



**Freedom Trail Realty School, Inc.  
Massachusetts Real Estate  
Pre-Licensing Course Study Guide**

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## The Basics

There's a lot to know in the big wide world of real estate, but don't worry we'll start with some of the basics that will set the stage for the rest of the course material:

### **About This Study Guide**

This study guide covers everything you need to study for the licensing exam, condensed down to around 140 pages. That way you won't be overwhelmed by a 700-page textbook when it's time to study. It's designed as a companion to our 40-hour course, which will cover the material in greater detail, rather than as a standalone text.

Three things to keep in mind when using this study guide:

- 1) It's dense. Every page covers a lot of information. Please pay careful attention while you're studying!
- 2) If something is covered in this study guide, you must know it for the exam. No exceptions. While you won't get asked questions about every single thing in here – the license exam is only 120 questions, after all – the exam software gives each test taker a slightly different set of questions for their exam, so everything contained in this study guide is fair game and could show up on test day. It might seem like a bit of a pain, but it's very smart test design, and prevents any studying shortcuts.
- 3) You will see some sections of the text highlighted in purple. Those sections cover material specific to Massachusetts. Other material is applicable both nationally, and in Massachusetts. You may also notice footnotes that indicate if something has been removed from the salesperson or broker exam.

This study guide is terse by design since it accompanies the 40 hour course, so if you'd like more detail *Real Estate License Exams for Dummies* is an excellent supplementary text. But it's totally not required, and everything you need to pass the licensing exam is covered in this study guide. And please note that this study guide, our course, our website, and all of our other materials and communications, are for informational purposes only and are not legal or professional advice. Nothing we provide is legal or professional advice, and if you need legal or professional advice you should speak with a licensed attorney or other relevant licensed professional.

### **Massachusetts State Mandated Pre-Class Reading**

#### For All Pre-License Students

Beginning August 1, 1994, Massachusetts instituted "One-stop-licensing." This means that upon successful completion of the licensing examination, the candidate will immediately be licensed to practice real estate. The following examination procedures must be adhered to:

You must be prepared to pay for the license upon passing the examination. Personal checks will be accepted for the license fee. You must have your Education Certificate with you. It must be properly completed. If any part appears to be altered, do not attempt to use it as you will not be admitted to the examination. At the completion of the pre-license course, all students will be given a Candidate Handbook. You must read this handbook completely. All of the requirements for examination are explained in this handbook. Failure to be prepared will result in the forfeiture of the examination fee. If you have questions, you should ask your instructor, the school's Authorized Agent or the examination service. Remember, examination fees are not refundable.

All candidates must have a social security number in order to be examined and licensed. You may not substitute a driver's license number.

If you have a criminal or disciplinary history in any State, Country, or Jurisdiction, the issuance of your license will be withheld until the Board has reviewed your record. The review will be done after you pass the examination. Upon approval your license will be issued. The record will not be reviewed in advance of the examination.

If you have previously held a Massachusetts real estate broker or salesperson license, you must reinstate that license. You may not be issued a new license. Send a written request for reinstatement to the Board. Be sure to include your name, address, date of birth, only the last four (4) digits of your social security number and signature.

#### For Broker Pre-License Students

When you make your examination reservation you will be given a Professional Identification Number. This number must be provided to your insurance agent to be used in issuing the requisite bond. You must provide the test center personnel with an original, properly completed and signed bond prior to being tested. The required bond form is included in the Candidate Handbook, which will be disseminated upon completion of the pre-license course. If this bond is not properly completed or you do not have the original, you will not be allowed to test.

You must also have your current salesperson license with you to turn in upon passing the broker examination. If you do not have the license, be prepared to sign an attestation concerning the lost license.

### **Licensure and The Test**

#### **Why do we have licenses?**

Licenses exist to protect consumers. As a rule, if there's a question on the exam about why the government does something, the answer is, "to protect the public," or, "for the public good." This is because much of the government's ability to regulate private transactions stems from its *police power* (the right of the government to enact laws to protect the public.)

#### **Who needs a license?**

Most state laws, including Massachusetts law, requires that anyone who does any of the following for a fee (or with the expectation of receiving a fee), no matter how small the amount, must be licensed as a real estate agent: advertises and/or holds himself or herself out as engaged in the business of selling, renting, leasing, negotiating, exchanging, purchasing and dealing in real estate or options for real estate.

#### **Who governs licensure?**

The State Legislature creates licensing laws, which are permanent unless otherwise stated. A state or local real estate board oversees the laws and enforces them in most states.

In Massachusetts, the *Board of Registration of Real Estate Brokers & Salespersons* issues the licenses and oversees administration and enforcement. The Board is a part of the *Division of Occupational Licensure*. It was established in 1960, and the governor appoints its five members. Three of them are brokers with at least seven years of experience, and two of them don't have licenses at all (they represent the public). One of them is also appointed the chairperson. All members serve five-year unpaid terms and meet at least four times a year. At least three members must be present for those meetings, and written meeting records are made available to the public on the Division of Occupational Licensure's website. You can find their offices at 1000 Washington Street in Boston, MA.

In addition to *state laws* (e.g. the laws of Massachusetts), your real estate activities will also be subject to *federal law* (the laws of the United States). Generally speaking, state law builds on federal law, and is more specific than federal law. In a conflict between the two, federal law usually wins. We need to know the difference between these types of laws for the two sections of the licensure test.

### **The Massachusetts Licensing Test**

After you finish the 40-hour pre-licensing class, you'll need to pass the Real Estate Licensing Test (either Salesperson or Broker). The test is administered by an outside agency (PSI Exams), so you won't take it in class. It is offered several times a week in Boston, as well as in Auburn, Worcester, Springfield, and other locations throughout the state.

To take the test, you will send your course completion certificate, along with some test application paperwork, to PSI Exams for approval. This lets PSI double check that you have properly completed your course requirements, and run a background check, before you get your license. After reviewing your paperwork and running a background check, PSI will approve your application, and let you choose a test date. You will receive all of the paperwork for the test application after you complete your course. You can't apply for the exam until you have fully completed your course requirements.

If you're wondering what PSI is looking for during the background check, you can check out the Massachusetts Real Estate Board's Good Moral Character requirements here: <https://www.mass.gov/service-details/statutes-and-regulations-for-real-estate-brokers-and-salespersons>

Note that a real estate candidate with a criminal conviction must pass the exam and request permission from the Board for licensing. The board will make a judgment on whether or not the candidate should be licensed (see above link). You should also be aware that pursuant to MGL 62C, licensure candidates must pay all state taxes owed and file all state returns as required by law before they may be licensed.

The cost of the licensing exam varies depending on if you are taking the salesperson or broker exam. The salesperson license test is \$85 for your first try (a \$54 test fee and a \$31 processing fee), and \$54 for any retakes. The broker license test is \$106 for your first try (a \$54 test fee and a \$52 processing fee), and \$54 for any retakes.

The salesperson and broker licensing tests are entirely multiple choice and have two sections: 1.) General (or National) Real Estate Knowledge and 2.) Massachusetts Law. For salespersons, the General section is 80 questions, and Massachusetts Law is 40 questions. For brokers, the General section is 75 questions (worth 80 points) and Massachusetts Law is 40 questions. You might also receive some extra experimental questions when you take the exam, which the testing company uses to try out new question formats. If you do see those experimental questions, you will most likely receive an extra 10 questions on the General section, and an extra 5 questions on the Massachusetts Law section. You may or may not know which questions are experimental, depending on the version of the test you receive, but any extra experimental questions will not count for your score, and your score will only be calculated based on the total 120 points (80 questions for salespersons and 75 for brokers on the General section, and 40 questions for both salespersons and brokers on the Massachusetts Law section).

For both the salesperson and broker licensing tests, you have 4 hours to complete the test, and you must score at least a 70% on each section in order to pass. If you fail one section, you will only need to retake the section you failed. You won't have to retake the whole test. You have to wait at least 24 hours between retakes (though we'd recommend studying a bit more than that!).

A word of warning: the test can be tricky. It doesn't always ask questions directly, and instead expects you to recognize and apply the principles and rules you learned in the course. You'll need to fully understand (not just memorize) all of the concepts and terminology we go over in this class. Make sure to study for the test! You should know this study guide by heart. We recommend a minimum of 20 hours of study after you complete your 40 classroom hours, which usually takes at least 2-3 weeks, assuming you're studying part time.

Once you pass the test, you'll receive your license on the spot. Congratulations: you're now ready for your next step in real estate. Time to go make money!

## **Key Terms**

### **Salespersons, Brokers, and REALTORS®.**

It's important that we differentiate among a few key terms: salesperson, broker, and REALTOR®.

In most states there are two types of real estate licenses: brokers licenses, and salesperson licenses. The main differences are outlined below.



### Salesperson License

- Must affiliate with a broker to practice real estate.
- May not accept direct client payments.
- Must be 18 years old, take a 40-hour class, pass the state exam, and pay a fee (currently \$103-\$150).

### Broker's License

- Can do everything that a real estate salesperson can do, plus they may operate independently, accept direct client payments, and handle escrow funds (client deposits).
  - Employing brokers or brokers of record typically have this authority
  - Associate brokers or broker associates are those with broker's licenses who choose to work under another broker. They are not permitted to handle escrow accounts.
- Must have 3 years of experience as a salesperson, take an additional 40-hour class, pass an additional state exam, be bonded for \$5000, and pay a fee (currently \$142-\$200).

### REALTORS® and the NAR

REALTOR®'s licenses aren't listed above because being a REALTOR® isn't a matter of state licensing- it's a membership in a trade association. Established in 1908, the *National Association of REALTORS® (NAR)*, whose members are known as REALTORS®, is the largest trade association and one of the most powerful lobbying groups in the United States.

In Massachusetts, you become a REALTOR® by joining your local chapter of the *Massachusetts Association of REALTORS® (MAR)* after you're licensed as a Massachusetts real estate salesperson or broker. It's optional, and you can sell real estate whether or not you choose to become a REALTOR®, though membership does provide many benefits and is often worthwhile.

The NAR's membership includes people involved in many different aspects of real estate: residential and commercial brokers, salespersons, property managers, appraisers, and more. These members belong to one, or multiple, local REALTOR® associations. REALTORS® must follow a special code of ethics and standards of practice that were adopted in 1913, and which go beyond the state licensure laws and regulations.

When opening an office, be aware that all agents associated with that office typically ought to become REALTORS® if the office is associated with a local REALTOR® association. Failure by an agent in a REALTOR® office to become a REALTOR® may result in an assessment to the offices' *Designated REALTOR®* (usually the owner of the brokerage).

### Other Key Concepts To Know

#### The basics of a real estate transaction

Whether you've bought or sold a house for yourself or have been involved in the real estate industry already, you might be familiar with the process and timeline of a real estate transaction. Let's briefly take a look at a typical transaction from the listing agent's perspective: Note that the usual process for a real estate sales transaction takes anywhere from 1-12+ months (and about 2-4 months on average):

When you are hired as a listing agent by a seller to sell their property, you are working in their best interest to get the property sold for the most money in the shortest timeframe (if that is their desire). The first step is preparing the property for sale. This might include hiring a photographer or stager to best showcase the property. Advertising the property is the one of most important aspects of a listing agent's job. This is how you find a buyer! Typically, the property will be advertised for sale on *Multiple Listing Services (MLS)*, accessed via your brokerage), online (on Trulia, Zillow, Realtor.com, etc.), and in newspapers or specialty publications. Buyers will contact either the listing agent directly or their buyer's agent (who will contact the listing agent) to see the property, and will set up a showing. Qualifying buyers through a standard series of questions, such as their moving timeframe, if they have a pre-approval, and what they are looking for in their next home can ensure that the property is a good match for their needs so no time is wasted showing on either side. After the buyer has viewed the property either at an open house or private showing, they might submit an *offer* and if the sellers accept it, a *Purchase and Sale Contract (P&S)* will be drafted and

signed typically within 7-14 days. Once the terms and conditions of the P&S are met (securing financing, completing inspections, etc.), the final sale will take place (settlement or *closing*), the brokerage(s) and their agent(s) will be paid the commission.

### **Principal, Special Agent, and Subagent**

Your client (often referred to as your *principal*) is the person who hires an agent in a real estate transaction. Legally, only the broker (the *special agent* in the transaction) can be hired and paid directly by the principal. The broker will pay their agents as a *subagent* (an agent's agent) working on their behalf. This means salespersons will be the client's subagent, and the broker's agent. Note that an agent with a broker's license who chooses to work under another broker is considered a broker-associate or associate-broker. Associate brokers are generally subagents.

### **1099 vs W2**

Hiring at a brokerage generally takes two forms: *1099 independent contractor*, or as a *W2 employee*. If someone is paid by the job or on commission, sets their own schedule, can turn down work, use their own methods, etc., then they are likely a 1099 independent contractor. Most residential real estate agents are 1099 contractors. On the other hand, if someone is salaried or paid hourly, and the employer controls what and how the work is done, then they are likely a W2 employee. This is sometimes the case in commercial real estate or when real estate brokerages hire administrators or assistants.

For the agent, the tax implications of being a 1099 contractor vs. a W2 employee are critical to understand. Most notably, unlike a W2 employee, 1099 independent contractors do not have taxes withheld from their pay; they are treated as self-employed and are solely responsible for their own tax withholding. Those who are 1099 shouldn't spend their full commission checks, because taxes will be owed at the end of the year (or quarterly)! However, 1099 independent contractors may also take advantage of many tax write-offs (also known as *tax deductions*) that a W2 employee may not. It is therefore wise to seek assistance when preparing taxes as a 1099 independent contractor, and to keep careful track of all business expenses.

