

# Contents

---

PREFACE	xxxiii
ACKNOWLEDGMENTS	xxxix

---

## **1** AN INTRODUCTION TO REAL ESTATE 1

<i>Chapter Objectives</i>	1
<i>Chapter Outline</i>	1
<b>I. INTRODUCTION</b>	<b>1</b>
<b>II. REAL PROPERTY VERSUS PERSONAL PROPERTY</b>	<b>2</b>
A. What Makes Real Property So Unique?	3
B. Physical Characteristics of Land	4
C. Economic Characteristics of Land	4
<b>III. THE REAL ESTATE MARKET</b>	<b>7</b>
<b>IV. CLASSIFYING PROPERTY BY USE</b>	<b>8</b>
A. Unimproved Land	9
B. Residential Property	9
1. Single- and Multi-Family Homes	9
2. Apartments	9
3. Condominiums and Townhouses	10
a. Condominiums	10
b. Townhouses	10
4. Cooperatives	10
5. Mobile Homes	11
6. Manufactured Housing and “Kit” Homes	11
C. Commercial Property	11
1. Retail/Wholesale	12
2. Shopping Centers and Malls	12
D. Industrial Property	12
1. Industrial Parks	12
2. Light Industry/Heavy Industry	12

E. Farm and Rural Property	13
F. Recreational Property	13
G. Government-Owned Land	13
<i>Case Excerpt: Jones v. State Prop. Tax Appeal Bd.</i>	13
<i>COVID-19 Concern</i>	20
<i>Chapter Summary</i>	20
<i>Skills You Need in the Real World</i>	21
<i>Ethical Issues for the Paralegal: An Introduction</i>	22
<i>Key Terms and Concepts</i>	23
<i>End-of-Chapter Exercises</i>	23
<i>Annotated Document: Real Estate Sales Listing</i>	25
<i>Practice Questions for Test Review</i>	25



## ESTATES IN REAL PROPERTY 27

<i>Chapter Objectives</i>	27
<i>Chapter Outline</i>	27
<b>I. INTRODUCTION</b>	<b>28</b>
<b>II. REAL PROPERTY ESTATES</b>	<b>28</b>
<b>III. FEE SIMPLE ESTATES</b>	<b>28</b>
A. Rights of Fee Simple Absolute Owners	30
B. Conditional Fee Simple Estates	30
1. Fee Simple Determinable	31
2. Fee Simple on a Condition Subsequent	31
<b>IV. LIFE ESTATES</b>	<b>33</b>
A. Historical Basis of Life Estates	33
B. Remaindermen	34
C. Waste	34
D. Court Doctrines That Affect Life Estates	34
E. Life Estate <i>Pur Autre Vie</i>	35
<b>V. CONCURRENT OWNERSHIP IN REAL ESTATE</b>	<b>35</b>
A. Tenants in Common	36
B. Joint Tenancy	36
1. Right of Survivorship	36
2. Specificity Required to Create Joint Tenancy	37
C. Tenancy by Entirety	38

D. Tenancy in Partnership	39
E. The Right to Partition	39
<i>Case Excerpt: Vargo v. Adams</i>	40
<i>COVID-19 Concern</i>	42
<i>Chapter Summary</i>	42
<i>Skills You Need in the Real World</i>	43
<i>Ethical Issues for the Paralegal: Drafting Deeds</i>	43
<i>Key Terms and Concepts</i>	44
<i>End-of-Chapter Exercises</i>	44
<i>Annotated Document: Creating a Life Estate</i>	46
<i>Practice Questions for Test Review</i>	46

## 3

## PROPERTY DESCRIPTIONS AND BOUNDARIES 49

<i>Chapter Objectives</i>	49
<i>Chapter Outline</i>	49
<b>I. INTRODUCTION</b>	<b>50</b>
<b>II. THE HISTORY OF PROPERTY BOUNDARIES</b>	<b>50</b>
<b>III. PROPERTY DESCRIPTIONS IN DEEDS</b>	<b>51</b>
A. The Elements of a Valid Property Description	51
B. Legal Requirements for Property Descriptions in Deeds	52
C. Referring to Other Documents to Prove Property Boundaries	52
D. Litigating Property Boundaries	53
E. Ambiguous Property Descriptions	53
1. Patent Ambiguities	54
2. Parol Evidence and Property Descriptions	54
3. Latently Ambiguous Property Descriptions	55
<b>IV. METES AND BOUNDS DESCRIPTIONS</b>	<b>55</b>
A. Drafting Metes and Bounds Descriptions	57
B. Using Technology to Help with Metes and Bounds Drawings	59
<b>V. OTHER METHODS TO DESCRIBE PROPERTY: GOVERNMENT SURVEY SYSTEM</b>	<b>59</b>
A. Tract Indexing	59
B. Plats	60
C. Torrens Registration	60

