
42 sign only one type of listing agreement, even though their property may be advertised
43 in the MLS system. Typically, open listings are prohibited from participating in the
44 MLS system.

45
46 E. Net Listing: A **NET LISTING** is utilized when a seller is only
47 concerned with how much money he or she will receive after closing regardless of
48 the purchase price. The seller expects to net a certain amount of money at closing.
49 Funds in excess of the net amount requested by the seller are paid to the broker as a

1 commission. The net listing should be avoided (it is illegal in many states) because
2 it frequently results in dissatisfied sellers and brokers and could create a conflict of
3 interest.
4

5 F. Buyer-Broker Agreement: It is possible for a buyer to enter into an
6 agreement with a broker providing for the exclusive representation of that buyer.
7 This type of arrangement is similar to a listing contract for buyers. The broker is
8 entitled to a commission when the buyer purchases a property. Although
9 commissions are typically paid by the seller's broker, the buyer guarantees that the
10 Buyer-Broker agent will be paid if no commission funds are forthcoming from the
11 seller.
12

13 G. Procuring Cause: A licensee is considered to be the procuring cause
14 of the sale when he or she has set into motion events that were ultimately
15 responsible for the formation of a contract. Recent court decisions, however, have
16 narrowed the definition of "procuring cause" to mean the broker obtaining the signed
17 contract is considered to be the procuring cause. When determining commission
18 disputes between two competing brokers, the broker who is the procuring cause will
19 be the party entitled to the commission.
20

21 H. Soliciting Listings: Brokers and sales associates obtain listing
22 contracts through various sources such as working farm areas, advertising, and
23 telephone solicitation of prospective sellers. Ethically, licensees should avoid
24 soliciting listings that are already listed with competing brokers until those listings
25 have expired. If a licensee is calling an expired listing for the purpose of getting that
26 seller to list their property, the licensee should first call the original listing agent to
27 confirm that the listing has in fact expired.
28

29 Licensees need to be cautious when soliciting potential listings by telephone.
30 Under Florida law, persons who do not wish to receive telephone solicitations of any
31 kind can register their names with the Florida Department of Agriculture, Division of
32 Consumer Services, and have their name placed on the "no solicitation" list.
33 Violation of this law can result in a fine up to \$10,000. Before soliciting prospective
34 sellers by telephone, licensees should confirm that those persons are not listed on
35 the "No Solicitation" list.
36

37 Even if a person's name is on the "no solicitation" list, under certain
38 conditions, this person can still be solicited by telephone. Licensees may telephone
39 their prior clients (with whom they have conducted business with during the last 18
40 months) for solicitation purposes even if those prior clients are on the "no solicitation"
41 list.
42
43

44 **VIII. SALES AND PURCHASE AGREEMENT**

45 A. Overview: A real estate sales and purchase agreement is an
46 agreement by a seller (vendor) to sell specific real property to a buyer (vendee). In
47 order to be enforceable, real estate sales contracts must be in writing. Additionally,
48 in order for a real estate sales contract to be valid there must be two or more parties,
49 consideration, accurate identification of the property (preferably a legal description),

1 and lawful subject matter. As with all contracts, there must be an offer, acceptance,
2 and communication of the acceptance to the offeror. If there is a counteroffer, it has
3 the effect of extinguishing the original offer with a replacement offer. Sufficient
4 consideration for a valid real estate sales contract exists when a buyer promises to
5 buy and the seller promises to sell. Although an earnest money deposit is not
6 required to make a contract valid, it shows good faith by the buyer and protects the
7 seller in the event of default.

8
9 B. Equitable Title: In a real estate Sale and Purchase Contract, the
10 seller retains legal title and the buyer has equitable title while the contract is
11 executory. Equitable title is a beneficial interest in real estate that implies legal title at
12 a later date. At closing, the buyer's equitable title is replaced with legal title.

13 14 15 **IX. IMPORTANT TERMS**

16 The following terms should be included in all well-drafted real estate Sale and
17 Purchase Contracts:

- 18 1. Date, time, and place of closing
- 19 2. Purchase price
- 20 3. Legal description (complete)
- 21 4. Financing terms
- 22 5. Quality of title to be conveyed (unless otherwise specified, a
23 fee simple estate is expected)
- 24 6. Type of deed (unless otherwise specified, a general warranty
25 deed is expected)
- 26 7. Items of personal property should be included
- 27 8. Title evidence to be provided (unless otherwise specified, an
28 owner's title insurance commitment is expected)
- 29 9. Closing costs and other expenses
- 30 10. Items to be prorated (taxes, homeowner's dues, rent)

31 32 33 34 **X. REQUIRED DISCLOSURES**

35 Under certain state and federal laws, various disclosures must be given to
36 prospects.

37
38 A. Radon Gas Disclosure: Must be provided prior to signing a real
39 estate sales or leasing contract. This disclosure warns about the possible health
40 hazards of radon gas but does not require a radon gas inspection. Radon gas has
41 become more of a health concern due to energy-efficient housing.

CHAPTER ELEVEN: REAL ESTATE CONTRACTS

1 B. Lead Based Paint: Federal law requires a disclosure about lead-
2 based paint if the subject property was built before 1978. The disclosure must be
3 provided to prospective buyers prior to the signing of a real estate sales contract
4 while buyers and renters must be provided with an EPA pamphlet about lead based
5 paint prior to contract.

6
7 C. Energy Efficiency Disclosure: Requires that real estate buyers be
8 provided, prior to contract, a brochure entitled "Florida Building Energy Efficiency
9 Rating System."

10
11 D. Homeowner Association Disclosure: Requires that buyers of
12 properties which require membership in a homeowner's association be given, prior to
13 contract, a disclosure which states that any owner will be required to join a
14 homeowner's association, that dues must be paid by all members, that failure to pay
15 the dues may result in a lien being filed against the property, that the bylaws can be
16 amended by the developer without membership approval, and that the bylaws are
17 recorded in the county records if further review is desired. Failure to timely provide
18 the homeowner's association disclosure will give the buyer a 3-business day right of
19 rescission that will begin once the disclosure is provided.

20
21 E. Flood Insurance Disclosure: Prospective buyers must be informed,
22 prior to closing, whether the subject property is located in a Flood Hazard Area, as
23 defined by the Federal Emergency Management Agency. If located in a Flood
24 Hazard Area there must be a disclosure about the availability of flood insurance.

25
26 F. Condominium and Cooperative Disclosures: Prospective buyers of
27 condominiums and cooperatives must be given disclosure statements about the
28 property description, form of title, description of common areas and amenities,
29 existence of judgments or liens, management agreements, escrow provisions for
30 deposits, restrictions on the sale or transfer of units, apportionment of common
31 expenses, construction completion date, estimating operating budget, estimating
32 closing costs, and copies of all key documents.

33
34 G. Stigmatized Property: Florida Law does not require real estate
35 licensees to disclose the claim that a property may be stigmatized. The site of a
36 homicide, suicide, or death is not a material fact that must be disclosed in a
37 transaction.

38
39
40 **XI. OPTION CONTRACTS**

41 An **OPTION** contract is a unilateral agreement between an Optionor (potential
42 seller) and an Optionee (potential buyer). An option contract must be in writing. In
43 an option contract, the Optionor grants an Optionee the right to buy the subject
44 property within a specified period of time for a specified price and other terms.
45 During the option period, the Optionor agrees not to sell the property to anyone else.
46 The Optionee is under no obligation to purchase.

1 In an option contract, the Optionor promises to sell. Since the Optionee is
2 under no obligation to purchase, in order for there to be a binding contractual
3 agreement, the Optionee is required to give definite, valuable consideration which is
4 considered to be more than a promise and is often in the form of money. The parties
5 can agree whether the consideration is refundable in full, in part, or may be applied to
6 the purchase price if there is a sale.
7

8 9 **XII. INSTALLMENT SALE CONTRACT**

10 An Installment Sale Contract, also known as a Land Contract or Contract for
11 Deed, is considered a financing device. The buyer takes possession of the property,
12 makes installment payments, and, when the final payment is made, the deed
13 delivered to the buyer. If there is a breach by the buyer and the Contract for Deed
14 has been recorded, the seller must file a foreclosure action. Licensees should
15 exercise great caution when involved with an Installment Sale Contract and should
16 advise their clients to consult with an attorney before signing such a contract.
17

18 19 **XIII. DEFECT DISCLOSURE**

20 Sellers of real estate are required to disclose all known property defects that
21 are not openly visible to potential buyers as soon as possible. In the Florida
22 Supreme Court decision of Johnson v. Davis, the seller was found guilty of
23 concealing defects, and the Court rescinded the sales contract. If a licensee is
24 aware of any material defects of a property, those defects must be disclosed as soon
25 as possible but, in any event, no later than the parties entering a Purchase and Sale
26 Agreement.
27

28 A seller can sell property in "as is" condition, but if the seller is aware of any
29 material defects, those defects must be disclosed.
30
31

32 **SUMMARY**



- 33 ➤ The essentials of a contract include contractual capacity of the parties,
34 offer and acceptance, legality of object, and consideration.
35
- 36 ➤ A contract can be either formal (written) or parol (oral), unilateral or
37 bilateral, implied or express, executory or executed.
38
- 39 ➤ Offers can be terminated by acceptance, withdrawal, rejection,
40 counteroffer, or lapse of time.
41
- 42 ➤ Contracts can be terminated by performance, mutual rescission,
43 destruction of the subject property, or breach.
44
45

CHAPTER ELEVEN: REAL ESTATE CONTRACTS

- 1 ➤ Remedies for breach of contract include liquidated damages, specific
2 performance, unliquidated damages, rescission, or declaratory judgment.
3
4 ➤ The Statute of Frauds requires certain types of contracts to be in writing in
5 order to be enforceable. The Statute of Limitations establishes time
6 deadlines for filing legal proceedings in the event of a breach.
7
8 ➤ An option contract must be in writing, must provide definite consideration,
9 and must be unilateral in nature. All terms and conditions must be
10 specified.
11
12 ➤ There are three types of listings: the open listing (least preferred by
13 brokers), the exclusive listing, and the exclusive right of sale listing (most
14 preferred by brokers).
15
16 ➤ There are numerous disclosure requirements that must be provided in
17 real estate sales or rental agreements. They include radon gas, energy
18 efficiency, lead-based paint, homeowner's association, flood insurance,
19 condo, and co-op.

20

CHAPTER ELEVEN QUIZ 

- 21 1. Which of the following contracts are required to be in writing in order to be
22 enforceable?
23
24 I. Real Estate Sale and Purchase Contracts
25 II. Open Listing Contracts
26 III. Option Contracts
27 IV. Leases for more than one year
28
29 A. I and II
30 B. I only
31 C. I, III, and IV
32 D. II, III, and IV
33
34
35
36 2. Which of the following conditions must occur if an oral real estate sale and
37 purchase contract is enforceable under the partial performance doctrine?
38
39 A. Part of the purchase price must be paid.
40 B. The buyer must take possession.
41 C. The buyer must make improvements.
42 D. The property must be located in Florida.
43
44
45
46

CHAPTER ELEVEN: REAL ESTATE CONTRACTS

- 1 3. Which of the following is an example of a voidable contract?
2
3 A. An oral lease for 6 months
4 B. A real estate contract signed by a seller who is 17 years old
5 C. A verbal contract wager on the Super Bowl
6 D. A contract to pay a kickback
7
8
9
- 10 4. All of the following are essentials of a valid contract except
11
12 A. capacity of the parties
13 B. legality of subject matter
14 C. consideration
15 D. in writing
16
17
18
- 19 5. In order for a real estate sale and purchase contract to be valid, it must
20 contain which of the following:
21
22 I. Signed by the parties
23 II. Witnessed
24 III. Notarized
25 IV. Earnest money deposit
26
27 A. I only
28 B. I and II
29 C. I, II, III
30 D. I, II, III, and IV
31
32
33
- 34 6. An option contract is a type of:
35
36 A. Unilateral contract
37 B. Bilateral contract
38 C. Voidable contract
39 D. Unenforceable contract
40
41
42
- 43 7. Offers can be terminated in each of the following ways except:
44
45 A. Acceptance
46 B. Rejection
47 C. Counteroffer
48 D. Closing
49

CHAPTER ELEVEN: REAL ESTATE CONTRACTS

- 1 8. Most real estate sale and purchase contracts provide that if the Buyer
2 defaults, the seller may retain the earnest money deposit as
3
4 A. damages
5 B. liquidated damages
6 C. unliquidated damages
7 D. special damages
8
9
10
11 9. Buyer Kathy defaults and refuses to buy a house from Seller Cindy. What are
12 Cindy's possible remedies?
13
14 I. Liquidated damages
15 II. Specific performance
16 III. Unliquidated damages
17 IV. Rescission
18
19 A. I and II
20 B. II and III
21 C. II, III, and IV
22 D. I, II, III, and IV
23
24
25
26 10. Buyer Tom has lawfully assigned his rights to a Purchase and Sale
27 Agreement to Jeff. One day before closing, Jeff announces he is not going to
28 perform and defaults the contract. What are the Seller's rights?
29
30 A. The seller can sue Tom for specific performance.
31 B. The seller can sue Jeff for specific performance.
32 C. The seller can sue either Tom or Jeff for specific performance or
33 compensatory damages.
34 D. The seller can sue only Jeff for specific performance or compensatory
35 damages.
36
37
38
39 11. If a listing agreement is in writing, the seller is entitled to a copy of the
40 agreement within:
41
42 A. 24 hours
43 B. 48 hours
44 C. 7 days
45 D. 14 days
46
47
48
49

CHAPTER ELEVEN: REAL ESTATE CONTRACTS

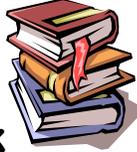
- 1 12. The type of listing that is most beneficial to a real estate licensee is the:
2
3 A. Open listing
4 B. Exclusive Right of Sale listing
5 C. Exclusive Agency listing
6 D. Preferred listing
7
8
9
- 10 13. Which type of listing is disfavored in Florida and should be avoided:
11
12 A. Open listing
13 B. Exclusive Agency listing
14 C. Preferred listing
15 D. Net listing
16
17
18
- 19 14. Beth has entered into a written contract to purchase Bob's home. Prior to
20 closing this contract is considered to be
21
22 A. Parol
23 B. Voidable
24 C. Executory
25 D. Executed
26
27
28
- 29 15. Federal law requires lead based paint disclosures for properties that were
30 constructed prior to:
31
32 A. 1977
33 B. 1978
34 C. 1979
35 D. 1980
36
37
38
- 39 16. In an option contract, which party is considered to be the Optionor?
40
41 I. Potential buyer
42 II. Potential seller
43 III. Person receiving the option
44 IV. Person giving the option
45
46 A. I
47 B. I and III
48 C. II
49 D. II and IV

CHAPTER ELEVEN: REAL ESTATE CONTRACTS

- 1 17. A parol contract
2
3 A. is an oral contract
4 B. is also known as a formal contract
5 C. is unenforceable
6 D. has nothing to do with real estate
7
8
9
- 10 18. The Florida Statute of Limitations requires actions based upon breach of a
11 written contract to be filed within what period of time?
12
13 A. 2 years
14 B. 4 years
15 C. 5 years
16 D. 7 years
17
18

1 CHAPTER TWELVE:

2 RESIDENTIAL MORTGAGES



3 Talk the Talk

4 **Acceleration Clause:** A condition in a loan contract that permits the lender to
5 require immediate repayment of the entire loan balance of the loan if the contract is
6 breached or conditions for repayment occur, such as sale or demolition

7 **Assumption:** The taking over of an existing mortgage by a buyer

8 **Contract for Deed:** An instrument by which a prospective buyer pays for a property
9 in installments; legal title is conveyed in the future after payment of the full price or an
10 otherwise specified amount

11 **Deed in Lieu of Foreclosure:** A deed from an owner to a mortgage lender to avoid
12 the necessity of a foreclosure lawsuit

13 **Defeasance Clause:** Provides the borrower with a satisfaction of mortgage once the
14 note has been repaid (a mortgage is “defeated” and the real property is no longer
15 pledged as collateral)

16 **Discount Point:** Pre-paid interest charged by the lender at the time of closing; a
17 discount point is equal to 1% of the loan amount

18 **Due-On-Sale Clause:** A mortgage clause that causes the entire loan balance to
19 become due upon the sale of the property

20 **Equity:** The market value of a property less any mortgages attached

21 **Equity of Redemption:** The right of a mortgagor, before a foreclosure sale, to
22 reclaim forfeited property by paying the entire indebtedness

23 **Escrow:** A depository account in a bank, trust company, title company or attorney
24 having trust powers, credit union, or savings and loan association within the state of
25 Florida where funds are placed and held in trust until disposition is authorized

26 **Estoppel Certificate:** A written statement by a mortgagee verifying the balance due
27 on the mortgage

28 **Exculpatory Clause:** The borrower is not personally responsible for the debt (a
29 non-recourse loan); the lender will not seek a deficiency judgment

30 **Hypothecation:** To pledge something without turning it over (mortgage)

31 **Interest:** The price paid for the use of borrowed money

32 **Lien Theory:** Legal concept that regards a mortgage as a just claim (lien) on
33 specific property pledged as security for a mortgage debt

34 **Lis Pendens:** Constructive notice of a pending legal action

35 **Loan Origination Fee:** A separate fee charged by a mortgage lender added to the
36 closing costs of the buyer

37 **Loan Servicing:** Collecting and processing payments on behalf of the mortgagee

38 **Loan-to-value Ratio:** The relationship between the loan amount to the value of a
39 property

40 **Mortgage:** A document providing written evidence of a creditor's right to have a
41 debtor's real property sold upon default and foreclosure

42 **Mortgagee:** The lender; the one to whom the property is pledged

43 **Mortgagor:** The borrower; the one pledging the collateral as security for a debt

1 MORE TALK THE TALK

2
3 **Note:** Legal evidence of a debt that must accompany a mortgage in Florida; a legally
4 executed pledge to pay a stipulated sum of money

5 **Novation:** Substitution of a new contract for an existing contract between the same
6 or different parties

7 **PITI:** A mortgage payment that includes principal, interest, taxes, and insurance

8 **Prepayment Clause:** Mortgage provisions permitting the borrower to make loan
9 payments in advance of their due dates

10 **Prepayment Penalty:** Mortgage provision that allows a monetary penalty to be
11 imposed if the loan is paid off ahead of schedule

12 **Right to Reinstate:** The ability to recover from default by bringing current all
13 payments due

14 **Satisfaction of Mortgage:** Document signed by mortgagee indicating the entire
15 loan is satisfied and the mortgage is discharged

16 **Subject to mortgage:** A grantee taking title to real estate "subject to the mortgage"
17 is not assuming personal liability to the mortgagee for the payment of the mortgage
18 note; in the event of a default on payment of the note, the grantee could lose the
19 property and any equity he has in the property in a foreclosure sale

20 **Subordination Agreement:** An agreement whereby the holder (mortgagee) of a
21 higher priority mortgage agrees to subordinate or relinquish its priority position to an
22 existing or subsequent mortgage

23 **Title Theory:** A concept in lending whereby title temporarily transfers to the
24 mortgagee until the debt is repaid

25 **Wraparound Mortgage:** In general, a second mortgage with a face amount equal to
26 the balances due under the first and second mortgage; the wrap around mortgagee
27 collects all the money and makes the monthly payment due on the first mortgage

28
29
30 AREAS OF CRITICAL CONCERN

- 31
32 • Distinguish between title theory and lien theory
33 • Describe the essential elements of the mortgage instrument and the note
34 • Describe the various features of a mortgage including down payment, loan-to-
35 value ratio, equity, interest, loan servicing, escrow account, PITI, discount points,
36 and loan origination fee
37 • Explain assignment of a mortgage and the purpose of an estoppel certificate
38 • Explain the foreclosure process and distinguish between judicial and non-judicial
39 foreclosure
40 • Describe the mortgagor's and mortgagee's rights in a foreclosure
41 • Calculate loan-to-value ratio
42 • Explain the use of discount points and calculate approximate yield on a loan
43 • Distinguish among the various methods of purchasing mortgaged property
44
45
46
47
48
49

1 **I. MORTGAGE DEBT**

2 A. Overview: Buying a home is one of the largest investments a family
3 makes today. Most people are unable to pay cash; therefore, the need to borrow
4 money is critical to making such a large purchase.

5
6 For many years when a person borrowed money to buy a home, the lender
7 required the borrower to relinquish title to the lender until the debt was repaid. This
8 practice is followed in states that adhere to the **TITLE THEORY** of mortgages.

9
10 In other states (including Florida), the borrower keeps title to the property
11 while at the same time providing the lender with a mortgage (lien) to secure the debt.
12 This practice is known as the **LIEN THEORY** of mortgages.



13
14 *Authors Note: It should be noted that regardless of the type of theory*
15 *(lien or title), if the borrower defaults on the promissory note, foreclosure*
16 *is required to clear title*

17
18
19 B. Loan Instruments: When a person borrows money to purchase a
20 home, the lender will require him or her to sign a promissory **NOTE**, which is a
21 personal acknowledgement of the debt with a promise to repay the debt created.
22 The promissory note contains all of the loan details, such as the principal debt,
23 interest rate, amount of periodic payment, and the number of periodic payments.
24 Anyone who witnesses a promissory note is a “co-signor” and jointly held liable for
25 the debt also. Therefore, promissory notes are not witnessed.

26
27 Although the lender has the borrower's personal guarantee (promissory note)
28 that payments will be made and the loan will be repaid, there are still many things
29 that could happen which might lead to default by the borrower. Sickness or a loss of
30 employment could be disastrous. That's why most lenders will require some type of
31 collateral to secure the loan.

32
33 A **MORTGAGE** is a security instrument that the borrower signs voluntarily to
34 pledge the property as collateral. The borrower is known as the **MORTGAGOR** while
35 the lender is known as the **MORTGAGEE**. The lender will record the mortgage in the
36 public records which gives notice that there is a debt outstanding and the property
37 has been given as security. Typically only the mortgage is recorded, not the
38 promissory note.

39
40 When a debt has been repaid in full, the property is no longer required to act
41 as collateral. In order to release a mortgaged property as security, the lender will
42 provide the mortgagor a **SATISFACTION OF MORTGAGE** that is recorded on public
43 records providing constructive notice of the release.

44
45 C. First Mortgage vs. Junior Mortgage: The general rule is that the time
46 and date of the recording documents determine their priority. Most lenders will not
47 accept a junior position in lien priority. In some cases, a mortgagee might agree to
48 step down in priority in order to allow another mortgage to take a higher position.
49 This is known as **SUBORDINATION**.

1 Example: Dave purchased a lot to build his house and got the seller to
2 finance the purchase. Before the construction lender would make the construction
3 loan, the seller had to first allow the bank to take a superior position in lien priority.
4
5

6 **II ESSENTIAL ELEMENTS**

7 A. Important Mortgage Provisions: If the borrower fails to meet the
8 terms and conditions of the note, the mortgage provides that the lender may file suit
9 to have the collateral sold at public auction to pay the outstanding debt (foreclosure).
10 The mortgage outlines the obligations of the mortgagor in order to prevent
11 foreclosure. The mortgage typically provides the following:
12

- 13 1. The promise to repay the debt by making payments according
14 to the note
- 15 2. The promise to pay all taxes and keep the property insured
- 16 3. The promise to maintain the property in good repair and
17 condition
- 18 4. The promise not to remove the building or any part that is
19 pledged as security
20
21
22
23

24 B. Other Mortgage Provisions: A **PREPAYMENT CLAUSE** in a
25 mortgage outlines the mortgagor's rights, if any, to repay some or all of the existing
26 debt ahead of time. Most mortgages allow prepayment without any penalties. There
27 are some situations, however, when lenders do not want the debt to be paid early
28 and will insist on a prepayment penalty.
29

30 The **ACCELERATION CLAUSE** allows the mortgagee, upon default, to call
31 the entire debt due and payable. Banks do not like to foreclose; however, in order to
32 protect their position, foreclosure is the only remedy. The foreclosure process cannot
33 begin unless the entire debt is delinquent. Once the acceleration of the entire debt
34 has been demanded, the mortgagor has thirty days to pay the debt in full. If not, they
35 are considered to be in default of the entire debt and foreclosure can begin.
36

37 There are some circumstances in which a bank may change its mind
38 regarding foreclosure. The bank may, at its discretion, rescind the foreclosure and
39 reinstate the mortgagor with continued monthly payments. Generally speaking, a
40 bank will not start the foreclosure procedures unless the mortgagor is at least ninety
41 days in default. Government regulations require a lender to foreclose if default has
42 extended past a certain point in time.
43

44 The **DUE ON SALE CLAUSE** prevents owners from selling mortgaged
45 property without the lender's permission. This prevents unauthorized transfers of
46 title.
47

48 The **EXCULPATORY CLAUSE** removes the borrower from personal liability
49 form borrowed money. The lender must only look to the property for security and
50 repayment. This is generally found in commercial-investment lending.

1 **III. IMPORTANT MORTGAGE FEATURES**

2 A. Down Payment: Most mortgage lenders require borrowers to invest
3 some of their own money before qualifying for financing. A borrower's down payment
4 is known as **EQUITY**. Equity is the difference between the purchase price and the
5 loan amount.

6
7 B. Loan to Value Ratio: The **LOAN-TO-VALUE RATIO** is the
8 percentage of the loan (mortgage) as it relates to the value of the property. The
9 definition of value is either the contract price or the appraised value, whichever is
10 less. Most loan-to-value ratios for residential mortgages range from 70% to 100%,
11 depending on the borrower's ability (income) and willingness (credit) to repay.

12
13
14 **Mortgage + Equity = Value**
15
16

17 C. Interest Rate: The **INTEREST** rate is the price individuals pay to
18 borrow money. Mortgage interest is expressed as an annual percent but is
19 calculated and paid monthly along with the payment of principal. Interest is normally
20 paid in arrears or at the end of the month.

21
22 D. Loan Servicing: If a loan is originated with a local lender, more than
23 likely that loan will be sold to an investor. Monthly payments, however, will continue
24 to be paid to the original owner of the loan. The local lender will take a small fee out
25 and send the balance to the investor. This is known as **LOAN SERVICING**.

26
27 E. ESCROW ACCOUNT: When a mortgage loan is made, most
28 lenders require the borrower to not only make principal and interest payment each
29 month, but they insist that the payment include 1/12 of the required annual real
30 estate taxes and property insurance. This type of payment is called a budget
31 mortgage (PITI). Taxes and insurance are collected in advance and are placed in a
32 special escrow or impound account.

33
34 F. Discount Points: **DISCOUNT POINTS**, by definition, are pre-paid
35 interest. A borrower can get a slightly lower interest rate by paying points at closing.
36 A point is equal to a percent charged against the loan amount.

37
38 **Example:** \$75,000 loan with 2 points would be $\$75,000 \times .02 = \$1,500$ paid
39 by the borrower at closing. Lenders don't mind charging points because for every
40 point that a lender charges, it increases their yield by 1/8 of one percent. For
41 example: 7% interest rate with 2 points charged to the borrower at closing would
42 equal 7.25% true interest (yield) (2 points = 2/8 or .25%).

43
44 G. Origination Fee: A **LOAN ORIGINATION FEE** is considered to be a
45 commission paid to lenders for originating a loan. They may also be known as
46 mortgage brokerage fees. Origination fees are paid as a certain percent of the loan
47 amount.

48
49

1 H. Take-Out Commitment: When a person decides to buy a lot and
2 build a new home, it may require a construction loan. The construction loan is for a
3 short period of time, and, when the construction is completed, the homeowner will be
4 required to have a long-term mortgage ready to replace the construction loan. This is
5 known as a takeout loan. Generally, a takeout commitment is secured at the same
6 time the construction loan is made. Most lenders will not make a construction loan
7 without having a takeout commitment in place.

8
9
10 **IV. MORTGAGE ASSIGNMENT**

11 When a local lender sells a mortgage to an investor in the secondary market,
12 the process used to do this is known as assignment. The investor who is buying the
13 mortgage will get an **ESTOPPEL CERTIFICATE** verifying the amount of the debt
14 prior to the assignment. Fannie Mae and Freddie Mac are the most common
15 secondary investors.

16
17
18 **V. METHODS OF BUYING MORTGAGED PROPERTY**

19 A. Assumed: When a person buys a property and takes over the
20 payments of an existing debt, this is known as buying property "**ASSUMPTION OF**"
21 the mortgage. As a practical matter the bank will require the buyer to qualify for the
22 loan and sign a promissory note. Because of the due-on-sale clause in most
23 residential mortgage, this process is necessary to prevent default and possible
24 foreclosure.

25
26 B. Subject To: When a person buys a property and takes over the
27 payments of an existing debt and is not required to sign a note or take personal
28 liability, this is known as buying a property "**SUBJECT TO**" the mortgage. There are
29 not many non-qualifying assumable loans that are available, but at one time FHA and
30 VA loans could be bought and sold in this manner.

31
32 Generally speaking, if a seller of property allows a buyer to assume the
33 mortgage, the seller remains legally responsible because of the note that was signed
34 when the debt was created. In order for a seller to be released from liability,
35 **NOVATION** from the lender must be requested and granted.

36
37 C. Wraparound: A **WRAPAROUND** mortgage is a new mortgage that
38 includes the unpaid principal balance of an existing debt. Under most conditions, a
39 seller makes a wraparound to a buyer who is weak in qualifying for a regular third-
40 party loan. The wraparound is never a first lien position when it is created but rather
41 is junior to the existing mortgage being wrapped. The wraparound usually carries a
42 higher interest rate than the market dictates. The new buyer makes payments to the
43 seller on the wraparound, and, in turn, the seller makes payments on the first
44 mortgage. The due-on-sale clause in mortgages will prevent the wraparound from
45 being used.

1 D. Contract for Deed: A **CONTRACT FOR DEED**, also known as a land
2 contract, is the sale of property with seller financing that has a slight twist at closing.
3 At contract, the seller retains legal title with a promise to transfer legal title to the
4 buyer at a later date. The buyer is said to receive equitable title which is an interest
5 in real estate with the expectation of future title.

6
7 Some contract for deeds are prohibited from being recorded making it easier
8 for a seller to take the property back in the event of default. Buyers are in a
9 vulnerable position because title remains in the seller's name and is subject to liens
10 incurred by the seller.

11 12 13 **VI. DEFAULT**

14 A. Consequences: If a mortgagor defaults on the terms of the
15 promissory note, the mortgagee has the right according to the terms of the mortgage
16 to have the property pledged as security sold for the remaining debt owed. The
17 process to accomplish this task is known as foreclosure.

18
19 B. Judicial and Non-Judicial Foreclosure: Foreclosure is a judicial
20 process whereby the lender sues in court requesting a summary judgment to have
21 the property sold by the courts to pay an outstanding debt. The first step in any
22 lawsuit is the filing of a **LIS PENDENS** which is public notice of the suit commencing.

23
24 From commencement of the lawsuit through foreclosure sale, the mortgagor
25 has the right to redeem the property by paying the debt in full prior to the foreclosure
26 sale. This is known as **EQUITY OF REDEMPTION**. At the public auction, however,
27 the mortgagor's rights in the property will be extinguished and a new owner will take
28 title.

29
30 The mortgagee can only sue for the amount of money that is owed on the
31 mortgage. If there is any money left over after the sale of the property that money is
32 given to the mortgagor. If, however, the public auction does not generate enough
33 money to pay the amount owed, the lender has the right to obtain a deficiency
34 judgment for that amount.

35
36 In a foreclosure, the lienholder foreclosing is paid and any lien of lesser
37 priority is eliminated if there are no remaining monies for disbursement. Any lien in a
38 superior position will not be eliminated; rather, the new owner will take title subject to
39 the superior lien still attached to the property.

40
41 **DEED IN LIEU OF FORECLOSURE** occurs when a person defaults and
42 instead of going through the foreclosure process and simply gives title to the lender.
43 Before accepting title, the lender should first check for other liens that may remain
44 with the property. Deed in lieu of foreclosure is a non-judicial proceeding.