While we're on the topic of tax deductions, it's important to note that not everything is deductible. Only certain money that is spent on the business can be deducted and there must be receipts or records. Furthermore, deductible does not mean free. Unlike *tax credits* (which are subtracted directly from your tax bill), tax deductions do not directly reduce your tax bill, and instead reduce your taxable income. So, for example, if you earned \$100,000 for the year, and your effective tax rate was 30%, you would owe \$30,000 in taxes. A \$5,000 tax deduction would reduce your tax bill to \$28,500 (\$100,000 income - \$5,000 deduction = \$95,000 x 0.3 tax rate = \$28,500 tax bill). The \$5,000 deduction would therefore be worth only \$1,500 off your taxes – not the full \$5,000.

If all of this seems complicated, it's because it kind of can be. This is why CPAs exist!

### **Insurance**

There are two types of insurance that brokerages and their agents often carry: *professional liability insurance* (aka "*errors and omissions insurance*"), and *general liability insurance*. Professional liability insurance provides protection against the inevitable human mistakes brokers and salespersons make while providing real estate services to their clients.

General liability insurance, on the other hand, provides coverage for personal or property damage that might occur either at the brokerage or during showings (e.g. a client slipped and fell on the office stoop). Agents usually do not need to worry about general liability insurance as it is generally covered by the brokerage, but should strongly consider purchasing their own professional liability insurance, and broker owners should usually have general liability insurance for their brokerage.

That's all for the basic foundational terms and concepts – let's dig into section one!

## Property Rights

When selling property, you have to understand what is being sold. In this class, we focus on selling two different kinds of property: *real property* (the land and everything attached to it), and *personal property* (anything not attached to land).

### **Real Property**

Real property is the land, anything attached to the land, and all of the various rights associated with ownership of the land. You'll also see real property referred to as *real estate*, *realty*, or *immovable property*. Note that these terms are not strictly interchangeable: real property refers to both the land and the bundle of rights associated with it, while real estate, realty, and immovable property refer just to the land and all of the property attached to it. That said, the distinction between these terms is not hugely important in practice as an agent, and the exam will often use them interchangeably.

Ownership of real property is transferred (or *conveyed*) using a *deed*. Deeds get complicated – for the time being, think of them as the receipt for real estate. Transferring ownership (*legal title*) to real estate is known as *granting title*.

*When talking about giving and receiving something, the person with the suffix “or” is the one giving, and the person with the suffix “ee” is the one receiving. So the **grantor** gives the deed to the **grantee**.*

Ownership of real estate is a “*bundle of rights*”; it is not a single right of ownership. The bundle of rights is a grouping of property rights that can be separately transferred. The rights included in the bundle of rights are *possession*, *exclusion*, *control*, *disposition*, and *enjoyment*. These rights let you do different things with your real estate. For example, you could own real estate (possession), control the use of it (control), use it in any legal way (enjoyment), limit access to it (exclusion), or give it to someone else by sale, rental, or in your will (disposition).

When you think about real estate and the different things the bundle of rights allows you to do with it, also remember that real estate does not exist in a flat vacuum: it extends up and down, and connects to other pieces of real estate. That means you need to clearly define your real property. It might include:

### **Land and Surface Rights**

The land is the surface of the earth. Rights to the land's surface are known as *surface rights*, and often extend to approximately 30 feet below the land's surface.

### **Improvements on the Land**

Improvements are anything that is permanently attached (either directly or indirectly) to the land. For example, a house is an improvement. Individual improvements attached to the property (e.g. window blinds) are sometimes referred to as *fixtures*.

### **Air Rights and Mineral Rights**

Air and mineral rights are the rights to the space above and below the land, along with any natural resources such as oil, precious metals, etc. They are *vertical interests*, and may be sold or leased separately from the surface rights.

*Solid mineral rights* are solid minerals, and *liquid mineral rights* are oil, gas, etc. In many states, the landowner does not own the liquid mineral rights; instead, the landowner has the right to capture them under the *doctrine of capture*. Other states use *utilization pooling* where the landowner does own a fraction of whatever liquid mineral rights exist under their property.

Historically, *air rights* (or air lots) and *mineral rights* (or subsurface rights) were governed by the principal of *Cuius est solum, eius est usque ad coelum et ad inferos* (Latin for "whoever's is the soil, it is theirs all the way to Heaven and all the way to hell"). However, air rights changed with the advent of airplanes and the court case *United States v. Causby*. Now the space starting somewhere between 80-500 feet above the land is called "*navigable*" air space and is under the jurisdiction of the Federal Aviation Authority.

Mineral rights extend to the earth's core. If mineral rights are purchased separately from the surface of the land, the owner of the mineral rights automatically gains the right to harvest the minerals as an *implied easement* known as a *profit a prendre*.

### **Riparian Rights**

Riparian rights are the ownership rights for landowners whose property borders a river or other waterway. Properties bordering a navigable river have rights up to the *accretion line* (edge) of the water, and properties bordering non-navigable rivers have rights to the midpoint of the water.

Not all states use riparian rights to define the ownership rights of properties adjoining rivers and waterways. Water rights in Western states are usually determined by the *doctrine of prior appropriation*, which bases ownership on whoever used the water first; Eastern states (all of the 13 colonies, including *Massachusetts*) usually use *riparianism* (riparian rights).

### **Littoral Rights**

Littoral rights are the ownership rights of property bordering lakes and oceans. These properties own all of the land up to the accretion line (the edge of the water, most often the mean high tide line) in most states.

In *Massachusetts*, littoral rights work a bit differently. As defined in the *Colonial Ordinances of 1641-1647*, littoral rights in *Massachusetts* extend from the mean high-water line to the mean low-water line, or 100 rods (1650 feet) from the mean high-water line, whichever is less. The public has an *easement* (a right of access) over the land between the high and low water lines (known as *tidal flats*) for the purposes of navigation, fishing, fowling, and passing freely over and through the water.

### **Appurtenances**

An *appurtenance* is any property right or item that is attached to the land which exists outside the boundaries of the property itself. An easement (right of way) across an adjoining property for beach access, in-ground pool, mailbox, or a deeded parking spot in a condominium building are *appurtenant* to the land.

### **Personal Property**

Personal property is any property that is not attached to a piece of land, and not attached to any improvement on that land (e.g. a car or a table). It is also called *personalty*, *chattel*, or *moveable property*, and is transferred via a *bill of sale* (the fancy term for a receipt).

### **Differentiating Between Personal and Real Property**

Usually it's obvious if something is personal or real property, but some situations can get a bit more complicated. For those complicated situations, there are four tests you can use to find out if property is personal or real. These tests are important to know, because all those ways of defining your real property that we talked about above are included by default when you sell your real estate (this sounds obvious, but it can catch people off guard).

The tests are:

*Attachment* – Whether or not the property is permanently attached (e.g. by nails or roots) to the land.

*Adaptability* – Whether the property is custom built to fit, or generically fits anywhere.

*Intention* – The intent of the person who installed the property, i.e. did they want to make the property permanent.  
*Agreement* – The buyer and seller of a piece of property can agree to treat a piece of property as either personal or real. This overrides the other tests. Watch out for the *Statute of Frauds* (the law requiring that real estate contracts to be in writing to be legally enforceable) – all items of real estate are included in a home sale unless specifically excluded in writing. Real estate agents should talk to buyers and sellers of real estate to discover what, if any, property should be specifically included or excluded in the sale.

Intention is the most important of these tests, because it creates the two exceptions to these rules:

*Trade fixtures* – Items of business property that are somehow permanently attached to the land, but are treated as personal property because they were only installed for the use of one particular business. This is a particular concern with commercial tenants, and is often outlined in their lease to avoid disputes.

*Emblements* – Crops that are planted, and harvested, annually or biannually (like corn or wheat). Plants are usually real estate (since they're literally growing in the land), but emblements are treated as personal property because they are not intended to be permanent, and are only planted to be harvested. Note that permanent plants like apple trees or vineyards do not qualify as emblements, and are treated as real estate.

**Activity:** *In groups, come up with an example of a piece of personal or real property that might cause confusion in a real estate sale, and should therefore be addressed with the seller before listing their home.*

### **Changing Property Types**

The categories of real and personal property are fundamentally mutable, meaning that you may freely move items of property between them so long as there is no agreement preventing you from doing so (for example, a purchase and sale agreement). The terms for moving between the categories are *annexation* (when property was personal and is now real, e.g. planting a sapling) and *severance* (when property was real and is now personal, e.g. digging up a tree).

## Interests in Real Estate

There are many types of *interests* in real estate (also known as *estates* or *tenancies*). These terms are interchangeable (be careful of this!) and refer to the extent of someone's claim to real estate. Interests in real estate will be part of one of two major categories: *freehold* interests, which refer to ownership, and *non-freehold* interests, which refer to possessory rights that don't include ownership (usually a rental).

Note the having an interest in real estate doesn't mean you own it; it simply means that you have some right to the property.

### **Freeholds**

*Freehold* interests confer *ownership*. There are a number of different types:

#### **Fee Simple Absolute**

*Fee simple absolute* is the default type of ownership. It is also referred to as *fee* or *fee simple* or *fee simple indefeasible* ownership. It is an interest in real estate that is not in any way limited, and it is inheritable. The owner is entitled to their entire bundle of rights to the property. These interests are intended to be indefinite, and are only limited by public and private restrictions (e.g. zoning and building codes).

#### **Fee Simple Defeasible**

Unlike fee simple absolute, *fee simple defeasible* (or *qualified fee*), ownership is an interest in real estate that is limited in some way, and can be lost if some limitation is violated or a condition is triggered.

There are three forms of defeasible interests: *fee simple determinable*, which is automatically lost when a limitation is violated, *fee simple subject to a condition subsequent*, which is lost when legal action is brought pursuant to the violation of the limitation and returns the property to the original grantor, and *fee simple subject to an executory limitation*, which is basically the same as fee simple subject to a condition subsequent except the property would be transferred to third party named by the grantor, rather than back to the original grantor themselves.

### **Life Estates**

Life estates are freehold interests that only exist as long as the owner of the property (the "*life tenant*") is alive. The life tenant's deed will state who receives the life estate (usually a "*remainderman*") upon their death in a *habendum clause*. There are several different types of life estates:

*Life estate in reversion* – A life estate where, when the life tenant dies, legal title (ownership) will transfer back to the original grantor.

*Life estate in remainder* – A life estate where, when the life tenant dies, legal title will transfer to some third party originally named by the grantor (the third party is the *remainderman*).

*Pur Autre Vie* – Old French meaning, "for another's life." A life estate that is based not on the life tenant's term of life, but on some arbitrary third party's life as named by the original grantor.

*Legal Life Estate* – A life estate created by law, often in cases of *dower rights* (where a surviving husband or wife is granted a life estate for real property that was not willed to them, but that was owned by their spouse at their spouse's time of death). In many states, a surviving spouse is entitled to *dower rights* - up to a 1/3<sup>rd</sup> interest in their deceased spouse's real estate, in lieu of what was left in the will. The right is *inchoate*, or inactive, before the spouse's death. *Dower rights have been abolished in Massachusetts, but still appear on the National section of the exam.*

*Homestead* – A legal life estate granted to the owners of a family home. It often provides protections from the forced sale of the home to satisfy debts up to a certain amount. Usually you can only have one homestead at a time.

A life tenant has a *present interest* to the real estate subject to the life estate, while the remainderman (or the grantor in a life estate in reversion) holds a *future interest*. This means that the life tenant may not *commit waste* (cause the

property to be damaged, legally compromised, or at risk of foreclosure), because it would compromise the remainderman's future interest. Otherwise, the life tenant may enjoy their full bundle of rights, less the right to *devise* (transfer in a will) the property. This is why it's important to understand life estates: life tenants can sell, rent, or otherwise dispose of the property as they see fit, but anything they do while alive is undone upon their death. As a result, a client would probably not want to buy or rent property subject to a life estate.

### **Severalty**

A freehold interest (ownership) held by only one person. Its root is "severed"; ownership in severalty is the ownership of real estate severed from any co-owners.

### **Co-Ownership**

*Co-ownership* (or *concurrent ownership* or *co-tenancy*) is any freehold interest (ownership) shared by two or more persons, including corporations. There are several types:

#### **Tenancy in Common**

Tenancy in Common is the default form of co-ownership. Co-owners who purchase property without specifying a type of ownership own in common. Ownership interests may be equal or unequal, but all co-owners have an interest in the entire property that cannot be compromised. This type of co-ownership is inheritable.

#### **Joint Tenancy**

Joint Tenancy is a type of co-ownership that must be chosen by all co-owners, and specified in the deed. All owners must hold *four unities* to create a joint tenancy: the *unity of possession* (all have equal right of possession), *unity of time* (all purchase the property at the same time), *unity of interest* (all have equal interests in the property) and *unity of title* (all acquire in the same deed). Once a joint tenancy is created, it creates a right of *survivorship*. Survivorship means that, if one of the co-owners dies, their interest is divided amongst the surviving co-owners evenly. A joint tenancy is therefore not inheritable. If one of the joint tenants sells their portion of the property, that portion of the property is removed from the joint tenancy. A joint tenancy can be completely terminated by agreement (*voluntary partition*), court action (*partition action*), or the death of all joint tenants. If all joint tenants die except for one, the joint tenancy also ends, and the surviving owner owns in severalty.

#### **Tenancy by the Entirety**

Tenancy by the Entirety is joint tenancy for married couples. It works the same as joint tenancy, but includes creditor protections: a limitation on forced sale of the property to satisfy the debts of one spouse only (debts must be in the couple's name for the home to be sold), and **an automatic homestead protection for \$125,000, and the ability to file for \$500,000 of protection, in Massachusetts**. If the couple divorces, it defaults back to a tenancy in common, unless the couple chooses otherwise. In *separate property* states (**including Massachusetts**), tenants by the entirety may sell or devise separately, similar to joint tenants. In *community property* states, on the other hand, the property acquired during marriage cannot be sold or devised without the consent of both spouses, since it is treated as the property of both spouses (even if only one actually bought it).