<b>VI. WATER RIGHTS</b>	<b>61</b>
A. The Right to Use Water	61
1. Limitations on Right to Use the Water	61
2. Court Doctrines That Affect Water Rights	61
B. Natural Forces That Affect Property Boundaries	62
1. Accretion	62
2. Erosion	62
3. Avulsion	62
4. Reliction	63
C. Water and Property Boundaries	63
1. Navigable Waters	63
2. Non-Navigable Waters	63
<i>Case Excerpt: In re Foreclosure of Real Prop. Under Deed of Trust from Vicque</i>	64
<i>COVID-19 Concern</i>	69
<i>Chapter Summary</i>	69
<i>Skills You Need in the Real World</i>	70
<i>Ethical Issues for the Paralegal: Confidentiality</i>	70
<i>Key Terms and Concepts</i>	71
<i>End-of-Chapter Exercises</i>	71
<i>Annotated Document: Metes and Bounds Description</i>	73
<i>Practice Questions for Test Review</i>	74



## **TRANSFERRING TITLE TO REAL ESTATE 77**

<i>Chapter Objectives</i>	77
<i>Chapter Outline</i>	77

### **I. INTRODUCTION 78**

### **II. VOLUNTARY TRANSFERS OF TITLE 78**

A. Sale	78
1. The Differences Between Sale of Personal Property and Sale of Real Property	78
2. The Basic Requirements of Sale of Real Property	80
a. Mutual Assent	80
b. Consideration	80
c. Capacity	81
i. Infants	81
ii. Intoxicated Persons	81
iii. Mentally Incompetent Persons	81
d. Property Description	82

B. Will (Probate)	84
1. The Minimum Requirements of a Will	84
a. The Will Must Be in Writing	84
b. The Will Must Be Signed by the Testator	84
c. The Will Must Be Witnessed	85
d. The Will Must Clearly Express the Testator's State of Mind	86
e. The Will Must Clearly Devise Property to a Specific Beneficiary	86
2. Wills Versus Sales	86
3. Different Methods Used to Transfer Title Through Wills	87
a. Intestate Succession	87
b. Testate Succession	87
C. Gift	88
D. Dedication	88
E. Homesteading	88
<b>III. INVOLUNTARY TRANSFERS OF TITLE</b>	<b>88</b>
A. Foreclosure	89
1. Judicial Foreclosure	89
2. Power of Sale Foreclosure	89
a. The Right to Foreclose	90
b. Default	90
c. Notice to the Borrower	90
d. Steps in Foreclosure	91
e. The Foreclosure Auction	91
f. The Right of Redemption	92
g. Purchasing Property at a Foreclosure Sale	92
h. Terminating the Rights of Other Creditors	93
i. Mortgages and Deeds of Trust	93
B. Eminent Domain (Condemnation)	93
1. The Process of Eminent Domain: Condemnation	94
2. Inverse Condemnation	94
C. Partition	95
D. Escheat	95
E. Civil Judgment	95
F. Adverse Possession	95
1. Why Does the Doctrine of Adverse Possession Exist?	95
2. The Elements of Adverse Possession	96
a. Open, Continuous, Notorious, and Hostile Possession	96
b. Color of Title	97
3. Specified Time Periods for Adverse Possession	97
G. Tax Auctions	98
<i>Case Excerpt: Dip Lending I, LLC v. Cleveland Avenue Properties</i>	98
<i>COVID-19 Concern</i>	101
<i>Chapter Summary</i>	101

<i>Skills You Need in the Real World</i>	102
<i>Ethical Issues for the Paralegal: Fraudulent Transfers</i>	102
<i>Key Terms and Concepts</i>	103
<i>End-of-Chapter Exercises</i>	103
<i>Annotated Document: Notice of Foreclosure</i>	105
<i>Practice Questions for Test Review</i>	106