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SUMMARY

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- In title theory states, title temporarily transfers to the lender until the debt is repaid. In lien theory states, title remains with the mortgagor, and the property is pledged to the lender as collateral by way of a mortgage.
- The essential elements of a mortgage are:
 1. The promise to repay
 2. The promise to pay taxes and insurance
 3. The promise to maintain the property in good condition
 4. The promise not to remove real property from the premises
- The equity plus the mortgage balance equals the value of the property.
- Local lenders usually sell mortgages to investors through assignment.
- Foreclosure in Florida is a judicial process that requires a public auction to be managed by the courts.
- Upon default by the mortgagor, the mortgagee has the right to sell property that is pledged as collateral. The mortgagor has the time period up to the public auction to redeem the default (equity of redemption).
- The loan-to-value ratio is a percent that is calculated by dividing the loan amount by the value of the property.
- A discount point is pre-paid interest. For every point that a lender charges a borrower, it increases the lender's yield $\frac{1}{8}$ of one percent.
- A person buying property "subject to" the mortgage is not responsible for the debt while persons buying property "assumption of" the mortgage becomes legally liable for the debt by signing a note.



1 **CHAPTER TWELVE QUIZ**

2 1. A mortgage clause that permits the lender to require immediate repayment of
3 the entire balance of the loan in the event of default is known as the

- 4
5 A. acceleration clause
6 B. defeasance clause
7 C. redemption clause
8 D. default clause
9

10
11 2. After a mortgage is paid in full, a mortgagor should request that the
12 mortgagee sign and record a

- 13
14 A. promissory note
15 B. mortgage deed
16 C. satisfaction
17 D. estoppel certificate
18

19
20 3. A superior mortgagee voluntarily allows a subsequent mortgagee to assume
21 a priority position under the principal of:

- 22
23 A. Assumption
24 B. Novation
25 C. Foreclosure
26 D. Subordination
27

28
29 4. The due-on-sale clause:

- 30
31 A. Accelerates the mortgage debt balance upon conveyance to a third
32 party
33 B. Is contained on most mortgages
34 C. Prevents mortgage assumption
35 D. All of the above
36

37
38 5. Karen owns a house worth \$250,000 with a mortgage debt of \$200,000.
39 What is her loan-to-value ratio?

- 40
41 A. 20%
42 B. 40%
43 C. 75%
44 D. 80%
45
46

CHAPTER TWELVE: RESIDENTIAL MORTGAGES

1 Facts for Questions 6 and 7:
2

3 Tara finances the purchase of a condominium with a \$300,000 mortgage at 8%
4 interest and a charge of 4 points.
5

6
7 6. How much money will the points cost Tara?

- 8
9 A. \$4,000
10 B. \$6,000
11 C. \$9,000
12 D. \$12,000
13

14
15 7. What will be the lender's effective yield?
16

- 17 A. 3%
18 B. 8%
19 C. 8½%
20 D. 8¾%
21

22
23 8. Miranda works for a closing attorney and needs to verify the balance of an
24 existing mortgage on the subject property so that the lender can be fully paid at
25 closing. Miranda should contact the lender and request which of the following?
26

- 27 A. Due on sale clause
28 B. Estoppel certificate
29 C. Mortgage deed
30 D. Exculpatory clause
31

32
33 9. A mortgagor has the right to stop a foreclosure sale up until the very last
34 minute before the auction if the entire balance is paid plus costs and fees. The
35 mortgagor's right to keep his or her property is under the principal of
36

- 37 A. equity of redemption
38 B. deficiency judgment
39 C. lis pendens
40 D. lien theory
41

42
43 10. A non-judicial proceeding that voluntarily transfers title to the mortgagee
44 without the need for a foreclosure is known as:
45

- 46 A. Equity of redemption
47 B. Due on sale clause
48 C. Surrender of title
49 D. Deed in lieu of foreclosure

CHAPTER TWELVE: RESIDENTIAL MORTGAGES

- 1 11. Which of the following is not an essential element of a mortgage?
2
3 A. The promise to pay taxes and insurance
4 B. The promise to live on the premises as the mortgagor's primary
5 residence
6 C. The promise to maintain the property in good condition
7 D. The promise not to remove real property from the premises
8
9
- 10 12. Which of the following transactions will require a buyer to be liable for an
11 existing mortgage?
12
13 A. Assumption
14 B. Subject to
15 C. Novation
16 D. All of the above
17
18
- 19 13. The market value of a property, less the value of existing mortgages, is
20 known as:
21
22 A. Price
23 B. Cost
24 C. Value
25 D. Equity
26
27
- 28 14. A form of constructive notice concerning the existence of a pending litigation,
29 such as a foreclosure, is known as
30
31 A. lis pendens
32 B. recording
33 C. estoppel certificate
34 D. satisfaction
35
36
- 37 15. To which theory of mortgages does Florida subscribe?
38
39 A. Lien theory
40 B. Title theory
41 C. Mortgage theory
42 D. Debt theory
43

1 CHAPTER THIRTEEN:

2 TYPES AND SOURCES OF MORTGAGE MONEY



3 Talk the Talk

4 **Adjustable Rate Mortgage (ARM):** A mortgage loan with a calculated interest rate
5 that may increase or decrease during the term of the loan

6 **Amortizing:** A fully repaid loan according to a periodic and consistent schedule that
7 includes both principal and interest

8 **Balloon Payment:** A final installment payment on a note that is much larger than
9 the previous monthly payments on the note

10 **Biweekly Mortgage:** Mortgage payments that are made every other week (26
11 payments a year)

12 **Blanket Mortgage:** A mortgage that is secured by two or more items of real
13 property

14 **Conforming Loan:** A loan that meets FNMA and FHLMC borrowing requirements

15 **Disintermediation:** When depositors withdraw money from savings for direct
16 investment with a borrower

17 **Home Equity Loan:** A mortgage secured by a personal residence up to the value of
18 the mortgagor's equity

19 **Index:** Financial indicator that will be the basis for an adjustable rate mortgage
20 interest fluctuation

21 **Intermediation:** The process of depositing funds in financial institutions that serves
22 as "intermediaries" for flow of funds for investment and borrowing

23 **Land Contract:** An agreement in which the seller of real estate obligates his or
24 herself to deliver a merchantable title to the buyer upon buyer's performance of
25 certain agreed upon conditions such as payment of a certain number of installment
26 payments; also known as a Contract for Deed

27 **Level Payment Plan:** A method for amortizing a mortgage whereby the borrower
28 pays the same amount each month

29 **Lifetime Cap:** Sets the upper and lower interest limits for an adjustable rate
30 mortgage

31 **Margin:** The additional rate of interest charged over and above the index rate in an
32 adjustable rate mortgage

33 **MIP:** Mortgage Insurance Premium; payment for mortgage insurance which protects
34 the lender in the event of default

35 **Negative Amortization:** When the monthly payment is insufficient to pay the
36 accumulated interest for that month resulting in an increase in the amount of the
37 principal

38 **Package Mortgage:** A debt secured by pledging both real property and personal
39 property (building plus furniture)

40 **Partially Amortized Mortgage:** Mortgage loan repayment with equal monthly
41 payments but with a large balloon payment due at the end of the term

42
43

1 MORE TALK THE TALK

2
3 **Private Mortgage Insurance (PMI):** Non-governmental mortgage insurance needed
4 to insure the portion of the mortgage balance that exceeds an 80% loan to value ratio

5 **Purchase money mortgage:** A mortgage given by the buyer as part or all of the
6 purchase price consideration for real property

7 **Reverse annuity mortgage:** A loan arrangement in which a lender makes
8 payments to the borrower

9 **Teaser rate:** Below-market introductory rate for an adjustable rate mortgage

10 **Term mortgage:** A mortgage loan that provides for periodic payments of interest
11 only with a balloon payment at the end of the loan term

12 **UFMIP:** Up Front Mortgage Insurance Premium; lump sum mortgage insurance
13 premium paid at closing for FHA loans

14
15
16 AREAS OF CRITICAL CONCERN

- 17
18 • Describe the mechanics of an adjustable rate mortgage and the components of an
19 ARM
- 20 • Describe the features of an amortized mortgage and amortize a level-payment
21 plan mortgage when given the principal amount, the interest rate, and the
22 monthly payment amount
- 23 • Distinguish among the various types of mortgages
- 24 • Describe the characteristics of FHA mortgages and common FHA loan programs
- 25 • Identify the guarantee feature of VA mortgage loans and the characteristics of VA
26 loan programs
- 27 • Explain the process of qualifying for a loan and how to calculate qualifying ratios
- 28 • Distinguish among the primary sources of home financing
- 29 • Describe the role of the secondary mortgage market and know the features of the
30 major agencies active in the secondary market
- 31 • Describe the major provisions of the federal laws regarding fair credit and lending
32 procedures
- 33 • Recognize and avoid mortgage fraud
- 34
35

36 **I. TYPES OF MORTGAGES**

37 A. Amortized Mortgage: **AMORTIZING** is a systematic payment
38 method that retires the principal loan amount at the end of a specified period. The
39 mortgage payment remains constant; however, the principal and interest change
40 each payment (**LEVEL PAYMENT PLAN**). The interest portion of the payment is
41 based on the principal balance of the loan. As the principal balance gets smaller, the
42 corresponding interest payment gets smaller. Over the life of the loan, the interest
43 part of the payment gets smaller while the principal part of the payment gets larger.

44

45 There are several mortgage terms that are available. The most common is
46 the thirty-year term. The monthly payments are lower with more interest paid over
47 the life of the loan. The fifteen-year mortgage has a larger monthly payment but
48 builds equity faster and pays less interest over the life of the loan.

49

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

1 B. Adjustable Rate: An **ADJUSTABLE RATE MORTGAGE** (ARM) is
2 one in which the monthly payments may change on a periodic basis based on a pre-
3 determined **INDEX**. The adjustable rate mortgage is made up of the index and the
4 margin. The index is set by a monetary policy such as the one-year T-Bill or the Cost
5 of Funds Index published by the Federal Reserve Board. Once the index is set, it is
6 beyond the control of either the mortgagee or the mortgagor. **MARGIN** is simply
7 profit. Although the index may adjust up or down depending on the movement of a
8 market, the margin is fixed and remains constant throughout the life of the loan. The
9 index plus the margin equals the loan's calculated interest rate.

10
11 The adjustable rate mortgage is designed to ease market risk in that as
12 interest rates go up, the adjustable rate goes up. As interest rates go down, the
13 adjustable rate goes down. The adjustments have caps. The most common is the
14 2/6 cap. That is to say, the adjustments cannot go up more than 2% each year with
15 a 6% adjustment increase over the life of the loan (**LIFETIME CAP**). If the payment
16 caps are less than the index, the result could be a **NEGATIVE AMORTIZATION**
17 (instead of reducing the principal balance of a loan, the loan balance actually gets
18 larger).

19
20 A **TEASER RATE** is a below market interest rate offered by the lender to sell
21 the loan. There is normally a pre-payment penalty during the first year or two
22 because of the below-market rate. Most homebuyers keep a home for an average of
23 seven years, and the lender is able to make up the deficit over that time.

24 25 26 **II. CUSTOM MORTGAGES**

27
28 A. Partial Amortization: A **PARTIALLY AMORTIZED MORTGAGE** is
29 one in which principal and interest is made but not enough is paid by the end of the
30 loan term to pay the loan amount in full. A partially amortized mortgage usually
31 requires a **BALLOON PAYMENT** for the unpaid balance.

32
33 B. Biweekly: A **BIWEEKLY** mortgage is one in which payments are
34 made twenty-six times each year rather than twelve times. This type of mortgage
35 accelerates the principal debt reduction which satisfies the mortgage debt sooner.

36
37 C. Package Mortgage: A **PACKAGE MORTGAGE** accepts both real
38 property and personal property (chattel) as collateral. This is not a common practice
39 in residential mortgages; however, commercial loans often accept chattels as part of
40 the mortgage. Example: Bob buys a fully furnished restaurant, and, as collateral, the
41 lender accepts not only the building but also the kitchen equipment, tables, and
42 chairs.

43
44 D. Blanket Mortgage: A blanket mortgage is when two or more items of
45 real property are pledged as collateral in one mortgage loan. Typically, a **BLANKET**
46 **MORTGAGE** will contain a release clause providing that each item of real property
47 will be released from the mortgage upon its sale, provided the lender receives all of
48 the sale proceeds minus commissions and closing cost.

49

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

1 Brokers are not allowed to accept a listing on real property covered by a
2 blanket mortgage unless there is a release clause in place. Brokers violating this rule
3 are committing a fraud.
4

5 E. Home Equity: A **HOME EQUITY LOAN** is typically a junior loan that
6 is based on the equity in a home. A person is able to borrow on the equity portion of
7 the home value.
8

9 F. Land Contract: A **LAND CONTRACT** is also known as a contract for
10 deed. It is considered a type of mortgage because the seller finances the
11 transaction. Because of the outstanding debt the buyer owes the seller, the seller
12 withholds title at closing and agrees to deliver title when the loan has been repaid in
13 full or reaches a pre-agreed upon amount.
14

15 G. Purchase Money Mortgage: A **PURCHASE MONEY MORTGAGE**
16 (PMM) is often associated with seller financing. It differs from a traditional mortgage
17 in that the mortgage is exchanged for a debt without money actually transferring.
18 Ordinarily the bank will send a check in the amount borrowed to the closing whereas,
19 with a PMM, the seller allows the buyer to pay an agreed amount over time without
20 money actually passing hands.
21

22 H. Reverse Annuity: The **REVERSE ANNUITY MORTGAGE** (RAM)
23 was designed to help senior citizens stabilize their income. Homeowners 62 years of
24 age or older can "sell their equity" to the bank for payments over the remaining
25 portion of their lives. When the homeowner dies, there is a lien placed on his or her
26 property and will be paid back when the property sells.
27

28 I. Term Mortgage: Banks often make short-term loans where the
29 borrower make scheduled payments of interest only. This type of loan is known a
30 **TERM MORTGAGE**.
31

32 III. GOVERNMENT INSURED FHA PROGRAM

34 A. Overview: The Federal Housing Administration (FHA) was created in
35 1934 to assist in the recovery of the nation's second worst economic depression.
36 The purpose of the FHA was and is to stimulate construction of new homes and
37 homeownership by encouraging lenders to release greater amounts of funds for
38 financing residential homes. In addition, the FHA was designed to upgrade and
39 improve housing standards and to establish sound lending practices.
40

41 The FHA does not lend money but rather insures loans in the event the
42 borrower defaults. It is the primary mortgage market that originates FHA insured
43 loans. The interest rate is set by the market which means it is negotiated between
44 the lender and the borrower. The buyer, the seller or any party can pay discount
45 points that may be charged by the lender. In fact, all closing costs are negotiated
46 between the buyer and the seller.
47
48
49

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

1 The Department of Housing and Urban Development (HUD), after taking
2 charge of the FHA insurance in the 1960's, designed a very complex and
3 complicated calculation for the down payment. In addition, FHA has established loan
4 limits in each area of the country. Areas that have a higher "cost-of-living" will have a
5 higher loan limit. Real estate licensees and borrowers should contact the local HUD
6 office for specifics.

7
8 The borrower pays the FHA mortgage insurance premium up-front at closing
9 (**UFMIP**) which is percentage of the loan amount. In addition, the borrower is
10 required to pay an additional premium which is a percent of the loan balance
11 calculated annually and paid monthly (**MIP**).

12
13 The FHA insurance has established qualifying ratios that allow the borrower
14 easier accesses to financing. The housing expense ratio (PITI divided by monthly
15 gross income) cannot exceed 31% while the borrower's total obligations (PITI + other
16 payments divided by monthly gross income) cannot exceed 43%.

17
18 The FHA insurance is committed to providing quality housing. In that regard,
19 the lending standards of FHA are generally higher than that of conventional lending
20 standards. The FHA will not insure loans on obsolete homes or on properties poorly
21 located with respect to vital community services and adequate transportation. The
22 appraisal that is done for FHA insured loans have strict guidelines that insure these
23 standards.

24
25 Prior to December 1, 1986, all FHA loans could be assumed without
26 qualification. Today all FHA loans require the same qualifications of the buyer who is
27 assuming the mortgage as it would of a new borrower. In addition, FHA assumptions
28 do not allow prepayment penalties.

29
30 B. FHA Loan Programs: The FHA 203b program was the first and is
31 the most common program available. It is for residential homeownership (up to 4
32 units) with a 30-year fixed rate mortgage. The FHA 251 program is similar but is
33 based on an adjustable rate mortgage. The FHA 234 program is insurance for
34 condominiums loans which is quite common in Florida.

35 36 37 **IV. VA LOAN GUARANTEE PROGRAM**

38 A. Overview: The Veterans Administration was created in 1944 to
39 assist returning war veterans readjusting to normal civilian life. Home buying was an
40 essential part of that assistance. The Department of Veterans Affairs has two areas
41 of authority:

42
43 1. The power to partially guarantee mortgage loans made to
44 veterans by qualified VA lenders

45
46 2. The power to make direct loans to veterans in areas where VA
47 mortgage loans are not available

48

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

1 B. Characteristics of VA Mortgage Loans: Only veterans, the surviving
2 spouse of veterans, or active military personnel qualify to originate a VA loan
3 although in some cases non-veterans can assume these loans. A certificate of
4 eligibility will provide the amount of entitlement available to the borrower.

5
6 The VA loan eligibility requirements are as follows:

7
8 1. Ninety days of active duty during any or all of WWII, Korea,
9 Vietnam, or the Persian Gulf

10
11 2. 181 days of active duty during non-war/conflict periods
12 (peacetime). 24 months after 9/8/80 during peacetime

13
14 3. Six years of service in the National Guard or Reserves

15
16 Local lenders originate VA loans. Most lenders are authorized to directly
17 underwrite VA loans ("supervised lenders") simplifying the process. Real estate
18 licensees should rely on the borrower and the lender to determine the eligibility that is
19 available.

20
21 The VA will guarantee loans made for the purchase of a home or the
22 construction of a home by a veteran or an active military serviceman. The property
23 may be from one to four units and must be owner-occupied.

24
25 One of the unique characteristics of a VA guaranteed loan is that the veteran
26 is not required to have a down payment (100% financing). Interest rates, discount
27 points (pre-paid interest), loan origination fees, and most closing costs can be paid
28 by either the buyer or the seller. All lender agent commissions must be paid by the
29 seller. The qualifying ratio for a VA loan requires the borrower's total obligations ratio
30 not to exceed 41%. There is no housing expense ratio for VA guaranteed loans.

31
32 Loan closing or settlement fees, document preparation fees, interest lock-in
33 fees, loan application fees, and fees charged by loan brokers cannot be paid by the
34 borrower.

35
36 The VA does not have loan limits; however, there are guarantee limits.
37 Currently, the maximum guarantee is \$104,250. The guarantee depends on the loan
38 amount. The maximum V.A. loans with 100% financing is \$417,000. Any amount
39 above this will require 25% as a down payment.

40
41

	<u>Mortgage Amount</u>	<u>Guarantee (Entitlement)</u>
42		
43		
44	1. \$45,000 or less	50% of the loan
45	2. \$45,001 to \$56,250	\$22,500
46	3. \$56,251 to \$144,000	\$36,000 or 40%
47		whichever is less
48	4. More than \$144,000	\$104,250 or 25%
49		whichever is less

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

1 The veteran can have the guarantee reinstated when the loan is paid off.

2
3 The appraisal for a VA loan must be done by an appraiser approved by the
4 DVA. The appraisal is called a Certificate of Reasonable Value (CRV).

5
6 Since VA loans are not insured but rather guaranteed, the veteran is required
7 to pay a funding fee rather than an insurance premium. First time VA borrowers will
8 pay 2.15% of the loan amount. With subsequent VA loans, 3.3% of the loan amount
9 will be required. These percentages will decrease if the loan-to-value ratio is less
10 than 95%.

11
12 The DVA requires that veterans can pre-pay all or a portion of the principal
13 balance ahead of time without penalty.

14
15 Currently, the assumption of VA guaranteed loans is allowed provided the
16 new borrower is able to show creditworthiness. The party assuming a VA loan can
17 either be a veteran or non-veteran. If the buyer is a non-veteran, the eligibility of the
18 veteran is not automatically reissued. Unless the veteran has been released of
19 liability by the DVA, the veteran remains liable for the loan.

20 21 22 **V. CONVENTIONAL MORTGAGES**

23 Conventional mortgages are different from FHA insured loans and VA
24 guaranteed loans in that conventional mortgages are insured by private insurance
25 companies. The Mortgage Guarantee Insurance Company is the largest private
26 mortgage insurance company.

27
28 Conventional mortgages have larger equity requirements than government
29 underwritten loans. In most cases, conventional lenders require 5%-10% down
30 (equity). If a person has lower than average credit scores, lenders may require as
31 much as 30% down. It should be understood that lending money is like any other
32 business which is based on risk and reward; that is to say, the greater the risk to the
33 lender, the greater the reward expected. Anytime the loan-to-value ratio is greater
34 than 80%, conventional lenders will require **PRIVATE MORTGAGE INSURANCE**
35 **(PMI)**. Once the home has 20% or more equity realized, however, PMI can be
36 canceled with the proper request and proof (appraisal).

37
38 Conventional lenders use qualifying guidelines to assist in determining if a
39 borrower qualifies. The Housing Expense Ratio (PITI divided by monthly gross
40 income) should not be more than 28%. The Total Obligation Ratio (PITI + other debt
41 divided by monthly gross income) should not be more than 36%. These are only
42 guidelines and lenders have latitude, depending on credit scores. The credit score
43 becomes critical because this single item reflects the borrower's willingness in the
44 past to repay a debt. Past payment patterns usually don't change; therefore, poor
45 payment patterns will probably continue.

46
47 The relationship between the supply and demand of lendable funds ultimately
48 creates the price that the consumer pays to borrow. The interest rate on
49 conventional mortgages is set by the market and is negotiated between the lender

1 and the borrower. Most fixed rate mortgages are non-assumable while adjustable
2 rate mortgages can be assumed with pre-determined qualification criteria. Generally
3 speaking, there are no prepayment penalties involved. Some adjustable rate loans,
4 however, have a lower than-market-starting rate (teaser rate) and will have a
5 prepayment penalty required during the early stages of the loan.

6 7 8 **VI. QUALIFYING FOR THE LOAN**

9 Anytime a person is required to obtain a loan to purchase a property, the
10 lender will want to qualify both the borrower and the property. Most lenders use an
11 application form that allows general information to be obtained about the borrower's
12 ability to repay a loan as well as his or her willingness in the past to repay. The
13 Uniform Residential Loan Application (FNMA form 1003) is the most common;
14 however, modern technology allows "on-line" processing and approval with ease and
15 speed.

16
17 Lenders are able to qualify the properties by having an appraisal done to
18 estimate its current market value. The appraiser works for the lender, and it is the
19 appraiser's job to protect the lender from over investing in a property.

20
21 Loan underwriting is simply evaluating the risk before making a loan.
22 Information required to make this type of decision include current employment, job
23 security, assets acquired, cash on hand, and credit worthiness.

24 25 26 **VII. PRIMARY SOURCES OF HOME FINANCING**

27 The primary mortgage market is the place where the consumer makes
28 application for a mortgage loan. Applications are taken, underwriting is performed,
29 and loans are approved. Most lenders participate in the process known as
30 **INTERMEDIATION** by acting as middlemen between depositors and borrowers by
31 allowing consumers to deposit funds and in turn invest that money for a profit.
32 **DISINTERMEDIATION** removes the intermediary and allows individuals to lend
33 money to borrowers directly.

34
35 There are several sources of financing available:

36
37 A. Savings and Loan Associations: Savings and Loan Associations
38 were created in 1816 as a place where individuals deposited their money in savings
39 and were allowed to borrow to buy a home. Local citizens would join these
40 associations, pool their funds with other members, and then make the funds available
41 to members who needed financial assistance when buying a home.

42
43 Since that time, Savings and Loans have gone through a lot of changes,
44 including a financial crisis in the late 1980's. Most Savings Associations are federally
45 chartered by the Federal Home Loan Bank System (FHLBS). The FHLBS was
46 created to regulate Savings Association very much like the Federal Reserve System
47 regulates commercial banks. Depositors in Savings Associations are insured by the
48 Depositors Insurance Fund (DIF) up to \$250,000 per account per bank. DIF is a
49 function of the Federal Deposit Insurance Corporation (FDIC).

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

1 B. Commercial Banks: Commercial banks are the largest lenders of
2 short-term commercial or construction loans. Their lending policies are much more
3 conservative than other lending sources. Generally speaking, commercial banks
4 charge a higher interest rate, require more money down, and give a shorter length of
5 time to repay the loan.

6
7 Most commercial banks are federally chartered and regulated by the Federal
8 Reserve System (FRS). Depositors in commercial banks are insured up to \$250,000
9 per account per bank by the Depositors Insurance Fund (DIF). DIF is a function of
10 the Federal Deposit Insurance Corporation (FDIC).

11
12 C. Credit Unions: Credit unions, until recently, have been known as a
13 place for short-term consumer loans such as cars, boats, etc. Today, credit unions
14 are working with many secondary investors to originate long-term mortgage loans.
15 Although some credit unions are state chartered most are now federally chartered
16 and work with federal regulators in home mortgage lending.

17
18 D. Mortgage Bankers: Mortgage bankers (mortgage companies) are on
19 the cutting edge of technology in home mortgages. Mortgage bankers do not provide
20 savings but rather focus on lending only. Mortgage bankers have the ability to
21 approve and make loans from their own funds as well as service loans once they are
22 originated. They are able to earn income from both originating and servicing
23 mortgages.

24
25 E. Mortgage Brokers: A mortgage broker brings the lender and the
26 borrower together for a fee (a middleman). A mortgage broker does not make or
27 approve loans nor can they service loans once they are originated. Mortgage
28 brokers sometimes have an advantage over commercial banks because they can go
29 directly to the wholesale market where interest rates and other fees are oftentimes
30 less.

31
32 F. Life Insurance Companies: Life insurance companies are the largest
33 lenders of large-scale commercial properties (shopping centers, hotels, etc.). Life
34 insurance companies provide an invaluable source of funds that would otherwise not
35 be available. There are two major reasons that life insurance companies are so
36 successful in this regard:

37
38 1. Liquidity: Tremendous amount of available cash to lend

39
40 2. Less regulated: Regulated only in and by the states in which
41 they do business (no federal regulations to impair the lending efforts)

42
43 G. Private Funding: There are other sources of lending available that
44 are not considered part of the traditional lending market:

45
46 1. Seller financing

47
48 2. Private investors

49

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

1 The three agencies that are the major contributors in the secondary mortgage
2 market are the Federal National Mortgage Association (FNMA), the Government
3 National Mortgage Association (GNMA), and the Federal Home Loan Mortgage
4 Corporation (FHLMC).

5
6 1. The Federal National Mortgage Association (FNMA), known as
7 "Fannie Mae", was created in 1938 to purchase the newly created FHA
8 mortgages from local Savings and Loans. The FHA insurance program was
9 created to assist in the recovery of an economic depression, and FNMA was
10 created to make sure FHA loans could continue being made. In 1948, FNMA
11 was authorized to purchase VA guaranteed loans and, in 1970, authorized to
12 purchase conventional mortgages. Today "Fannie Mae" purchases all three
13 types of loans. Although FNMA was a government agency when it was
14 created, it has since become a corporation traded on the New York Stock
15 Exchange.

16
17 2. The Government National Mortgage Association (GNMA),
18 known as "Ginnie Mae", was created in 1968 to act as a subsidy function
19 assisting qualified homebuyers with low interest loans. GNMA works with
20 FNMA in what is called "the tandem plan" paying the difference between the
21 subsidized rate and current market rate. GNMA is a government agency
22 guaranteeing funding through mortgage-backed securities. GNMA does not
23 lend money but rather acts as a guarantor with the support of the full faith and
24 credit of the United States Government.

25
26 3. The Federal Home Loan Mortgage Corporation (FHLMC),
27 known as "Freddie Mac", was created in 1970 to purchase conventional
28 mortgages from local S & Ls. Today "Freddie Mac" buys not only
29 conventional loans but FHA and VA loans as well. FHLMC is a quasi-
30 government agency that competes with FNMA and is a corporation traded on
31 the New York Stock Exchange.

32 33 34 **X. LAWS AFFECTING FAIR CREDIT AND LENDING PROCEDURES**

35 A. Equal Credit Opportunity Act (ECOA): The Equal Credit Opportunity
36 Act was created in 1974 to prohibit discrimination by lenders based on race, religion,
37 age, sex, marital status, national origin, or receipt of money from public assistance
38 programs.

39
40 B. Consumer Credit Protection Act (TILA): The Truth in Lending Act
41 was created to provide disclosure to borrowers of the cost of borrowing. The cost of
42 borrowing includes the interest rate charged plus other costs involved in borrowing.
43 These costs are expressed as a percentage and are known as the Annual
44 Percentage Rate (APR). This disclosure must be made by the lender within three
45 business days of taking the application. The Consumer Credit Protection Act applies
46 to all consumer loans made by institutional lenders.

47
48 The Truth in Lending Act is implemented by the Federal Reserve Regulation
49 "Z."

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

1 C. Real Estate Settlement Procedures Act (RESPA): The Real Estate
2 Settlement Procedures Act applies to all federally related residential loans. RESPA
3 was created primarily to provide to borrowers the disclosure of closing costs that
4 might be incurred while buying a home. Lenders are required to provide applicants:

5
6 1. An information booklet on borrowing within three business
7 days of application

8
9 2. A good-faith estimate of closing costs within three business
10 days of application

11
12 3. RESPA prohibits lenders from receiving referrals or kickbacks
13 from closing related businesses unless an actual service was provided.

14
15 D. TILA/RESPA Integrated Disclosure (Closing Disclosure): Consumer
16 Financial Protection Bureau has been given the authority to require lenders to
17 provide borrowers the TILA/RESPA Closing Disclosure at least 3 business days prior
18 to closing.

19
20 E. Mortgage Fraud: Fraud in the mortgage industry is not
21 rampant but does exist to some degree. Federal regulations attempt to
22 protect the public from banking fraud but the system is not full-proof.

23
24 Buyers applying for a first mortgage while at the same time seeking an
25 undisclosed second mortgage are doing so fraudulently. Agents are
26 prohibited from taking part in this type of activity. Also allowing unqualified
27 individuals to assume an existing loan without the lenders knowledge is a
28 breach of the mortgage contract.

29
30 Straw Buyers are also used in order to obtain a residential mortgage
31 loan for a person who would not qualify for the loan, frequently a family
32 member or friend. In for profit schemes, the straw buyer is usually
33 compensated by a third party for the use of his financial identity. The straw
34 borrower is lured into the transaction with the promise that he would not be
35 liable for the mortgage payments. However, once the loan is obtained the
36 straw borrower becomes responsible for making the payments. Upon default
37 of the loan the straw borrower's name and his or her credit will be ruined.
38 Misrepresentation of identity on a federally related mortgage transaction is a
39 criminal offense punishable by up to 30 years imprisonment.

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SUMMARY

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- The adjustable rate mortgage is designed to change with the market. The interest rate can go up, down, or remain the same, depending on the current market conditions. The adjustable rate mortgage is comprised of an index and margin (index + margin = ARM).
- Amortization is the systematic method of paying a loan down by making payments that consists of both interest and principal. In the early stages of the amortization process, the interest part of the payment is considerably larger than the principal portion.
- There are three types of mortgages available: FHA, VA and Conventional.
- FHA is a government insurance program that protects lenders in the event of borrower default.
- VA loans are guaranteed by the federal government which protects lenders in the event of default. Generally speaking, the VA does not fund loans. However, the VA will fund a loan if the property is located in an area where VA loans are not available.
- In order for a person to qualify for a loan, he or she must show they have the ability and the willingness to repay the loan. In addition, lenders consider two ratios in evaluating the ability: the housing expense ratio (PITI div. by monthly gross income) and the total obligation ratio (TOR div. by monthly gross income).
- There are several sources that a borrower can go to for home loans (primary market): Savings Associations, Mortgage Bankers, Mortgage Brokers, Credit Unions, and Commercial Banks.
- The secondary mortgage market buys mortgages from the primary market to provide liquidity. There are three major agencies that make up the secondary market: (1) Federal National Mortgage Association (Fannie Mae) which buys VA, FHA, and conventional mortgages; (2) Government National Mortgage Association (Ginnie Mae) which acts as a subsidy function; and (3) The Federal Home Loan Mortgage Corporation (Freddie Mac) which buys VA, FHA, and conventional mortgages.
- There are four major laws that govern lending practices:
 1. Equal Credit Opportunity Act prohibits discrimination in loan underwriting based on sex, marital status, race, religion, age, or national origin.

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

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2. Consumer Credit Protection Act (Truth in Lending) requires lenders to disclose the cost of borrowing (APR).
 3. Real Estate Settlement Procedures Act requires lenders to provide certain disclosures at the time of application and before closing.
 4. TILA/RESPA now requires lenders to provide borrowers the Closing Disclosure Forms at least 3 business days prior to closing.