### **Condominiums**

*Condominiums* are a way to subdivide a building into separate units, creating fee simple ownership of the individual units, and shared ownership of the common areas (hallways, elevators, a roof deck, etc.) as tenants in common. Most states have condominium laws referred to as a *horizontal property act*.

The condominium is created via a *master deed*, which describes how the building and its *condominium or homeowner's association* (the building's governing body) will be set up. A *declaration of trust* sets up a Board of Trustees to manage the condominium association. *Bylaws of the association* are the rules of the building. A building that is made into condominiums is known as a *condo conversion*.

Each individual condo owner owns their unit via a *unit deed*, along with a share of the common areas in proportion to their unit's fair market value. Owners are responsible for their proportionate share of common area expenses, and pay them as monthly *condo fees*.

Owners that fail to pay their condo fees are at risk of foreclosure. Failure to pay the fees can result in the condominium association placing a *super-priority lien* for up to 6 months of unpaid fees against the unit. These fees run with the land (meaning they are the responsibility of unit, not the unit owner), and therefore are binding on subsequent property owners. **Because of this, Massachusetts requires a 6D Closing Certificate for the sale of every condominium unit. This certificate establishes the status of the condo fees as of the date the unit is sold.**

Watch out for common problems with condo buildings: *special assessments* (extra condo fees charged to repair or upgrade the building), a lack of *capital reserves* (money held in a *reserve fund account* by condo associations and investors to pay for improvements to a property), and low owner occupancy rates.

## Cooperatives

Cooperatives are another way of structuring co-ownership in apartment buildings. In a cooperative, a company (usually an LLC) is formed for the limited purpose of providing housing to its shareholders. The people living in the building own *stock* or *shares* in the company (or *stock certificates*), which gives them a right to a *proprietary lease* to their unit. They do not own their unit; instead, they own the company that rents them their unit. This gives owners a significant amount of control over what goes on in the building, at the cost of ceding the same control to their neighbors.

The cooperative will have a *co-op board* like a condominium board of trustees, and owners will pay monthly *co-op fees* for building expenses, similar to condo fees. Banks will typically accept stock in a cooperative as collateral for a loan.

Because cooperatives are indirect ownership, the sale and purchase of cooperative units are subject to oversight and approval by the co-op board. It can be difficult to buy and sell co-op units because of this limitation. The property might also have debt in the name of the corporation itself, which must be paid on time, lest the corporation itself go into foreclosure.

Cooperatives are typically created to permit their residents to limit unit ownership in some legally permissible way, since the co-op board must approve the sale of co-op shares. This allows the creation of housing for a specific group of people, e.g. "artists only" housing. Any limitation on cooperative housing must be legal and comply with fair housing law

## Trusts<sup>1</sup>

Trusts are generally created during a person's life (a *living trust*) or upon their death (a *testamentary trust*). The person creating the trust (*trustor*) conveys property to a *trustee*, who cares for the trust's assets (e.g. real estate) on the behalf of any *beneficiaries* (the people who receive the money from the trust).

*Land trusts* are those trusts that only own real estate, and do not include other assets. Often the beneficiary of the trust is also the trustor, since the public record does not name the beneficiary as the owner of the property (and instead only names the trust), creating anonymity. They are also often used for land conservation. Land trusts typically last for some limited period of time (e.g. 25 years).

## Timeshares

A way of dividing time, rather than space, in the property. Timeshares, or *timesharing*, is a form of ownership where the owner only owns a specific part of the year in fee simple, along with a shared interest in the common areas. The owner pays *maintenance fees* for the upkeep and maintenance of the unit year-round. Timesharing is also known as *interval ownership*, a *prepaid vacation*, or a *floating use period*.

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<sup>1</sup> Starting September 1<sup>st</sup>, 2018, Trusts are only on the PSI Broker exam, though they're important for your practice.



## **Securities**

Securities are investments (e.g. stocks and bonds). There are a number of different types of securities:

*Syndications* are legal entities that invest in a single piece, or pieces, of real estate. They may take many forms (partnership, limited partnership, corporation, limited liability company or LLC, etc.), and provide a return based on how a specific piece of real estate performs. Corporations are "*corporate persons*" under the law, and can own real estate in severalty, or in common with "*natural persons*" (actual humans).

Investors in syndications can either be *general partners* or *GPs* (those with a management role) or *limited partners* or *LPs* (passive investors who do not have a management role). Only general partners have full liability for the financial obligations of the partnership; limited partners are only liable for their investment. Because limited partners are only liable for their investment, their tax deductions for losses in the syndication are also limited to their investment under the IRS's *at risk limitation* rule. This rule says that LPs cannot deduct a loss greater than their total investment amount on their taxes, even if the syndication lost more than that amount.

In contrast to syndications, *REITs* (real estate investment trusts), *REMICs* (real estate mortgage investment conduits), and *REMTs* (real estate mortgage trusts) are real estate investment vehicles. They allow indirect investment in either real estate itself (REITs) or real estate loans (REMICs and REMTs), and provide a return that is based on the performance of the national real estate market (or a specific submarket).

Why are we concerned with these investments? Because a person must have a *securities license* to market and sell interests in an investment vehicle like a syndication; your real estate license does not enable you to sell investment in them. Federal and State law regulates securities and their sale, most notably *Blue-Sky Laws*, which protect the public from fraud on a state-by-state basis, though the *Securities and Exchange Commission* (SEC) has largely preempted these laws.

## **Non-Freeholds**

*Non-freehold* interests confer the possession and use of someone's real property, without transferring ownership (e.g. *renting*). In a rental, the *lessor* is the landlord, and the *lessee* is the tenant.

*Leaseholds (Tenancy for Years, Estate for Years, Interest for Years)* – A written conveyance of the possession real estate for a period of time. It must be in writing, and have an expiration date.

*Tenancy at Will (TAW)* – A verbal, or (rarely) written, right to possess property without any specified term or stated interval. Either the lessee or the lessor may terminate the agreement at any time. **In Massachusetts, lessor or lessee must give 30 day notice to vacate in order to terminate a tenancy at will.**

*Periodic Tenancy (Tenancy from Period to Period)* – Like a tenancy at will, but with fixed intervals (e.g. month-to-month). Parties may terminate at the end of the period.

*Tenancy at Sufferance* – A holdover tenancy (when the tenant stays in the property past the lease expiration) without the lessor's permission. Since the lessee is a tenant at sufferance, and not a trespasser, the lessor must evict the tenant to regain possession of the property.

**Remember, the terms *estate*, *tenancy*, and *interest* can be used interchangeably.** The exam will use all three, and you should be able to recognize terms regardless of which word is used. For example, you should know that "tenancy in common" and "estate in common" mean the same thing.

## Limitations on Property Rights

In many cases, property rights can be quite limited. The term "*encumbrance*" is used to refer to restrictions that limit real property rights.

### **Government Limitations**

Local, state, and federal governments strictly regulate what property owners can do with their property. There are four basic government limitations (or *public limitations*) on what property owners can do with their real estate (**P.E.T.E.**):

*Police power* – The right of government to regulate private activity if it's in the public interest to do so. In real estate, police power usually refers to the local zoning ordinances and building codes.

*Eminent domain* – The right of government to force the sale of privately owned property if it is in the public interest. Under the 5<sup>th</sup> Amendment of the United States Constitution, the government must pay the property owner *fair market value* for the property. The legal process for taking the land by eminent domain is *condemnation*. If the government takes only a portion of the land by eminent domain, but not the whole parcel, the owner may receive *severance damage*. If government action in an adjacent lot of land causes a diminishment of property value, a property owner can claim compensation under *inverse condemnation*.

*Taxes* – Municipal property taxes. They are the primary source of revenue for municipal governments (the local town or city).

*Escheat* – The reversionary interest the state maintains in all privately owned property. If a property owner dies without a will or heirs, their property transfers to the government.

### **Zoning Ordinances**

Zoning is a means of regulating and controlling land use. In Massachusetts, the zoning laws are found in Chapter 40A (the *Zoning Enabling Act*). Towns often use *comprehensive* or *master plans*, drafted by a *planning commission*, to plan their future development. Zoning might include rules about:

*Use* – The purposes for which property may be used. For example, *residential* property may be lived in, while *commercial* property may be used for business.

*Heights* – Building heights.

*Setbacks* – The distance from lot lines before building is permitted.

*Lot size* – The minimum permissible lot size.

*Buffer zones* – Areas where you cannot build anything; used to ease transitions between zoning areas (e.g. industrial to residential zoning).

Properties can also take many forms under zoning:

*Single family homes (detached homes)* – A property containing one unit only.

*Multifamily homes (apartment buildings)* – A property containing several different units, but that is not subdivided.

*Condominiums* – Subdivided units contained within shared common areas.

*Cooperatives* – Shared property owned by a company or corporation.

*Mixed use developments* – Properties containing multiple uses (e.g. both retail and residential condominiums).

*Planned Unit Developments* – Mixed use land developments that are often exempted from certain zoning regulations.

There are three basic ways to bypass zoning:

*Nonconforming Use* – A legal use that existed prior to the enactment of current zoning ordinances. Properties are grandfathered (exempted) under zoning if a structure was legal when it was built, even if zoning has subsequently changed.

*Variance* – Special permission to do something otherwise forbidden by the zoning rules.

*Conditional Use Permits (Special Use Permits)* – Think of this as a limited variance. Conditional use permits (CUPs) allow a commercial or residential use that would not otherwise be permitted in an area, with the caveat that you are restricted to a specific use case that is deemed to be in the public interest (e.g. only for a supermarket). Towns usually use these permits instead of use variances (e.g. allowing a residential property to be used commercially), which leads to *converted use properties*.

While the process to receive a variance or conditional use permit is different in every municipality, it most often works like this:

First, the property owner applies for *building permits* (approval to build something) with a local *zoning enforcement officer* or *building inspector* to build whatever they want to build. The local officer or inspector will look at local zoning rules, and determine if the proposed structure is allowed. If the permits are approved, the property owner can build whatever it is that they applied to build, subject to the local rules.

On the other hand, if the permits are denied (or if the property owner knew that they would not be approved under existing zoning rules in the first place), the property owner can appeal the decision to the local *zoning board of appeals (ZBA)* by applying for a variance or conditional use permit. The ZBA will review the application, what if any *hardship* is imposed on the property owner by the local zoning rules, and any negative impact that the proposed building might have on the community. Neighbors will usually get a chance to comment on community impact during a public hearing, which can influence the ZBA's final decision.

Again, while the process varies, the property owner must often show that their enjoyment of the property is unreasonably impacted by local zoning rules, or that a variance or conditional use permit is necessary for their property to have a worthwhile use. Often a successful property owner will show that there is something unique about their property that requires the approval of a variance or conditional use permit, so that they can fully enjoy their property rights (e.g. a river that cuts through their property and is not present on other properties).

### **Building Codes**

Building codes define basic requirements for construction without necessarily prescribing implementation (e.g. you must have smoke detectors that meet the state standards, but not any specific brand). A *certificate of occupancy* shows that a building has been inspected and found to satisfy the building codes. Both *stick built homes* (homes built on a property using traditional construction methods) and *modular homes* or *factory built homes* (homes manufactured in pieces in a factory, and later assembled on a property) are required to meet the local building codes. *Manufactured* or *mobile homes* are sometimes held to different building code standards, though they must also satisfy the relevant regulations. The *Occupational Safety and Health Administration (OSHA)* governs construction site safety.

### **Property Taxes**

Real estate property taxes are taxes paid to the town or city (the *municipality*) where a property is located. Property taxes are calculated against the *assessed value*, or tax value, of property. This is known as an *ad valorem* tax (think "at value"). Every property subject to tax is listed on a municipal *tax roll*, and the total taxes collectable by the municipality will sometimes be referred to as the *tax base* of the municipality. Property taxes pay for local services like schools and trash pickup.

Property taxes are paid in *mills* (dollars per \$1000 of value), expressed as a *millage rate*. Taxes are paid on a *fiscal year* running July 1 to June 30, and are due 11/1 and 5/1 (or 8/1, 11/1, 2/1, and 5/1 if collected quarterly).

Watch out for *special assessments*, which are a special tax for any *betterments* to your property (improvements paid for by public funds, such as town sewer hookups, or sidewalks). Property owners are charged for special assessments in accordance to their *frontage* to the betterment, over a period of years, with interest. *Special Districts* might also be used to levy additional property taxes. A special district is an area used to charge property owners in the district extra taxes for services that they personally benefit from, e.g. a school or a park.

**Math: Property Taxes**

What is the annual property tax on a \$100,000 home that is assessed at 40% of its value in a town with a millage rate of \$20 per \$1000?

$$\text{Equation: Annual Tax} / ((\text{Assessed Value}/1000) \times \text{Millage Rate}) = 1$$

$$\text{Math: } \$100,000 \times .4 = \$40,000$$

$$\$40,000 / 1000 = 40$$

$$40 \times \$20 = \underline{\$800 \text{ in Taxes}}$$

**Private Limitations**

*Private limitations or restrictions* (also known as *CC&Rs*) are contractual limitations on ownership created by deed or separate agreement. There are two basic kinds:

*Covenants* – Restrictions created by the developer of a *subdivision* (a property development) or *planned unit development* (a mixed used property development) and recorded in the county registry of deeds. Covenants are binding on any property owners in the subdivision, as long as they are deemed reasonable and within the public interest. The developer or another owner may enforce the covenants by court action, but they must usually be enforced consistently and uniformly against all property owners in a subdivision to remain legal and enforceable.