## 5

## RIGHTS ASSOCIATED WITH REAL ESTATE 109

<i>Chapter Objectives</i>	109
<i>Chapter Outline</i>	109
<b>I. INTRODUCTION</b>	<b>110</b>
<b>II. FIXTURES</b>	<b>110</b>
A. Determining When Personal Property Becomes a Fixture	111
1. Intent Test	111
2. Manner of Attachment Test	112
3. Use Test	112
4. Damage Test	112
B. Trade Fixtures	113
<b>III. EASEMENTS</b>	<b>113</b>
A. Appurtenant Easements	114
B. In Gross Easements	115
C. Easements Run with the Land	116
D. Creating Easements	116
1. Agreement	116
2. Deed Reservation	116
3. Implication	117
4. Necessity	117
5. Prescription	117
6. Eminent Domain	118
E. Terminating Easements	118
1. The Easement Is No Longer Needed	119
2. The Properties Have Merged	119
3. The Parties Enter into an Agreement	119
4. The Easement Is Abandoned	119
<b>IV. LICENSES</b>	<b>120</b>
<b>V. PROFIT À PRENDRE</b>	<b>120</b>
<b>VI. LIENS</b>	<b>121</b>

<b>VII. ASSESSMENTS</b>	<b>122</b>
<b>VIII. AIR RIGHTS</b>	<b>122</b>
<b>IX. WATER RIGHTS</b>	<b>124</b>
A. The Right to Draw Water	124
B. Subterranean Water	124
C. Terminology for Water Rights	125
<b>X. MINERAL RIGHTS</b>	<b>125</b>
<i>Case Excerpt: Scott v. Lee &amp; Donna Metcalf Charitable Trust</i>	126
<i>COVID-19 Concern</i>	130
<i>Chapter Summary</i>	130
<i>Skills You Need in the Real World</i>	131
<i>Ethical Issues for the Paralegal: Unauthorized Practice of Law</i>	131
<i>Key Terms and Concepts</i>	131
<i>End-of-Chapter Exercises</i>	132
<i>Annotated Document: Lien</i>	134
<i>Practice Questions for Test Review</i>	135



## REAL ESTATE CONTRACTS 137

<i>Chapter Objectives</i>	137
<i>Chapter Outline</i>	137
<b>I. INTRODUCTION</b>	<b>138</b>
<b>II. WHAT IS A CONTRACT?</b>	<b>138</b>
A. Offer	139
1. Offers Do Not Require Specific Language	140
2. The Reasonable Person Standard and Offers	140
B. Acceptance	141
1. The Power of Acceptance	141
2. Communicating the Acceptance to the Offeror	142
3. The Mailbox Rule	142
4. Counteroffers	143
C. Mutual Assent	143
D. Consideration	144
E. Legality	144
F. Capacity	144
<b>III. THE STATUTE OF FRAUDS</b>	<b>145</b>

<b>IV. FORMATION ISSUES IN CONTRACT LAW</b>	<b>146</b>
A. Guidelines That Courts Use to Interpret Contracts	146
B. Mistake	147
C. Fraud	147
<b>V. REAL ESTATE CONTRACTS</b>	<b>147</b>
A. Listing Agreements	148
1. Open Listing	148
2. Exclusive Listing	148
3. Multiple Listing	148
B. Offer of Purchase and Contract	149
1. Property Description	151
2. Purchase of Personal Property	151
3. Purchase Price Details	151
4. Conditions	151
5. Evidence of Title	151
6. Property Disclosures	151
7. Risk of Loss Provisions	152
8. Closing Provisions	152
9. Signature Provisions	152
C. Options	152
<b>VI. CONTRACT CLAUSES</b>	<b>153</b>
A. Time Is of the Essence	153
B. Title	153
C. Escrow	154
D. Insurance (Risk of Loss)	154
<b>VII. BREACH OF CONTRACT</b>	<b>154</b>
A. Remedies for the Seller	154
B. Remedies for the Buyer	155
C. Remedies for the Broker	155
<i>Case Excerpt: Pickett Fence Preview, Inc. v. Zillow, Inc.</i>	155
<i>COVID-19 Concern</i>	159
<i>Chapter Summary</i>	159
<i>Skills You Need in the Real World</i>	160
<i>Ethical Issues for the Paralegal: Legal Research</i>	161
<i>Key Terms and Concepts</i>	161
<i>End-of-Chapter Exercises</i>	161
<i>Annotated Document: Offer of Purchase for Real Estate</i>	163
<i>Practice Questions for Test Review</i>	164