CHAPTER THIRTEEN QUIZ



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1. In a fully amortized mortgage, although the monthly payment stays the same, the portion of each monthly payment that is applied to reduce the principal debt
 - A. stays the same
 - B. increases each month
 - C. decreases each month
 - D. not enough information
 2. The component of an adjustable rate mortgage that remains constant throughout the term of the loan is the:
 - A. Index
 - B. Margin
 - C. Calculated interest rate
 - D. None of the above
 3. A below-market interest rate offered on adjustable rate mortgages utilized to attract new borrowers is known as the:
 - A. Teaser rate
 - B. Preferred rate
 - C. Calculated interest rate
 - D. Index rate

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

- 1 4. Which of the following applies to a biweekly mortgage?
2
3 I. The loan is typically paid off faster
4 II. Twenty-six payments are made annually
5 III. The interest rate is typically higher
6
7 A. I only
8 B. II only
9 C. I and III
10 D. I and II
11
12
13
- 14 5. Christina has entered into a mortgage for a condominium that she intends to
15 rent on a weekly basis. The lender has accepted a mortgage which covers the
16 condominium plus all its furnishings. Which type of mortgage has Christina entered
17 into?
18
19 A. Blanket
20 B. Bilateral
21 C. Package
22 D. Chattel
23
24
- 25 6. Which type of mortgage requires an upfront mortgage insurance payment
26 plus a monthly mortgage insurance payment?
27
28 A. VA
29 B. FHA
30 C. Conventional
31 D. Rural Housing
32
33
- 34 7. The qualifying ratios for an FHA loan are:
35
36 A. 28% housing expense ratio / 36% total obligations ratio
37 B. 28% housing expense ratio / 43% total obligations ratio
38 C. 36% housing expense ratio / 38% total obligations ratio
39 D. 31% housing expense ratio / 43% total obligations ratio
40
41
- 42 8. Mortgage bankers are an example of:
43
44 A. Disintermediation
45 B. Intermediation
46 C. Package mortgage
47 D. Blanket mortgage
48
49

CHAPTER THIRTEEN: TYPES AND SOURCES OF MORTGAGE MONEY

- 1 9. The amount of a VA guarantee on a mortgage loan depends on:
2
3 A. the credit rating of the borrower
4 B. the geographical location of the property
5 C. the amount of the loan
6 D. the amount of the down payment
7
8
- 9 10. A person who borrows money directly from the owner of the funds is an
10 example of:
11
12 A. Capitalization
13 B. Intermediation
14 C. Disintermediation
15 D. Leverage
16
17
- 18 11. All of the following are sources of lendable funds for mortgages except:
19
20 A. Credit unions
21 B. Savings associations
22 C. Life insurance companies
23 D. Federal Reserve System
24
25
- 26 12. The association known as "Fannie Mae" is the:
27
28 A. Federal National Mortgage Association
29 B. Government National Mortgage Association
30 C. Federal Home Loan Mortgage Corporation
31 D. Federal Reserve System
32
33
- 34 13. Which of the following secondary mortgage market agencies is a government
35 agency?
36
37 A. Federal National Mortgage Association
38 B. Government National Mortgage Association
39 C. Federal Home Loan Mortgage Corporation
40 D. Federal Mortgage Group
41
42
- 43 14. The Federal Truth in Lending Act is governed by Regulation:
44
45 A. S
46 B. T
47 C. X
48 D. Z
49
50

1 **CHAPTER FOURTEEN:**
2 **REAL ESTATE CLOSINGS**



3 **Talk the Talk**

4 **Arrears:** When payment is due at the end of the term

5 **Credit:** On a closing statement, credit refers to money that is paid or payable

6 **Debit:** On a closing statement, debit refers to money that is owed or a payment

7 **Pre-closing Inspection:** On-site review and inspection of a property shortly before
8 closing

9 **Proration:** To apportion an expense between the buyer and seller so that each party
10 pays his or her pro rata share

11
12
13
14 **AREAS OF CRITICAL CONCERN**

- 15 • Compute the sales commission
- 16 • Calculate the percent of profit or loss given the original cost of the investment, the
- 17 sale price, and the dollar amount of profit or loss
- 18 • List the preliminary steps to a closing
- 19 • Prorate the buyer's and seller's expenses using either the 30-day-month method
- 20 or the 365-day method
- 21 • Calculate the dollar amount of transfer taxes on deeds, mortgages, and notes
- 22 • Allocate taxes and fees to the proper parties and compute individual costs
- 23 • Explain the rules of thumb for closing statement entries

24
25
26
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28
29
30 **I. BASIC REAL ESTATE COMPUTATIONS**



31 A. Fractions, Decimals, and Percentages: When a number (or a whole
32 unit) is divided into parts, each part is a fraction and a percentage of the entire
33 number. If a parcel of real estate is divided into 4 parts, each part is 1/4 (or 25%) of
34 the whole parcel.

35
36 Sometimes a real estate licensee is asked to convert a fraction into a decimal.
37 To do so, perform the following steps on your calculator:

- 38
- 39 1. Enter the number on the top of the fraction (the numerator)
- 40 2. Press the divide key
- 41 3. Enter the number on the bottom of the fraction (denominator)
- 42 4. Press the "=" key
- 43

CHAPTER FOURTEEN: REAL ESTATE CLOSINGS

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Example: Express 1/5 as a decimal.

Answer: $1 \div 5 = .20$

Sometimes a real estate licensee is asked to convert a percentage to a decimal. To do so, place a decimal point two places to the left and delete the percentage symbol.

Example: Express 76% as a decimal

Answer: **.76**

B. Sales Commission: To calculate a sales commission due a real estate licensee, multiply the sales price by the commission rate (expressed as a decimal).

Example: What is the dollar amount of a sales commission if the purchase price is \$275,000 and the commission rate is 6%?

Answer: $\$275,000 \times .06 = \mathbf{\$16,500}$

Sometimes, the commission rate can be graduated, depending on the sales price.

Example: Broker Bob has entered into a listing agreement with Owner Otis. The commission rate is as follows: 5% for the first \$200,000, 6% for next \$100,000, and 7% for the amount over \$300,000. If the house sells for \$350,000, what is the sales commission?

Answer:	$\$200,000 \times .05 =$	$\$ 10,000$	
	plus	$\$100,000 \times .06 =$	$\$ 6,000$
	plus	$\$ 50,000 \times .07 =$	<u>$\\$ 3,500$</u>
	Total Commission earned:		$\\$ 19,500$

CHAPTER FOURTEEN: REAL ESTATE CLOSINGS

1 In the real estate profession, it is customary for commissions to be split
2 between the sales associate and the broker. To determine a sales associate's
3 commission, first calculate the total commissions due from the seller then divide it
4 between the sales associate and the broker.

5
6
7 **Example:** Salesperson Sally is working for Broker Barbara. Their
8 commission agreement states that Sally will earn 80% of any
9 commission, and Barbara will earn 20%. Owner Oliver has listed his
10 house for \$450,000 and has agreed to a 6% commission. If the house
11 sells for the full listed price, how much money has Sally earned?

12
13 **Answer:** \$ 450,000 x 6% = \$27,000 (total commission)

14
15 \$ 27,000 x 80% = **\$21,600** (Sally's share)
16
17
18

19 II. PRELIMINARY STEPS TO CLOSING

20 Even after a Purchase and Sales Agreement is signed, there are many tasks
21 to accomplish before the closing can take place. Even though a contract is signed,
22 technically the property is not "sold." Once a contract has been signed, the licensee
23 should notify the MLS that the property is "under contract."
24

25 The earnest money deposit must be delivered to the broker "immediately" and
26 timely placed in an escrow account. Some contracts provide for additional deposits
27 to be remitted after the initial earnest money deposit. Those additional deposits
28 should also be placed in an escrow account.
29

30 If the buyer intends to finance the transaction, the appropriate mortgage
31 application should be submitted as soon as possible. If the Purchase and Sale
32 Agreement contains a financing contingency, the buyer will be entitled to cancel the
33 contract if unable to obtain mortgage financing. The contract may also contain other
34 contingencies which must be satisfied before a party is obligated to perform, such as
35 a satisfactory structural report (home inspection), approved title search and
36 commitment, or termite inspection.
37

38 As part of the financing process, the property will have to be appraised by an
39 appraiser acceptable to the lender. The appraisal must confirm the property's value
40 so that the bank's collateral will be sufficient in the event of a payment default.
41

42 Sometimes, the buyer will require certain items to be repaired or replaced as
43 a condition of closing. Obviously, such items should be addressed as soon as
44 possible, preventing last minute concerns and anxieties.
45

46 Other matters that must be addressed prior to closing include having a survey
47 performed (if required by the lender or title insurance company) and providing the
48 closing agent with proof of hazard, flood, and homeowner's insurance.
49
50

CHAPTER FOURTEEN: REAL ESTATE CLOSINGS

1 As the closing day approaches, the agent(s) should arrange a property **PRE-**
2 **CLOSING INSPECTION** and co-ordinate the actual date, place, and time of the
3 closing. The agents should also review all closing documents with their respective
4 clients at least one day before closing. That way, all issues, questions, and problems
5 can be addressed and resolved without delaying the closing. Also, the escrow agent
6 must deliver the earnest money deposit for closing.
7

9 **III. PRORATIONS AND EXPENSES**

10 A. Overview: Some expenses associated with the subject property are
11 shared between the buyer and the seller through the process of **PRORATION**. At
12 closing, each party's obligation is calculated as either a debit or credit to the buyer or
13 the seller.
14

15 A **DEBIT** is an item (expense) that is charged to a party. A **CREDIT** is an
16 item (amount of money) that is being paid to the party receiving the credit. All items
17 on a closing statement are characterized as either a debit or a credit.
18

19 Expenses that are prorated at closing include property taxes, homeowner's
20 fees, rent (if a tenant will continue to reside on the property after closing), and pre-
21 paid interest on an assumed mortgage loan. Pro-ration calculations are temporal,
22 meaning they are based upon a period of time. For example, property taxes are
23 based upon a calendar year. Rent and pre-paid mortgage interest are typically
24 based upon a monthly schedule.
25

26 When calculating the pro-ration, either the 365-day method or 360-day
27 method is utilized. If the expense is truly a yearly amount (such as property taxes),
28 the 365-day method is used. That is, the annual taxes are divided by 365 to
29 determine the daily amount. Once the daily amount is known, the closing agent
30 determines the number of days allocated to each party and calculates the
31 appropriate debit/credit.
32

33 If the expense is based upon a 12 month/30-day method (such as mortgage
34 interest), the annual amount is divided by 360 to determine the daily amount. All
35 months are considered to have 30 days. Banks like the 360-day method because it
36 gives the bank just a little more interest every day. When multiplied by thousands of
37 mortgage loans, the additional amount can be significant.
38

39 B. Prorating Rent: If a property is being sold and the tenant is going to
40 remain in possession, the rent for the month of closing must be shared between the
41 buyer and seller. Because rent is paid in advance, the seller collects the full amount
42 on the first day of the month. Since it would be unfair to allow the seller to keep all of
43 the money when the seller doesn't own the property for the entire month, the rent
44 must be prorated (shared) between the seller and the buyer. The Purchase and Sale
45 Agreement should state which party is entitled to the closing day rent.
46
47
48
49
50

CHAPTER FOURTEEN: REAL ESTATE CLOSINGS

1 D. Prorate Interest on Assumed Mortgage: When a buyer assumes a
2 mortgage from a seller, the mortgage interest for the closing month must be prorated
3 between the seller and the buyer. When the buyer makes the next mortgage
4 payment, the buyer is paying the mortgage interest for the entire prior month. For
5 instance, if a closing is in April, the buyer will make a mortgage payment on May 1st
6 that will pay the interest for April.
7

8 **Example:** Buyer is assuming a \$50,000 mortgage at 9% interest, closing
9 scheduled for April 14th. If the day of closing goes to the buyer, prorate the interest
10 on the assumed mortgage using the 365-day method:
11

12
13
14 **Answer:**



22 Since mortgage interest is paid in arrears, we are concerned with the period
23 of time from the date of closing back to the first day of the month (April):
24

- 25 1. Calculate the daily interest: $\$50,000 \times 9\% = \$4,500$
26 $\$4,500 \div 365 \text{ days} = \mathbf{\$12.3288 \text{ per day}}$
27
28 2. Calculate the # of days: **13 days**
29
30 3. Multiply the # of days $\$12.3288 \times 13 \text{ days} = \mathbf{\$160.27}$
31 by the daily interest: debit seller/credit buyer
32
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CHAPTER FOURTEEN: REAL ESTATE CLOSINGS

IV. STATE TRANSFER TAXES

A. Documentary Stamp Tax on Deed: The state of Florida raises revenue by charging a tax on every transfer of real property. The actual tax rate is stated as \$.70 for every \$100 of purchase price.

To calculate the tax due on a sale, convert the purchase price into units by dividing by 100 then multiply the number of units by \$.70. If the number of units is a decimal, always round up to the next highest whole unit number.

Example: What is the deed documentary stamp tax due if the purchase price is \$175,000?

Answer: $\$175,000 \div 100 = 1,750$ units
 $1,750 \text{ units} \times \$.70 = \mathbf{\$1,225}$

Example: What is the deed documentary stamp tax due if the purchase price is \$95,425?

Answer: $\$95,425 \div 100 = 954.25$ units round to 955 units
 $955 \text{ units} \times \$.70 = \mathbf{\$668.50}$

B. Documentary Stamp Tax due on Notes: The state of Florida raises revenue by charging a tax on every promissory note, including promissory notes that finance the purchase of real property. The tax is charged on new loans, assumed loans, and seller financing. The actual tax rate is stated as \$.35 for every \$100 of loan amount.

To calculate the tax due on a note, convert the principal loan amount into units by dividing by 100 then multiply the number of units by \$.35. If the number of units is a decimal, always round up to the next highest whole unit number.

Example: What is the note documentary stamp tax due if the loan is \$150,000?

Answer: $\$150,000 \div 100 = 1,500$ units
 $1,500 \text{ units} \times \$.35 = \mathbf{\$525}$

Example: What is the note documentary stamp tax due if an assumed loan balance is \$45,230?

Answer: $\$45,230 \div 100 = 452.3$ units round to 453 units
 $453 \text{ units} \times \$.35 = \mathbf{\$158.55}$

CHAPTER FOURTEEN: REAL ESTATE CLOSINGS

1 C. State Intangible Tax on New Mortgages: The state of Florida raises
2 revenue by charging an intangible tax on every new mortgage (no intangible tax on
3 mortgage assumptions). The tax rate is stated as 2 mills (.002) multiplied by the loan
4 amount. There is no need to convert to units when calculating intangible taxes.
5

6 **Example:** What is the intangible tax if the new mortgage
7 loan is \$150,000?
8

9 **Answer:** \$150,000 x .002 = **\$300**
10

11 V. Other Charges Payable at Closing (Expense Items)

12 In addition to taxes, there are other charges that must be paid at closing,
13 typically by one party or the other. These types of charges are always debits on the
14 closing statement. Examples of additional "closing costs" include:
15

- 16
- 17 A. Document preparation fees charged by the closing agent
 - 18 B. Recording fees charged by the clerk of court
 - 19 C. Broker commission, usually paid by the seller
 - 20 D. Title insurance premium charged by the title insurance company
- 21

22 VI Rule of Thumb for Closing Costs

23 A. Items usually credited to the seller:
24

- 25
- 26 1. Purchase price
 - 27 2. Other pre-paid items
- 28

29 B. Items usually debited to the seller:
30

- 31
- 32 1. Mortgages paid off
 - 33 2. Mortgages assumed
 - 34 3. Prorated taxes, interest, and rent
 - 35 4. Doc. stamps on the deed
 - 36 5. Deed preparation and recording fees
 - 37 6. Broker's commission
- 38

39 C. Items usually credited to the buyer:
40

- 41
- 42 1. Earnest money deposit
 - 43 2. New or assumed mortgage
 - 44 3. Prorated taxes, interest, and rent
- 45

CHAPTER FOURTEEN: REAL ESTATE CLOSINGS

1 D. Items usually debited to the buyer:

- 2
3 1. Purchase Price
4 2. Mortgage lender charges
5 3. Doc. stamps on the note
6 4. Intangible tax
7 5. Mortgage recording fee
8
9



10 **SUMMARY**

- 11
12 ➤ Sales commissions are calculated upon the purchase price according to
13 terms and percentages established in the listing agreement.
14
15 ➤ The preliminary steps to closing include depositing the earnest money
16 funds, submitting mortgage application paperwork, satisfying
17 contingencies, ordering title insurance, performing any necessary repairs,
18 termite inspection, survey, pre-closing inspection, review closing
19 documents, and scheduling the closing time and place.
20
21 ➤ Taxes, rent, and interest on assumed loans are prorated at closing
22 between the buyer and the seller.
23
24 ➤ State taxes related to closings include documentary stamp tax on deeds,
25 documentary stamp tax on notes, and intangible tax on new mortgages.
26
27 ➤ The uniform settlement statement (closing document) contains the parties
28 credits, debits, and net amount to be received (seller) or net amount to
29 funded (buyer) at closing.
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1 CHAPTER FOURTEEN QUIZ



2 1. If Broker Bob has a property listed for \$250,000 with a 6% commission, how
3 much will his commission be if he sells it for \$220,000?

- 4
5 A. \$13,200
6 B. \$13,500
7 C. \$13,800
8 D. \$14,200
9

10
11 2. Which of the following appears as a credit on seller's closing statement?

- 12
13 A. Tax proration
14 B. Down payment
15 C. Purchase price
16 D. Realtor's commission
17

18
19
20 3. The tax rate for intangible taxes on real estate financing is

- 21
22 A. .02
23 B. .002
24 C. .2
25 D. 2.0
26

27
28
29 4. Which of the following usually appear as a debit on the buyer's closing
30 statement?

- 31
32 A. Purchase price
33 B. Lender charges
34 C. State taxes on the loan
35 D. All of the above
36

37
38
39 5. Which type of payment is paid in advance?

- 40
41 A. Property taxes
42 B. Mortgage interest
43 C. Rent
44 D. Mortgage payoff at closing
45
46

CHAPTER FOURTEEN: REAL ESTATE CLOSINGS

- 1 6. Which of the following is typically pro-rated at closing?
2
3 A. Property taxes
4 B. Purchase price
5 C. Real estate commission
6 D. Doc. stamps on the deed
7

1 **CHAPTER FIFTEEN:**
2 **THE REAL ESTATE MARKET**
3



4 **Talk the Talk**

- 5 **Buyer's market:** The supply of available properties exceeds the demand
6 **Demand:** The quantity of goods or services wanted by consumers
7 **Household:** One individual, or a group of individuals, living in one dwelling unit
8 **Seller's market:** The demand is greater than the supply of homes available
9 **Situs:** The economic quality of a parcel because of its location, uniqueness, and
10 immobility relative to other parcels for a given area
11 **Supply:** The product (properties) that is available at any given time
12 **Vacancy Rate:** The percentage of rental units unoccupied
13
14

15 **AREAS OF CRITICAL CONCERN**
16

- 17 • Describe the physical characteristics of real estate
- 18 • Describe the economic characteristics of real estate
- 19 • List the factors that influence demand
- 20 • List the factors that influence supply
- 21 • Distinguish among different ways of interpreting market conditions
- 22 • Know the different market indicators
23
24

25 **I. PHYSICAL CHARACTERISTICS OF REAL ESTATE**

26 Real estate is immobile in nature and cannot be moved from one area to
27 another. External forces, such as surrounding properties, affect property values and
28 have a direct influence on both value and future use.
29

30 Although real estate cannot be moved, adjacent properties may benefit from
31 their relationship to one another. Combining contiguous parcels together under one
32 ownership (assemblage) can increase their overall value (plottage).
33

34 The "highest and best use" of a site is its legal and possible use that
35 generates the greatest value and return on the land. Sometimes a site's current use
36 or current zoning restricts the overall potential of that site. Investors and developers
37 must work with local government agencies to promote a positive change that will
38 benefit the entire community.
39

40 Real estate development is generally slow to respond to changes in supply
41 and demand. Buying a site, securing the proper building permits, plus actual
42 construction can be time consuming. When there are more buyers (**DEMAND**) than
43 current homes available for sale (**SUPPLY**), prices will increase on the homes that

1 are available. In response to an increase in demand, developers oftentimes
2 overbuild, therefore, creating more supply than demand.
3

4 Land is indestructible and will exist into perpetuity. Certainly a building can
5 be destroyed, but the “bundle of rights” that are the basis of ownership of real
6 property will endure. In fact, a homeowner’s insurance policy covers all
7 improvements but not the land itself because land does not depreciate.
8

9 Real estate is said to be heterogeneous, meaning that every parcel of land is
10 different and unique (non-homogeneous) and every parcel of real estate has its own
11 particular identification (legal description).
12

13 Real estate is subject to a variety of government controls, often with
14 conflicting results. Federal, state, and local governments restrict the use and
15 profitability of land through zoning ordinances, building codes, and taxation while at
16 the same time provide assistance in financing and tax deductions.
17

18

19 **II. ECONOMIC CHARACTERISTICS OF REAL ESTATE**

20 A. Overview: Supply is the amount of product that is available.
21 Demand is the number of people who want a particular product. The relationship
22 between supply and demand creates economic value (price).
23

24 B. Demand Factors:

25
26 1. As prices of real estate increase, demand decreases (inversely
27 related).
28

29 2. As population and/or **HOUSEHOLD** composition increases,
30 demand increases.
31

32 3. As incomes of the consumers rise, demand increases.
33

34 4. As the availability of mortgage money increases, demand
35 increases.
36

37 5. Consumer taste or preference can increase or decrease
38 demand.
39

40 C. Supply Factors:

41
42 1. The more skilled labor available, the better chance of
43 competitive product (housing) that can be produced
44

45 2. More available construction money at a reasonable rate
46 increases the chance that a product can be sold at a lower price. When
47 interest rates are down, homebuyers can buy a higher priced home for the
48 same monthly payment

1 3. The more land that is available, the less the price of land will
2 be; thus, the final finished product (housing) will be less expensive.

3
4 4. When materials are scarce, such as lumber, sheetrock, and
5 concrete, there is generally less finished product (housing) available.

6
7 D. Interpreting Market Conditions: Price levels are set by the
8 relationship between supply and demand. For example, if demand goes up and the
9 supply remains constant, the price goes up. A good indicator of how well the housing
10 supply is doing as it relates to demand is the vacancy rate. For example, if an
11 apartment building is running a 5% vacancy rate, it is doing well.

12
13 Vacancy rates apply to the housing market also. Builders and developers are
14 very mindful of absorption rates that, in effect, function as a vacancy rate. For
15 example, if a developer is building a fifty-unit housing project and after a year of
16 marketing only ten have sold, the developer's absorption rate has not met
17 expectations.

18
19 When a person buys a parcel of real estate, location is typically a primary
20 consideration. The uniqueness of location combined with immobility is known as
21 **SITUS**. Understanding the principal of supply and demand contributes to
22 understanding the difference between a buyer's market and a seller's market. When
23 there are more buyers than sellers, it is a **SELLER'S MARKET**. On the other hand,
24 when there are more sellers than buyers, it is a **BUYER'S MARKET**. Most
25 geographical areas contain a combination of both types of markets, varying from one
26 location to another.

27
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32 **III. MARKET INDICATORS**



33
34 A. Vacancy Rate: The **VACANCY RATE**, as was mentioned earlier,
35 gives an indication of how well the housing market is doing by comparing supply to
36 demand and its effect on occupancy. Generally, a decrease in vacancy rates that is
37 not attributable to reduced rents is evidence of a reviving real estate market.

38
39 B. Market Data: Information on market conditions and vacancy rates is
40 available from the local association of REALTORS®, Chamber of Commerce, or
41 Homebuilders Association. One of the best housing market indicators is the
42 issuance of new building permits. Records of building permits are available from city
43 and/or county building departments upon request.



SUMMARY

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

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

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

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

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

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

1 CHAPTER FIFTEEN QUIZ



- 2 1. Combining two or more parcels together to form one larger parcel is known as
3
4 A. assemblage
5 B. plottage
6 C. subdivision
7 D. rezoning
8
9
10
11 2. All of the following are characteristics of real estate except:
12
13 A. Adjacent properties may benefit from their relationship to one another
14 B. Real estate development is generally slow to respond to changes in
15 supply and demand
16 C. Real estate is said to be heterogeneous
17 D. A property's current zoning will never restrict the overall potential of
18 that site
19
20
21
22 3. All of the following will affect the supply of real estate except:
23
24 A. Availability of skilled labor
25 B. Availability of materials
26 C. Change in consumer tastes or preferences
27 D. Amount of land available for construction
28
29
30
31 4. Vacancy rate refers to the
32
33 A. percentage of units that is vacant
34 B. percentage of units occupied
35 C. length of time of rental property is unoccupied
36 D. percentage of units that have tenants move out early
37
38
39
40 5. The increase in value realized as a result of assemblage is known as:
41
42 A. Plottage
43 B. Appreciation
44 C. Reliction
45 D. Depreciation
46

CHAPTER FIFTEEN: THE REAL ESTATE MARKET

- 1 6. A property's "highest and best use" refers to:
2
3 A. the type of construction that will benefit the community
4 B. the type of construction that will result in the highest value for that
5 property
6 C. the largest type of structure that may be built on the property
7 D. the tallest possible structure that may be built on the property
8
9
10
11 7. Generally, when there are more buyers than current homes available for sale,
12 prices will:
13
14 A. increase
15 B. decrease
16 C. stays the same
17 D. not enough information
18
19
20
21 8. The overall relationship between supply and demand will ultimately affect:
22
23 A. Supply
24 B. Demand
25 C. Mortgage interest rates
26 D. Price
27
28
29
30 9. A household is defined as:
31
32 A. One individual, or a group of individuals, living in one dwelling unit
33 B. One individual living in one dwelling unit
34 C. A group of individuals living in one dwelling unit
35 D. None of the above
36
37
38
39 10. Which of the following events will cause demand to decrease?
40
41 A. Population increase
42 B. Price increase
43 C. Income increase
44 D. Lower interest rates
45
46
47
48

1 **CHAPTER SIXTEEN:**
2 **REAL ESTATE APPRAISALS**
3



4 **TALK THE TALK**

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

7 **Assemblage:** The bringing together of two adjoining parcels of property under one
8 ownership

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

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

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

18 **Depreciation:** A decline or loss in value for any reason

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

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

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

25 **Highest and Best Use:** A principle of value that focuses on a property's most
26 profitable, legal use

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

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

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

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

37 **Plottage:** An increase in value of property experienced through assemblage

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

41 **Progression:** The tendency of a property to increase in value at a faster rate in
42 order to conform to surrounding properties
43

1 **MORE TALK THE TALK**

2
3 **Reconciliation:** The process by which an appraiser evaluates, chooses, weighs,
4 and selects from among two or more alternative conclusions or indications to reach a
5 single answer (final value estimate)

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

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

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

12 **Subject property:** The real property under discussion or appraisal
13
14
15

16 **AREAS OF CRITICAL CONCERN**

- 17
18 • Describe federal and state regulations pertaining to appraising
19 • Distinguish among the various types of value
20 • Define market value and describe its underlying assumptions
21 • Distinguish among value, price, and cost
22 • Describe the four characteristics of value
23 • Distinguish among the principles of value
24 • Differentiate among the three approaches to estimating the value of real property
25 • Calculate value using gross multiplier analysis
26 • Explain how to prepare a CMA
27

28
29 **I. REGULATIONS AFFECTING APPRAISING**

30 A. State Licensed and Certified Appraisers: Title XI of the Financial
31 Institution Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires states
32 to establish appraisal licensing and certification programs for appraisers who may be
33 involved in performing appraisals which support a **FEDERALLY RELATED**
34 **TRANSACTION**. In Florida, licensed and certified appraisers are regulated by the
35 Florida Real Estate Appraisal Board which is outlined in Chapter 475 F.S. part II.
36

37 Systematic procedures and logical analysis as presented in the Uniform
38 Standards of Professional Appraisal Practice (USPAP) should be followed.
39

40 Florida law prohibits brokers, sales associates, or broker associates from
41 performing appraisals unless they hold an appraiser's license also.
42
43
44
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1 **II. CONCEPT OF VALUE**

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

5
6 1. Investment value is a value that is determined because of
7 individual investor's requirements.

8
9 2. Assessed value is determined by the local property appraiser
10 to establish value for real estate taxes.

11
12 3. Liquidation value is the amount a property is most likely to sell
13 at a forced or hurried sale (foreclosure).

14
15 4. Salvage value is the amount that part or all of a property's
16 improvements can be sold for at the end of its economic life taking into
17 consideration the cost of removing those improvements from the land.

18
19 5. Insurable value is often estimated for insurance coverage
20 purposes which are based on replacement cost.

21
22 B. Market Value: **MARKET VALUE** is the most common purpose of real
23 estate appraising. The USPAP defines market value as the most probable price
24 which a property should bring in a competitive and open market with the buyer and
25 seller each acting prudently and knowledgeably and assuming the price is not
26 affected by undue stimulus.

27
28 Implicit in the definition of market value is the consummation of a closing on a
29 particular date and the transferring of title from the grantor to the grantee under the
30 following conditions:

31
32 1. Both seller and buyer are motivated under normal conditions;

33
34 2. Both parties are well informed and properly advised and acting
35 in a manner that places their best interests first;

36
37 3. A reasonable amount of time is allowed in the open market for
38 adequate exposure;

39
40 4. Payment is made in U.S. dollars or its equivalent; and

41
42 5. The price represents an arm's length transaction (no special
43 pricing and the parties are not related).

44
45 C. Concept Cost, Price, and Value: Cost of production is the expenditure
46 of resources necessary to bring a property into existence. It is measured in monetary
47 terms and includes compensation of all factors of production including, but not limited
48 to, land, utilities, improvements, and carrying costs. Price is the amount of money
49 that is actually paid for a property. The most direct way to determine value is what

1 someone is willing to pay. Value is an imaginary number that the appraiser believes
2 a property will sell for. In appraisal, market value is a result of the interaction of
3 supply and demand.
4

5 It should be remembered that in an active market, cost, price, and value may
6 be similar, but one does not create the other. For example, a home may cost
7 \$200,000 to build, but that does not mean that the market will be willing to pay that
8 price.
9

10 D. Characteristics of Value: For a property to have economic value,
11 four characteristics must be present (**DUST**):
12

- 13 1. Demand: those who want the property,
- 14 2. Utility: what the property can be used for,
- 15 3. Scarcity: the number of properties that are available, and
- 16 4. Transferability: title must be transferable to another.
17
18
19
20

21 **III. PRINCIPLES OF VALUE**

22 A. Substitution: The basic premise of appraising is found in the
23 **PRINCIPLE OF SUBSTITUTION** which states that an informed buyer will pay no
24 more for a property than the cost of acquiring an equally desirable substitute
25 property.
26
27

28 B. Highest and best use: This principle establishes the greatest
29 economic value or return possible. **HIGHEST AND BEST USE** is a residual concept
30 (net value after expenses) that determines what a property can be used for that will
31 cause it to be worth the most money. The site residual technique is used to
32 determine how a site can be used most beneficially. Highest and best use is defined
33 as the specific use of a site that will provide the greatest income (value) to the site
34 after deducting an appropriate return to the capital invested in the improvement.
35

36 The highest and best use of an improved property must consider three things:
37

- 38 1. Should the improvement be used "as is",
- 39 2. Should the improvement be renovated which could increase
40 rents/value, and
41
- 42 3. Should the improvement be demolished and a new
43 improvement built?
44
45

46 Regardless of the choice, the property should logically achieve its greatest
47 net value potential. Often renovations or new construction can be more costly than
48 the additional income it generates, and, therefore, highest and best use has not been
49 achieved.

1 C. Increasing and Decreasing Returns: Home buying is, for the most
2 part, an emotional experience. It stands to reason that people have a tendency to
3 improve properties without considering the economic consequences. This is known
4 as over improving a property. A philosophy that passes the test of time is "you
5 should never buy the largest home in a neighborhood; rather, buy the smallest."
6 Smaller, less expensive homes tend to appreciate faster than their larger neighbors.
7 A good example of an **OVERIMPROVEMENT** might be a swimming pool or the
8 addition of an extra bathroom.

9
10 D. Conformity: The principle of conformity states that property values
11 will be enhanced if architectural designs are similar and conform to each other.
12 Conformity is achieved through the use and implementation of restrictive covenants.