*Deed restrictions* – Deed restrictions are limitations written into a deed. They create a fee simple defeasible estate. If the restriction is violated, the grantor who wrote the restriction (or the grantor's heir) has the right to demand *forfeiture of title*, meaning ownership would revert back to the grantor that wrote the restriction. Conditions run with the land, meaning that they are binding on future owners of the property, as well as the current owner.

**Conflicts Between Public and Private Limitations**

If there is ever a conflict between private restrictions and public zoning, the more restrictive rule wins. So, if a private restriction limits homeowners to 2.5 story buildings, but public zoning allows up to 3 stories, the homeowner would be limited to 2.5 stories.

**Environmental Limitations**

Environmental laws and restrictions are of concern to property owners, especially real estate developers (since they often limit what the developer may do with the property). Under NEPA (the *National Environmental Policy Act*), an *environmental impact statement* is required to determine what, if any, environmental impacts a development might have on an area and how a developer might handle those issues. Several pieces of environmental legislation impact real estate, including:

***Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)*** – Commonly referred to as the “Superfund Act,” it was designed to clean up sites contaminated with hazardous substances, and to create liability for those who contaminate properties. CERCLA created the *Agency for Toxic Substances and Disease Registry (ATSDR)*. The law allows the *Environmental Protection Agency (EPA)* to identify who is responsible for contamination of sites and compel them to clean up the sites. If the responsible party cannot be found, the EPA can clean up the site using a special trust fund. A *superfund site assessment* is often used to confirm or evaluate property contamination.

Liability under CERCLA generally runs with ownership or possession of the land, so property owners or tenants not responsible for contamination, but in possession when the contamination is discovered, may still be held liable (this is called retroactive liability). In certain circumstances, the *Superfund Amendments and Reauthorization Act (SARA)*

provides for "innocent landowner" status, which allows landowners who did not contaminate the property to avoid liability. Typically, an environmental assessment will be done before purchase to determine if the owner needs to seek immunity protections under SARA.

**Leaking Underground Storage Tank Program (LUST)** – Sometimes called the UST or Underground Storage Tank program, LUST regulates underground fuel tank installation, maintenance, and spill prevention and monitoring. It is enforced and administered by the EPA. Certain tanks are exempt from regulations under LUST, including: tanks under 110 gallons, tanks used for heating oil, and motor fuel tanks less than 1,100 gallons on residential and farm properties.

**MA Oil and Hazardous Material Release Prevention and Response Act (Chapter 21E)** – The Massachusetts superfund act; regulates the transportation, storage, and disposal of oil and other hazardous waste in accordance with the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Oil Pollution Act, and Clean Water Act.

The Act authorizes the Department of Environmental Protection to take or arrange for response actions whenever it has reason to believe that oil or hazardous material has been released or that there is a threat of release of oil or hazardous material. The Act establishes strict liability, with limited exceptions, for releases or threats of release. The Act also creates an Office of Brownfield Revitalization within the Governor's office, and allows for the certification of lands as uncontaminated ("*21E Certification*"). It also requires the certification of oil tanks, to ensure that they are not leaking or otherwise contaminating property.

**The Clean Water Act of 1972 (CWA)** – Regulates pollution of navigable (and connected) waters. Established the goals of eliminating the release of high amounts of toxic substances into water, eliminating water pollution, and ensuring that surface waters meet standards necessary for human sports and recreation. Limits (and can prohibit) the filling of wetlands and other property development near navigable waters, especially if the filling/development would substantially degrade water quality.

**National Flood Insurance Program (NFIP)** – Established by Congress in 1968 as part of the National Flood Insurance Act, and administered by the *Federal Emergency Management Agency (FEMA)*. Requires property owners in "high risk flood zones" (think: waterfront property) to purchase flood insurance if their community participates in the NFIP and if they have a federally backed mortgage.

**Massachusetts Wetlands Protection Act** – A Massachusetts state law enforced by the *Department of Environmental Protection (DEP)* and local *conservation commissions* (the town and city environmental agencies that are tasked with protecting local natural resources). Wetlands are areas that are either permanently or seasonally wet, where the soil and the plant community have adapted to that moisture (e.g. riverbanks, marshes, etc.). Wetlands are designated by the MA DEP, and not all wet areas are wetlands.

The act requires a buffer zone (an area where you cannot build anything) of 100 feet from any wetlands. The DEP or local conservation commission may permit certain minor changes after 50 feet, and may also permit certain changes within the buffer zone, subject to DEP regulations, though typically no changes may be made to the wetland itself.

The Wetlands Protection Act was amended in 1996 by the *Massachusetts Rivers Protection Act* to specifically protect any *riverfront areas* that were not already designated as wetlands. Riverfront areas are the lands between the mean high water line of a river or stream and 200 feet from that mean high water line, or 25 feet in densely populated areas. The act also provides \$30 million dollars for the acquisition and protection of riverfront lands by the state, and for their administration and regulation by local conservation commissions. While construction is not banned in these riverfront areas, developers must show that their proposed project will not impact the riverfront area, and receive permission from the area's local conservation commission in order to build.

**Coastal Zone Management Act (CZMA)** – A federal law designed to protect *coastal zones* (like the Gulf of Mexico or Long Island Sound) from the harmful effects of real estate development. It limits, or completely eliminates, development in those zones.

**Endangered Species Act of 1973** – Designed to protect critically imperiled species from extinction as a, "consequence of economic growth and development un-tempered by adequate concern and conservation." May limit property use and development if the presence of an endangered species is discovered on a piece of property.

**Hazardous Material Transportation Act (HMTA)** – The HMTA regulates the removal, labelling, and transport of hazardous materials (e.g. from a construction site). It is enforced by the Department of Transportation (DOT).

**LEED Certification** – Leadership in Energy and Environmental Design (LEED) is a suite of rating systems for the design, construction, operation, and maintenance of green buildings, homes and neighborhoods. Developed by the U.S. Green Building Council (USGBC) in 1998, LEED is intended to help building owners and operators find and implement ways to be environmentally responsible and resource-efficient. LEED certification also provides financial and permitting incentives for environmentally friendly construction. Under LEED, buildings are rated from 0 to 100 points distributed across five major credit categories: Sustainable Sites, Water Efficiency, Energy and Atmosphere, Materials and Resources, and Indoor Environmental Quality, plus an additional six points for Innovation in Design and an additional 4 points for Regional Priority. Buildings can qualify for four different levels of certification:

Certified: 40–49 points

Silver: 50–59 points

Gold: 60–79 points

Platinum: 80 points and above

### **Environmental Vocabulary**

There are a few additional environmental real estate terms that sometimes appear on the exam:

*Accretion* – An increase of property by the gradual, natural action of wind or water (e.g. the slow increase of a beach).

*Aeolian Soil* – Soil deposited by wind, such as sand dunes or silt.

*Alluvion* – An increase of land area along a shore by deposited alluvium or by the recession of water (e.g. the slow increase of a riverbank).

*Alluvium* – Any clay, silt, sand, gravel, or similar *detrital material* (sand, rocks, gravel, etc.) deposited by running water.

*Avulsion* – The sudden separation of land from one property or its attachment to another, usually caused by flooding, a storm, or a change in the course of a river.

*Erosion* – The process by which the surface of the earth is gradually worn away by natural actions (e.g. water, wind, etc.).

*Reliction* – An increase of the land by the sudden retreat of the sea, lake, river, or other body of water (e.g. a sudden decrease in the water table).

### **Other Property Right Concerns**

#### **Easements**

Easements are rights of way across a neighboring property. The property with the right is the *dominant tenement*; the one encumbered by the right is the *servient tenement*. Easements are usually the right of the property, not the property owner, and therefore *run with the land* (transfer when ownership of the land transfers). Rights of *ingress* are rights of entrance; rights of *egress* are rights of exit. There are several types of easements:

*Easements appurtenant* – Easements that involve two adjoining lots of land. One owner has a right of way across the other's property for some limited purpose. Easements appurtenant may be created in four ways:

1. *By Deed*: The easement is created in the deed when the property is sold. This can either come as an *easement grant* where the owner of the servient tenement grants the easement, or an *express reservation* where the owner of the servient tenement reserves the right to use a portion of the property (usually when they own the dominant tenement as well).

2. *By Implication*: The seller implies an easement by the sale of the property. This often occurs when the seller intended to create an easement, but failed to do so. For example, if a property is sold with no legal access road, but could be accessed by crossing the lands of the seller, it might create an *implied easement*.
3. *By Necessity*: If a property owner cannot legally access their property ("*landlocked land*") a court might grant an easement so that the owner can access their property.
4. *By Prescription*: An easement acquired by the **O**pen, **N**otorious, **C**ontinuous, **H**ostile, and **A**dverse (O.N.C.H.A.) use of the right of way for more than 20 years. For example, property owner A uses property owner B's path for 25 years. Property owner B never says anything about it; they don't give owner A permission, ask them to stop, or post "No Trespassing" signs. Owner A has been using the path openly (they aren't sneaking by at night), notoriously (publicly), continuously (they didn't move away in the middle of the 25 years), and hostilely and adversely (against B's property rights). In this situation, owner A could go to court, prove that they've been using the path for 25 years, and be granted an easement by prescription by the court.

Easements appurtenant are difficult to remove once put in place. Generally, there are only two ways to remove them: by combining the two lots into one large lot (since an easement appurtenant requires two lots by definition), or if the purpose for which the easement was granted becomes impossible (e.g. an easement was given for road access, and there is no longer a road to access).

*Easements in Gross* – Personal easements granted in writing to someone who does not own an adjoining lot (e.g. the seller of a piece of property writes into the deed that they have dock rights on the property). Easements in gross automatically extinguish when the person holding the right passes away.

## Licenses

Personal, revocable and non-assignable permission to enter someone else's property for a particular purpose. For example, a homeowner gives the town a 6 month license to step on 4 feet of their front lawn while they install a sidewalk in the neighborhood. Or a construction company receives a license to park their construction vehicles overnight in a nearby mall parking lot for 8 months while they work on the highway. Other examples include harvesting timber licenses, fishing licenses, and even a ticket to enter Fenway Park could be considered a type of license.

## Encroachments

The intrusion of an improvement onto a neighboring property (e.g. a misaligned fence). Failure to take action against an encroachment may result in a loss of the land (again via O.N.C.H.A. with a 20-year time frame).

## Financial Limitations (Liens)

Financial limitations, or *liens*, are limitations on your ownership associated with debts or payment obligations. They can either be *voluntary* (taken on willingly), or *involuntary* (imposed by a third party), and either *statutory* (put in place by laws), or *judicial* (put in place by a court). Liens are usually paid according to, "*first in time, first in right*," meaning that the first lien put in place is paid first, and so on. A *general lien* covers all property of the debtor (both real and personal); a *specific lien* only covers the property identified by the lien (e.g. a home).

## Voluntary Liens

Voluntary liens make a piece of property collateral for some debt. They typically take two forms:

*Mortgage* – Used when borrowing money from a bank, usually for the purchase of real estate. The borrower (*mortgagor*) gives the bank (*mortgagee*) the right to sell their home if they do not pay the loan (evidenced in a *note*, or IOU). The *mortgage* is a lien against the property in most states (though not all; please see the Financing section).

*Installment Sales Contract (Conditional Sales Contract, Contract for Deed, Land Contract)* – Similar to *rent to own*. The seller (or *vendor*) enters into a contract with the buyer (or *vendee*), which states that the buyer will make payments until the seller has been fully paid for the property. When the contract is fully paid, the buyer receives a deed

transferring ownership of the property. Under the contract, the buyer holds what is called *equitable title*, or a future right to acquire *legal title* (ownership) to the property. If the buyer defaults on the contract (usually by non-payment), the seller keeps any money the buyer has paid, and the buyer does not receive title to the property.

### **Involuntary Liens**

Involuntary liens are claims against the property that are imposed by some third party (usually the government, or a court).

*Property Tax Liens* – Claims against property for municipal property taxes. Property taxes represent a specific *priority lien* against real estate. This means that the taxes are paid first in the event of foreclosure, ahead of all other *lienholders* (persons or legal entities that have a lien against the property). If a property owner doesn't pay their taxes, the town or city the property is located in will foreclose on the property, and provide the purchaser with a *bargain and sale deed* or a *certificate of sale*. In Massachusetts, property owners have a *statutory right of redemption* (also called an *equity or equitable right of redemption*), or the right to pay their debt and regain ownership of their home, that extends six months from the date of sale at foreclosure (land court has the right to extend this timeline). This means that, after a home is sold at tax foreclosure, the homeowner has up to six months to pay their unpaid taxes (plus interest) to get their property back.

*Federal Tax Liens* – Liens placed against a person for unpaid income taxes. They are general liens, and are used by the Internal Revenue Service (IRS) to recoup tax revenue. *Estate tax liens* are a type of Federal Tax Lien used by the IRS to secure an estate's tax payments.

*Mechanic's Liens* – A protection for *contractors*. They are allowed to place a lien against a property for work they did, and weren't paid for. This only applies to work done on real estate; personal property is not eligible for a mechanic's lien. A mechanic's lien is an example of a *cloud on title*, or an issue with ownership that might create problems during a real estate sale, and of a statutory lien.

*Judgments* – The final ruling by a court of law about who wins, and who loses, a court case. Often comes with an award of *damages* (monetary compensation) for the harm suffered by the *plaintiff* (person bringing the suit). If the *defendant* (person being sued) can't pay the judgment, the court will often take their property, sell it in a *sheriff's sale*, and satisfy the plaintiff with the proceeds from the sale. Judgment liens are judicial liens.