**LANDLORD AND TENANT LAW 167**

<i>Chapter Objectives</i>	167
<i>Chapter Outline</i>	167
<b>I. INTRODUCTION</b>	<b>168</b>
<b>II. THE LANDLORD-TENANT RELATIONSHIP</b>	<b>169</b>
A. Historical Background on Landlord-Tenant Law	169
B. Modern Changes to the Landlord-Tenant Relationship	170
<b>III. LEASES</b>	<b>171</b>
A. Fixed-Rent Leases	171
B. Percentage Leases	171
C. Net Leases	171
D. Rent-to-Own Leases	172
E. Ground Leases	172
F. Timber Leases	172
G. Mineral Leases	172
H. Oil and Gas Leases	173
<b>IV. COMMON LEASE PROVISIONS</b>	<b>173</b>
A. Rent	173
B. Late Payments and Fees	174
C. Pet and Security Deposits	174
D. Renewal Provisions	174
E. Persons Permitted on the Leased Premises	174
F. Acceptance of Leased Premises	175
G. Modifying or Altering the Premises	175
H. Subletting	175
I. Notice	175
<b>V. COMMERCIAL LEASES</b>	<b>176</b>
<b>VI. PUBLIC POLICY CONCERNS IN LEASES</b>	<b>177</b>
A. Federal Law Requirements	177
B. Statue of Frauds Considerations	177
<b>IV. RIGHTS AND DUTIES CREATED BY THE LANDLORD-TENANT RELATIONSHIP</b>	<b>178</b>
A. Uniform Residential Landlord and Tenant Act	178
B. Landlords' Duties and Rights	178
1. Right to Re-Enter Premises	179

2. Duty to Repair	179
3. Duty to Third Parties	181
4. Discriminatory Practices	181
C. Tenants' Duties and Rights	182
1. Right to Use and Enjoyment	182
2. Tenant Duties	182
3. Responsibility for Damages to Leased Premises	183
a. Ordinary Wear and Tear	183
b. Safety Deposits	183
c. Pet Deposits	184
D. Legal Doctrines That Arise in the Landlord-Tenant Relationship	184
1. Warranty of Habitability	184
2. Quiet Enjoyment	184
<b>VIII. REMEDIES FOR BREACH OF DUTY</b>	<b>184</b>
A. Tenant Remedies Against Landlord	185
1. Damages That Can Be Awarded to the Tenant	185
a. Equitable Relief	185
b. Compensatory Damages	185
c. Punitive Damages	186
2. Constructive Eviction	186
3. Actions for Wrongful Eviction	187
B. Landlord Remedies Against Tenant: Eviction	187
1. Procedures to Evict	188
2. Self-Help Eviction	188
3. Retaliatory Eviction	189
<b>IX. CLASSIFYING LANDLORD-TENANT RELATIONSHIPS</b>	<b>189</b>
A. Tenancy for Years	189
1. Creating a Tenancy for Years	190
2. Terminating a Tenancy for Years	190
B. Tenancy from Year to Year	190
1. Creating a Tenancy from Year to Year	190
2. Terminating a Tenancy from Year to Year	190
C. Tenancy at Will	191
1. Creating a Tenancy at Will	191
2. Terminating a Tenancy at Will	191
D. Tenancy at Sufferance	191
1. Creating a Tenancy at Sufferance	191
2. Terminating a Tenancy at Sufferance	191
<i>Case Excerpt: Alabama Assoc. of Realtors v. U.S. Dept. of Health and Human Services</i>	192
<i>COVID-19 Concern</i>	196
<i>Chapter Summary</i>	196

<i>Skills You Need in the Real World</i>	197
<i>Ethical Issues for the Paralegal: Landlords Who Violate State Law</i>	197
<i>Key Terms and Concepts</i>	197
<i>End-of-Chapter Exercises</i>	198
<i>Annotated Document: Apartment Lease</i>	199
<i>Practice Questions for Test Review</i>	200