13
14 E. Other Valuation terms: **PROGRESSION** is a term that is used when
15 properties increase in value while **REGRESSION** refers to those properties that lose
16 value.

17
18 The combining of two or more parcels of real estate into a single ownership is
19 known as **ASSEMBLAGE**. The increase in value because of assemblage is known
20 as **PLOTTAGE**.

21 22 23 **IV. THE THREE APPROACHES TO VALUE**

24 A. Overview: There are three approaches used by the appraiser when
25 doing an appraisal. They are the Comparable Sales Approach, the Cost-
26 Depreciation Approach, and the Income Approach. All three approaches are used
27 when applicable.

28
29 B. Sales Comparison Approach: In the comparable sales approach, the
30 appraiser looks at other properties that are similar to the property being appraised.
31 The comparables should be similar in construction quality, location, and size and
32 should have sold recently. The comparable sales approach is based on the principle
33 of substitution and is relied upon heavily when appraising residential homes, vacant
34 land, and small investment properties.

35
36 There are three steps required in the **SALES COMPARISON APPROACH**:

- 37
38 1. Data collection for comparable properties that have sold
39 recently,
40
41 2. Adjustment of the comparables' sales prices, and
42
43 3. Reconciliation of the adjusted sales price into a final value
44 conclusion.

45
46 Obtaining data on sales of comparable properties requires the appraiser to
47 gather information about not only the property but also the transaction itself.
48 Property data includes the physical factors such as size, number of bedrooms and
49 baths, age, architecture, and zoning. Transactional characteristics include such

1 items as financing terms, market condition (sale date), and condition of sale (arm's
2 length). This data can be collected from public records and the MLS system of the
3 local Association of REALTORS®. The minimum number of comparables to be used
4 is three; however, between eight and ten are recommended.

5
6 Once the proper comparables have been gathered, the appraiser then adjusts
7 the comparables to be as similar to the **SUBJECT PROPERTY** as possible. Only the
8 comparables are adjusted, not the subject property being appraised. If the
9 comparable is better than the subject, the appraiser must deduct the value difference
10 from the comparable to make it like the subject. If the comparable is inferior, value
11 must be added to the comparable to make it like the subject. Remember Robin
12 Hood: "take from the rich and give to the poor."

13
14 In the adjustment process there is a specific sequence that must be followed.
15 Transactional characteristics are adjusted first then the adjustment of property
16 characteristics follows.

17
18 The final step in the sales comparison approach is the value conclusion
19 process. This process is known as **RECONCILIATION** which is a weighted
20 averaging that gives more validity (weight) to those properties more like the subject
21 and less validity to those less similar.

22
23 C. Cost-Depreciation Approach: The **COST-DEPRECIATION**
24 **APPROACH** is based on the premise that a potential buyer will pay no more for a
25 property than the cost of acquiring a comparable lot and constructing a new
26 improvement of equal utility. Therefore, new construction of equal utility tends to set
27 the upper limits of value. The cost-depreciation approach to value is based on the
28 principal of substitution and is relied upon extensively when appraising unusual or
29 **SPECIAL PURPOSE PROPERTIES** (no comps available).

30
31 There are several steps in the cost-depreciation approach: estimating
32 reproduction cost, estimating accrued depreciation, subtracting depreciation from
33 reproduction cost, estimating land value, estimating the value of any other
34 improvements, and adding the site value and other improvement value to the
35 depreciated value of the building.

36
37 1. Reproduction cost is the amount of money that would be
38 required to construct a new building that is an exact replica of the structure
39 being appraised. Do not confuse reproduction cost with replacement cost.
40 Replacement cost refers to the expense of building a property of equal utility
41 that is similar but not identical. The appraiser determines reproduction cost,
42 not replacement cost.

43
44 There are three methods of determining reproduction cost:

45
46 a. Unit comparison method (per square foot method) is
47 the most common method used by appraisers. This method
48 usually requires the use of a cost service manual that gives the
49 estimated cost per square foot. Examples of the cost

1 D. Income-Capitalization Approach: The **INCOME-CAPITALIZATION**
2 **APPROACH** to value infers that the cash flows from rental properties have value.
3 The income approach to value is based on the principal of anticipation and is relied
4 upon heavily when appraising commercial and investment properties. All
5 calculations in this approach should be annualized.

6
7 There are five steps in the income-capitalization approach to value:

- 8
9 1. Estimate potential gross income (PGI)
- 10
11 2. Estimate and subtract vacancy & collection losses (V&C) to
12 get effective gross income (EGI)
- 13
14 3. Estimate and subtract operating expenses to get net operating
15 income (NOI)
- 16
17 4. Estimate a capitalization rate
- 18
19 5. Apply the IRV formula to get value (income div. by rate =
20 value)

21
22 Potential gross income (PGI) is considered to be the maximum revenue a
23 property can generate under the best conditions with full occupancy. PGI is
24 determined in two ways: market rent (comparable) and contract rent (current leases).

25
26 Vacancy and collection losses exist when a property is not fully occupied or
27 the tenants are not paying according to their leases. If the property has other
28 income, such as vending machines, it should be added only after vacancy has been
29 factored out.

30
31 Effective gross income (EGI) is the actual income that a property owner has
32 available to pay bills. It is calculated by subtracting V&C losses from PGI.

33
34 Operating expenses maintain properties and are classified in three
35 categories:

- 36
37 1. Fixed expenses will be payable regardless of the occupancy
38 rate. Taxes and insurance are considered fixed expenses.
- 39
40 2. Variable expenses will fluctuate depending on occupancy.
41 Maintenance, management and utilities are considered variable expenses.
- 42
43 3. Reserves for replacement are simply money set aside to pay
44 for items that will break down later.

45
46 Operating expenses do not include the mortgage payment (debt service) or
47 depreciation (for tax purposes).

48

CHAPTER SIXTEEN: REAL ESTATE APPRAISALS

1 Net operating income is calculated by subtracting operating expenses (fixed,
2 variable, and reserves) from effective gross income. It is the net operating income
3 (NOI) that is capitalized into a present value.
4

5 The capitalization rate, also known as the cap rate or overall rate, is
6 determined by comparing other similar properties that have sold (value) to their net
7 income. The cap rate is considered to be either a required return or a return that is
8 market driven.
9

10 Factors involved: Income (NOI), Rate, and Value. If you know two factors,
11 you can find the third.
12

$\frac{I}{R \quad V}$	I = Net Operating Income R = Capitalization Rate V = Value (purchase price)
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13
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19 E. The **GROSS RENT MULTIPLIER (GRM)** is a simplified method in
20 determining the value of smaller income producing properties. It expresses the
21 relationship between a property's current market rent and a multiplier (a number) that
22 determines market value. Generally speaking, the GRM is a monthly calculation
23 using a property's monthly gross rent. This approach is applied when the monthly
24 rent is stable throughout the year.
25

26 In situations where rents fluctuate throughout the year, the Gross Income
27 Multiplier (GIM) is used. For example, a condominium on the beach may rent for one
28 amount during the summer and another amount during the winter.
29

30 Factors involved: Value, Rent, and Multiplier. If you know two factors, you
31 can find the third.
32

$\frac{V}{R \quad M}$	V = Value (purchase price) R = Rent M = Multiplier
-----------------------	--

33
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39 F. **COMPARATIVE MARKET ANALYSIS (CMA)**

40 The primary function of a real estate licensee is to acquire listings as part of
41 an inventory to market. Listings usually create an employment agreement that is the
42 foundation of the real estate industry. Therefore, proper evaluation of a property is
43 essential in listing properties.
44

45 The licensee performs a comparative market analysis that is comprised of
46 three parts:
47

- 48 1. Evaluating sold properties: This will be the key indicator of the
49 subject property's value.
50

CHAPTER SIXTEEN: REAL ESTATE APPRAISALS

1 2. Evaluate what is currently on the market "For Sale": This will
2 provide information on the competition.

3
4 3. Evaluate "expired" listings: This will provide insight as to what
5 the market is unwilling to pay.

6
7 The comparative market analysis is performed in the same manner in which
8 the comparative sales approach is done:

9
10 1. Locate viable comparable properties that sold recently,

11
12 2. Adjust the comparables and make them as similar to the
13 subject property being listed as possible, and

14
15 3. Reconcile the comparables to a value range that would be
16 appropriate for the subject property being listed.

17
18
19 CASE STUDY FOR CMA:

20
21 A broker is preparing information that will be used when making a listing
22 presentation. The broker selects three recent sales of comparable properties within
23 the neighborhood that are similar to the subject property. The comparable properties
24 have been increasing in value at the rate of 1% per month.

25
26 Subject Property: Three bedrooms, two bathrooms, two-car garage, swimming pool
27 with a screened patio, and central air conditioning

28
29 Comparable #1: Four bedrooms, three bathrooms, central air conditioning,
30 screened patio, and two car garage. Sale date: six months
31 earlier; sale price: \$175,000

32 Comparable #2: Three bedrooms, two bathrooms, two-car garage, swimming pool,
33 fenced back yard, and central air conditioning. Sale date: 4
34 months earlier; sale price: \$168,000

35 Comparable #3: Four bedrooms, two bathrooms, two-car garage, fenced back
36 yard, central air conditioning, and screened patio. Sale date: 1
37 year earlier; sale price: \$162,000

38
39 The broker should list all characteristics of the comparable properties and then make
40 adjustments based upon the characteristics of the subject property.

- 41
42 ■ A bedroom has a value difference of \$10,000
43 ■ A bathroom has a value difference of \$6,000
44 ■ A swimming pool has a value difference of \$12,000
45 ■ A fenced back yard has a value difference of \$2,000
46 ■ A screened patio has a value difference of \$4,000

47
48 The adjustments are added or subtracted from the comparable properties' sale
49 prices, giving a range of value. The final list price is a judgment based upon this
50 range.

51

Based on the above information, complete the CMA form:

CMA FORM			
	Sale #1	Sale #2	Sale #3
Sales Price:	\$ _____	\$ _____	\$ _____
<u>Adjustments</u>			
Time	\$ _____	\$ _____	\$ _____
Bedrooms	\$ _____	\$ _____	\$ _____
Bathrooms	\$ _____	\$ _____	\$ _____
Garage	\$ _____	\$ _____	\$ _____
Pool	\$ _____	\$ _____	\$ _____
Central Air	\$ _____	\$ _____	\$ _____
Fence	\$ _____	\$ _____	\$ _____
Screening	\$ _____	\$ _____	\$ _____
Total Adjustments:	\$ _____	\$ _____	\$ _____
Adjusted Price:	\$ _____	\$ _____	\$ _____
Value Range:	_____		

1 Answer:

2

3

CMA FORM

4

5

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	Sale #1	Sale #2	Sale #3
Sales Price:	<u>\$ 175,000</u>	<u>\$ 168,000</u>	<u>\$ 162,000</u>
<u>Adjustments</u>			
Time	<u>\$ 10,500+</u>	<u>\$ 6,720+</u>	<u>\$ 19,440+</u>
Bedrooms	<u>\$ 10,000 -</u>	<u>\$</u>	<u>\$ 10,000-</u>
Bathrooms	<u>\$ 6,000-</u>	<u>\$</u>	<u>\$</u>
Garage	<u>\$</u>	<u>\$</u>	<u>\$</u>
Pool	<u>\$ 12,000+</u>	<u>\$</u>	<u>\$ 12,000+</u>
Central Air	<u>\$</u>	<u>\$</u>	<u>\$</u>
Fence	<u>\$</u>	<u>\$ 2,000-</u>	<u>\$ 2,000-</u>
Screening	<u>\$</u>	<u>\$ 4,000+</u>	<u>\$</u>
Total Adjustments:	<u>\$ 6,500+</u>	<u>\$ 8720+</u>	<u>\$ 19,440+</u>
Adjusted Price:	<u>\$181,500</u>	<u>\$176,720</u>	<u>\$181,440</u>
Value Range:	<u>\$176,000 - \$182,000</u>		



SUMMARY

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- The purpose of every appraisal is to determine some type of value. That value could be investment value, assessed value, insurable value, or market value.
- Market value is the most common type of value that an appraiser looks for. Simply put, it is market driven under normal market conditions.
- Cost is the actual dollars spent to create a property; Price is the dollars actually paid for the finished product; and Value is an imaginary number that a property is thought to be worth.
- In order for a property to have economic value there must exist: Demand, Utility, Scarcity, and Transferability (DUST).
- Highest and best use determines what a property can be used for that will cause it to have the greatest net value.
- There are three approaches to value:
 1. The sales comparison approach, which considers other properties that are similar and have sold recently,
 2. The cost-depreciation approach, which reproduces the subject building, subtracts accrued depreciation, and adds the site and other improvements, and
 3. The income-capitalization approach, which implies value based on cash flows.
- The gross rent multiplier (GRM) calculates value by multiplying the monthly rent by a multiplier. It is used on residential homes and small income properties.
- The comparative market analysis functions in the same manner as the sales comparison approach. The difference is that, in addition to comparing properties that have sold recently, the licensee also looks at properties that are currently on the market as well as those that have expired

1 CHAPTER SIXTEEN QUIZ



2 1. Sales associate Tom is hired to perform an appraisal on his neighbor's house.
3 May Tom perform the appraisal?

- 4
- 5 A. Tom may perform an appraisal provided he is not paid more than
6 \$50.00.
- 7 B. Tom may perform the appraisal provided he does not charge a fee.
- 8 C. Tom may not perform the appraisal unless he is a certified or state
9 licensed appraiser also.
- 10 D. Tom may not perform the appraisal as long as he holds a sales
11 associate's license.
- 12
- 13
- 14

15 2. The expenditure of resources necessary to bring a property into existence is
16 known as

- 17
- 18 A. cost
- 19 B. price
- 20 C. value
- 21 D. market value
- 22
- 23
- 24

25 3. The concept that an informed buyer will pay no more for a property than the
26 cost of acquiring an equally desirable substitute property is known as

- 27
- 28 A. principal of conformity
- 29 B. principal of substitution
- 30 C. principal of value
- 31 D. principal of market
- 32
- 33
- 34

35 4. The gross rent multiplier multiplied by the monthly rent will be equal to

- 36
- 37 A. value
- 38 B. capitalization rate
- 39 C. annual rent
- 40 D. depreciation
- 41
- 42
- 43
- 44
- 45

CHAPTER SIXTEEN: REAL ESTATE APPRAISALS

- 1 5. Which of the following appraisal methods would be appropriate for a subject
2 property when comparable sales data is unavailable?
3
- 4 I. Sales Comparison Approach
5 II. Income Capitalization Approach
6 III. Cost-Depreciation Approach
7
- 8 A. I only
9 B. II only
10 C. I and II
11 D. II and III
12
13
- 14 6. The expense of building a property of equal utility that is similar but not
15 identical to the subject property is known as its:
16
- 17 A. Replacement cost
18 B. Reproduction cost
19 C. Appraisal value
20 D. Market value
21
22
- 23 7. After seven years, a motel building in Lake City, Florida, is worth less money
24 due to wear and tear. This is an example of
25
- 26 A. physical deterioration
27 B. functional obsolescence
28 C. external obsolescence
29 D. market obsolescence
30
31
- 32 8. Karen owns a large home with a master bedroom that has only a small, single
33 closet. Karen's home is suffering from a condition known as
34
- 35 A. functional obsolescence
36 B. Design transition
37 C. Over improvement
38 D. None of the above
39
40
- 41 9. Robert is preparing to sell his residence. The interior needs repainting at a
42 cost of \$5,000. However, Robert is encouraged because, after the interior is
43 repainted, it will add \$10,000 to the property's value. The status of the interior paint
44 condition is known as:
45
- 46 A. Functional obsolescence
47 B. Curable depreciation
48 C. Incurable depreciation
49 D. Economic life

CHAPTER SIXTEEN: REAL ESTATE APPRAISALS

- 1 10. Effective gross income less operating expenses (including reserves for
2 replacements) is equal to:
3
- 4 A. Potential gross income
 - 5 B. Vacancy and collection losses
 - 6 C. Before tax cash flow
 - 7 D. Net operating income
- 8
9
- 10 11. According to the income capitalization method, if the capitalization rate
11 remains the same but net operating income is increased, how will value be affected?
12
- 13 A. Value goes up
 - 14 B. Value goes down
 - 15 C. Value remains the same
 - 16 D. Not enough information
- 17
18
- 19 12. If a comparable property has a feature that is \$5,000 superior to the subject
20 property, how should this difference be reflected in the reconciliation?
21
- 22 A. The subject property value should be adjusted by a \$5,000 reduction.
 - 23 B. The comparable property value should be adjusted by a \$5,000
24 reduction.
 - 25 C. The subject property value should be adjusted by a \$5,000 increase.
 - 26 D. The comparable property value should be adjusted by a \$5,000
27 increase.
- 28
29
- 30 13. The amount of money actually spent to acquire a property is known as its:
31
- 32 A. Value
 - 33 B. Cost
 - 34 C. Price
 - 35 D. All of the above
- 36
37
- 38 14. Which of the following are characteristics of value?
39
- 40 I. Demand
 - 41 II. Scarcity
 - 42 III. Transferability
 - 43 IV. Utility
- 44
- 45 A. I only
 - 46 B. II only
 - 47 C. I, II, and III
 - 48 D. I, II, III, and IV
- 49

1 **CHAPTER SEVENTEEN:**
2 **REAL ESTATE INVESTMENT**
3 **AND BUSINESS OPPORTUNITY BROKERAGE**
4



5 **Talk the Talk**

6 **Appreciation:** An increase in a property's value

7 **Basis:** The purchase price plus closing costs and other added improvements

8 **Capital Gain:** The positive difference between the sales price and the basis of the
9 property after appropriate adjustments for fix-up expenses, closing costs, allowable
10 depreciation, etc.; taxable profit

11 **Cash Flow:** The resulting amount when annual debt service, tax liability and capital
12 improvement costs are subtracted from net operating income

13 **Equity:** The difference between the market value of a property and the mortgage
14 debt

15 **Going Concern Value:** The value of a business considered as an operating
16 enterprise as opposed to its value merely as a collection of assets and liabilities

17 **Goodwill:** An intangible asset (value) of a business based on its reputation or
18 expectation of customer loyalty

19 **Leverage:** The use of borrowed funds to finance the purchase of an asset

20 **Liquidation Value Approach:** Comparing the value of assets to liabilities, the
21 difference typically representing minimum value (Liquidation Analysis)

22 **Liquidity:** The ability to convert assets to cash or its equivalent within a reasonable
23 period of time

24 **Tax Shelter:** An investment that shields income or gain from payment of income
25 taxes; a term used to describe some tax advantages of owning real property (or other
26 investments), including postponement or even elimination of certain taxes
27
28
29

30 **AREAS OF CRITICAL CONCERN**
31

- 32 • Identify the advantages and disadvantages of investing in real estate
- 33 • Distinguish among the risks associated with general business conditions
- 34 • Distinguish among the risks that affect return
- 35 • Describe the similarities and differences between real estate brokerage and
36 business brokerage
- 37 • Describe the types of expertise required in business brokerage
- 38 • Distinguish among the methods of appraising businesses
- 39 • Describe the steps in the sale of a business
40
41
42
43

CHAPTER SEVENTEEN: REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

1 **I. INVESTMENT REAL ESTATE TERMINOLOGY**

2 A. **CASH FLOW** is the amount of money that can be generated from an
3 investment. Cash flow is often perceived as the actual amount of money that an
4 investor will have after all expenses and debt service has been paid. There are
5 several ways to define cash flow:

6
7 1. Potential gross income is the maximum dollars that can or
8 could be generated from a property under the very best of situations (100%
9 occupancy)

10
11 2. Effective gross income is the actual dollars generated after
12 considering vacancy and collection losses. Other miscellaneous incomes,
13 such as vending machines or paid parking, are added after vacancy and
14 collection losses are factored out.

15
16 3. Net operating income is calculated by taking Effective gross
17 income and subtracting all operating expenses. An operating expense is paid
18 to maintain the operations of the property. There are three categories of
19 operating expenses: [1] fixed, [2] variable, and [3] reserves.

20
21 4. Cash throw-off, also known as before-tax cash flow, is
22 calculated by taking net operating income and subtracting the appropriate
23 debt service (principal and interest portion of the mortgage payment).

24
25 5. After-tax cash flow, or true cash flow, is found by taking the
26 before-tax cash flow and subtracting the appropriate state and federal income
27 tax.

28
29 B. **LEVERAGE** is the act of borrowing money to acquire an asset.
30 Leverage is sometimes known as O.P.M., or other people's money. Leverage
31 increases an investor's buying power because the assets purchased can be financed
32 in whole or in part. Leverage may increase an investor's yield (profit) at the time of
33 sale as well. For example, an investment cost \$100,000 and the investor puts
34 \$20,000 down. If the property appreciates 6% in the first year (\$6,000), the return on
35 the \$20,000 investment is 30% (\$6,000 div by \$20,000). Obviously, if the property
36 depreciates in value the yield would be negative.

37
38 C. **CAPITAL GAIN** occurs when a person sells a capital asset for a profit.
39 A capital loss occurs when a person sells a capital asset and loses money. What is,
40 then, a capital asset? A capital asset is anything that a party purchases for income,
41 business, or investment. Capital gains and losses are taxed according to special IRS
42 rules.

43
44 D. A property's **BASIS** is the amount of money that a person pays for a
45 property, plus closing costs, plus any capital improvements made to the property.

46
47 E. **APPRECIATION** occurs when a property increases in value.
48

CHAPTER SEVENTEEN: REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

1 F. **EQUITY** is the difference between the value of the property and the
2 mortgage(s). Equity is also known as the down payment required purchasing a
3 property.
4

5 G. **LIQUIDITY** is being able to sell an asset in a short period of time (one
6 year) and getting at least the original investment back. Liquidity should not be
7 confused with marketability. Marketability is defined as the ability to sell an asset at a
8 price that the market is willing to pay. Every asset is marketable but does not always
9 have liquidity.
10

11 H. Risk is inherent with every investment. Risk is measured as the
12 difference between the amount of money an investor expects and the amount
13 actually collected. There are some risks that can be insured (static risk) such as fire,
14 theft, or completion while some risks are uninsurable (dynamic risk). Dynamic risk
15 includes capital risk (construction cost overruns), operating business risk (lower cash
16 flows/higher expenses than expected), and operating financial risk (ability of a
17 property to pay expenses from operational income).
18

19 I. A tax-sheltered real estate investment is one in which taxable income
20 is less than the cash flow generated by the investment. Depreciation allowances
21 generally create **TAX SHELTERS**. In other words, income that is protected from
22 income taxes because of an authorized tax deduction (interest or depreciation) is a
23 tax shelter.
24

25 II. **TYPES OF INVESTMENT PROPERTIES**

26 Investment properties come in all sizes, shape, and types. The following are
27 the most common types of investment properties:
28

29 A. Residential: These properties include apartments, condos, and single
30 family homes for rent
31

32 B. Commercial: Commercial properties include shopping centers, office
33 buildings, and warehouse just to mention a few.
34

35 C. Industrial: These properties include factories and manufacturing
36 plants.
37

38 D. Agricultural: These are our farms and Greenbelt areas.
39

40 E. Business Brokerage: These are going concern operations being sold.
41
42

43 III. **ADVANTAGES OF REAL ESTATE INVESTMENTS**

44 A. Good Rate of Return: Rental investment real estate may provide
45 periodic returns (positive cash throw-off). Investors are able to borrow the majority of
46 the price paid for an investment which creates a greater return on the actual dollars
47 invested (equity).
48
49

CHAPTER SEVENTEEN: REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

1 B. Tax Advantages: Real estate has certain tax advantages that make
2 investing more lucrative. During ownership of investment property, an owner can
3 deduct all operating expenses (except reserves for replacements), interest paid on
4 the debt service, and depreciation. Upon the sale of an asset, the investor pays a
5 reduced tax rate on the gain (long term capital gains tax rate).

6
7 C. Hedge Against Inflation: A good real estate investment can act as a
8 hedge against inflation. The return on the investment is greater than the cost to
9 invest.

10
11 D. Leverage: Leverage is the use of borrowed funds to finance the
12 acquisition of a capital asset. The two major reasons for using leverage are (1.) The
13 high cost of real estate (the cost of purchasing real estate for cash exceeds the ability
14 of most investors) and (2.) the hopes of positive leverage (the investor's equity yield
15 is enhanced when the interest rate on borrowed funds is lower than the overall rate of
16 return on the investment).

17
18 E. Equity Build-Up: Equity build-up is the increase of an investor's
19 equity investment in a property over time. Equity build-up occurs through either
20 appreciation and/or reduction of the mortgage's principal balance through amortized
21 mortgage payments.

22
23
24 **IV. DISADVANTAGES OF INVESTING IN REAL ESTATE**

25 A. Illiquidity: Investors expect to buy an investment with the
26 anticipation of selling it at a later date for a profit. Unfortunately, not all properties
27 can be sold for a profit. Sometimes a property is sold, and the investor is unable to
28 get his investment back.

29
30 B. Local Market: Real estate is considered to be local in nature. Unlike
31 buying and selling stock through global stock markets, real estate is limited to a
32 smaller geographic marketing area.

33
34 C. Need for Expert Help: Because of the complex nature of real estate
35 investing, the investor often needs expert assistance in matters such as financing,
36 cash flows, and tax consequences from investing.

37
38 D. Management: Many investors are unable to have "hands-on"
39 management; therefore, professional property managers are required. Absentee
40 ownership and the complex nature of certain investment properties have popularized
41 property management firms.

42
43 E. Risk: Buying investment real estate is not risk free. In fact, buying
44 investment real estate is based on the principal of "risk vs. reward." In most cases,
45 the greater the risk involved, the greater the reward anticipated.

46
47
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49

1 **V. ASSESSMENT OF RISK**

2 A. Risks Associated with General Business Conditions:

3
4 1. Business risk is the risk income earned may be lower than
5 projected, and actual operating expenses may be higher.

6
7 2. Financial risk may occur when available funding/cash flows
8 may be insufficient to finance the operations.

9
10 3. Purchasing-power risk is directly related to inflation. During
11 periods of inflation, investment properties that were once profitable become
12 less profitable depending on the rate of inflation.

13
14 4. Interest-rate risk is influenced by the interest rates that
15 currently exist in the market. The higher the interest paid to finance an
16 investment, the less an investor is willing to pay for a given property. A
17 property's mortgage payment (debt service) is a critical factor in projecting
18 future cash flows.

19
20 B. Risks that affect Return:

21
22 1. Liquidity risk involves selling a property in a relatively short
23 period of time which returns the full amount invested.

24
25 2. Safety risk involves market risk (positive leverage vs. negative
26 leverage) and the risk of default (payments are not made according to an
27 agreement).

28
29
30 **VI. COST, PRICE AND PROFIT**

31 COST refers to the amount of money required to build or create the subject
32 real estate. PRICE refers to the amount someone actually paid for the real estate.
33 PROFIT refers to the spread between Cost and Price. The formula is as follows:

$$\frac{\text{MADE (profit)}}{\text{PAID (initial cost)}}$$

34
35
36
37
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39
40
41 **Example:** Tom buys a house for \$125,000 and then sells it one
42 year later for \$150,000. What is the percentage of profit?

43
44 **Answer:** \$150,000 - \$125,000 = \$25,000 (profit)

$$\frac{\$ 25,000}{\$125,000} = 20\% \text{ profit}$$

CHAPTER SEVENTEEN: REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

1
2 **Example:** Deborah buys a house for \$175,000 and sells it one
3 year later for \$150,000. What is the percentage of loss?
4

5 **Answer:** \$175,000 - \$150,000 = \$25,000 loss
6

$$\frac{\$ 25,000}{\$175,000} = 14.29 \% \text{ loss}$$

7
8
9

10
11
12 **VII. NATURE OF BUSINESS BROKERAGE**

13 A. Similarities to Real Estate Brokerage: In almost every business
14 brokerage transaction, the transfer of an interest in real property takes place (sale or
15 lease). For this reason, a real estate license is required to practice business
16 brokerage.
17

18 B. Differences from Real Estate Brokerage: Business brokerage
19 involves the transfer of a going-concern operation. Business brokerage is a highly
20 specialized field that requires the understanding of financial statements and the
21 principals of accounting. It involves the transfer of a going-concern operation, which
22 includes the transfer of real property (tangible asset) and also the transfer of
23 intangible assets (**GOODWILL**).
24

25 The value of a business could be more than, equal to, or less than the value
26 of the real property that is part of the transaction. Real property value and **GOING**
27 **CONCERN VALUE** are often different.
28

29 Another major difference is the market place itself. Real estate is local in
30 nature and marketing is limited. Marketing the sale of a business can be done on a
31 much larger geographic area.
32

33 C. Expertise Required in Business Brokerage: Business brokerage is a
34 highly specialized field that requires the understanding of financial statements,
35 balance sheets, and other principles of accounting. Business brokers must
36 understand the difference between corporations, partnerships, and sole
37 proprietorships.
38

39 There are four approaches to valuing a business:
40

41 1. Sales Comparison Approach: comparing the subject business
42 to other businesses that have recently sold
43

44 2. Cost Depreciation Approach: reproducing the business new,
45 then subtracting accrued depreciation
46

47 3. Income Capitalization Approach: determining the value of a
48 business based on its income
49

CHAPTER SEVENTEEN: REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

1 4. Liquidation Value Approach: taking a business' assets and
2 comparing them to a business' liability. This liquidation analysis reveals the
3 difference between assets and liabilities providing the minimum value of the
4 business. This approach to value helps determine if a business is profitable
5 or unprofitable. The liquidation value approach is unique to business
6 brokerage valuation.
7

8 D. Steps in the Sale of a Business: The steps involved in the sale of a
9 business are similar to those of selling real property. First, a value must be
10 established (an appraisal), secondly, determine the type of business entity and who
11 the principals are, and, thirdly, the closing may involve the assistance of a lawyer or
12 an accountant to insure proper transfer.
13
14
15
16
17



18 **SUMMARY**

- 19
- 20 ➤ There are five advantages to owning investment real estate:
- 21 1. Good rate of return
- 22 2. Tax advantages
- 23 3. Hedge against inflation
- 24 4. Leverage
- 25 5. Equity build-up
- 26
- 27 ➤ There are five disadvantages to owning investment real estate:
- 28 1. Illiquidity
- 29 2. Market is local in nature
- 30 3. Need for expert assistance
- 31 4. Management assistance
- 32 5. Risk
- 33
- 34 ➤ There are four areas of risk associated with business conditions:
- 35 1. Business risk
- 36 2. Financial risk
- 37 3. Purchasing-power risk
- 38 4. Interest-rate risk
- 39
- 40
- 41 ➤ There are two areas of risk associated with risk that affects return:
- 42 1. Liquidity risk
- 43 2. Safety risk (market risk and risk of default)
- 44
- 45
- 46

CHAPTER SEVENTEEN: REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

- 1 ➤ There are two similarities between real estate and business brokerage:
2
3 1. The sale or lease of real property is involved in the transaction
4 2. A real estate license is required to practice business brokerage
5
6 ➤ Business brokerage is a very specialized field that requires the
7 understanding of accounting, financing, and business valuation.
8
9 ➤ There are four approaches to value a business:
10
11 1. Comparable sales approach
12 2. Cost-depreciation approach
13 3. Income capitalization approach
14 4. Liquidation value approach (unique to business brokerage only)
15
16

17

CHAPTER SEVENTEEN QUIZ



- 18 1. Net operating income less debt service is known as:
19
20 I. Cash throw-off
21 II. Before Tax Cash Flow
22 III. After Tax Cash Flow
23 IV. Effective Gross Income
24
25 A. I and II
26 B. II only
27 C. III only
28 D. IV only
29
30
31 2. Johnny decided to finance the purchase of his second home by mortgaging
32 the property with his local bank. This method of acquiring an asset is known as:
33
34 A. Leverage
35 B. Capital gain
36 C. Tax shelter
37 D. Homestead
38
39
40 3. Tom owns his home which has a value of \$200,000 with a mortgage of
41 \$140,000. What is the value of Tom's equity?
42
43 A. \$ 60,000
44 B. \$140,000
45 C. \$200,000
46 D. \$340,000

CHAPTER SEVENTEEN: REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

- 1 4. All of the following are advantages of investing in real estate except:
2
3 A. Illiquidity
4 B. Good rate of return
5 C. Tax advantages
6 D. Leverage
7
8
- 9 5. All of the following are disadvantages of investing in real estate except:
10
11 A. Need for expert help
12 B. Risk
13 C. Need for management
14 D. Leverage
15
16
- 17 6. The risk that income earned may be lower than projected and actual
18 operating expenses may be higher than expected is known as:
19
20 A. Business risk
21 B. Financial risk
22 C. Purchasing power risk
23 D. Liquidity risk
24
25
- 26 7. Which of the following is not an accepted approach to valuing a business?
27
28 A. Sales comparison approach
29 B. Income capitalization approach
30 C. Cost-depreciation approach
31 D. Goodwill value approach
32
33
- 34 8. An intangible asset (value) of a business based on its reputation or
35 expectation of customer loyalty is known as:
36
37 A. Chattel
38 B. Goodwill
39 C. Market value
40 D. Publicity value
41
42
- 43 9. If a business is operating at the time of its sale, its added value as an ongoing
44 enterprise is known as its
45
46 A. goodwill
47 B. going concern value
48 C. market value
49 D. market price

CHAPTER SEVENTEEN: REAL ESTATE INVESTMENT
AND BUSINESS OPPORTUNITY BROKERAGE

- 1 10. Which of the following are tax advantages to owning investment real
2 property?
3
- 4 I. Deduction for operating expenses
 - 5 II. Deduction for mortgage payments
 - 6 III. Deduction for real estate taxes paid
 - 7 IV. Deduction for depreciation
- 8
- 9 A. I and II
 - 10 B. II and III
 - 11 C. I, III, and IV
 - 12 D. I, II, III, and IV
- 13
14
- 15 11. What type of risk occur when the mortgage market tightens and money is
16 difficult to obtain?
17
- 18 A. Mortgage risk
 - 19 B. Financial risk
 - 20 C. Investment risk
 - 21 D. Purchasing Power risk
- 22
23
- 24 12. Leverage increases an investor's buying power and it may:
25
- 26 A. Decrease yield
 - 27 B. Increase yield depending on appreciation
 - 28 C. Increases interest rates
 - 29 D. Decreases capitalization rate
- 30
31

1 CHAPTER EIGHTEEN:

2 REAL ESTATE TAXES



3 Talk the Talk

- 4 **Ad Valorem:** According to value; annual real estate taxes are ad valorem taxes
5 **Assessed Value:** A property's value for ad valorem tax purposes as established by the
6 county property appraiser
7 **Exempt Property:** Real property excused for payment of ad valorem taxes
8 **Greenbelt Laws:** A lower assessed value associated with agricultural properties
9 **Homestead Tax Exemption:** A deduction from the value of homestead properties that
10 results in a savings on real estate taxes
11 **Immune Property:** Real property that is never assessed or required to pay ad valorem
12 taxes, such as government buildings
13 **Installment Sale:** When the buyer pays the purchase price over time in separate
14 installment payments
15 **Just Value:** A fair and reasonable value; the property appraiser is required to assess
16 properties at their Just Value
17 **Like Kind Exchange:** An exchange of one property for another with a deferral of tax
18 consequences; also known as a "1031 exchange"
19 **Mill:** One one-thousandth (.001)
20 **Special Assessment:** A one-time tax assessed against a property that will directly
21 benefit from some public improvement
22 **Tax Rate:** The millage rate; the tax rate is multiplied by the taxable value of a property
23 to determine the levy
24 **Taxable Income:** Income that is subject to taxation
25 **Taxable Value:** Value of property for tax purposes determined by subtracting all
26 exemptions from the assessed value
27
28

29 AREAS OF CRITICAL CONCERN

- 30
31 • Distinguish among immune, exempt, and partially exempt property
32 • Describe the various personal exemptions available to qualified owners of homestead
33 property
34 • Compute the property tax on a specific parcel, given the current tax rate, assessed
35 value, and eligible exemptions
36 • List the steps involved in the tax appeal procedure
37 • Describe the purpose of Florida's Green Belt Law
38 • Calculate the cost of a special assessment, given the conditions and amounts
39 involved
40 • Describe the tax advantages of home ownership
41 • Explain how to determine taxable income of investment real estate
42 • Distinguish between installment sales and like-kind exchange
43

1 **I. REAL PROPERTY TAXATION**

2 A. Local Importance: Real property taxation is determined and influenced
3 by local factors. Under the U.S. Constitution, the federal government may not levy a tax
4 on real property. Each state, however, does have that right. In Florida, there is
5 technically no state property tax, although various documentary stamp taxes and
6 intangible taxes are charged at real estate closings. Florida has given real property
7 taxation to the local authorities. Primarily, the taxing districts, such as counties, cities,
8 school districts, emergency medical service, and others, collect real estate taxes.