*Attachments* – A court order seizing property in order to satisfy a possible future judgment. The defendant still owns their property, but the property is attached to the lawsuit; if the property later changes ownership, it is still covered by the lawsuit, and may be sold to satisfy a judgment. A *lis pendens* is recorded to inform the public that the property is subject to litigation.



## Property Valuation

How much is property worth? Ultimately, it's only worth what a buyer will pay for it, so the buyer (and the market in general) determine real estate values. How much will buyers pay? Now, that's a tough question! In fact, it's so tricky that there is an entire profession dedicated to answering it. The people who estimate what buyers will pay for real estate are known as *appraisers*. Their estimates of value are known as *appraisals*. Appraisals are important to understand due to their relationship to financing and taxes, and are governed by the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

Per Title XI of the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989*, appraisers must have an appraisal license to make an appraisal for any federally related real estate transaction secured by real estate (and for any non-secured real estate transactions over \$250,000 in value), which covers most real estate sales. Therefore, real estate agents can typically only make *comparative* or *competitive market analyses* (usually as part of a *listing presentation*) or give *broker price opinions* to determine listing prices (usually based on recent sale prices by the square foot).

### How an Appraiser Estimates Real Estate Value

All appraisals follow a similar process. First, the appraiser defines what rights, real estate, and definition of value are being considered. Second, a preliminary survey is ordered, and an appraisal plan is made. The plan might include data, personnel, and time requirements, and a fee proposal. The appraiser then collects information about the general macroeconomic climate, area economic data, specific information about the property in question (e.g. title and record, physical characteristics, improvements), and comparative properties (*comps*, which are local sales, rentals, etc. from the past six months). The appraiser completes a *highest and best use* analysis to determine if the property is being used efficiently or if it could be put to better use, and finally, the land is valued. The improvements on the land are valued based on the three approaches to value (below), and the findings from any of those approaches are *reconciled* (the appraiser weighs each finding and arrives at a final estimate of value) in the *reconciliation* step. The appraiser then reports their estimate of value in either *narrative form* (a written report) or via a *Uniform Residential Appraisal Report (URAR, or Fannie Mae/Freddie Mac Form 1004)*.

### What is Value?

*Value* is how much a ready, willing, and able buyer will pay for something, and a willing and informed seller will accept. There are many factors that impact an appraiser's estimate of value. The elements of value are **D.U.S.T.:**

*Demand* – The number of people that want to buy the property (and are actually able to do so).

*Utility* – Something's usefulness. The more useful it is, the more demand there is.

*Supply (or Scarcity)* – The more plentiful something is, the less it is worth (and vice versa).

*Transferability* – Sellable real estate must be free from *clouds on title* (issues with ownership). This is known as having *good and clear title* or *marketable title*. Real estate with title defects is difficult to sell, and thus has lower value.

There are several ways to define value for real estate:

*Market Value* – The theoretical price a ready, willing, and able buyer would pay, and a willing, informed seller would accept in an *arms-length transaction* (a sale with no collusion between the buyer and seller). Also known as *fair market value*.

*Market Price* – The actual amount paid in the market.

*Value-in-Use* – The value to a particular user of a property (e.g. farm value vs. raw real estate value).

*Cost* – The total cost to build a property.

*Investment Value* – The value of a property for investors.

*Insurable Value* – The value of a property for insurance. The *Comprehensive Loss Underwriting Exchange (CLUE)* records past consumer claims that are used in homeowner's insurance underwriting.

*Assessed Value* – The tax value of a property.

*Liquidation Value* – The foreclosure value of a property.

## The Principles of Value

Below are some terms that appraisers use when valuing real estate. You will sometimes see these referred to as the *principles of value*.

*Change* – Real estate values are cyclical, and change over time in response to the general economic climate, interest rates, inflation, employment, etc.

*Anticipation* – The benefit a property owner expects to receive over their lifetime of ownership. An example is if someone buys a property for \$60,000, and expects to sell it for \$300,000.

*Substitution* – Buyers will not pay more for something than they have to pay for a comparable good; as a result, property owners can't charge much more for their property than the surrounding comparable properties are selling for.

*Progression/Regression* – The increase (*appreciation*) or decrease (*depreciation*) in your property value caused by substitution. This means that a home in an area with nicer properties than it will usually see its value increase (progression), and alternatively if the properties around the home were less nice than it, its value would decrease (regression).

*Four Stage Lifecycle* – Properties go through 4 stages: growth, stability, decline, and revitalization.

*Balance* – The notion that value is created and maintained when there is equilibrium among the amount and location of types of real estate. For instance, a loss in value might occur if there are fewer services and agencies than a community needs, or more services or agencies than a community can support.

*Conformity* – The idea that maximum value is achieved when a property is more or less in line with the surrounding properties.

*Contribution* – Additional investment in a piece of property (as measured by the increase in value).

*Increasing and Decreasing Returns* – Spending money to improve a property may not add value (this is a function of substitution). If you have spent too much it is *over-improvement*, and not spending enough is *under-improvement*.

*Competition* – Profits attract competition. Competition increases supply, which drives down price (and the corresponding profits). It is assumed that, in free markets, profit will eventually be driven to zero by competition.

*Consistent Use* – This principle states that, when improved land is in a state of transition to another highest and best use, it cannot be appraised with one use for the land and another use for the improvements.

*Highest and Best Use* – The idea that properties will be optimized to their most optimal use over time. The highest and best use is that most optimal use.

*Plottage Value* – An increase in value associated with *assemblage* (the combination of multiple small pieces of land into one large parcel).

## Influences on Property Value

There are also a number of fairly intuitive basic forces that influence the value of real estate:

*Social Trends* – People's wants and desires. Impacted by demographic trends, family sizes, environment preferences, crime rates, etc.

*Economic* – People's ability to buy homes. Impacted by employment, inflation, interest rates, etc. Real estate tends to follow *market cycles* (characterized by a cycle of recovery, expansion, oversupply, and recession).

*Government and Legal* – What you can legally do with the land. The more useful it is to more people, the more it is worth, and vice-versa. Impacted by zoning, building codes, environmental laws, etc.

*Environmental and Physical* – Location, location, location! Proximity to transportation and highways, natural resources, climate, views, etc.

## The Three Ways to Value Real Estate

There are three basic approaches to evaluating the value of a piece of real estate. They are the *sales comparison approach*, the *income approach*, and the *cost approach*.

**Sales Comparison Approach**

This is the most common appraisal analysis, also referred to as the *Market Data Approach*, where an appraiser looks at recent *comparable sales* ("comps") and estimates the value of a property based on those sales. It is most useful for midlife residential properties and land sales. Comparable sales should be limited to properties that 1) are located in the same area as the *subject property* (the property being valued) and 2) were sold in the last 6 months.

Take a situation where the appraiser is evaluating the value of a 3-bedroom home. In our simplified example below, they find 2 sales that are similar to the subject property, except that they each have a different number of bathrooms. The appraiser would use available pricing data to estimate the value of a bathroom in this area (for our example, let's say \$10,000), and would adjust the comparable properties to reflect an increase or decrease in value if they had the same number of bathrooms as the subject property. It would look something like this:

	<b>Subject Property</b>	<b>Comp #1</b>	<b>Comp #2</b>
<b>Bathrooms</b>	2	1	3
<b>Sales Price</b>	N/A	\$150,000	\$170,000
<b>Adjustments</b>	N/A	+\$10,000	-\$10,000
<b>Adjusted Price</b>	\$160,000	\$160,000	\$160,000

Obviously, our example is extremely simple. In real life there would be many more adjustments, and the appraiser would have to do a *weighted average* of the adjusted prices (where more similar properties are given more importance than those with many adjustments) in order to finalize the estimated value of the subject property.

**Investment Value (The Income Approach)**

There are several ways to estimate the value of a property to investors. For investors, a property's financials are one of the most important factors when they decide to buy or sell a property.

*Annual Property Operating Data (APOD) sheets* show the annual income of a rental property. APODs are considered the profit and loss statements for investment properties.

Sample APOD Sheet

---

Potential Gross Income ( <i>PGI</i> )	
- Vacancies	
=	
Effective Gross Income ( <i>EGI</i> )	
- Operating Expenses	
=	
Net Operating Income ( <i>NOI</i> )	
- Debt Service	
- Capital Expenditures	
=	
Cash Flow Before Taxes ( <i>CFBT</i> )	
- Income Taxes	
=	
Cash Flow After Taxes ( <i>CFAT</i> )	

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**APOD Sheet Terms**

Let's look at the essential elements of an APOD sheet:

*Gross Income* – Income before expenses (revenue).

*Net Income* – Income after expenses (profit).

*Vacancy* – Empty rental properties or units that do not produce income. *Vacant* (empty) rental properties result in a loss of income, since no one is paying rent while the property is vacant. *Occupancy* is the opposite of vacancy.

*Operating Expenses* – The costs to run the property. Operating expenses are things like maintenance, insurance, municipal property management, property taxes, etc., and are usually deductible for tax purposes.

*Debt Service* – Mortgage loan payments.

*Capital Expenditures (Capital Improvements)*– Any money spent to improve the property, rather than maintain it. For example, a new roof makes the property better, and increases the property's value. The new roof is therefore a capital expenditure. This is in contrast to something like roof maintenance, which does not increase the property value and instead merely maintains the existing value, and is therefore an operating expense. Capital Expenditures are usually not deductible for tax purposes, but can be *depreciated* (see the taxes section in Government Financing Programs and Regulations).

For the purposes of APOD sheets, debt service and capital expenditures are never operating expenses.

With the financials out of the way, we can dig into the different ways to value investment properties:

### ***The Gross Rent Multiplier (GRM)***

*GRM* (the “*gross rent multiplier*”) is how many months of gross (total before any expenses) rent it would take for a property to pay for itself. It can be either a monthly or annual number. To find out if a property is a good value, an investor would look at recent rental property sales in an area, and calculate how many months' rent it would take to pay for their sales prices. The investor can then use that information to determine if an investment property is a good deal (is the GRM lower, or higher, than similar properties in the area?), and how much they should offer (based on the multiple of the rent).

Note that GRM is a very simple number and doesn't take into account operating expenses, which can significantly impact an investor's return. It is therefore only useful when comparing single-family homes to other single-family homes (and even then, it is of limited use).

#### **GRM Math**

$$\text{Equation: Sales Price} / \text{Gross Rent} = \text{GRM}$$

How much is a house renting for \$1000 a month worth if the average monthly GRM in an area is 200?

**Answer:**  $\$1000 \times 200 = \$200,000$

### ***The Capitalization Rate (Cap Rate)***

The capitalization rate (or *cap rate*) is the percentage of a property's value an investor can expect to receive as *net operating income (NOI)* (income after expenses) every year. It is a commonly used metric among real estate investors and lenders, since it provides a quick way to determine if an investment property is worth investigating, or if it is priced far out of line with the market. It is often more useful than GRM because it takes into account the costs of running the property.

If cap rate seems a little simple, it's because it is. If a property is worth looking at an investor might perform a more in-depth analysis of the property's financials before purchasing it (e.g. a discounted cash flow analysis), but the cap rate is often used to get a quick read on an investment's potential.

**Cap Rate Math**

*Equation: NOI / Sales Price = Cap Rate*

How much is a property with an NOI of \$10,000 worth if properties in the area have an average cap rate of 5%?

**Answer:**  $\$10,000 / .05 = \$200,000$

What is the cap rate for a property with an NOI of \$5,000 and a value of \$100,000?

**Answer:**  $\$5,000 / \$100,000 = .05$  or 5%

**Cash on Cash Return on Investment (CoCROI)**

The *cash on cash* method is similar to the cap rate, except that it is the return on an investor's cash investment in the property, rather than the property's total value. This gives the investor a metric to determine how the property is performing, compared to their investment goals, or compared to other investments on the market. *Cash on cash return on investment* is the percentage of your total investment received as annual cash flow (usually before taxes).

**Cash on Cash Return Math**

*Equation: Cash Flow / Dollars Invested = Cash on Cash Return on Investment*

How much is a property with cash flows of \$20,000 returning on an investment of \$150,000?

**Answer:**  $\$20,000 / \$150,000 = 0.13$  or 13%

**The Cost Approach**

The *cost approach* uses construction costs to estimate property value. It is used for buildings and improvements that lack adequate sales comparison data, either because they are unique (churches, historical buildings, etc.) or brand new. Since these properties often also lack income, the cost to build the property is used as a valuation method instead. This method can also be used to estimate value if a real estate market might begin to attract competition in the form of new construction; if existing properties are selling for the same as, or more than, the cost of new construction, expect competition!

To value a property using the cost approach, an appraiser estimates the new cost of a *reproduction* or *replacement* of the property's improvements at today's prices. The appraiser then subtracts from that number the *depreciation* (loss in value, assuming the property is not new) to come to an estimate of the value of the improvements. The value of the land is then calculated using the sales comparison approach and added to the cost to reach a final value.

The valuation math via the cost approach is relatively straightforward. An appraiser might calculate the following:

\$520,000	Estimated replacement or reproduction cost
<u>- \$60,000</u>	Less depreciation costs
\$460,000	Estimated improved value of the property
<u>+ \$92,000</u>	Plus estimated land value (calculated via the sales comparison approach)
<u>\$552,000</u>	Final estimated property value

## Estimating Replacement and Reproduction Costs

*Comparative-Unit Method* – The cost of recently constructed similar properties divided by their square footage to produce a *price per square foot* cost of construction (Price / Square Feet = Price Per Square Foot). This is the *replacement* cost. Using this method, we can estimate the cost of building a similar property.