## REAL ESTATE DEEDS 203

<i>Chapter Objectives</i>	203
<i>Chapter Outline</i>	203

<b>I. INTRODUCTION</b>	<b>204</b>
<b>II. A BRIEF HISTORY OF DEEDS</b>	<b>204</b>
<b>II. ELEMENTS OF DEEDS</b>	<b>205</b>
A. The Deed Must Be in Writing	205
B. The Deed Must Identify the Grantor and the Grantee	206
C. The Deed Must Be Signed by the Grantor	207
D. The Grantor Must Have Legal Capacity	208
E. The Property Must Be Adequately Described	210
1. Specific Descriptions	210
2. Court Interpretations of Ambiguous Property Descriptions	211
F. The Deed Must Contain Language Indicating an Intention to Convey Property Rights	211
G. The Deed Must Be Delivered by the Grantor and Accepted by the Grantee	212
1. Proving Delivery	213
2. Delivery in Escrow	214
H. The Deed Must Be Attested and Acknowledged	214
1. Attestation	214
2. Acknowledgment	215
I. Other Deed Provisions	215
1. Seals	215
2. Consideration Recitals	216
3. Exceptions and Exclusions	216
J. Nonessential Deed Provisions	216
1. Witnesses	216
2. Date	217

<b>IV. TYPES OF DEEDS</b>	<b>217</b>
A. General Warranty Deeds	217
1. <i>Seizin</i>	218
2. Quiet Enjoyment	218
3. Against Encumbrances	218
4. Further Assurance	218
5. Warranty Forever	218
B. Special Warranty Deeds	219
C. Deeds of Trust/Mortgages	220
D. Quitclaim Deed	221
<b>V. RECORDING STATUTES</b>	<b>221</b>
A. Notice Recording Statutes	221
B. Race-Notice Recording Statutes	221
C. Race Recording Statutes	222
<i>Case Excerpt: Corso v. Miser</i>	222
<i>COVID-19 Concern</i>	227
<i>Chapter Summary</i>	227
<i>Skills You Need in the Real World</i>	228
<i>Ethical Issues for the Paralegal: Use of Forms</i>	228
<i>Key Terms and Concepts</i>	229
<i>End-of-Chapter Exercises</i>	229
<i>Annotated Document: General Warranty Deed</i>	231
<i>Practice Questions for Test Review</i>	233



## **MORTGAGES AND FINANCING THE PURCHASE OF REAL ESTATE 235**

<i>Chapter Objectives</i>	235
<i>Chapter Outline</i>	235
<b>I. INTRODUCTION</b>	<b>236</b>
<b>II. MORTGAGE MARKETS</b>	<b>237</b>
A. Primary Mortgage Market	237
B. Secondary Mortgage Market	239
1. Federal Agencies in the Secondary Mortgage Market	240
a. Fannie Mae	241
b. Ginnie Mae	241
c. Freddie Mac	242
d. HUD	242
e. The Role of the Federal Reserve Board	242
f. Troubled Asset Relief Program	242

2. Federal Legislation That Governs Real Estate Financing	242
a. Dodd-Frank	243
i. Sweeping Changes in Truth-in-Lending	244
ii. Potential Problems Under Dodd-Frank	247
iii. Violations of Dodd-Frank	248
b. Real Estate Settlement Procedures Act	248
<b>III. THE LEGAL REQUIREMENTS OF A MORTGAGE/DEED OF TRUST</b>	<b>249</b>
A. Mortgages Versus Deeds of Trust	249
B. The Elements of a Mortgage	249
1. Mortgages Must Be in Writing	250
2. The Parties Must Be Identified	250
3. Specific Clauses in Mortgages	251
a. Property as Collateral	251
b. Promissory Note	251
c. Granting Clause	251
d. Description of the Debt	251
e. Power of Sale Provision	252
f. Taxes and Insurance	252
g. Estoppel Certificate	252
h. Acceleration Clause	252
i. Due on Sale Clause	252
j. Interest Escalation Clause	252
k. Prepayment Clause	253
l. Attorney's Fees	253
C. Recording Mortgages	253
<b>IV. TYPES OF MORTGAGES</b>	<b>254</b>
A. Fixed-Rate Mortgages	254
1. Advantages and Disadvantages of Fixed-Rate Mortgages	254
2. Amortization	255
B. Adjustable-Rate Mortgages	255
1. Advantages and Disadvantages of Adjustable-Rate Mortgages	255
2. Rate Caps	256
C. Other Types of Mortgages	256
1. Purchase-Money Mortgages	256
2. Wraparound Mortgages	257
3. Second Mortgages	257
4. Equity Lines of Credit	258
5. Bridge Loans	258
<b>V. QUALIFYING FOR A MORTGAGE</b>	<b>258</b>
A. Underwriting	260