9
10 Revenues from real property taxation are the primary sources of funds for these
11 taxing districts although other sources of revenue may be available such as sales tax,
12 user taxes (permitting and impact fees), public utility revenues, and other fees charged
13 by the taxing district.

14
15 Real property taxes are said to be **AD VALOREM**, meaning "according to value."
16 That is, the greater value a property has, the larger the tax levy will be.

17
18 B. Determining Just Value: Real property is taxed according to its fair and
19 equitable value, known as the **JUST VALUE**, which will be determined by the county
20 property appraiser. Once "Just Value" has been determined, all local taxing districts use
21 that value for taxing purposes. Although it is the Property Appraiser's duty to determine
22 the Just Value of properties, the actual amount of tax dollars due (Levy) is equal to the
23 Just Value multiplied by the applicable **TAX RATE**.

24
25 After the assessed value of a property has been determined, the Property
26 Appraiser's office will notify the owner of the assessment for tax purposes. If the owner
27 disagrees with the determined assessed value, there is a protest procedure that can be
28 utilized.

29
30 1. After receiving the assessment notice, the owner files a protest
31 directly with the Property Appraiser's office within 25 days of receiving the
32 assessment notice. The Property Appraiser will either reject the protest or
33 modify the assessment.

34
35 2. If the owner is unsatisfied with the results of the first step, the
36 owner may then file a written objection to the local Value Adjustment Board
37 provided the objection is filed within 25 days after receiving the assessment
38 notice. The Value Adjustment Board is comprised of three County
39 Commissioners and two School Board members.

40
41 3. If the Value Adjustment Board rejects the owner's request, the
42 final step available is to commence litigation by filing a lawsuit in certiorari
43 (asking a court to review a case). The owner must first pay the taxes under
44 protest and then file the suit.

CHAPTER EIGHTEEN: REAL ESTATE TAXES

1 C. Exceptions from Property Taxes: Sometimes, real properties are
2 granted a full or partial release from having to pay ad valorem taxes.

3
4 1. **IMMUNE PROPERTIES** consists of government properties (e.g.
5 courthouses and military bases) that are never assessed for tax purposes.

6
7 2. **EXEMPT PROPERTIES** are owned by qualified not-for-profit
8 organizations and churches. These properties are assessed for tax purposes,
9 but, due to the status of the owner and the property's use, the owner is released
10 from the obligation to pay the tax on the full assessed value.

11
12 3. Under the Florida **HOMESTEAD TAX EXEMPTION**, a head of a
13 household (including single persons) may declare his or her property to be a
14 homestead which will then entitle the owner to a \$25,000 exemption from the
15 assessed value of his or her property when calculating city, county, and school
16 board tax levies. If the assessed value of the property is for more than \$50,000,
17 there is an additional exemption of up to \$25,000. This additional exemption,
18 however, does not apply to school tax levies.

19
20 Florida real estate tax laws provide for an assessment growth limitation of
21 10% for all non-homestead properties and a 3% annual cap on homestead
22 properties. The owner is not required to live in the homestead for the majority of
23 the year, but it must be the owner's principal residence as evidenced by his or
24 her driver's license, voter registration card, or tax return. A person can have only
25 one homestead at a time.

26
27 To obtain the homestead exemption, the owner needs to apply in person
28 at the local Property Appraiser's office no later than March 1st of the first year he
29 or she seeks to claim the exemption. Once the homestead exemption is
30 obtained, some counties have an automatic renewal while other counties
31 required a new registration each year.

32
33 4. Various \$500 Exemptions: Unmarried widows or widowers
34 and/or legally blind individuals may deduct \$500 from their assessed value for
35 each.

36
37 5. Military Related Disabilities: If an honorably discharged veteran
38 is totally and permanently disabled as a result of military service, then that
39 individual is granted a total exemption from ad valorem property taxes on his or
40 her homestead. Persons with at least a 10% military service related disability
41 and non-veterans that are totally and permanently disabled are all entitled to a
42 \$5,000 exemption from the assessed value of the homestead.

43
44 6. Greenbelt Laws: The State of Florida is very sensitive to the
45 financial issues facing today's agricultural property owners. **GREENBELT**
46 **LAWS** entitle any owners of these properties to a beneficial tax treatment. If the
47 subject property is identified as an agricultural property, the property will be
48 assessed for that purpose which will typically result in a lower assessed value.
49 To qualify for the exemption, the owner must justify its applicability each year.

CHAPTER EIGHTEEN: REAL ESTATE TAXES

1 D. Calculating Property Taxes: **TAXABLE VALUE** is calculated by
2 subtracting any exemptions from a properties assessed value. Once this is done the
3 appropriate **TAX RATE** can be applied.
4

5 A Tax Rate of .008 is expressed as 8 mills. A "mill" is one-thousandth of a dollar
6 or .001. Seven mills is equivalent to .007. Twenty mills is equivalent to .020 or .02. To
7 calculate the property tax owing on a subject property, multiply the Taxable Value of the
8 property by the Tax Rate.
9

10 **Example:** A house is assessed at \$49,000 and qualifies for a
11 homestead exemption. If the tax rate is 25 mills, what are the property
12 taxes owed on this property?
13

14 Step 1: \$49,000 - \$25,000 = \$24,000 (Taxable Value)
15 Step 2: \$24,000 x .025 = \$600 (Levy)
16
17

18 E. Special Assessments by Government: **SPECIAL ASSESSMENTS**
19 are one-time taxes levied against properties that will directly benefit from a government
20 expenditure or improvement such as a new sidewalk or street pavement. In order for a
21 special assessment to be proper, the improvement must directly benefit the subject
22 property. If the government decides to pave a certain street, it is possible that a special
23 assessment could be charged to only those properties which are located on the paved
24 street. The cost is based on the front feet (running feet). It should be noted that in
25 better than 50% of the time there will be a property owner across the street that will
26 equally share the cost of the improvement.
27

28 F. Non-Payment of Real Property Taxes: Real property taxes begin to
29 accrue on January 1st of each year and are immediately considered to be a lien on the
30 subject property. The taxes are payable on November 1st of that year but must be paid
31 no later than April 1st of the following year to avoid delinquency.
32

33 After a tax is delinquent, the county tax collector will sell tax certificates at a
34 public auction. The purchaser of a tax certificate bids on the interest rate which starts at
35 18 percent and decreases as the bidding continues until the lowest interest rate bid has
36 been established.
37

38 The purchaser of the tax certificate pays the amount of the delinquent tax and is
39 entitled to the interest rate determined from the bidding process. The holder of the tax
40 certificate will either be repaid the delinquent tax amount plus interest, or the tax
41 certificate holder may apply for a tax deed after holding the tax certificate for at least 2
42 years but not more than 7 seven years. A tax certificate is valid for a maximum of 7
43 years at which point it expires.
44

45 After a proper request for a tax deed, there will be another public auction, but
46 this time the highest bidder acquires title through a tax deed. The proceeds from the tax
47 deed auction are first used to pay the tax certificate plus interest and expenses.
48
49

1 **II. FEDERAL INCOME TAXES**



7 A. Sale of Real Property: When an owner sells real property for a profit, a
8 tax is charged against that profit unless excluded by IRS rules. For federal tax
9 purposes, the profit is considered to be a capital gain which can be either a short-term
10 capital gain or long-term capital gain. A short-term capital gain applies to properties
11 held for one year or less while a long-term capital gain applies to properties held for
12 more than one year. Short-term capital gains are taxed as ordinary income while long-
13 term capital gains are taxed at lower more favorable rate.

14
15 The sales price less any sales expenses is known as the "Amount Realized."
16 Technically speaking, the Amount Realized less the adjusted basis is classified as the
17 "Capital Gain" (or Capital Loss).

18
19 B. Sale of Principal Residence: Some or all of the gain realized from the
20 sale of a principal residence may be excluded from federal income tax. If the subject
21 property was the taxpayer's principal residence for at least two of the last 5 years, the
22 taxpayer may exclude up to \$500,000 of gain if married, filing a joint return or \$250,000
23 if single or married filing separately. That means that the profit earned from the sale of
24 your principal residence could be tax free!

25
26 C. Tax Benefits Associated with Ownership: There are other tax
27 advantages of owning real property:

28
29 1. Mortgage Interest Deduction: A taxpayer is allowed to deduct
30 the amount of interest paid on any mortgage for a first or second home.

31
32 2. Property Tax Deduction: A taxpayer is allowed to deduct the
33 amount of property taxes paid on a first or second home.

34
35 3. IRA Withdrawal: A first-time homebuyer may make a tax free
36 withdrawal of up to \$10,000 from an IRA account to fund a down payment
37 toward the purchase of a first home.

38
39 D. Investment Real Estate: Many people purchase income-producing real
40 estate as an investment such as rental condominiums or apartments. When analyzing
41 income producing properties, and their respective cash flows, the following formula must
42 be evaluated:

CHAPTER EIGHTEEN: REAL ESTATE TAXES

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	Potential Gross Income
-	Vacancy and collection losses
+	Other Income
	<hr/>
=	Effective Gross Income
-	Operating Expenses (includes reserves)
	<hr/>
=	Net Operating Income
-	Debt Service
	<hr/>
=	Before Tax Cash Flow (Cash Throw Off)
	Taxes (+/-)
	<hr/>
=	After Tax Cash Flow

As one might expect, income produced from real estate investments is taxable. To calculate the **TAXABLE INCOME**, note the following formula:

	Net Operating Income
+	Reserves
-	Mortgage interest
-	Allowable Depreciation
	<hr/>
=	Taxable Income

The Taxable Income is then multiplied by the investor's tax rate to determine the amount of income tax to be paid.

E. **INSTALLMENT SALE**: If the purchase price is paid in installments, the taxpayer only pays taxes on money collected or earned in any given year. For example, when the seller takes back a purchase money mortgage and collects payments over time, taxes are only paid on the payments received.

F. **LIKE KIND EXCHANGE**: When real estate is exchanged for another "like kind" property, the tax on the gain may be deferred. These types of exchanges are governed by Internal Revenue Code Section 1031 and are called "1031 exchanges." The property exchange must be "like kind", meaning anything that has been acquired for income, business, or investment. Personal residences and builder inventories cannot qualify under the 1031 exchange laws. "Un-like kind" properties include cash and mortgages which are known as "boot". Like-kind exchanges must be completed within 180 days.



SUMMARY

- Immune properties are never assessed for tax purposes (courthouse). Exempt properties are assessed, but the owner is excused from paying the levy (churches). Partially exempt properties are assessed, but the owner is excused from paying taxes on a portion of the assessed value (homestead).
- In addition to the homestead tax exemption, a property may be entitled to the following additional exemptions:
 1. Surviving spouse (\$500)
 2. 10% or more military disability (\$5,000)
 3. Blind (\$500)
 4. Non-veteran 100% disability (\$5,000)
 5. Permanent and total military disability (100% exempt)
- A tax levy is calculated as follows:
 1. Assessed value less exemptions equals taxable value
 2. Taxable value multiplied by tax rate equals tax levy
- To appeal a tax assessment, the property owner must first request an adjustment from the property appraiser's office. If that request is denied, the property owner files a request with the Value Adjustment Board for a hearing. If the property owner is unsatisfied with the Value Adjustment Board's decision, the property owner can ask the courts to hear the case.
- Florida Greenbelt Laws are enacted to provide agricultural property owners relief from high taxes by assessing their properties at a lower amount.
- Special assessments are calculated by determining the size of the property, the per foot cost of the improvement, and apportioning the cost of the improvement between the government and the property owners.
- Home ownership provides three tax advantages:
 1. Mortgage Interest Deduction
 2. Real Estate Tax Deduction
 3. Exclusion of gain from sale of principal residence
- A real estate installment sale occurs when a seller accepts partial payments over a period of time. No tax is due until the payment is collected.
- When a property is exchanged for another like-kind property, the taxes on the exchange are deferred.



1 **CHAPTER EIGHTEEN QUIZ**

2 1. Which of the following is an "ad valorem tax"?

- 3
4 A. Income tax
5 B. Special assessment
6 C. Real property tax
7 D. Corporate tax
8
9

10
11 2. The county property appraiser assesses real property according to its fair and
12 equitable value, known as

- 13
14 A. market value
15 B. taxable value
16 C. equitable value
17 D. just value
18
19

20
21 3. If a property owner disagrees with assessed value determined by the county
22 property appraiser, the first step for the property owner should

- 23
24 A. file litigation
25 B. refuse to pay the tax
26 C. file a protest directly with the property appraiser's office
27 D. file a petition with the Value Adjustment Board
28
29

30
31 4. Which of the following is an example of an exempt property?

- 32
33 A. Courthouse
34 B. Residential property
35 C. Church
36 D. Restaurant
37
38

39
40 5. Carl has a homestead property assessed at \$49,000. If city taxes are 8 mills,
41 county taxes are 10 mills, and school taxes are 7 mills, what are the tax savings?

- 42
43 A. \$600
44 B. \$625
45 C. \$650
46 D. \$700

CHAPTER EIGHTEEN: REAL ESTATE TAXES

- 1 6. What is the tax levy on a property assessed at \$150,000 and the millage rate is
2 14 mills?
3
4 A. \$2,100
5 B. \$2,350
6 C. \$2,730
7 D. \$20,030
8
9
10
11 7. A one-time tax levied against properties that will directly benefit from government
12 expenditure or improvement is known as:
13
14 A. Ad valorem tax
15 B. Special assessment
16 C. Primary tax
17 D. Levy
18
19
20
21 8. The auction bidding on tax certificate interest begins at what rate?
22
23 A. 8%
24 B. 10%
25 C. 18%
26 D. 24%
27
28
29
30 9. Real property taxes begin to accrue on January 1st of each year. When are they
31 first due and payable?
32
33 A. January 1st
34 B. April 1st
35 C. November 1st
36 D. December 31st
37
38
39 10. Ed purchased a tax certificate in May. How many years must he wait before he
40 may timely request a tax deed be issued?
41
42 A. One month
43 B. One year
44 C. Two years
45 D. Seven years
46
47
48
49

CHAPTER EIGHTEEN: REAL ESTATE TAXES

- 1 11. Bob and Terri have lived in their principal residence for the last three years.
2 When they sold the property, they realized an \$80,000 gain. If they are in the 35% tax
3 bracket, how much money will they owe in taxes as a result of the sale?
4
- 5 A. \$28,000
6 B. \$22,400
7 C. \$16,000
8 D. \$0
9
- 10
11 12. What type of laws is designed to provide agricultural property owners relief from
12 high taxes by assessing their properties at a lower value?
13
- 14 A. Ad valorem laws
15 B. Citrus belt laws
16 C. Greenbelt laws
17 D. Eminent Domain
18
19
- 20 13. An exchange of one property for another with a deferral of tax consequences is
21 known as a:
22
- 23 I. Like kind exchange
24 II. 1031 exchange
25 III. Mutual exchange
26 IV. IRS exchange
27
- 28 A. I and II
29 B. I and III
30 C. II and III
31 D. III only
32
33
- 34 14. Bill owns an apartment building and would like to do a 1031 tax deferred
35 exchange. Which property will not qualify for this exchange?
36
- 37 A. Vacant land
38 B. Builder home for sale
39 C. Shopping center
40 D. Office building
41
42
43
44
45
46
47
48

CHAPTER EIGHTEEN: REAL ESTATE TAXES

- 1 15. The city is going to pave your street at a cost of \$50 per front foot and has
2 agreed to pay 40% of the cost. Your property measures 120'x 145'. What is the amount
3 of the special assessment for your property?
4
5 A. \$1,800
6 B. \$2,160
7 C. \$3,600
8 D. \$4,350
9
10
11

1 **CHAPTER NINETEEN:**
2 **PLANNING AND ZONING**

3



4 **Talk the Talk**

5 **Buffer Zone:** A parcel of land separating two other parcels or areas, such as a
6 parcel of land between residential and commercial properties

7 **Building Code:** Codes adopted by local governments governing acceptable building
8 construction standards and materials

9 **Building Permit:** Written authority by a unit of government (county or city) for the
10 construction of a new building or other improvement or for the repair or demolition of
11 an existing structure

12 **Certificate of Occupancy:** Issued after construction is substantially completed
13 indicating that the premises are habitable

14 **Environmental Impact Statement (EIS):** A report of the probable effect of a
15 development on the surrounding area

16 **Health Ordinance:** Local laws that protect the health and well-being of the citizens
17 in a community

18 **Nonconforming Use:** A use of property which no longer conforms to the current
19 zoning regulations but its continued use is allowed because the use was lawfully
20 established and maintained prior to the change in zoning

21 **Planned Unit Development:** Residential project with mixed land uses and high
22 residential density

23 **Special Exception:** An individual ruling in which a property is granted the right to a
24 use otherwise contrary to law

25 **Special Flood Hazard Area:** Flood zones "A" and "V" are considered to be areas
26 prone to flooding at least 1% of the time each year

27 **Variance:** An exception to strict compliance with zoning regulations or ordinances
28 granted to relieve a hardship

29 **Zoning Ordinance:** Local law that restricts the use of land to various classifications,
30 such as residential and commercial

31

32

33

34

35 **AREAS OF CRITICAL CONCERN**

36

37

- Describe the composition and authority of the local planning agency
- Distinguish among the five general zoning classifications
- Distinguish among zoning ordinances, building codes, and health ordinances
- Explain the purpose of a variance, special exception, and a nonconforming use
- Describe the impact of the Comprehensive Environmental Response
Compensation and Liability Act

38

39

40

41

42

43

1 **MORE AREAS OF CRITICAL CONCERN**

- 2
- 3 • Calculate the number of lots available for development given the total number of
- 4 acres contained in a parcel, the percentage of land reserved for streets and other
- 5 facilities, and the minimum number of square feet per lot
- 6 • Describe the characteristics of a planned unit development
- 7 • Explain the provisions of the national flood insurance program
- 8
- 9

10 **I. PLANNING AND ZONING**

11 City planning is not a new concept. Pensacola and St. Augustine, two of the

12 oldest cities in the United States, were well-planned communities settled by the

13 Spanish. Many communities were developed in an unplanned manner that was not

14 conducive to growth. Most governments followed a laissez-faire philosophy which

15 allowed city development to occur as free markets provided the direction.

16

17 As the industrial revolution progressed, more and more people were moving

18 to the cities for jobs. Controlling growth became an important issue and local

19 governments began making laws that would protect the rights of property owners.

20 Eventually, government took on the task of coordinating zoning laws with other

21 community needs. Goals of city planning include:

22

- 23 1. Preventing urban sprawl which saves tax dollars that can be
- 24 spent for other community needs
- 25
- 26 2. Providing adequate services such as sewer, water, garbage
- 27 collection, and transportation
- 28
- 29 3. Providing for road right-of-ways and adequate set back
- 30 restrictions to prevent buildings from becoming too cramped
- 31
- 32 4. Insuring against costly flooding and environmental problems by
- 33 providing adequate drainage facilities for the community
- 34
- 35 5. Monitoring and controlling the impact of undesirable uses that
- 36 may be required in a community such as landfill locations and prison sites
- 37
- 38

39 **II. LOCAL PLANNING AGENCIES**

40 A. Overview: The planning of a community is regulated by local

41 governments through the Community Planning Act. Both City and County Planning

42 agencies have the responsibility of overseeing the future growth of their community.

43

44 Planning agencies throughout Florida are operated on a local level. Local

45 legislative groups such as the county commission and/or city council appoint

46 members to the planning commission. Members of the planning commission

47 represent a cross-section of the community and are not professional planners. The

48 planning commission acts in an advisory role to the city council and/or county

49 commission.

CHAPTER NINETEEN: PLANNING AND ZONING

1 B. Authority of the Planning Commission: A Planning Commission has
2 three primary areas of responsibility and authority:

3
4 1. Subdivision Plat Approval: This is required when a developer
5 intends to develop subdivisions. **BUILDING PERMITS** will not be issued until
6 the planning commission has approved the plat.

7
8 2. Site Plan Approval: This is similar to the subdivision plat
9 approval but requires more details in areas such as traffic, impact on
10 neighbors, and environmental issues.

11
12 3. Sign Control: Sign Control protects motorists by restricting
13 hazardous and distracting signs. Community pride demands that sign
14 companies be sensitive to the overall aesthetics of a community.

15
16 C. Planning Commission Support Staff: The planning commission acts
17 in an advisory capacity to the local government and are not planning professionals.
18 In order to be properly prepared in this regard, a professional support staff is hired on
19 a full-time basis to provide the in-depth research required.

20 21 22 **III. COMMUNITY PLANNING ACT**

23 The Community Planning Act was signed into law 2011 which moved community
24 development from the Department of Community Affairs back to the local
25 governments. Florida's Comprehensive Plan was repealed to make way for
26 Department of Economic Opportunity which is now run by the Division of Community
27 Development.

28
29 Concurrency and other stringent rules were removed to make way for local planners
30 to decide on what is best for their particular community.

31 32 33 **IV. ZONING, LAND USE RESTRICTIONS, AND BUILDING CODES**

34 A. Zoning: **ZONING ORDINANCES** are created and designed to
35 protect the public from the intrusion of undesirable use of adjacent property owners.
36 Zoning is an example of a local government's exercise of police power. An
37 important function of zoning is to assist the implementation of the Growth
38 Management Plan.

39
40 There are five classifications of zoning:

41
42 1. Residential Zoning is based on the number of units per acre
43 (density). This zoning addresses setback requirements and specifies that the
44 structure must be used for residential purposes only.

45
46 2. Commercial Zoning is based on the degree of use (intensity).
47 This zoning addresses size, height, and traffic.

48

CHAPTER NINETEEN: PLANNING AND ZONING

1 3. Industrial Zoning is also based on intensity. This zoning
2 addresses issues such as noise, smoke, odors, and other industrial concerns.

3
4 4. Agricultural Zoning addresses agricultural and farming needs.

5
6 5. Special Use Zoning considers the public needs with regards to
7 schools, courthouses, and other public facilities. In addition, there may be
8 areas that are known as **BUFFER ZONES** that separate residential areas
9 from other uses that are commercial in nature.

10
11 B. Building Codes: **BUILDING CODES** protect the health and safety of
12 the public by regulating the quality and method of construction. There are state
13 building codes and local building codes throughout Florida. In order to obtain a
14 **CERTIFICATE OF OCCUPANCY (CO)**, the building must first be inspected and
15 meet all the requirements for fireproofing, ventilation, wind-load strength, rest rooms,
16 and other construction features relevant to public safety.

17
18 C. Health Ordinances: **HEALTH ORDINANCES** also protect the public
19 from unnecessary harm in a number of commercial uses. Restaurants, taverns,
20 grocers, public water, and public sewer are a few of the important areas that the local
21 Health Department regulates.

22
23
24 **V. APPEALS AND EXCEPTIONS**

25 A. Zoning: Zoning laws are designed to protect the property rights of
26 owners in a community. Therefore, it would be impossible for zoning laws to be fair
27 for every individual. Understanding the need to be flexible, local governments
28 establish and maintain a zoning board of adjustment. The board holds hearings
29 concerning individual problems and has the authority to grant either a Variance or
30 Special Exception from the current zoning requirements. It should be remembered
31 that if a person is not satisfied with the outcome of a board of adjustment hearing, he
32 or she can appeal the case to the judicial system.

33
34 A **VARIANCE** provides relief from the literal enforcement of a zoning law if
35 that law creates an unnecessary hardship. For example, if a residential zoning
36 ordinance requires at least 70 feet of road front in order to build a home, a property
37 owner with a 68-foot lot can request a variance that would permit the owner to build
38 even though the lot dimensions were inadequate.

39
40 A **SPECIAL EXCEPTION** is an authorized departure from current zoning
41 laws. For example, if a property owner wanted to build a convenience store on a
42 residentially zoned lot, the owner could request a special exception. The property
43 owner would request a permit to build a convenience store with no other use allowed
44 and try to demonstrate that the special exception will benefit the surrounding
45 community.

46
47 A legal **NONCONFORMING USE** is a use that began prior to the current
48 zoning laws which prevail. This is also known as being "grandfathered in."
49

CHAPTER NINETEEN: PLANNING AND ZONING

1 B. Development of Regional Impact: A Development of Regional
2 Impact (DRI) is the process of identifying and promoting the control of areas such as
3 water quality, air pollution, and waste disposal. A DRI is a development that will
4 affect more than one county.

5
6 A **PLANNED UNIT DEVELOPMENT** (PUD) takes a large site with low-
7 density zoning and creates a "self-contained" community. It incorporates residential
8 use with multi-family, commercial, and common area use. A good example of a PUD
9 is the Sandestin resort community located in Northwest Florida.

10
11 The state of Florida is committed to protecting structures and endangered
12 lands which have significant impact upon historical, archeological, or environmental
13 resources of critical concern. An **ENVIRONMENTAL IMPACT STATEMENT** (EIS)
14 will show the effects of long-term land use on energy, air quality, vegetation, and
15 automobile and air traffic.

16 17 18 **VI. SUBDIVISION CALCULATIONS**

19 Sometimes a developer will know the total number of acres contained in a
20 vacant tract of land but still must mathematically determine the total number of lots
21 available for development. This information is important to developers in evaluating
22 the overall economic soundness of the potential investment.

23
24 To calculate the total number of potential lots, the developer must first
25 determine the total number of square feet in the tract then deduct the square footage
26 of common areas, roads, and other non-buildable areas.

27
28 After determining the total number of square feet available for construction,
29 the developer then divides that number by the minimum area for each lot.

30 31 32 **VII. NATIONAL FLOOD INSURANCE PROGRAM**

33 A. Overview: Local communities are often vulnerable to bad weather
34 and flooding, especially coastal properties. The National Flood Insurance Act (NFIA)
35 of 1968 established the National Flood Insurance Program (NFIP), a federal program
36 enabling property owners to purchase federally subsidized insurance protection
37 against losses from flooding in **SPECIAL FLOOD HAZARD AREA** (SFHA). SFHA is
38 an area within a floodplain having a 1% or greater chance of flooding in any given
39 year (A and V zones).

40 Residential structures in the SFHA must have the first floor above the Base
41 Flood Elevation, and all new development must be restricted in a manner so as not to
42 obstruct the natural flow of floodwaters.

43 Non-residential structures in the SFHA must meet the residential requirement
44 or must be watertight below the Base Flood Elevation.

45
46 Flood insurance requirements only apply to insurable improvements that are
47 located in SFHA. If the land is in the hazard area but the structures are not, no flood
48 insurance is required. Over 40% of purchasers of National Flood Insurance are
49 located in Florida.

1 **VIII. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,**
2 **AND LIABILITY ACT**

3 A. Overview: In 1980, the Congress of the United States enacted
4 the Comprehensive Environmental Response, Compensation, and Liability Act, also
5 known as CERCLA. The purpose for this legislation is to provide the United States
6 government and any participating states the authority to respond to the presence of
7 hazardous substances in properties that pose a health risk. As part of the law, a
8 National Priorities List (NPL) was established to identify contaminated sites. If a
9 property is listed on the National Priorities List, it becomes eligible for "Superfund"
10 funds to assist in the clean-up and waste removal.

11
12 B. Superfund Amendment and Reauthorization Act (SARA): The
13 "Superfund" is a trust fund established by the Federal Government under CERCLA
14 and later broadened through a 1986 amendment to CERCLA known as the
15 Superfund Amendment and Reauthorization Act (SARA). This amendment provides
16 for funding through various taxes charged on petroleum and other chemical products.

17
18 Under CERCLA, a person who can be held responsible is known as a
19 **POTENTIALLY RESPONSIBLE PERSON**. Liability for the presence of hazardous
20 substances is broad and far-reaching, and the government does not need to show
21 fault or prior knowledge of the substances present. A person who could be liable for
22 the site's clean-up is known as a Potentially Responsible Person, defined by CERLA
23 as either:

- 24
25 1. The present owner of a site that is contaminated;
26 2. Former owners if the contamination occurred during their ownership
27 period;
28 3. The manufacturer or producer of the hazardous substance, whether
29 created on site or transported to the site; or
30 4. Persons who transported the hazardous substance to the site.