*Square footage is based on **Gross Living Area (GLA)**, not the total space in the property. Gross Living Area is all of the finished, heated, and above grade (above the surface of the ground) parts of the property. Garages, sunrooms, basements, etc. might not count towards GLA.*

*Unit-in-Place Method* – Evaluates the value of systems and components (e.g. the roof, HVAC system, etc.) in the property. Used for both the *replacement* and *reproduction* cost.

*Quantity Survey Method* – Estimates the cost of rebuilding the property exactly as it appears today using local construction costs, supply costs, permitting costs, etc. It is used for the *reproduction* cost, and tries to estimate the cost of creating an exact replica of the subject property.

## Estimating Depreciation Costs

Remember, all of the methods above estimate the *new* property value. If the property is not new, the appraiser must contend with any loss in value associated with the aging of the property, known as *depreciation*.

*Accrued depreciation* is the depreciation that has already occurred when the property is purchased, while *remainder depreciation* will occur after purchase. The *straight-line* method of calculating depreciation calculates the annual loss in value based on some economic life for the property (usually the IRS defines economic lives as 27.5 years for residential property and 39 years for commercial property), while the *cost to cure* method calculates the depreciation costs based on how much it will cost to repair any *curable depreciation* (depreciation the owner can fix) on the property, plus any loss associated with *incurable depreciation* (depreciation the owner cannot fix).

*Physical Deterioration* – Costs associated with aging, physical wear and tear, and deferred maintenance (e.g. a leaky roof). Physical deterioration is a type of curable depreciation because the property owner could fix these issues to improve the property's value.

*Functional Obsolescence* – A loss of value due to a poor original design, outdated design, or changes in building standards and market preferences. Functional obsolescence is also a type of curable depreciation. Examples might include: A seven-story building with no elevator, a six-bedroom home with only one bathroom, a retail space without parking, etc.

*Economic Obsolescence* – A loss in value due to *external* factors that have a negative effect on the value of the property. This is an incurable depreciation because the property owner cannot fix it. Examples might include: changes in zoning, high foreclosure rates in the area, the loss of public transportation, etc.

## Contracts

*Contracts* are special legally binding agreements between two or more parties (either natural or legal persons). This means that the parties to a contract can go to court if one of them doesn't *perform* under the contract (*performance* is doing what you promised in the contract). To be officially recognized as a contract, and not simply an agreement, an agreement must meet the *essentials* of a contract:

- *Offer and Acceptance* (*meeting of the minds, mutual agreement, or mutual assent*), as evidenced by either signatures or action (such as making or accepting payment). In addition to wet signatures, electronic signatures are also binding per the *Federal Electronic Signatures in Global and National Commerce Act (E-Sign)* and the corresponding *Massachusetts Uniform Electronic Transactions Act (UETA)*.
- *Consideration* is anything of value exchanged between the parties. *Valuable consideration* is money (even a small amount), goods, or services; *good consideration* is anything of a generous, affectionate, or moral nature (a hug, words of wisdom, etc.).
- *Legal object* means that the purpose of the contract must be legal. Therefore, a contract to do something illegal is not really a contract.
- *Reality of Consent and Competence* – *Consent* is defined as freedom from *misrepresentation* (misstatement of the facts without intent to deceive), *fraud* (deliberate misrepresentation), *undue influence* (unfair advantage or influence over another due to the relationship between the parties), or *duress* (the threat of physical injury or any other threat). The parties to the contract must also be *competent* (sober, of sound mind, and of legal age or an *emancipated minor*).

A *valid* contract is a contract that has all of the essential elements listed above and can therefore be enforced by a court ("legally binding.") *Void* or *voidable* contracts, on the other hand, suffer from some problem and may not be legally binding. *Void* contracts are agreements that are intended to be contracts, but because they lack one of the first three essentials listed above (offer and acceptance, consideration, or legal object), they do not qualify as contracts and therefore are not legally binding. *Voidable* contracts are also intended to be contracts, but lack the last essential (consent and competence). This last essential is different from the others because the contract is still valid unless the party whose consent is in question requests that a court void it (for example, someone who signed a contract while drunk could either wake up and still be fine with the terms and go forward with the contract, or they could realize they made a huge mistake and ask the court to void the contract). Watch out on the exam: a voidable contract is valid unless a court voids it.

Even if you have a valid contract, it still might be rendered *unenforceable* for a number of reasons. Simply having a valid agreement doesn't necessarily mean you will win in court. For example, a court might decide the contract is unfair, or that performance is impossible. Another way that a contract might be deemed unenforceable is under the *Statute of Frauds*. Remember, the Statute of Frauds is the law that requires that certain types of contracts, including real estate contracts, be in writing in order to be enforceable. A verbal real estate contract is therefore unenforceable (but not void!) under the Statute of Frauds. In practice, the difference between an unenforceable agreement and a void agreement isn't terribly important – in either case, the contract isn't protecting you from whatever has gone wrong and brought you to court – but on the exam, you need to make sure you differentiate between the two.

The *Doctrine of Laches* is the idea that you lose your rights if you fail to assert them within a reasonable timeframe, and can also be used to render a contract unenforceable. It can also be important in contract disputes. For example, if you signed a contract while drunk thirty years ago, it might not be terribly reasonable to ask a court to void it today. After all, it has been thirty years. That's a long time! Laches might therefore be used as a reason to deny voiding the contract, since you've waited an unreasonable amount of time to assert your right to void the contract. What's unreasonable? It's ultimately up to the judge, so consult an attorney before using this one.

A *Statute of Limitations* is a bit different from the Doctrine of Laches. While the Doctrine of Laches is based on what is reasonable in a particular situation, a Statute of Limitations is a hard legal limit on when you can bring a certain claim to court. For instance, in Massachusetts you might have up to 20 years to file a lawsuit after someone violates a contract, depending on the type of contract. After that Statute of Limitations has elapsed, though, the contract is unenforceable, and you cannot file a lawsuit over the violation.

Any promises made in a contract can be *unilateral* or *bilateral*. *Unilateral* contracts are those in which one party makes a promise to do something, while the other does not necessarily make any promise (e.g. an option, open listing contract). *Bilateral* contracts, on the other hand, involve a simultaneous exchange of promises (e.g. a 12-month lease, exclusive right to sell contract).

*Executory* contracts are contracts that have been agreed to, but not yet completed (like when you are in the middle of a 12-month lease). *Executed* contracts are completed and finished (you've moved out of your leased apartment and all the terms of the lease have been satisfied). Don't confuse the term *executed* with the term *accepted* (signed) – people often use them interchangeably, so the test will try to trip you up on this.

Contracts can also be *assigned*, which is the transfer of a party's rights and obligations to another party. However, the *assignor* (person assigning the contract) is not relieved of their obligations should the *assignee* fail to perform under the contract.

### **Contract Violations**

The purpose of a contract is to provide a remedy in the event that one of the parties doesn't do what they agreed to (known as a *breach of contract*). It's weird to think about, but contracts are made to be broken. After all, you don't need a contract if everyone does what they promised to do. The contract only becomes important when someone doesn't do what they promised, and you wind up in court.

The *doctrine of privity* (*privity of contract*) gives the parties in the contract the right to sue for a breach of that contract. In the event of a breach of contract, the innocent party may demand any number of things in a court:

*Rescission* – A cancellation of the contract. Typically, rescission will involve both parties signing *mutual release papers* or a *mutual release agreement* relieving each other of their obligations under the contract.

*Specific Performance* – A court order forcing the party in violation of the contract to comply with its terms (commonly used if a seller attempts to back out of a sale). This is a type of *injunctive relief* (a court ordered act, or a court ordered cessation of an act).

*Damages* – Monetary compensation for the harm suffered as a result of the breach of contract.

*Liquidated Damages* – A pre-agreed amount of money paid in the event of a breach of contract.

*Forfeiture* – A type of liquidated damages where you lose your deposit. In real estate transactions, the deposit that would be lost is typically the buyer's *earnest money* (a deposit they make when submitting an offer or signing a purchase and sale agreement).

### **Common Clauses**

There are a handful of common clauses (stipulations) to be aware of in contracts:

*Ironclad Merger Clause* (*Integration Clause, Merger Clause, Entire Agreement Clause*) – States that there is no prior agreement in place, and any other agreements outside of the current written contract (e.g. verbal statements at closing) shall not have any force or effect.

*Severability Clause* – By default, if one part of a contract is illegal, the entire contract is voided (see the section about "legal object" above). However, if the contract contains a *severability clause*, the clause provides that any part of the contract that is illegal will be voided, but the remainder of the contract will remain in effect. This way the whole contract won't be thrown out if one small section in it is found to be illegal.

*Contingency Clause* – Makes the contract agreement *contingent* (reliant) on something occurring. These include *mortgage contingencies*, *inspection contingencies*, and more. Generally speaking, contingencies that rely on the approval of a third party (e.g. an inspection) should have short deadlines to prevent unnecessary delays.



## **Types of Real Estate Contracts**

### **Listing (Selling) Contracts**

Real estate *listing contract* (or *broker employment contract*) – The contract used to hire an agent to sell a home. Listing contracts usually cover what property the agent is selling, what they will be paid (as a flat fee or percentage of the sales price), the agent's authority (putting up for sale signs, holding open houses, etc.), and the deadline for the sale (the listing's expiration). A *multiple listing* clause within the contract permits (or requires) cooperation with other agents via the *MLS* (*multiple listing service*). Listing agreements typically take one of four forms:

*Flat Fee Listing (Entry Only Listing)* – A listing where the agent is paid a fixed fee, rather than a percentage of the sales price. Usually in this type of listing, the property is simply listed on MLS, and the agent does not show the property or negotiate a sale.

*Open Listing* – A listing where the seller hires multiple agents and they all work competitively to earn the commission based on the terms specified in the listing. Open listings are the only type of listing that can be either written or verbal, because they are not exclusive listings – all the other types are exclusive, and therefore must be written. (Note: the Statute of Frauds does not apply to open listings because listing agreements are hiring contracts, not real estate contracts.) If the seller finds a buyer without an agent's help, no one earns the commission.

*Exclusive Agency* – The seller hires one agent who will earn the commission. In most states, including Massachusetts, exclusive listings must be in writing and have an expiration date. Like an open listing, no commission is earned if the seller finds a buyer without the agent's help.

*Exclusive Right to Sell* – One agent is hired to sell a property, and they will earn a commission even if the owner sells the property during the contract term without the agent's assistance. An exclusive right to sell often contains a *safety clause* (sometimes called a *protection* or *extender clause*) that states that the agent is owed some portion of their commission if the property sells shortly after the contract expires, to prevent the seller from waiting out the contract to avoid paying a commission. In most states, including Massachusetts, exclusive rights to sell must be in writing, and have a specific expiration date.

### **Buyer's Agency Contracts**

*Buyer's agency agreements* are simpler than listing contracts. This is because buyer's agreements typically focus on *exclusivity* (can the buyer only work with one agent, or many?), and are less focused on payment. Normally the buyer's agent isn't paid by the buyer directly and is instead compensated by receiving a share of the listing agent's commission (paid by the seller). On the exam, real estate commissions are treated as a cost for the seller. However, in practice, commissions are actually paid for by both the seller and the buyer which means both the buyer and seller should be aware of the costs of hiring an agent. The split of the commission is negotiable between the two agents. Nothing legally prevents the buyer from paying the agent directly, and this does sometimes happen if the seller hasn't hired a listing agent and isn't paying a commission, but on the license test, the real estate commission is always a cost to the seller.

Note that because both the seller and the buyer typically each have an exclusive agent, in order for the agents to work on the transaction together, they must have permission to *co-broke* from their respective clients.

### **Offers**

The listing is a solicitation for *offers*. Note that the listing is non-binding; the seller does not need to accept any offer they receive. Under the offer, the buyer is the *offeror*, and the seller is the *offeree*. The seller signs the written offer to accept it (remember, verbal offers and acceptances are non-binding per the Statute of Frauds), which creates a contract to enter into a *purchase and sale contract* within a certain timeframe (usually 5-14 days). The timeframe can be shorter or longer than the average because ultimately the buyer and seller negotiate this time frame. In a seller's market, typically the P&S will be signed in a shorter time frame than in a buyer's market where buyers desire more time to complete their due diligence. There is no priority among offers; the seller may accept whatever offer they choose.

However, once they accept an offer, they must perform under the terms of the offer, and cannot unilaterally cancel it without cause. Typically speaking, *time is of the essence*, meaning that timely performance under the contract is required.

Once an offer is accepted, it is no longer an offer – it is a contract. However, before signing, offers may be also terminated by any of the following:

- The time limit stated in the offer ends.
- The death of either party in the offer.
- The destruction of the *object of offer* (e.g. the house burning down).
- The withdrawal of the offer before it has been accepted in writing.
- Counter-offer by the seller (counter-offers automatically void the original offer and a new offer would need to be created and signed).

Agency relationships (the agent gets fired, loses their license, etc.) have no effect on the offer.

In some transactions, you will be presented with a shorted document known as a *binder* or a *letter of intent*, that serves a similar purpose to the offer.

### **Purchase and Sale Contracts**

The *purchase and sale contract (P&S)* is the agreement about how the sale will take place. Purchase and sale contracts outline the obligations of the buyer and the seller, any *contingencies* (e.g. *financing contingencies*, *escape clauses* permitting the seller to continue marketing the property while it is under contract, *inspection contingencies*, etc.), and the date of *closing* (sale of the property). The basic essentials of valid purchase and sale include the following:

- The names of the buyers and sellers
- Legal description of realty (i.e. its address)
- Offer and acceptance (in writing per the Statute of Frauds)
- Consideration (often a 5% deposit from the buyer)
- The terms and conditions agreed on by the parties
- Any contingencies negotiated by the buyer or seller
- The date of performance (closing)

After the P&S is signed, the buyer and seller may amend it by attaching a separate agreement (a *rider*), or by writing in new terms and initialing the changes to the agreement.