B. Borrower's Credit History	260
1. Consumer Reporting Agencies	260
2. The Fair Credit Reporting Act	260
3. Points	261
C. Appraisal	261
D. The Rise of Internet Lenders	261
<b>VI. DISCHARGING A MORTGAGE</b>	<b>261</b>
<b>VII. FORECLOSURE</b>	<b>262</b>
A. Judicial Foreclosure	262
B. Power of Sale Foreclosure	262
C. The Foreclosure Auction	262
D. Decreasing Foreclosure Rates	263
<i>Case Excerpt: Mohanna v. Wells Fargo Bank, N.A.</i>	263
<i>COVID-19 Concern</i>	266
<i>Chapter Summary</i>	266
<i>Skills You Need in the Real World</i>	267
<i>Ethical Issues for the Paralegal: Predatory Lending</i>	268
<i>Key Terms and Concepts</i>	268
<i>End-of-Chapter Exercises</i>	268
<i>Annotated Document: Residential Mortgage</i>	270
<i>Practice Questions for Test Review</i>	275



## **PUBLIC AND PRIVATE RESTRICTIONS ON THE USE OF LAND 277**

<i>Chapter Objectives</i>	277
<i>Chapter Outline</i>	277
<b>I. INTRODUCTION</b>	<b>278</b>
<b>II. PUBLIC RESTRICTIONS ON PRIVATE LAND USE</b>	<b>278</b>
A. Zoning	278
1. Aesthetic Zoning	279
2. Enforcing Zoning Regulations	279
3. Zoning Classifications	280
a. Residential	280
b. Commercial	281
c. Industrial	281
4. Exceptions to Zoning Classifications	281
a. Nonconforming Use	281
b. Conditional Use Permit	282
c. Variance	282

5. Unconstitutional or Illegal Zoning Regulations	283
a. Rational Basis Test	283
b. “Spot” Zoning	283
B. Building Codes	284
C. Planning Boards	285
D. Historic Districts	285
E. Urban Planning	285
F. Interstate Land Sales Full Disclosure Act	286
G. Environmental Issues	286
1. Clean Water Act	287
2. The Superfund	287
<b>III. PRIVATE RESTRICTIONS ON PRIVATE LAND USE</b>	<b>287</b>
A. Restrictive Covenants	287
1. Creating Covenants	288
2. Restrictive Covenants “Touch and Concern”	288
3. Typical Covenants	289
4. Illegal or Unconstitutional Covenants	289
5. Enforcing Covenants	290
6. Terminating Restrictive Covenants	290
a. Stated Time Period	290
b. Abandonment	290
c. Changed Conditions	290
d. Merger	291
B. Subdivision Rules and Regulations	291
C. Nuisance Actions	291
1. Public Nuisance	291
2. Private Nuisance	292
<i>Case Excerpt: Moseley v. Arnold</i>	292
<i>COVID-19 Concern</i>	299
<i>Chapter Summary</i>	299
<i>Skills You Need in the Real World</i>	300
<i>Ethical Issues for the Paralegal: Discriminatory Restrictive Covenants</i>	300
<i>Key Terms and Concepts</i>	300
<i>End-of-Chapter Exercises</i>	301
<i>Annotated Document: Restrictive Covenants</i>	302
<i>Practice Questions for Test Review</i>	304



<i>Chapter Objectives</i>	307
<i>Chapter Outline</i>	307

<b>I. INTRODUCTION</b>	<b>308</b>
<b>II. THE LAW OF AGENCY</b>	<b>308</b>
A. Creating an Agency Relationship	308
B. Agent's Duty to the Principal	309
1. Obedience	309
2. Care	310
3. Loyalty	310
4. Accounting	310
C. Agent's Duty to Third Parties	310
1. Honesty and Fair Dealing	311
2. Not to Commit Fraud	311
a. Material Facts	311
b. Sales Tactics	312
3. Avoid Negligent Misrepresentation	312
D. Principal's Duty to Agent	313
1. Compensate the Agent	313
2. Cooperate	313
3. Not to Unfairly Injure the Agent's Reputation	314
E. Independent Contractors	314
<b>III. APPLYING AGENCY LAW TO REAL ESTATE AGENTS</b>	<b>315</b>
A. A Real Estate Agent's Duty of Care	315
B. A Real Estate Agent's Responsibility to Disclose Information	316
C. Classifications of Real Estate Agents	316
1. Real Estate Brokers Versus Real Estate Agents	316
2. Becoming a Real Estate Broker or Agent	317
3. Regulations That Govern Real Estate Brokers and Agents	318
4. Services Provided by Real Estate Agents and Brokers	318
a. Multiple Listing Service	319
b. Locating and Prequalifying Buyers	320
<b>IV. OTHER REAL ESTATE PROFESSIONS</b>	<b>321</b>
A. Real Estate Investors	321
1. Advantages of Real Estate Investments	321
a. Appreciation in Value	322
b. Impact on Credit Rating	322
c. Potential Source of Funds	322
d. Tax Advantages	322
2. Disadvantages of Real Estate Investments	323
a. Poor Liquidity	323
b. Property Taxes	323
c. Maintenance Costs	323
d. Financing and Down Payment Costs	323
3. Real Estate Investment Trusts	323