31
32 Under the SARA amendment to CERCLA, a person can avoid liability by
33 performing certain preventative tasks at the initial purchase of a property. One of the
34 best ways to prevent future problems is to have the site evaluated by an expert and
35 tested if necessary. Property buyers can protect themselves from future liability by
36 utilizing the **INNOCENT-LANDOWNER DEFENSE** and follow its procedures and
37 requirements. An owner of a property may be held harmless if hazardous
38 substances are discovered on a property under these conditions:

- 39 1. The owner was not aware of any contamination at the time of
40 purchase.
41 2. Upon discovery of the contamination, the owner acted prudently.
42 3. Prior to purchase, the owner exercised due diligence in an attempt to
43 discover if the property was contaminated and inquired into any past
44 uses of the property that may have led to contamination.

45
46 C. Environmental Due Diligence: Prior to purchasing a property,
47 especially a commercial property or properties that are suspected of having
48 environmental problems, a smart buyer will undertake certain preliminary steps to
49 determine if a property is contaminated. Often, a mortgage lender will be concerned
50 about a property's environmental health and will require a borrower to take certain
51 steps to determine if the property is contaminated in order to protect the bank's

CHAPTER NINETEEN: PLANNING AND ZONING

1 investment in the event of foreclosure. **ENVIRONMENTAL DUE DILIGENCE** is the
2 process in which a buyer attempts to discover the presence of hazardous
3 substances.

4
5 The environmental site assessment includes the following phases:

- 6
7 1. **PHASE I ASSESSMENT**: An investigation into a property's prior use
8 to determine the likelihood of hazardous substances being present.
9 This phase also includes a general, on-site inspection of the property
10 and improvements and a review of prior aerial photographs. In
11 addition, the Phase I Assessment will review the National Priorities
12 List, review government lists of underground storage tanks, determine
13 if radon or asbestos is present, and review prior building records. A
14 title search will also reveal past owners that may have participated in a
15 potential contamination as a result of their business activities.
16
- 17 2. **PHASE II ASSESSMENT**: If Phase I yields indicators that suggest
18 the hazardous substances may be present, then the Phase II
19 Assessment is utilized. On-site field testing, analysis, and further
20 inspections are performed in the continuing process to discover
21 contaminants.
22
- 23 3. **PHASE III ASSESSMENT**: A complex and detailed inspection of the
24 site including core soil sampling and testing, water and air analysis,
25 and discussions of corrective actions to be taken if contaminants are
26 discovered in Phase II.
27
- 28 4. **PHASE IV ASSESSMENT**: Designation of parties or agencies to
29 prevent and avoid possible future contamination.
30

31 Buyers should carefully proceed with any transaction which may involve the
32 purchase of a site that could be potentially contaminated. Brokers should also advise
33 their clients to utilize the services of expert inspectors and attorneys to ensure that
34 the clients' interests are protected. Remember, an owner is responsible for
35 contamination even though the contamination occurred during previous ownership
36 unless the Buyer conducts due diligence prior to closing.
37

38 **SUMMARY**



- 39
40
41 ➤ The Planning Commission is comprised of a cross-section of the
42 community and is appointed by either the City Council or County
43 Commission. There are three areas of responsibility for the Planning
44 Commission: (1) subdivision plat approval, (2) site plan approval, and (3)
45 sign control.
46

CHAPTER NINETEEN: PLANNING AND ZONING

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- Zoning can either be changed or used for different purpose through the following:
 1. Variance
 2. Special Exception
 3. Non-conforming Use
 - There are five classifications of zoning:
 1. Residential (based on density)
 2. Commercial (based on intensity)
 3. Industrial (based on intensity)
 4. Agricultural
 5. Special use (government properties)
 - Zoning ordinances divide a community into areas of use. Building codes set criteria for the quality of construction. Health ordinances set guidelines to protect the public's safety and health.
 - The purpose of a variance is to provide relief from the strict letter of the zoning law while a special exception provides a use other than what the zoning laws allow. A legally non-conforming use is one in which a particular use pre-dates current zoning laws (grandfathered in).
 - A Planned Unit Development (PUD) is a large parcel of land that combines residential, multifamily, commercial, and common area use into a self-contained community.
 - The National Flood Insurance Program enables homeowners to purchase federally subsidized insurance protection against losses from flooding in Special Flood Hazard Areas.
 - CERCLA is legislation to make sure properties that have been contaminated will be cleaned.



1 **CHAPTER NINETEEN QUIZ**

- 2 1. Goals of city planning include which of the following?
3
4 I. Preventing urban sprawl
5 II. Providing adequate services such as sewer, water, garbage collection
6 and transportation
7 III. Providing for road right-of-ways and adequate set back restrictions to
8 prevent buildings from becoming too cramped
9 IV. To ensure against costly flooding and environmental problems by
10 providing adequate drainage facilities for the community
11
12 A. I and III
13 B. II and III
14 C. III only
15 D. I, II, III, and IV
16
17
18
19
20 2. Which of the following best describes the Community Planning Act?
21
22 A. Require the State of Florida to approve any new development
23 B. Allows local governments to determine how their community will
24 develop
25 C. Environmental Protection Agency must be notified when development
26 projects are being approved
27 D. Subdivision Plat Maps are no longer required when developing a
28 subdivision
29
30
31
32 3. Which of the following statements apply to local planning commissions?
33
34 I. Planning commission members are elected.
35 II. Planning commission members typically have extensive professional
36 training.
37 III. Planning commission members act in an advisory role.
38 IV. Planning commissions typically have responsibility in subdivision plat
39 approval, site plan approval, and sign control.
40
41 A. I and IV
42 B. II and III
43 C. III and IV
44 D. I, II, III, and IV
45

CHAPTER NINETEEN: PLANNING AND ZONING

1 4. A person that has been using a property as a restaurant for over 40 years,
2 even though the zoning has been changed to residential, can continue this use
3 through:

- 4
5 A. Non-conforming Use
6 B. Special Exception
7 C. Variance
8 D. Continuance would be prohibited
9

10
11
12 5. Which of the following is an example of laws created under a government's
13 police power?

- 14
15 A. Zoning
16 B. Health ordinances
17 C. Construction codes
18 D. All of the above
19

20
21
22
23 6. Maria wants to build a house that will encroach upon the setback area of her
24 property. If Maria wants permission to build on the setback area, she should seek a
25

- 26 A. variance
27 B. special exception
28 C. non-conforming use permission
29 D. any of the above
30

31
32
33
34 7. A large property site which incorporates residential use with multi-family,
35 commercial, and common area use is known as a
36

- 37
38 A. planned unit development
39 B. subdivision
40 C. concurrency use
41 D. mixed use
42
43
44
45
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47
48
49

CHAPTER NINETEEN: PLANNING AND ZONING

- 1 8. Which of the following types of zoning is concerned with intensity?
2
3 A. Residential
4 B. Commercial
5 C. Agricultural
6 D. Mixed use
7
8
9
- 10 9. A parcel of land separating two other parcels or areas, such as a parcel of
11 land between residential and commercial properties, is known as a:
12
13 A. Buffer zone
14 B. Transitional property
15 C. Mixed use
16 D. Planned unit development
17
18
19
- 20 10. Ralph just finished building his own house. He will be issued a certificate of
21 occupancy:
22
23 A. When he moves in and lives there
24 B. When his building permit is approved
25 C. When the house is substantially completed
26 D. When construction begins

CHAPTER TWENTY:

REAL ESTATE MATH

- I. Common Areas
 - II. Appraising Real Estate
 - III. Real Estate Investment
 - IV. Real Estate Taxes
 - V. Mortgage Amortization
 - VI. Closing Cost of Real Estate
- Math Exam

LESSON ONE COMMON AREAS

In order for a person to properly practice real estate, a complete understanding of the mathematical equations of common areas is required. There are several important numbers and area sizes that are significant:

*43,560 square feet in an acre

*Base x height = the area of a square or rectangle

To find the number of acres in a given parcel of land:

1. determine the number of square feet in the parcel
2. divide the number of square feet by 43,560 (feet in an acre)

Square Example Problem:

A parcel of land measures 400' x 400' (square). How many acres are contained in this parcel?

Base x Height = Area $400' \times 400' = 160,000$ square feet

Area \div 43,560 = # of Acres $160,000 \text{ sq. ft.} \div 43,560 = \mathbf{3.6731 \text{ acres}}$

CHAPTER TWENTY: REAL ESTATE MATH

1 Rectangle Example Problem:

2
3 A parcel of land measures 500' x 300' (rectangle). How many acres are contained in
4 this parcel?

5
6
7 Base x Height = Area 500' x 300' = 150,000 square feet

8
9 Area ÷ 43,560 = # of Acres 150,000 sq. ft. ÷ 43,560 = **3.4435 acres**

10
11
12
13 Common Area Problem:

14
15 1. Developer Dan recently purchased 20 acres in which to develop a
16 subdivision. The county requires that the subdivision contain 10% of the total to be
17 used for common areas. In addition, the development will require a road that is 500
18 feet by 30 feet. Each lot must contain at least 12,000 square feet. How many lots
19 will Dan be able to offer for sale?

- 20
21 A. 52
22 B. 64
23 C. 75
24 D. 81

25
26
27
28 **LESSON TWO**
29 **APPRAISING**

30
31 The three approaches used to appraise real property are the comparable
32 sales approach, the cost-depreciation approach, and the income approach.

33
34 Comparable Sales Approach Example:

35
36 In determining the market value of vacant land, the appraiser should take the
37 following steps:

- 38
39 1. Determine the square footage of comparables (at least 3)
40
41 2. Determine the selling price of the comparables
42
43 3. Determine the price per square foot of each comparable
44
45 4. Determine the average cost per square foot of all comparables
46
47 5. Apply the average cost per square foot to the square feet of the subject
48
49

CHAPTER TWENTY: REAL ESTATE MATH

1 **Example:** You have been asked to determine the value of a vacant parcel of land
2 with the dimensions of 125' x 150'. There are four comparables available that sold
3 within the last year. There are no other adjustments to be made other than square
4 footage.

Sale	Lot Size	Sales Price	Sq. Ft.
#1	130' x 150'	\$19,500	130' x 150' = 19,500 s.f.
#2	125' x 125'	\$12,500	125' x 125' = 15,625 s.f.
#3	100' x 125'	\$15,000	100' x 125' = 12,500 s.f.
#4	100' x 150'	\$16,500	100' x 150' = 15,000 s.f.

#1	$\$19,500 \div 19,500 \text{ s.f.} = \1.00 per sq. ft.
#2	$\$12,500 \div 15,625 \text{ s.f.} = \$.80 \text{ per sq. ft.}$
#3	$\$15,000 \div 12,500 \text{ s.f.} = \1.20 per sq. ft.
#4	$\$16,500 \div 15,000 \text{ s.f.} = \1.10 per sq. ft.

Average cost per square foot = \$1.03

Subject property 125' x 150' = 18,750 sq. ft. x \$1.03 = \$19,312.50 +/-

Market Value of the Subject Property: \$19,300

25 **Example:** An appraisal is being done on a single family home that is three
26 bedrooms, two baths, two-car garage, and a pool. The comparable, a four
27 bedrooms, two baths, two-car carport, and no pool, sold for \$150,000. A bedroom
28 has an additional value of \$8,000, a pool \$6,000, while the difference between a two-
29 car garage and a two-car carport is an additional \$3,000 to the garage. With no other
30 adjustment necessary, what is the market value of the subject property?

Sales Price	\$150,000
Bedroom adjustment	- 8,000
Carport adjustment	+ 3,000
Pool adjustment	+ 6,000
Market Value of the Subject:	\$151,000

CHAPTER TWENTY: REAL ESTATE MATH

1 Cost-Depreciation Approach Example:

2 In determining the value of a property using the cost-depreciation approach,
3 the appraiser should take the following steps:

- 4
- 5 1. Determine reproduction cost
- 6 2. Determine accrued depreciation
- 7 3. Subtract depreciation from reproduction cost
- 8 4. Determine the value of the land and any other improvements
- 9

10
11 REPRODUCTION COST
12 - DEPRECIATION
13 + SITE VALUE (LAND)
14 _____
15 DEPRECIATED VALUE OF THE PROPERTY
16
17

18 The observed condition breakdown method (effective age/economic life) is an
19 easy way to calculate the depreciated value of an improved property.

20

21 If a building has an economic life of 40 years and appears to the appraiser to
22 be 10 years old (effective age), the amount of depreciation would be 25%
23 (10/40) while the depreciated value remaining of the building would be 75%
24 (30/40).

25

26 **Example:**

27

28 A home has a living area of 50' x 30' and an attached garage that is 20' x 25'.
29 In today's market, the cost to build the main part of the house (living area) is \$75.00
30 per square foot while the garage costs \$40.00 per square foot. The home is 10 years
31 old with an effective age of 6 years and an economic life of 30 years. The lot the
32 home is located on has been appraised for \$15,000. What is the depreciated value
33 of this property?

34

35	50' x 30' = 1,500 s.f. x \$75	= \$112,500
36	20' x 25' = 500 s.f. x \$40	= <u>\$ 20,000</u>
37	Total Reproduction Cost:	\$132,500

38

39 6 years of depreciation which is 6/30 or 20%

40 24 years of depreciated value remaining which is 24/30 or 80%

41

42 $\$132,500 \times .80 = \$106,000$ (depreciated value) + \$15,000 = \$121,000

43

44 Depreciated Value of the Property = \$121,000

45

46

47

48

CHAPTER TWENTY: REAL ESTATE MATH

1 Income Approach:

2
3 The income capitalization approach calculation is:

4
5
6
7 Potential Gross Income
8 - Vacancy & Collections
9 = Effective Gross Income
10 - Operating Expenses
11 = Net Operating Income

$$\frac{I}{R \times V}$$

12
13
14
15 I = Net Operating Income
16 R = Capitalization Rate
17 V = Value
18
19

20
21
22 The Gross Rent Multiplier (GRM) is an easy calculation to determine the value of a
23 small residential rental property. The calculation is:

$$\frac{V}{R \quad M}$$

24
25
26
27
28
29 V = Value
30 R = Monthly Rent
31 M = Multiplier
32

33
34
35 The steps to find value are:

- 36
37 1. Find the average multiplier in the market
38 $V \div R = M$
39
40 2. Apply the market multiplier to the subject property's gross monthly rent
41 $R \times M = V$
42

43 The Gross Income Multiplier (GIM) is the same calculation. However, annual
44 rent is used rather than monthly rent.
45
46
47
48
49
50

CHAPTER TWENTY: REAL ESTATE MATH

1 Appraisal Problems:

2
3 1. A house has a living area of 60' x 40' and an enclosed garage that is 20' x 25'.
4 The cost to construct this home today is \$80 per square foot for the main living area
5 and \$35 per square foot for the garage. The home is 5 years old and has an
6 estimated useful life of 25 years. The lot is appraised for \$25,000. What is the
7 depreciated value of the property?

- 8
9 A. \$192,600
10 B. \$167,600
11 C. \$157,125
12 D. \$182,125
13
14

15 2. Over the past six months, there have been three sales that can be used for
16 an appraisal of a vacant parcel of land. The subject parcel is 110' x 125'. There are
17 no other adjustments required other than square footage. What is the value of the
18 subject lot?

19

Sales	Size	Price
#1	100' x 125'	\$15,000
#2	110' x 150'	\$16,500
#3	100' x 100'	\$11,000

20
21
22
23
24

- 25 A. \$11,600
26 B. \$12,500
27 C. \$13,700
28 D. \$15,125
29
30

31 3. If annual income of a commercial property is \$80,000 and the sales price is
32 \$680,000, what is the Gross Income Multiplier?

- 33
34 A. 6.5
35 B. 7.5
36 C. 8.5
37 D. 9.5
38
39

40 4. If the net operating income of a rental property is \$50,000 and the overall
41 capitalization rate is 9%, what is the value of the property (round to the nearest
42 \$100)?

- 43
44 A. \$500,000
45 B. \$555,600
46 C. \$575,350
47 D. \$595,000
48
49

CHAPTER TWENTY: REAL ESTATE MATH

- 1 5. If a commercial property sold for \$400,000 that had a net operating income of
2 \$48,000, what is the applicable capitalization rate for the sale?
3
4 A. 10%
5 B. 11%
6 C. 12%
7 D. 13%
8
9
10 6. You are appraising a warehouse that measures 150' x 200'. Reproduction
11 cost is estimated to be \$40 per square foot. Accrued depreciation is estimated to be
12 as follows: physical deterioration \$90,000; functional obsolescence \$120,000; and
13 external obsolescence \$25,000. The subject land has been appraised for \$300,000.
14 What is the total value of this property?
15
16 A. \$ 900,000
17 B. \$ 965,000
18 C. \$1,265,000
19 D. \$1,345,000
20
21
22

23 **LESSON THREE**
24 **REAL ESTATE INVESTMENT**

25
26 Percentage of Profit Example:
27

28 Bill purchased two parcels of property for \$30,000 each. He later subdivided the land
29 into 6 lots, and sold them for \$12,000 each. What was his profit percentage?
30

31 **MADE**
32 **PAID**

33
34 $2 \times \$30,000 = \$60,000$ (paid)

35 $6 \times \$12,000 = \$72,000 - \$60,000 = \$12,000$ (made)
36

37 $\$12,000$ (made) div by $\$60,000$ (paid) = .20 or 20%
38
39
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1 **LESSON FOUR**
2 **REAL ESTATE TAXES**
3

4 In order to determine taxable value, total exemptions must first be
5 determined. They are: Homestead \$25,000 plus an additional \$25,000 if the
6 assessed value exceeds \$50,000. School Board taxes are not part of the second
7 \$25,000 exemption. Surviving Spouse \$500; Blind \$500 and 10% or better military
8 disability \$5,000. Individuals that are 100% military disabled, are exempt from real
9 estate taxes on their homestead.

10
11 There are other exemptions to consider. A person over 65 years of age
12 whose income is \$20,000 or less can receive an additional \$25,000 exemption and a
13 person who is qualified as total and permanent military disabled pays no taxes on the
14 homestead.

15
16 A Tax Rate of .008 is expressed as 8 mills. A "mill" is one-thousandth of a
17 dollar or .001. Seven mills is equivalent to .007. Twenty mills is equivalent to .020 or
18 .02. To calculate the property tax owing on a subject property, multiply the Taxable
19 Value of the property by the Tax Rate.

20
21 **Example:** A house is assessed at \$200,000 and qualifies for a homestead
22 exemption. If city taxes rate is 6 mills, county tax rate is 10 mills, and school tax rate
23 is 8 mills, what are the property taxes (levy) owed on this property?

24
25 Step 1: $\$200,000 - \$50,000 = \$150,000 \times .024 = \$3,600$

26
27 Step 2: $\$25,000 \times .008 = \200 (no-exempt)

28
29 Step 3: $\$3,600 + \$200 = \$3,800$ (total taxes due)

30
31
32 Special Assessment Problem:
33

34 **Example:** The county government has decided to pave the street in front of Parcel
35 "A" which measures 80' by 120' (first number is road frontage). The cost of paving
36 the street is \$12.00 per foot and the county will assume 40% of the expense.
37 Calculate the total special assessment for Parcel "A"

38
39 Step 1: $80' \times \$12 = \960 (total cost of paving)

40
41 Step 2 $\$960 \times 60\% = \576 (cost paid by adjacent property owners)

42
43 Step 3 $\$576 \times 1/2 = \288 (cost paid by Parcel "A")
44

45 Remember: For testing purposes, there is always someone owning property
46 across the street that will pay the other 50%.
47
48
49

CHAPTER TWENTY: REAL ESTATE MATH

1 Tax Rate Problems:

2
3 1. If your home is assessed at \$250,000, what are your taxes if the city tax rate
4 is 9 mills, county tax rate is 10 mills, and school tax rate is 5 mills?

- 5
6 A. \$6,000
7 B. \$2,050
8 C. \$1,200
9 D. \$1,075

10
11
12
13 2. Mrs. Keller lives in Orlando, Florida. The City tax rate is 7 mills, the county
14 tax rate is 8.25 mills, and the school board tax rate is 6 mills. Mrs. Keller's husband
15 recently died in a golfing accident, and she qualifies for the surviving spouse
16 exemption. If her home is assessed for \$350,000, what will Mrs. Keller pay in
17 property taxes?

- 18
19 A. \$0
20 B. \$6,214.38
21 C. \$6,364.38
22 D. \$6,514.38

23
24
25
26 3. The city is going to pave your street at a cost of \$50 per running foot and has
27 agreed to pay 40% of the cost. Your property measures 120'x145'. What is the
28 amount of the special assessment for your property?

- 29
30 A. \$1,800
31 B. \$2,160
32 C. \$3,600
33 D. \$4,350
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1 **LESSON FIVE**
2 **MORTGAGE**

3
4 Discount Points:

5
6 Discount points are pre-paid interest. For every point a lender charges, their
7 yield increases 1/8 of one percent. When a lender charges points, they are paid at
8 closing by the borrower. One point is calculated as one percent of the loan amount;
9 two points, two percent; etc.

10
11
12 **Example:**

13
14 If the purchase price is \$250,000, the loan amount is \$200,000, and the
15 lender is charging 1 discount point with a 6% interest rate, this is the calculation:

16
17 $\$200,000 \times .01 = \$2,000$ cash at closing
18 1 discount point = 1/8% or 6.125% (6 1/8) yield

19
20
21 Amortization:

22
23 Amortization is the systematic process of paying down a debt through
24 payments of principal and interest. The principal portion of the payment is the part
25 that amortizes the debt.

26
27
28

$$\frac{I}{P \times R \times T}$$

29
30
31

I	=	Amount of interest paid in dollars
P	=	Principal balance of a loan
R	=	Rate of Interest
T	=	Time length of the loan in terms of years

32
33
34
35
36
37
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39

Nine months	=	.75 of a year
Six months	=	.50 of a year
Three months	=	.25 of a year

40
41
42
43 To amortize a loan, the steps are:

- 44
45 1. Loan amount x Annual interest rate = Annual interest div by 12 = Monthly
46 interest
47
48 2. Mortgage payment (principal & interest) – Monthly interest = Principal portion
49

CHAPTER TWENTY: REAL ESTATE MATH

- 1 3. Principal balance of loan – principal portion of payment = New loan balance
2
3 4. Repeat same steps for next payment amortization.
4

5 **Example Amortization:**
6

7 \$80,000 loan for 30 years at an annual interest rate of 8% with monthly principal and
8 interest payments of \$587.01:

9
10 $\$80,000 \times .08 = \$6,400$ (annual interest) $\div 12 = \$533.33$ (monthly interest)
11 $\$587.01$ (P&I) - $\$533.33$ (I) = $\$53.68$ (P)
12

13
14 $\$80,000 - \$53.68 = \$79,946.32$ new principal balance after the 1st payment.
15

16 $\$79,946.32 \times .08 = \$6,395.71 \div 12 = \$532.98$ $\$587.01 - \$532.98 = \$54.03$
17 $\$79,946.32 - \$54.03 = \$79,892.29$ new principal balance after the 2nd payment.
18
19

20 Mortgage Problems:
21

22 1. A home was purchased for \$130,000 and Shifty Savings and Loan has
23 agreed to provide a 90% loan-to-value mortgage to the buyer. What is the amount of
24 equity the buyer will need to purchase the home?
25

- 26 A. \$10,000
27 B. \$11,000
28 C. \$12,000
29 D. \$13,000
30

31
32 2. Buyer Bill is buying a new home for \$150,000 and is getting a 95% loan. The
33 lender is charging 1½ points to originate this loan. How much money will the lender
34 charge?
35

- 36 A. \$2,137.50
37 B. \$4,750
38 C. \$7,500
39 D. \$9,637.50
40

41
42
43 3. Shifty Savings and Loan is making a 90% loan with an annual interest rate of
44 7%. If the lender charges 3 discount points at closing to make the loan, what is the
45 yield to the lender?
46

- 47 A. 7.25%
48 B. 7.375%
49 C. 7.5%
50 D. 10%

CHAPTER TWENTY: REAL ESTATE MATH

- 1 4. What is the principal balance if the interest amount is \$800 at 8% interest for
2 six months?
3
4 A. \$16,000
5 B. \$20,000
6 C. \$32,000
7 D. \$40,000
8
9
10
11 5. Bob borrows \$20,000 at 15% interest from Guido. When the loan has been
12 paid in full, Bob has paid \$2,250 in interest. How long did Bob owe Guido?
13
14 A. 3 months
15 B. 6 months
16 C. 9 months
17 D. 12 months
18
19
20
21 6. Steve borrows \$30,000 at 8% interest for a period of 25 years. If monthly
22 payments (P&I) were \$231.54, what is the principal balance of the loan after the third
23 monthly payment?
24
25 A. \$29,968.46
26 B. \$29,936.71
27 C. \$29,904.75
28 D. \$29,872.58
29
30
31
32
33

34 **LESSON SIX**
35 **CLOSING**

36
37 Commissions and Percentages:
38

39 Understanding percentages is an important part of a licensee's daily activities.
40 A quick review:

Percentage Amount	Decimal Amount
1/2 %	.005
1 %	.01
10 %	.10
100 %	1.00
125 %	1.25

41
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43
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CHAPTER TWENTY: REAL ESTATE MATH

1 **Example:**

2
3 A broker has a listing on a large parcel of vacant land. The broker agrees to
4 accept 8% on the first \$500,000 of the selling price and 10% on the balance. The
5 property sells for \$740,000. What is the broker's commission?
6

7 Solution:

8
9 $\$500,000 \times .08 = \$40,000$ $\$240,000 \times .10 = \$24,000$
10 $\$40,000 + \$24,000 = \$64,000$ total commissions due to the broker
11

12
13 Calculated Net Listing Example:

14
15 **Example:**

16
17 The Seller wants to net \$180,000 in the sale of her property which includes
18 \$4,000 of closing costs. If the Broker wants to earn a 7% commission, how much will
19 the property have to sell for?
20

21
22 $\$180,000 + \$4,000 = \$184,000$ total to net
23
$$\begin{array}{r} \$184,000 \\ .93 \end{array} = \$197,849$$

24
25
26

27 Commission Problems:

28
29 1. Broker Bob has agreed to pay Sales Associate Sam 60% of the total
30 commissions earned by Sam. Sam sold a home for \$375,000 with an agreed upon
31 commission of 7.5% of the sales price. What is Bob's share of the commission?
32

- 33 A. \$11,250
34 B. \$16,875
35 C. \$28,125
36 D. \$37,500
37

38
39
40
41 2. A broker lists a property for \$259,000 and agrees to accept a 5% commission
42 on the first \$50,000 of the selling price, 6% of the next \$45,000 of the selling price,
43 7.5% of the next \$40,000 of the selling price, and 9% of the balance of the selling
44 price. What is the broker's total commission on a sales price of \$235,300?
45

- 46 A. \$9,027
47 B. \$12,231
48 C. \$15,731
49 D. \$17,227
50

CHAPTER TWENTY: REAL ESTATE MATH

1 3. Seller Sam notifies his broker that he wants to net \$100,000 from the sale of
2 his home. The seller's closing cost will be \$3,000 and the broker would like to earn a
3 commission of 10%. What should the selling price on the property be?
4

- 5 A. \$110,000
6 B. \$113,333
7 C. \$114,444
8 D. \$117,777
9

10
11
12 State Documentary and Intangible Taxes:
13

14 When a property sells, a documentary stamp tax on the deed is paid to the
15 Department of Revenue regardless if the transaction is cash or financed. The doc
16 stamp on the deed is .70 per \$100 of the purchase price and any fraction of 100 must
17 be rounded up. The seller usually pays this stamp tax.
18

19 If the buyer finances the property, a new mortgage and note is created on
20 behalf of the lender. The lender will required the payment of an intangible tax on the
21 new mortgage and a documentary stamp tax on the new promissory note. In
22 addition, there will be a doc stamp on any assumed debt as well. These taxes are
23 required by law and the buyer typically pays them.
24

25 The doc stamp on the note is .35 per \$100 and any fraction of \$100 must be
26 rounded up.
27

28 The intangible tax is .002 (2 mills) on the new mortgages
29
30
31

32 Tax Problem:
33

34 Sally sells her home to Dan for \$159,000. Dan secures a new first mortgage
35 from Shifty Savings and Loan in the amount of \$130,330. The taxes due on this
36 transaction are:
37

38 $\$159,000 \div 100 = 1,590$ (units of \$100) $\times .70 = \$1,113.00$ (doc on deed)
39

40 $\$130,330 \div 100 = 1,303.3$ (round to 1304 units of \$100) $\times .35 = \$456.40$
41 (doc on note)
42

43 $\$130,330 \times .002 = \260.66 (intangible on mortgage)
44
45
46
47
48
49

CHAPTER TWENTY: REAL ESTATE MATH

- 1 5. How is \$880 in property taxes pro-rated when the day of closing is on June
2 21st and belongs to the seller?
3
4 A. \$465.32 debit to buyer, \$414.68 credit to seller
5 B. \$414.68 credit to buyer, \$414.68 debit to seller
6 C. \$414.68 debit to buyer, \$465.32 credit to seller
7 D. \$465.32 credit to seller, \$465.32 debit to buyer
8
9
10
11
12 6. A \$130,000 mortgage is being assumed as of October 15th and interest for
13 the month is \$760. How is the interest to be pro-rated if the day of closing belongs to
14 the seller?
15
16 A. \$405.33 credit to buyer, \$367.74 debit to seller
17 B. \$405.33 credit to seller, \$405.67 debit to buyer
18 C. \$367.74. credit to buyer, \$367.74 debit to seller
19 D. \$367.74 credit to seller, \$405.33 debit to buyer
20
21
22
23
24
25 7. A house sells for \$175,000. There is a cash down payment of \$25,000 and
26 the buyer assumes the existing first mortgage of \$92,550. The balance of the
27 purchase price is in the form of a new second mortgage. Calculate the state taxes
28 due on the documents used at closing.
29
30 A. Doc stamp on the deed \$ _____
31 B. Doc Stamp on Notes \$ _____
32 C. Intangible Tax \$ _____
33
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REAL ESTATE MATH EXAM

PRACTICE MATH EXAM

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1. How many acres are contained in a rectangular property that measures 300 feet by 240 feet?
 - A. 1.44
 - B. 1.65
 - C. 1.80
 - D. 1.93

2. The net income of a rental property is \$15,000, and the overall cap rate is 12%. What is the value of the property?
 - A. \$100,000
 - B. \$112,000
 - C. \$117,500
 - D. \$125,000

3. How many acres are in the N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 22?
 - A. 20
 - B. 40
 - C. 80
 - D. 160

4. Annual real estate taxes for the current year are \$1,370, and the day of closing is March 12. Using the 365-day method, how are the taxes to be pro-rated if the day of closing belongs to the seller?
 - I. 266.49 credit to buyer
 - II. 1,103.51 debit to seller
 - III. 266.49 debit to seller
 - IV. 1,103.49 credit to buyer
 - A. I and II
 - B. II and IV
 - C. I and III
 - D. III and IV

REAL ESTATE MATH EXAM

- 1 5. City taxes are 7 mills, County taxes are 6 mills, and school taxes are 5 mills.
2 If a property is assessed for \$365,000, how much are the total taxes?
3
4 A. \$5,670
5 B. \$6,310
6 C. \$6,570
7 D. \$6,840
8
9
10
11 6. A property sells for \$135,500 with the buyer securing a new first mortgage in
12 the amount of \$100,000. What are the total taxes due on this transaction?
13
14 A. \$1,060.00
15 B. \$1,346.40
16 C. \$1,383.90
17 D. \$1,498.00
18
19
20
21 7. A property is 300' x 550' and costs \$150,000. What is the cost per front foot?
22
23 A. \$.91
24 B. \$1.50
25 C. \$500
26 D. \$750
27
28
29
30 8. A broker has a listing in which the seller has agreed to pay 8% commission
31 on the first half of the sales price and 6% on the balance. If the property sells for
32 \$260,000, how much is the broker's commission?
33
34 A. \$18,200
35 B. \$10,400
36 C. \$ 7,800
37 D. \$18,550
38
39
40
41 9. A property costs \$130,000 based on \$5.00 per square foot. How many acres
42 are contained in the property?
43
44 A. .40
45 B. .50
46 C. .60
47 D. .70
48