### **Options**

*Options* are a type of contract that you might encounter, though rarely. They are written contracts where the owner of a piece of property (*optionor*), in exchange for consideration, grants another party (*optionee*) the right to purchase or lease property within a certain time frame at pre-agreed terms. The optionee may then choose to *exercise the option* (purchase or lease the property), or not, during that timeframe. There is no obligation to exercise the option.

Options may be assigned without the consent of the optionor. They might be used to buy time for a developer who needs to gain financing, or for a tenant who is interested in renting before owning to “try out” the home. An agent who brings an optionee, rather than a buyer, will only earn a commission if the option is exercised (the sale goes through).

### **Rights of First Refusal**

A *right of first refusal* gives a prospective buyer the right to match any offers made on a property, and to purchase the property at the offered price in lieu of the original offeror. That said, the right doesn't give the buyer control over what price or terms the property sells for; they are limited to matching the best offer made on the property. Unlike options, rights of first refusal allow the owner to track the market and ensure fair market value, or to choose not to sell. Rights of first refusal can also be used for rental properties.

Rights of first refusal can be disadvantageous for sellers because potential offerors might see the delay and uncertainty created by the right of first refusal as a negative, and therefore choose not to make an offer on the property. This might reduce the demand for, and thus the price of, a property. Typically, sellers only grant the right of first refusal if they are being very kind, if they are being compensated, or if it's required to close the original deal.

### **Rights of First Offer**

A right of first offer gives a prospective buyer the right to make an offer to purchase a property before anyone else, and typically requires the seller to make a good-faith attempt to reach a deal with that buyer before putting the property on the open market. Rights of first offer can also be used for rental properties. Like rights of first refusal, rights of first offer are typically only granted as a courtesy, for compensation, or if it's required to close the original deal.

### **Power of Attorney**

A *power of attorney* is a written document that allows someone to act in a legally binding way on behalf someone else. It creates what is known as an *attorney-in-fact*, and is often used to allow a real estate agent to attend a closing and sign documents on behalf of their client.

**Sample Exclusive Right to Sell Listing Agreement**

This EXCLUSIVE RIGHT TO SELL AGREEMENT is hereby established between the SELLER, \_\_\_\_\_, \_\_\_\_\_, Owner of the property with a description below and the BROKERAGE, \_\_\_\_\_. The agent who signs will be primarily responsible for fulfilling the obligations of the brokerage on behalf of the brokerage.

For the purposes of finding a buyer for the property, the Brokerage is, under the terms of this agreement, given the exclusive right to sell the property.

The SELLER further affirms, that as of the Signing Date of this agreement, the property is not currently under agreement with any other real estate brokerage.

**TIME PERIOD OF AGREEMENT**

**(a) Period.** The period shall commence at noon of the Signing Date, and conclude at noon of the Expiring Date.

**(b) Signing Date.** This agreement will be effective, and all the terms shall be in effect. The agreement will proceed on the date that it is signed by both the SELLER and the brokerage.

**2. REAL PROPERTY.** The property pertaining to this agreement includes all the real estate in the description below, and any personal property specified thereafter.

Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Plat: Lot \_\_\_\_\_ Block \_\_\_\_\_ PID # \_\_\_\_\_  
The Property may be identified in Deed Book \_\_\_\_\_ on Page # \_\_\_\_\_

**3. FIXTURES.** Any items attached directly or indirectly to the property, are included in the purchase price. Anything the SELLER doesn't want included, but that are presently attached, please list below:

\_\_\_\_\_  
\_\_\_\_\_

**4. PERSONAL PROPERTY.** These listed items of personal property are conveyed to the BUYER at no value and for no consideration:

\_\_\_\_\_  
\_\_\_\_\_

**5. WARRANTY.** The SELLER agrees \_\_\_\_\_, does NOT agree \_\_\_\_\_, to provide a home warranty for a period mutually agreed upon by the SELLER and the BUYER.

**6. LISTING PRICE.** The SELLER decides to list the property at a price of \$ \_\_\_\_\_

**7. BROKERAGE FEE.**

**(a) Commission Amount.** The SELLER shall pay a fee in the amount of \_\_\_\_\_ % of the gross sales price of the property.

**(b) Commission Earned.** The fee shall be considered earned if any of the following were to occur:

(i) If the BROKERAGE procures a ready, willing, and able buyer, in accordance with the price and terms established by the SELLER.

(ii) If the property is sold or otherwise transferred during the TIME PERIOD listed above.

**(c) Commission is Due and Payable.** Once a condition above is satisfied, the commission shall become due and payable at the sooner of:

- (i) Closing Time
- (ii) SELLER'S default of this agreement.

**8. FEES TO OTHER BROKERAGES.** BROKERAGE has apprised the SELLER of their policy about cooperating firms, and how much compensation is offered to other brokers. The SELLER hereby authorizes the BROKERAGE to *(check any applicable blank)*:

\_\_\_\_ Work with subagents that represent the SELLER and provide the following compensation: \_\_\_\_% of the gross sales price or \$ \_\_\_\_\_; and/or,

\_\_\_\_ Work with BUYER agents that represent the BUYER and provide the following compensation: \_\_\_\_% of the gross sales price or \$ \_\_\_\_\_; and/or,

\_\_\_\_ Work with other brokerages in accordance with their attached policies.

**9. MARKETING.** The SELLER empowers the BROKERAGE *(check any applicable blank)*:

\_\_\_\_ **For Sale Signs:** The BROKERAGE to place any sign to the marketing of the property.

\_\_\_\_ **Lock and Key Box:** To install a Lock and Key Box on the property

\_\_\_\_ **Open Houses:** To hold open houses at a mutually agreed upon time.

\_\_\_\_ **Listing Services:** To submit relevant information to any listing service for the purpose of marketing the property.

**10. MONEY ON DEPOSIT.** Any deposits on account will be held by the BROKERAGE'S authorized escrow agent, until the completion of this transaction.

**11. SELLER REPRESENTATIONS.**

**(a) Liens Currently on the Property.** As far as the SELLER is aware:

The Property is \_\_\_\_ is NOT \_\_\_\_, bound by a deed of trust or mortgage. *(fill in all applicable)*:

(i) There exists a first mortgage or deed of trust for the securing of a loan for the property held by:

Mortgagee Name: \_\_\_\_\_

Current Balance: \_\_\_\_\_

Lender Address \_\_\_\_\_

Phone Number: \_\_\_\_\_ Account Number \_\_\_\_\_

(ii) There exists a second mortgage or deed of trust for the securing of a loan for the property held by:

Mortgagee Name: \_\_\_\_\_

Current Balance: \_\_\_\_\_

Lender Address \_\_\_\_\_

Phone Number: \_\_\_\_\_ Account Number \_\_\_\_\_

(iii) There is a first mortgage or deed of trust for securing of an equity line of credit for the property held by:

Mortgagee Name: \_\_\_\_\_

Current Balance: \_\_\_\_\_

Lender Address \_\_\_\_\_

Phone Number: \_\_\_\_\_ Account Number \_\_\_\_\_

**(b)** The SELLER is not behind on payments to items numbered (i), (ii), and (iii)

**(c)** The SELLER affirms there are no liens secured against the Property for State, Federal or local income taxes, or unpaid municipal property taxes.

**12. SELLER'S OBLIGATIONS.** The SELLER agrees to work with the BROKERAGE in their effort to market and sell the Property.

SELLER: \_\_\_\_\_

CONTACT ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_ EMAIL \_\_\_\_\_

SELLER: \_\_\_\_\_

CONTACT ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_ EMAIL \_\_\_\_\_

BROKERAGE: \_\_\_\_\_ PHONE \_\_\_\_\_

AGENT: \_\_\_\_\_ LICENSE NO. \_\_\_\_\_

OFFICE PHONE: \_\_\_\_\_ EMAIL \_\_\_\_\_

**Sample Offer to Purchase**

Buyer(s) \_\_\_\_\_ Seller(s) \_\_\_\_\_  
\_\_\_\_\_  
Address \_\_\_\_\_ Address \_\_\_\_\_  
\_\_\_\_\_

The Buyer offers to purchase the property known as \_\_\_\_\_  
\_\_\_\_\_ or the property listed above, and will be paid as follows:

**1. Property Price:** The buyer agrees to pay \$ \_\_\_\_\_ in the following installments:

- (a) Due with this offer: \$ \_\_\_\_\_ deposit to bind the agreement.
- (b) Due upon signing of a Purchase and Sale Agreement: \$ \_\_\_\_\_
- (c) Balance due at or before closing \$ \_\_\_\_\_

**2. Time Frame for Offer:** Offer is good from this date \_\_\_\_\_ to \_\_\_\_\_

**3. Purchase and Sale Contract:** The buyer and seller agree to sign a purchase and sale agreement at the time indicated here: \_\_\_\_\_

**4. Closing:** The seller promises to deliver a good and clear title at the time indicated here: \_\_\_\_\_, at the \_\_\_\_\_ County, Registry of Deeds, or whatever other mutually agreed upon time and place.

**5. Escrow:** The escrow agent, \_\_\_\_\_, will hold the deposit for disbursement until the mutually agreed upon time.

**6. Contingencies:** It is understood that the buyer’s responsibilities under the Offer and Purchase and Sale agreements, are conditional to the following (check contingencies that apply):

- \_\_\_ **Mortgage:** The buyer’s responsibility to purchase is reliant on the buyer receiving a written commitment from a lender for the purchase of the property.
- \_\_\_ **Inspection:** The buyer has the right to acquire an inspection to determine the presence or effect of any hazardous substance on the property within 14 days of acceptance of this offer. The purchase is contingent on the inspection resulting in a designation of compliance.

**7. Representations/Acknowledgements:** The Buyer acknowledges that they have received all required disclosures.

**8. Buyer’s Non-performance:** The buyer will forfeit all deposits if they fail to go forward with the transaction.

-----  
**SELLER’S ANSWER**

The seller responds to the offer as indicated in the box checked below:

- \_\_\_ (1) The seller agrees to the offer at this time and date: \_\_\_\_\_
- \_\_\_ (2) The seller declines the offer
- \_\_\_ (3) The seller declines with this counter-offer: \_\_\_\_\_

The counter-offer is available until this time and date: \_\_\_\_\_

Seller \_\_\_\_\_ Buyer \_\_\_\_\_

---

**(IF SELLER PROVIDES COUNTER OFFER) BUYER'S RESPONSE**

\_\_\_ (1) The buyer agrees to the counter-offer at this time and date:

\_\_\_ (2) The buyer declines the counter-offer \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

---

**DEPOSIT RECEIPT:**

I hereby affirm and confirm the deposit received from the buyer in the amount of \$ \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Escrow Agent



**Sample Purchase and Sale Agreement**

The parties to this agreement, make this agreement on the \_\_\_ of \_\_\_\_\_

**1. Parties**

The SELLER, \_\_\_\_\_ agrees to sell to the BUYER, \_\_\_\_\_. The BUYER agrees to purchase the below described premises.

**2. Description of Property.** The Property consists of all the land with any and all buildings and improvements known as \_\_\_\_\_

The Agreement includes all appliances and fixtures, but does not include:

\_\_\_\_\_  
*[Insert references to refrigerators, dishwashers, microwave ovens, washing machines, dryers or other items where appropriate]*

**3. Purchase Price.** The purchase price for the Property is \$\_\_\_\_\_ of which

**4. Escrow.** All funds deposited or paid by the BUYER shall be held in an escrow account by \_\_\_\_\_, the escrow agent.

**5. Time for Closing.** The SELLER shall transfer the deed and the BUYER shall pay the balance of the purchase price at \_\_\_ o'clock \_\_. M. on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the \_\_\_\_\_ County, Registry of Deeds.

**6. Title.** The SELLER shall convey the Property by a quitclaim deed. The SELLER shall convey title to the Premises, free from liens.

**7. Title Insurance.** The BUYER'S obligations are subject to the availability of title insurance.

**8. Closing Certifications and Documents.** The SELLER shall execute the deed.

**9. Possession and Condition of Premises.** At the time of closing the BUYER shall take possession of the premises. The condition of the premises shall be the same as today and shall remain insured as today, until that time.

**10. Extension of Time for Performance.** If the SELLER cannot perform on the day agreed upon, there will be an automatic extension of thirty (30) days. Both sides promise to make a reasonable effort to perform at the time agreed.

**11. Nonconformance of Premises.** If the Property is altered because of fire damage, etc., the BUYER can ask of the SELLER that they pay for any repair.

**12. Acceptance of The Deed.** The acceptance of the deed by the BUYER shall constitute performance.

**13. Mortgage Contingency.** The sale is reliant on the BUYER obtaining a mortgage with reasonable terms.

**14. Lead Paint.** Both parties to the agreement acknowledge awareness of the lead paint law pertaining to children under 6 years old.

**15. Smoke Detectors.** At the time of closing, the SELLER shall provide the smoke certificate from the fire department, affirming its compliance.

**16. Acknowledgement of a Broker Fee Due:** A broker fee for professional services rendered is due \_\_\_\_\_  
For property built before 1978, the BUYER must have also signed the Lead Paint Property Transfer Notification.

**SELLER(s)** \_\_\_\_\_  
**BUYER(s)** \_\_\_\_\_  
**Broker(s)** \_\_\_\_\_

## Leases

A lease (also known as a *tenancy for years*, *estate for years*, *interest for years*, or *demise*) is a written conveyance of possession, but not ownership, of real estate for some specific period of time. Leases establish *privity of estate* (a legal relationship between two people with interests in the same property). The longest a lease can legally last is 99 years, and leases that last longer than 7 years must be recorded (made public record) in Massachusetts. Leases are *non-freehold* interests.