4. Small Investors and “Do It Yourselfers”	324
B. Loan Officers	324
1. Online Loan Applications	325
2. Internet Mortgage Lenders	325
C. Appraisers	325
1. Process of Appraisal	325
2. The Importance of Real Estate Valuation	326
D. Surveyors	326
E. The Legal Team	328
1. Real Estate Attorneys	328
2. Real Estate Paralegals	328
3. Real Estate Title Searchers	328
4. The Role of Technology in the Real Estate Law Office	329
F. Contractors	329
G. Property Managers	329
H. Inspectors	329
<i>Case Excerpt: Clark v. Taylor Hudson Real Estate</i>	331
<i>COVID-19 Concern</i>	336
<i>Chapter Summary</i>	336
<i>Skills You Need in the Real World</i>	337
<i>Ethical Issues for the Paralegal: Real Estate Professionals’ Codes of Ethics</i>	337
<i>Key Terms and Concepts</i>	338
<i>End-of-Chapter Exercises</i>	338
<i>Annotated Document: Real Estate Appraisal</i>	340
<i>Practice Questions for Test Review</i>	341

---

## 12

## TITLE INSURANCE AND TITLE EXAMINATIONS 343

<i>Chapter Objectives</i>	343
<i>Chapter Outline</i>	343
<b>I. INTRODUCTION</b>	<b>344</b>
<b>II. TITLE INSURANCE</b>	<b>344</b>
A. What Title Insurance Does	344
B. Obtaining Title Insurance	345
1. Title Insurance Premium	346
2. Terminating the Policy	346
<b>III. TITLE EXAMINATIONS</b>	<b>346</b>
A. What Is a Title Examination?	347
B. Information Needed for a Title Examination	348

1. Names of the Current Owners	349
a. Grantor-Grantee Index	349
b. Tract Index	349
2. Description of the Property to Be Conveyed	350
3. Time Period	350
4. Tax ID Number	350
5. Deed Book and Page Number	350
6. Surveys and Plats	351
<b>IV. STEPS IN A TITLE SEARCH</b>	<b>351</b>
A. Creating a Client File	352
B. Step 1: Creating the Chain of Title	352
1. The Tax Office	353
2. Creating the Links in the Chain of Ownership	353
3. Technological Innovations in Land Records	354
C. Step 2: Establishing the Out or Adverse Conveyances	355
1. Reviewing Title Documents	356
2. Liens	357
3. UCC Listings	358
4. Marriage, Birth, and Death Records	359
5. Probate Records	359
6. Judgments	359
D. Step 3: Compiling the Information	360
1. Role of Forms	360
2. Title Abstracts	360
E. Preliminary and Final Title Certificates	361
1. Legal Malpractice and Title Examinations	361
2. Tacking	361
F. The Paralegal's Role in Title Searches	361
<b>V. COMMON PROBLEMS IN TITLE SEARCHES</b>	<b>363</b>
A. Subdivided Properties	363
B. Holes or Breaks in the Chain of Title	364
<i>Case Excerpt: Fid. Nat'l Title Ins. Co. v. Butler</i>	364
<i>COVID 19 Concern</i>	371
<i>Chapter Summary</i>	371
<i>Skills You Need in the Real World</i>	372
<i>Ethical Issues for the Paralegal: Tacking and Other Shortcuts</i>	372
<i>Key Terms and Concepts</i>	373
<i>End-of-Chapter Exercises</i>	373
<i>Annotated Document: Chain of Title</i>	375
<i>Practice Questions for Test Review</i>	377