REAL ESTATE MATH EXAM

- 1 10. What is the principal balance of a \$100,000 mortgage at 7% interest after two
2 monthly payments of \$775.30?
3
4 A. \$99,808.03
5 B. \$99,614.94
6 C. \$99,420.73
7 D. \$99,225.38
8
9
10
11
12 11. A home sells for \$185,000. The buyer assumes an existing first mortgage of
13 \$103,225 with the seller taking back a purchase money mortgage in the amount of
14 \$50,000. Calculate the documentary stamps on the deed.
15
16 A. \$1,295.00
17 B. \$1,931.55
18 C. \$1,756.55
19 D. \$1,831.55
20
21
22
23
24 12. Sally sales associate is entitled to 55% of all commissions earned, and she
25 sells a property for \$220,000. If the brokerage receives a 6% commission, how much
26 will the broker's share of the commission be?
27
28 A. \$5,940
29 B. \$6,320
30 C. \$7,260
31 D. \$13,200
32
33
34
35
36 13. The seller wishes to net \$100,000 at closing, and the broker is to receive a
37 10% commission for her work. What must the property sell for?
38
39 A. \$100,999
40 B. \$110,000
41 C. \$111,111
42 D. \$102,999
43
44
45
46
47
48
49

REAL ESTATE MATH EXAM

- 1 14. A developer purchased three lots that are 100'x 200' each and cost \$500 per
2 front foot. He later subdivided the lots into five parcels and sold them for \$40,000
3 each. What is the developer's percent of profit?
4
5 A. 25%
6 B. 28%
7 C. 31%
8 D. 33%
9
10
11
12
13 15. An investment property was purchased for \$400,000, and the buyer is
14 investing \$100,000 as a down payment. What is the loan to value ratio?
15
16 A. 25%
17 B. 50%
18 C. 75%
19 D. 95%
20
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PRACTICE FINAL EXAM

PRACTICE FINAL EXAM

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1. Bob, who owns an orange grove near Orlando, was appointed by a court to appraise a grove near Tampa. Bob can:
- A. Not be compensated for the appraisal unless he is licensed
 - B. Apply for a temporary license from the state
 - C. Be compensated as long as the judge notifies the Florida Real Estate Commission before the farmer does the appraisal
 - D. Be compensated for the appraisal
2. During the week, Jane works for Dolphin Realty, Inc. as a sales associate. On weekends, she holds open house for Grouper Homes Realty and is paid a 2% commission directly by Broker Grouper on any sales she helps procure. Which is correct?
- A. This is a violation of F.S. 494 stating that a sales associate may have only one real estate employer.
 - B. She can work for both companies provided all parties are informed in writing.
 - C. This activity is legal provided a group license is obtained.
 - D. This is a prohibited activity.
3. Which of the following statements best describes a group license?
- A. It is issued to sales associates who work for more than one employer.
 - B. A broker may be issued a group license for each branch office.
 - C. It is issued to sales associates and broker-associates when working for several business entities provided there exists a common ownership.
 - D. It is issued to licensees who serve as the broker of record for more than one business entity.
4. The No Brokerage Relationship notice forms must be given:
- A. At first contact
 - B. No later than closing
 - C. Only to persons known to be represented
 - D. Prior to showing

PRACTICE FINAL EXAM

- 1 5. A licensed sales associate of a brokerage corporation may:
2
3 A. Be a corporate stockholder
4 B. Serve as an officer
5 C. Serve as a director
6 D. Be a general partner
7
8
9
- 10 6. John and Harry own investment property together. Harry dies and his interest
11 in the property passes to his estate. John and Harry owned the property as:
12
13 A. Tenants by the entireties
14 B. Tenants in common
15 C. Tenants at will
16 D. Joint tenancy
17
18
19
- 20 7. The comparable sales approach is based upon which principle?
21
22 A. Anticipation
23 B. Diminishing returns
24 C. Appreciation
25 D. Substitution
26
27
28
- 29 8. Jane purchased several adjacent parcels of land for \$1.75 per square foot.
30 She plans to combine these lots and sell them as one parcel at a price of \$2.50 per
31 square foot. This increase in value attributable to the combining of the parcels is
32 known as:
33
34 A. Alluvial
35 B. Plottage
36 C. Accretion
37 D. Assemblage
38
39
40
- 41 9. To determine the buyer's willingness to pay, the lender should consider the
42 applicant's:
43
44 A. Income
45 B. Housing expense ratio
46 C. Total obligations ratio
47 D. Credit Rating
48
49
50
51

PRACTICE FINAL EXAM

- 1 10. Which of the following is the best example of external obsolescence?
2
3 A. Fading exterior paint
4 B. A five bedroom house with one bathroom
5 C. A change in zoning
6 D. Stained carpet
7
8
9
- 10 11. In a lien theory state, the mortgage:
11
12 A. Is a lien on the property and the mortgagee has title
13 B. Is an encumbrance on the property and the mortgagee has title
14 C. Is a lien on the property and the mortgagor has title
15 D. Is a deed restriction on the property and the mortgagor has title
16
17
18
- 19 12. All of the following statements about a real estate brokerage corporation's
20 official sign are correct except:
21
22 A. The official sign must be readily visible.
23 B. The official sign must list the name of the corporation and at least one
24 active broker.
25 C. The official sign can have the names of all sales associates and
26 broker-sales associates, but the sign must include his/her license
27 status.
28 D. The official sign must list all of the officers and the members on the
29 board of directors of the corporation.
30
31
32
- 33 13. Information which has been published by recording it in the official public
34 records is called:
35
36 A. Actual notice
37 B. Constructive notice
38 C. Equitable notice
39 D. Judicial notice
40
41
42
- 43 14. Tom and Sally's home was taken so that a county road could be expanded.
44 This type of governmental action is known as:
45
46 A. Estoppel
47 B. Police power
48 C. Eminent domain
49 D. Escheat
50
51

PRACTICE FINAL EXAM

- 1 15. A sublease is best defined as:
2
3 A. A lease of the entire premises by a new tenant
4 B. A lease of the entire premises located underground
5 C. A portion of the leased rights and interests
6 D. A lease for a certain type of sandwich shop
7
8
9
- 10 16. Which of the following is a requirement under RESPA provisions?
11
12 A. Provide the buyer an information booklet no later than closing.
13 B. Provide seller and buyer a good faith estimate of closing costs within
14 three days of application.
15 C. Provide the buyer a good faith estimate of closing costs within three
16 days of application.
17 D. Provide the seller and buyer a settlement statement no later than
18 closing.
19
20
21
- 22 17. Which of the following business entities can register to broker real estate?
23
24 A. Corporation
25 B. Limited Partnership
26 C. Limited Liability Company
27 D. All of the above
28
29
30
- 31 18. A broker lists a house for \$200,000. Later, the broker and his brother form a
32 corporation that buys the house from the principal for \$170,000 although the broker
33 does not inform his principal of his participation with the corporation. Has any Florida
34 law been violated?
35
36 A. No, because the broker was only a part owner of the corporation
37 B. No, because the broker was the seller's single agent during the
38 transaction
39 C. Yes, because the corporation did not pay the full price for the house
40 D. Yes, because the broker did not disclose to the principal that he was
41 affiliated with the buyer
42
43
44
- 45 19. Title to real property is legally conveyed when the deed is:
46
47 A. Recorded
48 B. Delivered and accepted
49 C. Signed and witnessed
50 D. Signed, notarized and recorded
51

PRACTICE FINAL EXAM

- 1 20. Ann remits an earnest money deposit of \$37,500 on a property that is listed
2 for \$150,000. The broker then defrauds Ann out of the \$37,500. Ann takes the
3 broker to court and wins a judgment of \$37,500 plus \$15,000 punitive damages. The
4 broker has no assets, so Ann requests relief from the Florida Real Estate Recovery
5 Fund. Since she has a judgment for \$52,500, how much can she receive from the
6 Florida Real Estate Recovery Fund?
7
- 8 A. \$15,000
9 B. \$37,500
10 C. \$52,500
11 D. \$75,000
12
- 13
- 14 21. The statute of frauds applies to:
15
- 16 A. All legal contracts and other documents
17 B. The transfer of personal property
18 C. Real property sales contracts
19 D. Acts of fraud by licensees
20
- 21
- 22 22. The term applied to the use of borrowed funds to finance the purchase of real
23 estate is called:
24
- 25 A. Leverage
26 B. Liquidity
27 C. Intermediation
28 D. Equity
29
- 30
- 31 23. Bob, a resident of Maine, wishes to become a Florida real estate licensee.
32 Which of the following will be required of Bob?
33
- 34 A. Apply for a Florida Alien's License and take a 40 question exam on
35 Florida Law a pass with a score of 75%
36 B. Become a Florida resident within the initial license period
37 C. Complete the required educational course and pass the state exam
38 with a score of 75% or better.
39 D. Accept permanent revocation of his license should any violation of the
40 real estate law be upheld
41
- 42
- 43 24. Members of the Florida Real Estate Commission are prohibited from serving
44 more than:
45
- 46 A. Two years
47 B. Four years
48 C. Eight years
49 D. Two consecutive terms
50

PRACTICE FINAL EXAM

- 1 25. The Florida Real Estate Commission decides to modify an existing rule
2 concerning brokerage advertising. This is an exercise of the Commission's:
3
- 4 A. Executive power
5 B. Ministerial power
6 C. Quasi-legislative power
7 D. Quasi-judicial power
8
9
- 10
- 11 26. Broker Betty is moving to Germany for three years with her husband who is
12 transferring there with the U.S. Air Force. Before she leaves for Germany, she
13 places her license on voluntary inactive status. What are Betty's obligations to keep
14 her license in good standing?
15
- 16 A. She must pay her renewal fees only.
17 B. She must pay her renewal fees and complete her educational
18 requirements.
19 C. She must take a 30-hour broker management class upon her return to
20 Florida.
21 D. She is exempt from all renewal requirements while she is in Germany
22 and for six months after her husband's discharge from the Air Force.
23
24
- 25 27. An active sales associate allowed his license to expire. At that point, the
26 licensee was involuntarily inactive. What must this sales associate do to obtain
27 another active license after five years have lapsed?
28
- 29 A. Complete the FREC I course
30 B. Complete 35 hours of continuing education
31 C. Complete 28 hours of activation education
32 D. Complete the post-licensing and continuing education requirements
33
34
- 35 28. Which of the following best describes a transaction broker relationship?
36
- 37 A. Full fiduciary duties owed to the principal
38 B. Limited representation to the customer(s)
39 C. Full fiduciary duties owed to all parties involved
40 D. A transaction broker owes no duties to any party
41
42
- 43 29. In Florida, a broker and his principal enter into an agency relationship. Which
44 of the following Florida laws will govern that relationship?
45
- 46 A. F.S. 494
47 B. FREC regulations
48 C. Florida agency law
49 D. Both B and C
50
51

PRACTICE FINAL EXAM

- 1 30. A broker may not collect a commission from both parties to a contract without:
2
3 A. Having an exclusive listing
4 B. Notifying both parties of the transaction
5 C. Obtaining the informed consent of both parties
6 D. Violating Florida statutes
7
8
9
- 10 31. All advertisements by brokers must include which of the following:
11
12 A. Name and address of the broker's principal
13 B. Name of the licensee that obtained the listing
14 C. Name of the broker and office telephone number
15 D. Name of the brokerage firm
16
17
18
- 19 32. When a broker has a "good faith doubt" concerning which party is entitled to
20 the earnest money deposit, that broker has how many business days to notify FREC
21 in writing of the dispute?
22
23 A. 5
24 B. 10
25 C. 15
26 D. 30
27
28
29
- 30 33. A dispute arises between a buyer and seller two days before closing with
31 each party demanding ownership of the earnest money deposit. Both parties agreed
32 in their Purchase and Sale Contract that, in the event of a dispute, the matter should
33 be submitted to a neutral third party in an effort to reach a voluntary settlement. This
34 procedure is known as:
35
36 A. Mediation
37 B. Escrow Disbursement Order
38 C. Arbitration
39 D. Litigation
40
41
42
- 43 34. If a listing agreement provides that a broker is to "find a purchaser", the
44 broker earns his commission:
45
46 A. When the broker finds a purchaser
47 B. When any reasonable offer is made
48 C. Upon closing and conveyance of title
49 D. When the broker finds a buyer ready, willing, and able to purchase on
50 terms and conditions specified by the seller
51

PRACTICE FINAL EXAM

- 1 35. A broker may lawfully place escrow deposits in all of the following except:
2
3 A. Commercial bank
4 B. Mutual Fund
5 C. Title company with trust powers
6 D. Savings Association
7
8
- 9 36. In Florida, if a real estate broker registers as a "foreign corporation", it means
10 the business entity is chartered:
11
12 A. In a foreign country
13 B. Outside the continental United States
14 C. Outside the 50 states
15 D. Outside the state of Florida
16
17
- 18 37. A Florida corporation operating as a real estate brokerage is created in which
19 of the following ways?
20
21 A. Application to the Internal Revenue Service
22 B. Private agreement between the stockholders
23 C. Filing a certificate with the local Clerk of Court
24 D. Filing articles of incorporation with the Florida Department of State
25
26
- 27 38. Sales associate Sidney and Broker Beth wish to start a new real estate
28 brokerage general partnership. Which of the following best applies?
29
30 A. They are prohibited from this activity.
31 B. The partnership must be registered as a joint venture.
32 C. They must register the partnership with Beth as the broker of record.
33 D. They must register as the partnership with the Secretary of State.
34
35
- 36 39. A Florida general partnership operating as a real estate brokerage can be
37 created by which of the following methods?
38
39 A. Filing a partnership charter with the Florida Secretary of State
40 B. Filing a certificate of partnership with the DBPR
41 C. Oral agreement between the partners
42 D. File an application with the Florida Division of Partnerships
43
44
- 45 40. Which of the following can issue subpoenas pursuant to a formal hearing?
46
47 A. The director of the DRE
48 B. Chairman of FREC
49 C. President of the Florida Association of REALTORS®
50 D. Administrative law judge
51

PRACTICE FINAL EXAM

- 1 41. If a legally sufficient complaint has been filed, investigated, and found valid,
2 the next step in the complaint process is:
3
- 4 A. Informal hearing
 - 5 B. Formal hearing
 - 6 C. Probable cause determination
 - 7 D. Final Order issuance
- 8
9
10
- 11 42. A broker followed the dictates of an escrow disbursement order issued by
12 FREC requiring the return of an earnest money deposit to a buyer. Later, the seller
13 sued the broker to recover the amount of the deposit. After the trial, the judge rules
14 in favor of the seller and issues a judgment for \$7,000.00 against the broker. If the
15 Real Estate Recovery Fund makes payment to the seller as a result of the lawsuit,
16 what action will be taken against the broker?
17
- 18 A. The broker's license must be suspended.
 - 19 B. The broker's license may be revoked.
 - 20 C. The broker could be fined up to \$1,000.
 - 21 D. No action will be taken by FREC.
- 22
23
24
- 25 43. An owner possessing littoral rights owns land abutting a:
26
- 27 A. City or county line
 - 28 B. Highway or interstate
 - 29 C. River or stream
 - 30 D. Lake, sea, or ocean
- 31
32
33
- 34 44. If two or more persons have an interest in real property, which of the following
35 estates cannot be created unless specific wording in a deed provides for right of
36 survivorship?
37
- 38 A. Joint tenancy
 - 39 B. Tenancy by the entireties
 - 40 C. Tenancy in common
 - 41 D. Tenancy at will
- 42
43
44
- 45 45. Recording a deed:
46
- 47 A. Creates equitable title
 - 48 B. Provides actual notice of ownership
 - 49 C. Provides constructive notice of ownership
 - 50 D. Establishes a future right of redemption
- 51

PRACTICE FINAL EXAM

- 1 46. An instrument that transfers possession of real property but does not transfer
2 ownership is called a (n):
3
- 4 A. Deed
 - 5 B. Lease
 - 6 C. Easement
 - 7 D. Mortgage
- 8
9
10
- 11 47. A real estate contract signed by a minor is:
12
- 13 A. Enforceable
 - 14 B. Terminated
 - 15 C. Voidable
 - 16 D. Void
- 17
18
19
- 20 48. Jack offers to purchase Carly's home for \$150,000. The listing broker
21 submits the offer to Carly, but Carly responds with a counteroffer of \$165,000. Jack
22 rejects the counteroffer. Later, Carly wants to accept the original offer of \$150,000
23 and notifies Jack of her acceptance. Jack has changed his mind and does not want
24 to buy Carly's home at any price. The result is:
25
- 26 A. Carly's broker has earned a commission
 - 27 B. Jack is obligated to accept his original offer of \$150,000
 - 28 C. No valid contract exists
 - 29 D. An enforceable contract exists
- 30
31
32
- 33 49. The Truth in Lending Law of 1969, enacted to protect consumers, is
34 implemented by:
35
- 36 A. RESPA
 - 37 B. Regulation Z
 - 38 C. Regulation D
 - 39 D. A "Property Report"
- 40
41
42
- 43 50. The Real Estate Settlement Procedures Act does NOT require that:
44
- 45 A. A uniform settlement statement be used if an escrow agent is used for
46 closing
 - 47 B. Sellers be informed of their closing costs prior to closing
 - 48 C. Lenders give borrowers, who are to pay closing costs, an estimate of
49 the lender's closing agent's charges
 - 50 D. Lenders provide prospective borrowers with a HUD special
51 information booklet

PRACTICE FINAL EXAM

- 1 51. When a landlord accepts a security deposit, what may the landlord legally do
2 with the funds?
3
- 4 A. Commingle the funds provided sufficient bond is posted with the clerk
5 of court and pay the tenant interest
6 B. Deposit such funds in a separate non-interest-bearing account
7 C. Both A and B
8 D. Neither A nor B
9
- 10
11
- 12 52. Existing mortgages are bought and sold:
13
- 14 A. In Washington, D.C.
15 B. In the primary market
16 C. By the Federal Reserve System
17 D. In the secondary market
18
19
20
- 21 53. A purchase money mortgage:
22
- 23 A. Is always a junior mortgage
24 B. Is often called a chattel mortgage
25 C. Is any mortgage used to finance the purchase of real property
26 D. Cannot include personal property
27
28
29
- 30 54. Which of the following mortgages accepts both real property and personal
31 property as collateral?
32
- 33 A. Adjustable rate mortgage
34 B. Home equity loan
35 C. Package Mortgage
36 D. Purchase money mortgage
37
38
39
- 40 55. Under the provisions of the Truth In Lending Act, all of the following are
41 correct except:
42
- 43 A. All closing costs must be disclosed to the buyer and seller
44 B. Finance charges include loan origination fees, points, and insurance
45 C. It is administered through Regulation Z
46 D. It is designed to inform consumers of the actual costs of borrowing
47 money
48
49
50

PRACTICE FINAL EXAM

- 1 56. Tom, a non-licensed Alabama resident, referred a prospect to Broker Dave in
2 Pensacola, Florida. If Dave reimburses Tom for his expenses only, which of the
3 following statements best applies?
4
- 5 A. Dave can pay Tom's expenses without violating Florida law.
 - 6 B. Both Dave and Tom have violated Chapter 475, Florida Statutes.
 - 7 C. Dave may reimburse Tom's expenses but only if Tom does not
8 accompany the prospects to Florida.
 - 9 D. Only Dave has violated Chapter 475, Florida Statutes.
- 10
11
12
- 13 57. An agency relationship is created:
14
- 15 A. When valuable consideration is given by the parties
 - 16 B. By the personal trust between the broker and the principal
 - 17 C. When a broker and principal enter into an employment contract
 - 18 D. All of the above
- 19
20
21
- 22 58. A broker may lose the right to claim a commission if:
23
- 24 A. He fails to disclose a known defect to a buyer
 - 25 B. His license is not in good standing at the time a ready, willing and able
26 buyer is procured
 - 27 C. He violated Chapter 475, F.S. while performing a service of real estate
 - 28 D. All of the above
- 29
30
31
- 32 59. After Broker Sharon listed Todd's home for \$200,000 as a single agent, Buyer
33 Bert offers \$190,000 and states that he will pay more if Todd does not accept the
34 offer. Sharon is required to:
35
- 36 A. Immediately submit the \$190,000 offer to Todd
 - 37 B. Submit the \$190,000 offer and tell Todd that the prospect may pay
38 more
 - 39 C. Insist that Bert offer \$200,000
 - 40 D. Withhold the offer since it was not full price
- 41
42
43
- 44 60. Which of the following statements is correct regarding a single agency
45 relationship in Florida?
46
- 47 A. It is governed by Florida Statute 475
 - 48 B. It is a fiduciary relationship
 - 49 C. The agency relationship must be in writing
 - 50 D. All of the above
- 51

PRACTICE FINAL EXAM

- 1 61. If Karen is registered with Broker Bob when his license is suspended:
2
3 A. She may continue to operate under the broker's license if the DBPR
4 approves
5 B. She must become registered under another broker before performing
6 any services of real estate for compensation
7 C. She is temporarily out of the real estate business until Bob's
8 suspension ends
9 D. Her license will be cancelled or suspended at the option of FREC
10
11
12 62. After a proper investigation indicates that a licensee could be harmful to the
13 public when selling real estate, the DPBR can:
14
15 A. Suspend his or her licensee up to 10 years
16 B. Apply for a summary suspension
17 C. Revoke his or her license
18 D. Impose an administrative fine
19
20
21 63. Under which of the following circumstances may a broker or sales associate
22 lawfully refuse to show a home to a minority prospect who has specifically asked to
23 see that property?
24
25 A. When the owner is exempt under the 1968 Fair Housing Act
26 B. When the broker believes that showing the property to this prospect
27 will create blockbusting in the neighborhood
28 C. When the owner is not at home and has directed the broker not to
29 show the property during his absence
30 D. Never
31
32
33 64. A Georgia buyer comes to Florida and contacts Broker Bob who shows him a
34 parcel of land. The buyer makes a written offer on the property and gives Bob a
35 binder deposit in the form of his personal check drawn on an Atlanta Bank. The
36 seller accepted the offer and signed the contract, and Bob told the seller that the
37 deposit was a check. However, he did not mention that it was a personal check
38 written on a Georgia bank. A few days later, Bob learns that the check was returned
39 due to insufficient funds, and the seller refuses to proceed on the deal. The broker is
40 guilty of:
41
42 A. Nothing if the check was immediately deposited into his escrow
43 account
44 B. Culpable negligence because he didn't verify the amount of the
45 buyer's funds in the Georgia Bank
46 C. Nothing, but he is responsible for one-half of the deposit amount
47 D. Gross negligence because he didn't inform the seller that the check
48 was drawn on a Georgia Bank
49
50

PRACTICE FINAL EXAM

- 1 65. Randy makes an oral offer for \$151,000 on property that Broker Tom has
2 listed for \$155,000. However, before the offer can be presented to the seller, Al
3 makes an oral offer of \$155,000. How should Broker Tom handle this situation?
4
- 5 A. Present the first offer only
6 B. Present both offers
7 C. Not present either offer because they were oral
8 D. Present both offers after they are submitted in writing
9
- 10
11 66. Broker Dave asks his unlicensed assistant Bryan to drive a potential buyer to
12 view a house that Dave has listed. Upon arrival, the potential buyer asks for
13 information about the property, but Bryan only gives an information sheet that
14 provides information about the property, including the price. The potential buyer now
15 desires to make an offer. Which of the following statements is accurate?
16
- 17 A. Dave violated Florida law by using his unlicensed assistant in this
18 manner.
19 B. Florida real estate law was not violated.
20 C. Both Dave and Bryan violated Florida real estate license law.
21 D. Only Bryan violated Florida real estate license law.
22
23
- 24 67. If Broker Bill has been sentenced to prison for mail fraud:
25
- 26 A. FREC cannot take action because the violation did not involve real
27 estate
28 B. This will likely be grounds for suspension or revocation
29 C. Broker Bill will be automatically revoked by FREC
30 D. This will likely be grounds for suspension only
31
32
- 33 68. The economic concept that sets an upper limit of value for any particular
34 property is called the:
35
- 36 A. Depreciation rule
37 B. Principle of substitution
38 C. Capitalization process
39 D. Scarcity principle
40
41
- 42 69. The Federal National Mortgage Association (FNMA):
43
- 44 I. Is regulated by the federal government
45 II. Has privately held stock
46 III. Provides for a secondary mortgage market
47 IV. Deals directly with borrowers
48
- 49 A. I and II
50 B. I and III
51 C. II and IV
52 D. I, II and III

PRACTICE FINAL EXAM

- 1 70. The Federal National Mortgage Association (Fannie Mae) presently buys and
2 sells which types of mortgages?
3
4 A. FHA
5 B. VA
6 C. Conventional
7 D. All of the above
8
9
- 10 71. The most accurate method of describing land is the:
11
12 A. Metes and bounds
13 B. Government survey
14 C. Lot and block
15 D. Monuments
16
17
- 18 72. Which power of government represents the broadest power of government to
19 limit or regulate the rights of property owners?
20
21 A. Police power
22 B. Eminent domain
23 C. Escheat
24 D. Taxation
25
26
- 27 73. The term "real property" can best be described as:
28
29 A. The physical components of real estate
30 B. Land only
31 C. Land plus all improvements on it
32 D. A bundle of legal rights, land, and all improvements
33
34
- 35 74. The rights included in real property ownership under the allodial system
36 include which of the following?
37
38 A. Buy, sell, use, and possess
39 B. Use, dispose, improve, and possess
40 C. Acquire, use, dispose, and possess
41 D. Enjoyment, exclude, dispose, possess, and control
42
43
- 44 75. Which of the following offenses is a first-degree misdemeanor?
45
46 A. Publishing false or misleading information
47 B. Violation of rental list rules
48 C. Breach of trust in a real estate transaction
49 D. Having improper sign of the entrance of office
50
51
52

PRACTICE FINAL EXAM

- 1 76. Which of the following documents can a Florida real estate licensee legally
2 prepare?
3
- 4 A. Commercial leases, sales contracts, and deeds
 - 5 B. Listing, sales contracts, and option contracts
 - 6 C. Deeds, sales contracts, and residential leases
 - 7 D. Mortgages, residential leases, and all types of listing and sales
8 contracts
9
- 10
- 11 77. The Fair Housing Act of 1968, as amended, prohibits discrimination based
12 upon:
13
- 14 A. Race, color, religion, sex, national origin, familial status, or handicap
 - 15 B. Race or age
 - 16 C. Religion, race, familial status, or handicap
 - 17 D. Race, color, religion, creed, or national origin
18
- 19
- 20 78. The executive powers of FREC include the:
21
- 22 A. Regulation of real estate practices
 - 23 B. Creation of 61-J2 (F.A.C.) rules
 - 24 C. Filing of registrations
 - 25 D. Both A and B
26
27
- 28 79. Sandra Sales associate listed Tom's house on May 1 and sold it ten days
29 later. The transaction closed June 5, but Sandra's license had expired on March 31.
30 If her employing broker's license did not expire until September 30, which of the
31 following statements best applies?
32
- 33 A. Tom does not owe a sales commission to anyone.
 - 34 B. A violation of the license law will not occur if Tom merely pays the
35 broker's share of the commission.
 - 36 C. Sandra's broker can legally pay her commission after her license
37 expires.
 - 38 D. Sandra will not violate Chapter 475, F.S. if she receives her sales
39 commission directly from the property owner.
40
41
- 42 80. If an active broker's for four years license expires, her license will immediately
43 become:
44
- 45 A. Ineffective
 - 46 B. Cancelled
 - 47 C. Involuntary inactive
 - 48 D. Cease to be enforced
49
50
51

PRACTICE FINAL EXAM

- 1 81. Broker Betty sold John a rental information list on June 1st for \$400. If John
2 decides not to rent and calls Betty on July 4th to let her know, which applies?
3
4 A. Betty should give John a full refund of \$400
5 B. Betty is required to give John a refund of \$300
6 C. Betty is required to give John a refund of \$200 since the demand was
7 after 30 days of the purchase
8 D. Betty is not required to give any refund
9
10
11
12 82. Which of the following best describes leverage in real estate?
13
14 A. Pledging real property as security for a loan
15 B. It requires intermediation
16 C. It requires disintermediation
17 D. Borrowing funds to purchase an asset
18
19
20 83. Broker Ted rents space in offices shared by Brokers Al and Bob. Each broker
21 has separate business cards, stationary, and phone numbers, but they do share the
22 services of one secretary. If Broker Ted defrauds prospect Sam before his sign is
23 placed near the office entrance, which of the following statements is true?
24
25 A. Only Broker Bob could be charged with defrauding Sam.
26 B. Brokers Al and Bob could not be held liable because Ted's act was
27 not intentional.
28 C. All of the brokers could be charged with fraud and are equally liable as
29 ostensible partners.
30 D. All of the brokers could be charged with fraud, but only Ted has any
31 financial liability.
32
33
34 84. The most important aspect of a real estate investment is its:
35
36 A. After tax cash flow
37 B. Net operating income
38 C. Economic soundness
39 D. Property location
40
41
42 85. Gordon receives an offer to purchase his home after listing it with Broker
43 Fred. If Gordon's acceptance is not communicated to the buyer:
44
45 A. A valid contract exists
46 B. There is an offer and acceptance but not a valid contract
47 C. Broker Fred alone controls the binder deposit
48 D. The buyer, seller, and broker are parties to the contract that has been
49 created
50
51

PRACTICE FINAL EXAM

- 1 86. A licensee who fails to renew can remain involuntarily inactive for:
2
3 A. Two years
4 B. Four years
5 C. Six years
6 D. An indefinite period of time
7
8
- 9 87. If a citation has been issued to a real estate broker:
10
11 A. The licensee may refuse to pay the citation and request a hearing
12 B. It becomes a final order of FREC if the licensee does not dispute the
13 subject matter of the citation
14 C. It pertains to a violation by the licensee that did not involve the public
15 health, safety or welfare
16 D. All of the above
17
18
- 19 88. A deed restriction is:
20
21 A. An encroachment
22 B. An encumbrance
23 C. Non-transferable
24 D. All of the above
25
26
- 27 89. An encroachment can only be proven by:
28
29 A. A title insurance policy
30 B. An up to date abstract
31 C. An up to date survey
32 D. All of the above
33
34
- 35 90. Which type of agency relationship provides for full fiduciary duties?
36
37 A. Single agent
38 B. Transaction broker
39 C. Dual agent
40 D. All of the above
41
42
- 43 91. The city has decided to pave the street in front of your house. The total cost
44 of paving will be \$25.00 per running foot. The city agrees to pay 30 percent of the
45 cost of paving. The remaining costs are to be apportioned between the owners on
46 both sides of the street. What will the assessment of your property be if your lot is 80
47 feet wide?
48
49 A. \$350
50 B. \$700
51 C. \$1,400
52 D. \$2,000

PRACTICE FINAL EXAM

- 1 92. How many acres are contained in a square property that measures 250 feet
2 by 250 feet?
3
- 4 A. 1.56
5 B. 1.43
6 C. 2.93
7 D. 3.11
8
9
- 10 93. Sales Associate Dave works for Broker Bob. Dave sells a parcel of vacant
11 land described as the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 25, T1N, R29W and the S $\frac{1}{2}$ of
12 the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 25, T1N, R29W located in Escambia County,
13 Florida. The listing contract calls for a 7% commission to be paid to the broker, and
14 the broker has agreed to accept 30% of the total commission if Dave sells the
15 property. Dave secured a contract with a purchase price of \$8,000 per acre. What is
16 Sales associate Dave's share of the commission?
17
- 18 A. \$23,520
19 B. \$10,080
20 C. \$33,600
21 D. \$14,400
22
23
- 24 94. A sales associate accepts employment with a broker at 45% of sales
25 commissions earned as a result of his sales efforts. The broker lists a property for
26 \$48,000 with a 7% sales commission agreed by the owner. The sales associate sells
27 the property at the listed price. What is the broker's share of the commission?
28
- 29 A. \$1,512
30 B. \$1,848
31 C. \$1,884
32 D. \$3,360
33
34
- 35 95. An investor buys a property which has a net income of \$1,750 per month. It
36 has a capitalization rate of 14%. What did the investor pay for the property?
37
- 38 A. \$12,500
39 B. \$21,000
40 C. \$125,000
41 D. \$150,000
42
43
- 44 96. Calculate the deed documentary stamp tax on a purchase price of
45 \$325,750.00 with a purchase money mortgage of \$250,000.00.
46
- 47 A. \$2,280.25
48 B. \$1,140.13
49 C. \$2,280.60
50 D. \$1,750.00
51