---

**13 THE CLOSING 379**

<i>Chapter Objectives</i>	379
<i>Chapter Outline</i>	379

**I. INTRODUCTION 380****II. WHAT IS A CLOSING? 380****III. PREPARING TO CONDUCT A CLOSING 381**


A. Mortgages	381
B. Attorney Representation	382
C. Establishing the Date	382
1. Three-Day Window	382
2. Time Is of the Essence	383
D. Gathering Documents and Information	383
1. Title Search	384
2. Legal Description of the Property	384
3. Loan Payoff Amounts	385
4. Tax Information	385
5. Inspection Reports	386

**IV. PEOPLE NORMALLY PRESENT AT THE CLOSING 387**

A. Settlement Agent	388
1. Attorney	388
2. Paralegal	388
B. Buyer	389
C. Seller	389
D. Real Estate Agent	389

**V. THE CLOSING PROCEDURE 389**

A. Preparing the Loan Package	390
B. Verifying Hazard Insurance	390
C. Exchanging Documents	391
1. General Warranty Deed	391
2. Mortgage	391
a. Promissory Note	391
b. Subordination Agreements	392
3. IRS Forms	392
a. IRS Form 1099	392
b. IRS Form 4506	392
c. W-9 Form	392
4. Lien Waiver Affidavits	392
5. Disclosure Form	393
6. Bill of Sale for Personal Property	393

7. Compliance Agreement	393
8. Credit Insurance Documents	393
9. Loan Application	394
10. USA Patriot Act Requirements	394
11. PMI Disclosure	394
12. Trust Disbursement Records	395
13. Truth-in-Lending Documentation	396
14. Termite Inspection Letter	399
15. Survey	401
D. Disbursing the Funds	401
1. Lender's Fees	401
2. Attorney's Fees	402
3. Recording Fees	402
4. Seller's Profit on the Transaction	402
5. Real Estate Agent's Commission	402
6. Tax Payments	402
7. Proration	403
8. Certified Funds from the Buyer	404
<b>VI. OTHER CLOSING ISSUES</b>	<b>404</b>
A. "Escrow" Closings	404
1. Relation Back	405
2. Modifications to Escrow Closings Under Dodd-Frank	406
B. Dual Representation	406
<b>VI. AFTER THE CLOSING</b>	<b>406</b>
<i>Case Excerpt: Johnson v. Alexander</i>	409
<i>COVID-19 Concern</i>	413
<i>Chapter Summary</i>	413
<i>Skills You Need in the Real World</i>	414
<i>Ethical Issues for the Paralegal: Delegating the Closing to the Paralegal</i>	414
<i>Key Terms and Concepts</i>	414
<i>End-of-Chapter Exercises</i>	415
<i>Annotated Document: Settlement Statement</i>	417
<i>Practice Questions for Test Review</i>	418
<hr/>	
	<b>TAXATION ISSUES IN REAL PROPERTY 421</b>
<i>Chapter Objectives</i>	421
<i>Chapter Outline</i>	421
<b>I. INTRODUCTION</b>	<b>421</b>

<b>II. GOVERNMENTAL POWERS OF TAXATION</b>	<b>422</b>
A. What Can Be Taxed?	422
B. Tax Exemptions	423
1. Homestead Exemption	423
2. Charitable Exemption	423
3. Nonprofit Exemption	423
4. Government Exemption	424
<b>III. HOW TAXES ARE ASSESSED</b>	<b>424</b>
A. Determining the Property Value	425
1. Challenging an Assessment	425
2. Reassessment	426
B. Calculating the Tax Rate	426
<b>IV. PAYING TAXES</b>	<b>427</b>
A. Enforcing Tax Regulations	427
B. Tax Liens	427
1. Setting Priorities in Tax Liens	428
2. Foreclosing a Tax Lien	428
<b>V. ASSESSMENTS</b>	<b>429</b>
<i>Case Excerpt: Miller &amp; Rhoads Building, L.L.C. v. City of Richmond</i>	430
<i>COVID-19 Concern</i>	432
<i>Chapter Summary</i>	433
<i>Skills You Need in the Real World</i>	433
<i>Ethical Issues for the Paralegal: Tax Dodges</i>	434
<i>Key Terms and Concepts</i>	434
<i>End-of-Chapter Exercises</i>	434
<i>Annotated Document: County Tax Record</i>	436
<i>Practice Questions for Test Review</i>	437
<b>APPENDIX: Answers to Review Questions and Practice Questions for Test Review</b>	<b>439</b>
<b>GLOSSARY</b>	<b>483</b>
<b>INDEX</b>	<b>489</b>