PRACTICE FINAL EXAM

- 1 97. A developer purchases two adjacent lots for \$125,000 each. She subdivides
2 the land into 6 parcels which sell for \$50,000 each. What is the developer's
3 percentage of profit?
4
5 A. 20%
6 B. 50%
7 C. 25%
8 D. 40%
9
10
11
12 98. How much of the 2nd monthly payment will be applied to the principal balance
13 of a \$80,000 mortgage at 7.5% interest for 30 years if each monthly payment is
14 559.37?
15
16 A. \$59.37
17 B. \$59.74
18 C. \$60.11
19 D. \$60.49
20
21
22
23 99. A property closes on June 18, 2001. The ad valorem taxes are \$2,200 for the
24 year. Prorate the taxes for this transaction (day of closing goes to the buyer).
25
26 A. \$1,012.60 Credit to the Seller/Debit to the Buyer
27 B. \$1,012.60 Credit to the Buyer/Debit to the Seller
28 C. \$1,091.16 Credit to the Buyer/Debit to the Seller
29 D. \$1,091.16 Credit to the Seller/Debit to the Buyer
30
31
32 100. A property's price is \$300,000 of which \$60,000 is allocated to the cost of
33 land. The property has an economic life of 25 years and an effective age of 5 years.
34 Given this information and using the straight-line depreciation method, what is the
35 value of the property?
36
37 A. \$192,000
38 B. \$240,000
39 C. \$250,000
40 D. \$252,000
41
42
43

ANSWER KEY

End of Chapter Quiz Answer Key

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<u>CHAPTER 1</u>	<u>CHAPTER 2</u>	<u>CHAPTER 3</u>	<u>CHAPTER 4</u>	<u>CHAPTER 5</u>
1. C	1. B	1. D	1. B	1. B
2. A	2. B	2. C	2. D	2. B
3. A	3. A	3. A	3. B	3. D
4. A	4. C	4. B	4. A	4. C
5. D	5. A	5. C	5. C	5. C
6. B	6. A	6. D	6. D	6. D
7. B	7. C	7. C	7. B	7. C
8. C	8. C	8. A	8. A	8. A
9. D	9. C	9. B	9. D	9. B
10. A	10. D	10. A	10. B	10. C
11. A	11. B	11. B	11. C	11. D
12. C	12. C	12. D	12. C	12. B
13. C	13. A	13. A		13. C
14. C	14. A	14. A		14. C
15. B	15. B	15. C		15. C

<u>CHAPTER 6</u>	<u>CHAPTER 7</u>	<u>CHAPTER 8</u>	<u>CHAPTER 9</u>
1. B	1. A	1. B	1. D
2. A	2. C	2. B	2. A
3. A	3. B	3. D	3. B
4. C	4. A	4. C	4. D
5. D	5. B	5. B	5. A
6. B	6. C	6. D	6. A
7. C	7. D	7. B	7. B
8. C	8. C	8. D	8. A
9. B	9. A	9. A	9. D
10. D	10. B	10. D	10. B
11. C		11. C	11. D
12. C		12. B	12. A
13. A		13. C	13. B
14. D		14. A	14. B
15. A			15. A

<u>CHAPTER 10</u>	<u>CHAPTER 11</u>	<u>CHAPTER 12</u>	<u>CHAPTER 13</u>	<u>CHAPTER 14</u>
1. A	1. C	1. A	1. B	1. A
2. A	2. A	2. C	2. B	2. C
3. A	3. B	3. D	3. A	3. B
4. B	4. D	4. D	4. D	4. D
5. D	5. A	5. D	5. C	5. C
6. D	6. A	6. D	6. B	6. A
7. C	7. D	7. C	7. D	
8. B	8. B	8. B	8. A	
9. A	9. D	9. A	9. C	
10. B	10. C	10. D	10. C	
11. A	11. A	11. D	11. D	
12. A	12. B	12. A	12. A	
13. B	13. D	13. D	13. B	
14. C	14. C	14. A	14. D	
15. D	15. B	15. A		
	16. D			
	17. A			
	18. C			

ANSWER KEY

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CHAPTER 15

1. B
2. B
3. A
4. D
5. C
6. B
7. D
8. A
9. C
10. C
11. D
12. A
13. B
14. D

CHAPTER 16

1. C
2. A
3. B
4. A
5. D
6. D
7. A
8. A
9. A
10. D
11. A
12. B
13. C
14. D

CHAPTER 17

1. A
2. A
3. A
4. A
5. D
6. A
7. D
8. B
9. B
10. C
11. B
12. B

CHAPTER 18

1. C
2. D
3. C
4. C
5. B
6. A
7. B
8. C
9. C
10. C
11. C
12. C
13. A
14. B
15. A

CHAPTER 19

1. D
2. B
3. C
4. A
5. D
6. A
7. A
8. B
9. A
10. C

CHAPTER 20 - MATH REVIEW

LESSON ONE - COMMON AREAS

1. B (64)

LESSON TWO - APPRAISAL

1. A (\$192,6000)
2. D (\$15,125)
3. C (8.5)
4. B (\$555,600)
5. C (12%)
6. C (\$1,265)

LESSON FOUR- REAL ESTATE TAXES

1. A (\$6,000)
2. D (\$6,514.38)
3. A (\$1,800)

LESSON FIVE - MORTGAGE

1. D (\$13,000)
2. A (\$2,137.50)
3. B (7.375%)
4. B (\$20,000)
5. C (75%/9 mo.)
6. C (\$29,904.75)

LESSON SIX - CLOSING

COMMISSIONS AND PERCENTAGES:

1. A (\$11,250)
2. D (\$17,227)
3. C (\$114,444)

CLOSING PROBLEMS:

4. A (\$490.32 D-S, C-B)
 5. B (\$414.68 C-B, D-S)
 6. C (\$367.74 C-B, D-S)
- 7A: \$1,225.00
7B: \$525.35
7C: \$114.90

PRACTICE MATH EXAM

1. B (1.65)
2. D (\$125,000)
3. A (20 acres)
4. C (I&III)
5. C (\$6,570)
6. D (\$1,498.50)
7. C (\$500)
8. A (\$18,200)
9. C (.60)
10. B (\$99,614.94)
11. A (\$1,295)
12. A (\$5,940)
13. C (\$111,111.11)
14. D (33.333%)
15. C (75%)

ANSWER KEY

	Final Practice Exam Answer Key		
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4	1.	D	45. C
5	2.	D	46. B
6	3.	C	47. C
7	4.	D	48. C
8	5.	A	49. B
9	6.	B	50. B
10	7.	D	51. C
11	8.	B	52. D
12	9.	D	53. C
13	10.	C	54. C
14	11.	C	55. A
15	12.	D	56. B
16	13.	B	57. C
17	14.	C	58. D
18	15.	C	59. B
19	16.	C	60. D
20	17.	D	61. B
21	18.	D	62. B
22	19.	B	63. C
23	20.	B	64. A
24	21.	C	65. B
25	22.	A	66. B
26	23.	C	67. B
27	24.	D	68. B
28	25.	C	69. D
29	26.	D	70. D
30	27.	A	71. A
31	28.	B	72. A
32	29.	D	73. D
33	30.	C	74. D
34	31.	D	75. B
35	32.	C	76. B
36	33.	A	77. A
37	34.	D	78. A
38	35.	B	79. A
39	36.	D	80. C
40	37.	D	81. A
41	38.	A	82. D
42	39.	C	83. C
43	40.	D	84. C
44	41.	C	85. B
45	42.	D	86. A
46	43.	D	87. D
47	44.	A	88. B
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Glossary

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- Absentee Owner:** A property owner who does not reside on the property and who usually relies on a property manager to oversee the investment
- Abstract of Title:** A compilation of the recorded documents relating to a parcel of land from which an attorney may give an opinion as to the condition of title (a history of title)
- Acceleration Clause:** A condition in a loan contract that permits the lender to require immediate repayment of the entire loan balance of the loan if the contract is breached or conditions for repayment occur, such as sale or demolition
- Acknowledgment:** A written declaration by a person signing a document, given before an officer authorized to give an oath (notary public), stating that the signing is the person's voluntary act
- Actual notice:** Giving oral or written notice, presenting a deed, giving verbal notice, or physically moving into a property
- Ad Valorem:** According to value; annual real estate taxes are ad valorem taxes
- Adjudication Withheld:** When a criminal final judgment is withheld or not recorded in public record
- Adjustable Rate Mortgage (ARM):** A mortgage loan with a calculated interest rate that may increase or decrease during the term of the loan
- Adverse Possession:** A method of acquiring title by possession under open, notorious, exclusive, and hostile conditions for seven or more years
- Agent:** A person authorized by a principal to act on the principal's behalf
- Amortized Mortgage:** A mortgage loan that is fully repaid according to a periodic and consistent schedule that includes both principal and interest
- Appraisal:** A supported, defended estimate of the value of property rights as of a given date
- Appreciation:** An increase in a property's value
- Arrears:** When payment is due at the end of the term
- Asbestos:** A fire resistant material believed to be carcinogenic
- Assemblage:** The bringing together of two adjoining parcels of property under one ownership
- Assessed Value:** A property's value for ad valorem tax purposes as established by the county property appraiser
- Assignment:** A transfer to another of any property, real or personal, or of any rights or estates in said property
- Assumption:** The taking over of an existing mortgage by a buyer
- Balloon Payment:** A final installment payment on a note that is much larger than the previous monthly payments on the note
- Base Line:** The horizontal line that runs east and west through Tallahassee that is the starting point for all other horizontal lines north and south of Tallahassee
- Basis:** The purchase price plus closing costs and other added improvements
- Benchmark:** Survey mark made which is permanently fixed in the ground showing the height of that point in relation to sea level
- Bilateral Contract:** A contract in which both parties enter into mutual promises
- Biweekly Mortgage:** Mortgage payments that are made every other week (26 payments year)
- Blanket Mortgage:** A mortgage that is secured by two or more items of real property
- Blind Advertisement:** An advertisement of a principal's property providing only a telephone number, a post office box, and/or an address without the licensed name of the brokerage firm

1 **Blockbusting:** The illegal practice of inducing homeowners to sell their property by
2 making misrepresentations regarding the entry or prospective entry of minority
3 persons in order to cause a turnover of properties in the neighborhood;
4 discriminatory acts against sellers

5 **Broker:** One who is licensed by the State of Florida to carry on the business of dealing
6 in real estate; a broker may receive a commission for his or her part in bringing
7 together parties in a real estate transaction

8 **Broker Associate:** An individual qualified to be issued a broker's license but who
9 operates as a salesperson in the employ of another

10 **Buffer Zone:** A parcel of land separating two other parcels or areas, such as a parcel
11 of land between residential and commercial properties

12 **Building Code:** Codes adopted by local governments governing acceptable building
13 construction standards and materials

14 **Building inspection:** Performed by local government inspectors before a certificate of
15 occupancy is issued to assure that the structure satisfies code requirements

16 **Building permit:** Written authority by a unit of government (county or city) for the
17 construction of a new building or other improvement or for the repair or
18 demolition of an existing structure

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

22 **Buyer's Market:** The supply of available properties exceeds the demand

23 **Cancelled:** License status of salesperson when employing broker's license is ineffective
24 or void

25 **Capital Gain:** The positive difference between the sales price and the basis of the
26 property after appropriate adjustments for fix-up expenses, closing costs,
27 allowable depreciation, etc., (taxable profit)

28 **Casement:** A window hinged on its side so that it can swing open

29 **Cash Flow:** The resulting amount when annual debt service, tax liability, and capital
30 improvement costs are subtracted from net operating income

31 **Caveat Emptor:** "Let the buyer beware"

32 **Cease to be in force:** If a broker or real estate school changes its business address
33 or if a real estate licensee or real estate instructor changes their employer
34 without notifying the DRE within 10 days

35 **Certificate of Occupancy:** Issued after construction is substantially completed
36 indicating that the premises are habitable

37 **Chain of Title:** The chronological order of conveyance of a parcel of land from the
38 original owner to the present owner

39 **Check:** A 24-mile square that is created when a guide meridian and a correction line
40 intersect

41 **Citation:** A minor infraction of the license law that generally results in a small fine

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

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

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

48 **Compensation:** Any form of remuneration, payment, or value

49 **Competent:** Having the mental and age capacity to enter into a contract

50 **Complaint:** A charge or accusation that a licensee has committed a specified offense

1 **Concurrency:** A state mandate that infrastructure needed to support additional growth
2 must be in place before any new development is permitted

3 **Condominium:** Single unit ownership in a multiple unit dwelling

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

5 **Conforming Loan:** A loan that meets FNMA and FHLMC borrowing requirements

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

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

10 **Contract:** An agreement between two or more competent parties, supported by
11 consideration, to do, or not to do, a certain legal act

12 **Contract for Deed:** An instrument by which a prospective buyer pays for a property in
13 installments; legal title is conveyed in the future after payment of the full price or
14 an otherwise specified amount

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

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

20 **Corner Lot:** A parcel of land contiguous to two intersecting streets

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

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

26 **Credit:** On a closing statement, credit refers to money that is paid or payable

27 **Cul de sac lot:** Lot located at the end of a street which ends in a rounded, closed end
28 to provide for U-turns

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

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

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

35 **Debit:** On a closing statement, debit refers to money that is owed or a payment

36 **Debt Service:** Annual mortgage payments, including principal and interest

37 **Declaration:** The recorded document that creates a condominium

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

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

42 **Deed in Lieu of Foreclosure:** A deed from an owner to a mortgage lender to avoid
43 the necessity of a foreclosure lawsuit

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

46 **Demand:** The quantity of goods or services wanted by consumers

47 **Depreciation:** A decline or loss in value for any reason

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

1 **Discount Point:** Pre-paid interest charged by the lender at the time of closing; a discount
2 point is equal to 1% of the loan amount

3 **Disintermediation:** When depositors withdraw money from savings for direct
4 investment with a borrower

5 **Dormer:** A roof section that rises vertically above the main roofline

6 **Double Hung:** A type of window that opens vertically from the top to bottom

7 **Dual Agent:** Representing both principals in a transaction

8 **Due-On-Sale Clause:** A mortgage clause that causes the entire loan balance to become
9 due upon the sale of the property

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

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

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

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

17 **Encroachment:** A physical intrusion or trespass that can be detected by an up-to-date
18 survey

19 **Environmental Impact Statement (EIS):** A report of the probable effect of a
20 development on the surrounding area

21 **Equity:** The difference between the market value of a property and the mortgage debt

22 **Equity of Redemption:** The right of a mortgagor, before a foreclosure sale, to reclaim
23 forfeited property by paying the entire indebtedness

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

26 **Escrow:** A depository account in a bank, trust company, title company or attorney
27 having trust powers, credit union, or savings and loan association within the state
28 of Florida where funds are placed and held in trust until disposition is authorized

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

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

33 **Estoppel Certificate:** A written statement by a mortgagee verifying the balance due on
34 the mortgage

35 **Exculpatory Clause:** The borrower is not personally responsible for the debt (a non-
36 recourse loan); the lender will not seek a deficiency judgment

37 **Exclusive Agency Listing:** Listing agreement whereby the seller may find a buyer
38 without owing a commission although the seller agrees not to list the property
39 with any additional brokers

40 **Exclusive Right of Sale:** Listing agreement whereby the broker earns a commission
41 no matter who procures the buyer

42 **Exempt Property:** Real property excused for payment of ad valorem taxes

43 **Familial Status:** Refers to the status of a pregnant woman or a family with children under
44 18 years of age

45 **Farm Area:** A selected and limited geographical district to which a salesperson devotes
46 special attention and study

47 **Federal Related Transaction:** Any loan that is insured, guaranteed, or funded by the
48 federal government or a federally chartered institution

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

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

3 **Fixed Window:** A glass window with no movable parts

4 **Fixture:** Personal property that is permanently attached to real property

5 **Flat Roof:** A roof that is almost level except for a slight grading for drainage

6 **Florida Resident:** A person who has resided in Florida for at least four months or a
7 person who is residing in Florida with an intent to remain for at least four months

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

10 **Formal Complaint:** An outline of charges brought by the DBPR against an applicant
11 or licensee after a finding of probable cause

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

13 **Further Assurance:** The grantor agrees to obtain and deliver any legal documents or
14 instruments that might be required to clear title in the future

15 **Gable:** A roof with two sloping edges of approximately equal size

16 **Gambrel:** A roof with two sloping edges with the lower edge being more inclined

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

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

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

23 **Going Concern Value:** The value of a business considered as an operating enterprise as
24 opposed to its value merely as a collection of assets and liabilities

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

27 **Goodwill:** An intangible asset (value) of a business based on its reputation or
28 expectation of customer loyalty

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

32 **Grantee:** The person or party receiving the deed

33 **Granting Clause:** Words of conveyance found in the premises clause

34 **Grantor:** The person or party giving the deed

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

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

38 **Ground Lease:** A lease on the land only

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

43 **Guardian's Deed:** Utilized when the grantor is under 18 years of age

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

45 **Handicap Status:** Federal or state status for an individual unable to perform mental or
46 physical functions under normal conditions

47 **Health Ordinance:** Local laws that protect the health and well-being of the citizens in a
48 community

49 **Highest and Best Use:** A principle of value that focuses on a property's most profitable,
50 legal use

51

1 **Hip:** A roof with four sloping sides that rise to meet a ridge; usually found on garages
2 or church steeples; sometimes referred to as a pyramid roof

3 **Home Equity Loan:** A mortgage secured by a personal residence up to the value of the
4 mortgagor's equity

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

7 **Horizontal Sliding:** Type of window or door that opens horizontally

8 **Household:** One individual, or a group of individuals, living in one dwelling unit

9 **Immune Property:** Real property that is never assessed or required to pay ad valorem
10 taxes, such as government buildings

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

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

15 **Index:** Financial indicator that will be the basis for an adjustable rate mortgage interest
16 fluctuation

17 **Ineffective:** When a license is suspended, cancelled, or ceases to be in force

18 **Installment Sale:** When the buyer pays the purchase price over time in separate
19 installment payments

20 **Insulation:** Materials that hinder the passage of sound, cold, heat, or electricity

21 **Interest:** The price paid for the use of borrowed money

22 **Interior Lot:** Parcel of land not located on a corner

23 **Intermediation:** The process of depositing funds in financial institutions that serves as
24 "intermediaries" for flow of funds for investment and borrowing

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

27 **Intestate:** When a person dies without a will

28 **Involuntary Inactive:** A licensee fails to renew his or her license in a timely manner

29 **Jalousie:** Fixed or adjustable slats (louvers) in a door or window

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

32 **Just Value:** A fair and reasonable value; the property appraiser is required to assess
33 properties at their Just Value

34 **Key Lot:** A strategically located lot and the location adds value to itself and adjacent
35 lots. Also, a lot adjacent to a corner lot along the rear property line with frontage
36 along the secondary street

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

39 **Land Contract:** An agreement in which the seller of real estate obligates him or herself to
40 deliver a merchantable title to the buyer upon buyer's performance of certain
41 agreed upon conditions such as payment of a certain number of installment
42 payments; also known as a Contract for Deed

43 **Land:** Actual surface of the subject property

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

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

48 **Legally Sufficient:** When the initial complaint alleges a violation of any Florida Statute,
49 DBPR rule, or FREC rule

50 **Level Payment Plan:** A method for amortizing a mortgage whereby the borrower pays
51 the same amount each month

1 **Leverage:** The use of borrowed funds to finance the purchase of an asset
2 **License:** A document issued by the Department of Business and Professional
3 Regulation which certifies that the licensee is or was duly licensed on the effective
4 date shown
5 **Lien:** An encumbrance against a property for money, either voluntary or involuntary
6 **Lien Theory:** Legal concept that regards a mortgage as a just claim (lien) on specific
7 property pledged as security for a mortgage debt
8 **Life Estate:** An ownership in real property that is tied to the death of a pre-determined
9 party
10 **Lifetime Cap:** Sets the upper and lower interest limits for an adjustable rate mortgage
11 **Like Kind Exchange:** An exchange of one property for another with a deferral of tax
12 consequences; also known as a "1031 exchange"
13 **Limited Liability Company:** A business entity that may operate a real estate
14 brokerage having characteristics similar to a partnership and a subchapter "S"
15 corporation
16 **Limited Liability Partnership:** An alternative, hybrid business entity with the
17 combined characteristics and benefits of both limited partnerships and "S"
18 corporations
19 **Limited Partnership:** A business entity consisting of one or more general partners
20 and one or more limited partners
21 **Limited Representation:** A broker who offers to buyers and/or sellers representation
22 as a transaction broker without offering full fiduciary duties
23 **Liquidated Damages:** A specific dollar amount of damages to be paid by a breaching
24 party as specified in the contract
25 **Liquidation Analysis:** Comparing the value of assets to liabilities, the difference
26 typically representing minimum value
27 **Liquidity:** The ability to convert assets to cash or its equivalent within a reasonable period
28 of time
29 **Lis Pendens:** Constructive notice of a pending legal action
30 **Loan Origination Fee:** A separate fee charged by a mortgage lender added to the closing
31 costs of the buyer
32 **Loan Servicing:** Collecting and processing payments on behalf of the mortgagee
33 **Loan-to-Value Ratio:** The relationship between the loan amount to the value of a
34 property
35 **Lot and Block:** A common type of legal description used for single-family properties
36 located in subdivisions (recorded plat maps)
37 **Mansard:** A four-sided roof with each side having two separate slopes of different
38 angle degrees; the lower slope is at a steeper angle than the upper slope
39 **Margin:** The additional rate of interest charged over and above the index rate in an
40 adjustable rate mortgage
41 **Market Value:** The most probable price a property will bring from a fully informed
42 buyer, willing but not compelled to buy, and the lowest price a fully informed
43 seller will accept if not compelled to sell
44 **Marketable Record Title Act:** If a continuous chain of title has existed for at least
45 30 years, any potential title defect more than 30 years old is considered cured
46 **Meeting of the Minds:** An agreement and understanding between the parties
47 concerning the intent of their contractual terms
48 **Metes and Bounds:** The most accurate method to legally describe both regular and
49 irregular shaped parcels of real estate and is based on distances (metes) and
50 directions (bounds); also known as the "surveyor's system"
51 **Mill:** One one-thousandth (.001)

1 **MIP:** Mortgage Insurance Premium; payment for mortgage insurance which protects the
2 lender in the event of default

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

4 **Mortgage:** A document providing written evidence of a creditor's right to have a debtor's
5 real property sold upon default and foreclosure

6 **Mortgagee:** The lender; the one to whom the property is pledged

7 **Mortgagor:** The borrower; the one pledging the collateral as security for a debt

8 **Multiple License:** Additional license(s) issued to a broker when necessary for the
9 conduct of brokerage business

10 **Negative Amortization:** When the monthly payment is insufficient to pay the
11 accumulated interest for that month resulting in an increase in the amount of the
12 principal

13 **Net Lease:** A lease in which the tenant pays a specified rent plus a portion of typical
14 landlord costs

15 **Net Listing:** A listing agreement whereby the broker keeps any funds over a definite net
16 amount to be received by the seller

17 **Nolo Contendre:** A plea of no contest entered in a criminal court of law

18 **Nonconforming Loan:** A loan that does not meet FNMA and FHLMC borrowing
19 requirements

20 **Nonconforming Use:** A use of property which no longer conforms to the current
21 zoning regulations, but its continued use is allowed because the use was
22 lawfully established and maintained prior to the change in zoning

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

26 **Note:** Legal evidence of a debt that must accompany a mortgage in Florida; a legally
27 executed pledge to pay a stipulated sum of money

28 **Notice of Non-Compliance:** A warning that allows a licensee 15 days to correct a
29 minor infraction without consequence

30 **Novation:** Substitution of a new contract for an existing contract between the same or
31 different parties

32 **Open Listing:** Listing agreement whereby the seller promises to pay a broker a
33 commission if that broker procures a buyer; the seller may sell the property
34 without owing a commission, and the seller may enter an open listing with
35 several different brokers simultaneously

36 **Option:** A right, given as a continuing offer, to purchase real property upon specific
37 terms within a given period of time

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

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

44 **Package Mortgage:** A debt secured by pledge of both real property and personal
45 property such as range, refrigerator, or furniture

46 **Partially Amortized Mortgage:** Mortgage loan repayment with equal monthly
47 payments, but with a large balloon payment due at the end of the term

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

50 **Periodic Cap:** Limits the time period interval for ARM interest rate adjustments

51

1 **Personal Property:** All property that is not real property such as a car, a boat, stocks,
2 or a mortgage; also known as a chattel

3 **Personal Representative's Deed:** Utilized when the grantor is deceased

4 **PITI:** A mortgage payment that includes principal, interest, taxes, and insurance

5 **Planned Unit Development:** Residential project with mixed land uses and high
6 residential density

7 **Plottage:** An increase in value of property experienced through assemblage

8 **Point of Beginning:** The reference point that is the starting place for all metes and
9 bounds legal descriptions

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

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

16 **Pre-closing Inspection:** On-site review and inspection of a property shortly before
17 closing

18 **Prepayment Clause:** Mortgage provisions permitting the borrower to make loan
19 payments in advance of their due dates

20 **Prepayment Penalty:** Mortgage provision that allows a monetary penalty to be
21 imposed if the loan is paid off ahead of schedule

22 **Prima Facie Evidence:** Evidence that is valid and admissible on its face requiring no
23 further proof of authenticity

24 **Principal:** A party employing the services of an agent

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

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

31 **Private Mortgage Insurance (PMI):** Non-governmental mortgage insurance needed
32 to insure the portion of the mortgage balance that exceeds an 80% loan to
33 value ratio

34 **Probable Cause:** Reasonable grounds or justification for prosecution

35 **Profit:** The difference between the selling price and the cost price of an asset

36 **Progression:** The tendency of a property to increase in value at a faster rate in order
37 to conform to surrounding properties

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

40 **Property Report:** A brief summary of a subdivision property

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

42 **Prorate:** To apportion an expense between the buyer and seller so that each party
43 pays his or her pro rata share

44 **Public Accommodation:** A hotel, motel, or other facility to which the general public has
45 access to

46 **Purchase Money Mortgage:** A mortgage given by the buyer as part or all of the
47 purchase price consideration for real property

48 **Quiet Enjoyment:** The grantor guarantees the grantee peaceful possession undisturbed
49 by other claims of title

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

1 **Range:** A vertical strip of land six miles wide that runs north and south and helps determine
2 distances east and west across Florida

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

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

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

10 **Real Estate Services:** Buy, advertise, rent, sell, auction, lease, and exchange (BAR
11 SALE)

12 **Real Property:** Real estate plus the legal “bundle of rights” that a person acquires by
13 having an interest in real estate

14 **Recommended Order:** A final report prepared by an Administrative Law Judge
15 (hearing officer) containing finding of facts, conclusions, and suggested penalties,
16 if any.

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

20 **Redlining:** A lending institution’s illegal refusal to make mortgage loans in certain
21 areas

22 **Registration:** Authorization by the state to place an applicant on the register (record)
23 of officially recognized individuals and businesses

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

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

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

30 **Reverse Annuity Mortgage:** A loan arrangement in which a lender makes payments to
31 the borrower

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

34 **Right to Reinstate:** The ability to recover from default by bringing current all payments
35 due

36 **R-Value:** Insulation rating number; the higher the R-value, the greater amount of
37 resistance to temperature fluctuation is provided

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

40 **Sales Associate:** A licensed individual who, for compensation, is employed by a
41 broker or owner/developer

42 **Satisfaction of Mortgage:** Document signed by mortgagee indicating the entire loan
43 is satisfied and the mortgage is discharged

44 **Section:** A one-mile square found within a township

45 **Seisen:** A statement of ownership or title to real property

46 **Seller’s market:** The demand is greater than the supply of homes available

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

49 **Situs:** Relationships and influences created by location of a property which affect
50 value (e.g., accessibility, personal reference)

51 **Sole Proprietorship:** Operating as an individual in business

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

3 **Special Assessment:** A one-time tax assessed against a property that will directly
4 benefit from some public improvement

5 **Special Exception:** An individual ruling in which a property is granted the right to a
6 use otherwise contrary to law

7 **Special Flood Hazard Area:** Flood zones "A" and "V" are considered to be areas prone
8 to flooding at least 1% of the time each year

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

11 **Statute of Frauds:** Body of law that states that certain types of contracts must be in
12 writing to be enforceable

13 **Statute of Limitations:** Establishes time limits for filing litigation

14 **Steering:** The illegal practice of directing buyers to or from certain neighborhoods based
15 on minority status; prohibited by federal, state, and local fair housing laws

16 **Sub-agency:** The relationship of a salesperson working under a broker's supervision
17 with the broker acting as a principal and the salesperson as an agent

18 **Subdivision Plat Map:** The layout of a subdivision showing lots, roads, and other
19 infrastructure by the developer to a local government agency

20 **Subdivision:** A tract of land partitioned into lots for homes or other uses and improved
21 by roads, water and sewage systems, etc.

22 **Subject Property:** The real property under discussion or appraisal

23 **Subject to Mortgage:** A grantee taking title to real estate "subject to the mortgage" is
24 not assuming personal liability to the mortgagee for the payment of the
25 mortgage note; in the event of a default on payment of the note, the grantee
26 could lose the property and any equity he has in the property in a foreclosure
27 sale

28 **Sublease:** A tenant who transfers less than the entire leasehold estate

29 **Subordination agreement:** An agreement whereby the holder (mortgagee) of a
30 higher priority mortgage agrees to subordinate or relinquish its priority position
31 to an existing or subsequent mortgage

32 **Subpoena:** A legal process of ordering a witness to appear and testify before a court
33 of law or formal administrative hearing

34 **Summary Suspension:** Emergency or immediate suspension of a license

35 **Supply:** The product (properties) that is available at any given time

36 **Tax Rate:** The millage rate; the tax rate is multiplied by the taxable value of a property to
37 determine the levy

38

39 **Tax Shelter:** An investment that shields income or gain from payment of income
40 taxes; a term used to describe some tax advantages of owning real property (or
41 other investments), including postponement or even elimination of certain taxes

42 **Taxable Income:** Income that is subject to taxation

43 **Taxable Value:** Value of property for tax purposes determined by subtracting all
44 exemptions from the assessed value

45 **Teaser Rate:** Below-market introductory rate for an adjustable rate mortgage

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

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

50 **Tenancy by the Entireties:** Ownership of real property by husband and wife only

51

1 **Tenancy in Common:** Ownership of real property whereby the co-owners may or may
2 not have acquired title at the same time, may or may not have the same interest
3 and right of use, and do not have the right of survivorship
4 **Term Mortgage:** A mortgage loan that provides for periodic payments of interest
5 only with a balloon payment at the end of the loan term
6 **Testate:** A person who dies with a will
7 **Time-Share:** Selling or leasing a single unit to multiple owners or tenants with specific
8 rights to use
9 **Title Theory:** A concept in lending whereby title temporarily transfers to the mortgagee
10 until the debt is repaid
11 **Title:** The evidence one has of ownership to real property
12 **Township Line:** The horizontal lines six miles apart that border a township (tier)
13 **Township:** A six-mile square area that is created when two six-mile wide bands called
14 townships (tiers) and ranges intersect.
15 **Township or Tier:** The horizontal strip of land six miles wide that runs east and west
16 and helps determine distances north and south across Florida
17 **Toxic Waste:** A hazardous substance found in soil or water
18 **Trade Name:** Any adopted or fictitious name used to designate a business concern
19 **Transaction Broker:** A broker who provides limited representation to either the seller
20 or the buyer or both in a real estate transaction (no fiduciary requirements)
21 **UFMIP:** Up Front Mortgage Insurance Premium; lump-sum mortgage insurance
22 premium paid at closing for FHA loans
23 **Underground Storage Tanks:** Below ground containers used typically for petroleum
24 product storage
25 **Unenforceable:** Status of a contract when it violates the Statute of Frauds
26 **Unilateral Contract:** A contract whereby only one party undertakes a promise or
27 obligation
28 **USPAP:** Rules and guidelines that must be followed by any professional conducting
29 an appraisal
30 **Vacancy Rate:** The percentage of rental units unoccupied
31 **Valid:** When a contract satisfies all legal requirements
32 **Variable Lease:** The tenant pays rent based on a pre-determined index
33 **Variance:** An exception to strict compliance with zoning regulations or ordinances
34 granted to relieve a hardship
35 **Void:** Having no legal force or binding effect
36 **Voidable:** Contract involving a minor or other incompetent party wherein the
37 incompetent part has a choice to enforce or rescind the contract
38
39 **Voluntary Inactive:** When a licensee chooses not to have an active license or files the
40 proper form with the DRE requesting inactive status
41 **Wraparound Mortgage:** Creating a new second mortgage (generally owner
42 financing) that encompasses any existing mortgages
43 **Zero Lot Line:** Lot with no setback requirements
44 **Zoning Ordinance:** Local law that restricts the use of land to various classifications,
45 such as residential and commercial