Leases are contracts, so they are subject to the essentials of contracts (see previous "Contracts" section). Leases must also contain some statement of intention to rent ("Mary Smith leases to Joe Smith") a description of the property (usually just its address), the total rental amount, the time and manner of payment for the rent, and the *term* (length) of the lease.

Under a lease, the *lessor* (landlord) transfers possession and use, but not ownership, to the *lessee* (tenant). The lessor retains a *reversionary interest* under the lease (the right to regain possession after the lease is over); tenants who stay past their lease expiration become *tenants at sufferance*, and must be evicted.

Under most leases, the lessor is liable for and insures any common areas (the lobby, shared restrooms, elevators, etc.), and the lessee is liable for and insures the leased premises (the rented unit). When evaluating *commercial leases* (leases for businesses), watch out for the difference between *usable square footage* and *rentable square footage*. Usable square footage is the actual space the lessee can occupy within the walls of the leased premises, and is responsible for. Rentable square footage, on the other hand, includes both the leased premises and a percentage of any common areas maintained by the lessor and used by the lessee (again, the lobby, shared restrooms, elevators, etc.). This additional square footage is often referred to as a *common area load*, *common area factor*, or *load factor*, and usually ranges from 5 to 15% of usable square footage in many commercial leases.

This is important because most commercial rents are calculated on an annual price per square foot, rather than a fixed total rental amount, e.g. \$40 per square foot. So, for example, a business renting a 1,000 square foot office with a common area load of 10% would pay rent calculated on a total of 1,100 square feet of rentable square footage (1,000 sq. ft. x 1.1 common area load = 1,100 sq. ft.), rather than the 1,000 square feet of usable square footage. If the business in this example negotiated a rent of \$40 per square foot, the common area load would add an additional \$4,000 per year to their rent (100 sq. ft. common area load x \$40 per sq. ft. = \$4,000) above the cost of the usable office space. This could substantially change how much space the business can afford to rent!

Commercial leases sometimes involve a *build out* (or *fit up* or *fit out*) of the leased premises. This means that the landlord or tenant pays to modify the space for the particular business (e.g. a restaurant might need to build a bar, booths, and so on). Who pays for the build out is part of the lease negotiation, and will vary from lease to lease. Sometimes the landlord pays, sometimes the tenant pays, or sometimes they split the costs.

What happens if the landlord wants to sell the leased premises? Leases *run with the land*, which means that if the lessor sells the leased premises before the lease has ended, the new owner is responsible for the lease, and must honor it. The new owner cannot change the lease terms. The same applies if the lessor dies before the end of the lease. A *certificate of no defense* or *estoppel certificate* is often used to confirm the lease when the property is sold. The *doctrine of estoppel* states that once you cause another to rely on your words, you cannot go back on your promises. This prevents the tenant from attempting to renegotiate or defraud the new property owner. The doctrine of estoppel is also used when loans are sold, verbal agency agreements are created, and in many other situations where promises are made.

Similarly, lessees are permitted to *sublet*, *assign*, or *novate* their lease unless the lease explicitly prohibits them from doing so. *Subletting* is the act of transferring a portion of one's rental interest to a third party (e.g. one month of a 12-month lease). *Assigning* is the transfer of all of the remaining interest to a third party. *Novation* is a cancellation of the lease contract (or any contract, for that matter), and a transfer of the remaining portion of the lease to a third party in a new contract. Only novation relieves the lessee of their obligations under the lease.

Aside from novation, leases can also be terminated in a number of ways:

- *Performance* – Leases automatically terminate at the end of their term.
- *Surrender* – Cancellation of the lease prior to expiration.
- *Action of Law* – Eminent domain taking, tax sale, bankruptcy, etc.
- *Destruction* – The property is destroyed.
- *Foreclosure* – Banks may have the right to terminate a lease in the event of foreclosure, depending on the type of lease. Under the *Protecting Tenants at Foreclosure Act of 2009* residential leases survive foreclosure. The tenant is allowed to stay until the end of their lease, or are entitled to 90 days' notice if they are month-to-month or if the buyer at foreclosure plans to use the property as their primary residence. This act does not cover commercial leases, however. Commercial leases may be terminated on foreclosure.
- *Actual Eviction (Eviction)* – When the tenant has breached the lease by non-payment of rent, violation of the lease, holding over (staying in the property past the end of your lease without landlord permission), or some unlawful use of property, the lessor may evict the lessee. **In Massachusetts, if the breach is due to non-payment, the tenant is given a 14 days' notice to quit in writing. Any other reason for the breach and the amount of time for the notice to quit could change depending on the language in the lease. Most Massachusetts standard lease forms state 7 days' notice for any breach in terms or conditions, aside from criminal activity.** If after the notice period, the tenant does not vacate, the landlord must file an *unlawful detainer complaint, which in Massachusetts is done by filing a summary process summons and complaint form.* The complaint is served and from there will go to housing court for a hearing. Execution is the court order that allows a landlord to evict a tenant, however even if this permission is given, a constable (sheriff) is sent to the property to remove the tenant and their belongings from the property. The landlord may not simply lock the tenant out.
- *Constructive Eviction* – Occurs when the landlord has violated the *covenant of quiet enjoyment* (see below), which renders the leased property unfit for occupancy by the tenant. This permits the tenant to vacate the premises, and ends their obligation to pay the rent.

The *covenant of quiet enjoyment* is a tenant's right to undisturbed enjoyment of the leased property. Very basically, it means that landlords must not interfere with the tenant's use and enjoyment of the leased space. Note that the term "quiet" does not refer to the noise levels in the rental; it refers to the landlord's obligation to provide the tenant with undisturbed (hence "quiet") enjoyment of the leased property and any associated property rights. Examples of violations of the covenant of quiet enjoyment would thus include:

- The landlord trespassing on the leased premises. Note that landlords may enter the leased premises for good cause with reasonable notice (e.g. to show the property to prospective renters, to make repairs or upgrades, etc.), or in the event of an emergency. What constitutes reasonable notice depends on the situation; there is no legal requirement for 24 hours' notice.
- The landlord's failure to maintain the premises fit and suitable for occupancy as defined by the sanitary and building codes.
- The landlord's failure to provide any services promised in the lease for an unreasonable period of time (e.g. there is no running water for the unit for several weeks).

### Massachusetts Landlord Regulations

When leasing a property, landlords in Massachusetts are limited to collecting first month's rent, last month's rent, security deposit (maximum of one month's rent), and a reasonable lock and key fee. If the landlord takes a security deposit, a landlord's statement of condition is also required. The tenants can amend the statement of condition within 15 days of the lease start date, so that they have the opportunity to document any damage done by previous tenants in order to inculcate their security deposit against a landlord's potential claims for any damage done by the previous tenants.

Landlords must pay 5% interest or current bank rates (whichever is less) on the security deposit and last month's rent. The interest must be paid every year within 30 days of the annual tenancy anniversary. Alternatively, it can be deducted

from the last month's rent of the current lease term. Security deposits must be held in a trust or escrow account. The last month's rent does not have to be deposited, but if it is not, then 5% interest is mandatory.

Landlords must provide housing that is fit and suitable for occupancy, and up to state sanitary and building codes, per the covenant of quiet enjoyment. Under the sanitary and building codes, landlords must:

- Inspect the unit prior to occupancy to ensure it is free from violations. In some instances (e.g. when the State has found violations previously) the State Board of Health must inspect the unit and sign off prior to re-letting.
- De-lead all units with children under age 6 (see *Hazardous Materials and Disclosures*).
- Pay for heat and hot water, unless the lease requires the tenant pay for these. Heat is required from 9/16 through 6/14, and temperatures must be between 68°F and 78°F from 7 AM to 11 PM, and at least 64°F all other hours.
- Provide a kitchen with a sink and electricity for a refrigerator (though no refrigerator is required).
- Pay for water, unless separate metering is provided for each unit, and pay for heating of water between 110°F and 130°F, unless the lease states the tenant must pay for it.
- Maintain the units so they are free from pest infestation.
- Maintain the building up to building and structural requirements.
- Provide exits free from obstruction.
  - This includes snow removal from sidewalks and exits.

### **Property Management**

Property managers are typically *general agents* of the property owner (though they might also be *special agents*, depending on their authority). Managers are hired and granted authority in a *property management agreement* between the owner and the agent who will manage the property (either a natural or legal person), act in the best interest of the property owner, and their compensation is typically paid as a percentage of gross effective rental income to incentivize them to reduce tenant turnover and the resulting apartment vacancies. They do not need real estate licenses in many states, including Massachusetts. They may be required to obtain a separate property management license, though this is not required in Massachusetts.

### **Lease Types**

There are many different types of leases. Most of these lease types only apply to commercial properties; almost all residential properties use a *gross lease*. The common types of leases are:

*Gross Lease* – A lease where the tenant pays a fixed amount of rent, and the landlord pays any operating expenses of the building. The landlord thus receives gross income.

*Sublease (Sandwich Lease)* – Any lease between a sub-tenant and the original tenant.

*Net Lease* – A lease where the tenant pays some or all of the leased property's operating expenses (taxes, maintenance costs, management fees, etc.) on top of their normal rent. The landlord thus receives net income.

*Modified Gross Lease* – A lease where the tenant pays a fixed rental amount for year one, and any increases in operating expenses that the landlord incurs over the first year's expenses (called the *base year*) are paid for by the tenant.

*Percentage Lease* – A lease where most of the rent is paid as a percentage of the tenant's *receipts* (sales) or profits. It is something that is often given to *anchor tenants* (e.g. large department stores), so as to align the landlord's interests with the tenant's.

*Ground Lease* – A lease where the tenant rents the land, and can build whatever they want on it. When the lease expires, the landlord owns any improvements built by the tenant. Frequently seen with fast food franchises, cell towers, and in areas with sales limitations. Often the ground lease is a 99-year lease.

*Graduated Lease* – A lease whose rent increases on some pre-agreed-upon schedule (e.g. \$1/sq. ft. per year). An *escalator clause* increases or decreases the rent.

*Index Lease* – A lease whose rent is tied to some index (usually the *consumer price index* or *CPI*, which is meant to reflect inflation in the economy). When the index increases, the rent increases, and vice versa.

*Reappraisal Lease* – A lease whose rent is based on an appraiser's opinion of the rent, rather than negotiation between the tenant and landlord.

*Sale-Leaseback* – A sale-leaseback occurs when a property owner sells their property to an investor, and simultaneously rents it back (usually for a long term). This mostly happens with businesses, because it allows the business to pull their equity out of the property without giving up use and enjoyment of the property, and because rent is tax-deductible for businesses.

**Sample Rental Fee Disclosure**

In return for assistance in finding an apartment requested by you, you are expected to pay a fee as described here: \_\_\_\_\_

For the rental of the premises known as \_\_\_\_\_

The fee will become due when you fill out an application to rent a specific apartment. If you are turned down by the landlord, you will receive a full refund, as long as you complied with the terms of the application, and you provided no false information, unless the lease has been signed, and a tenancy has been created. A tenancy can be created when all parties have signed a lease or tenancy-at-will, or the tenant has taken possession of the apartment.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Broker or Salesperson

\_\_\_\_\_  
License Number

\_\_\_\_\_  
Signature of Prospective Tenant

Please print full name: \_\_\_\_\_

Salesperson or Broker can check here , if the above named prospective tenant refused to sign this form.

**Sample Apartment Application**

\_\_\_\_\_

Date

NAME

PHONE NUMBER

( )-

STREET ADDRESS

CITY

STATE

LANDLORD NAME AND ADDRESS

PHONE NUMBER

( )-

FORMER LANDLORD NAME AND ADDRESS

CURRENT EMPLOYER

FORMER EMPLOYER

TYPE OF JOB

POSITION

SALARY

PERSONAL REFERENCE (NAME) \_\_\_\_\_

NAMES OF ANY CO-TENANTS \_\_\_\_\_ PETS \_\_\_\_\_

Monthly rent \$ \_\_\_\_\_

Property Address

Key and lock deposit \_\_\_\_\_

\_\_\_\_\_

Last month's rent \_\_\_\_\_

\_\_\_\_\_

Security Deposit \_\_\_\_\_

\_\_\_\_\_

Renting Agent \_\_\_\_\_

Applicant Signature \_\_\_\_\_



## Transfer of Property

### Deeds

Real estate is transferred (*conveyed*) with a *deed*. A deed is the legal document that transfers *title* (ownership) to real estate. You can think of them as receipts for real estate.

*Title* to property can be a confusing term. Title to a property simply refers to ownership; it is not a physical document or item, unlike title to a car or boat. It is important to distinguish between the title to a property and the deed. The deed *is* a document, and it transfers title between one party and another; think of it as the receipt for the property. Title is the actual ownership. An *alienation of title* is any loss of ownership. An *involuntary alienation* is a forced loss of ownership (for example, a tax foreclosure), whereas a *voluntary alienation* (e.g. a real estate sale) is chosen, not forced.

When you own real estate, you own it because the person before you in the *chain of title* (the history of property ownership) also owned the real estate and *granted title* (transferred ownership) to you using a deed. This is important to remember, since it means that it's possible to have a deed for a property, but not actually hold title to that property. For example, if someone that doesn't own the property gives you a deed to it, they aren't actually transferring anything to you with that deed.

To be valid, deeds must always meet the following minimum criteria:

- They must be written (per the *Statute of Frauds*).
- The grantor must be legally competent.
- They must name the grantee.
- They must involve the exchange of consideration (evidenced by a *recital of consideration*).
- They must include a complete and accurate description of the land ("*full legal description*").
- They must include a granting clause (usually just the words "grant to").
- They must have delivery and acceptance.

If the interest being granted needs to be defined or limited (e.g. a life estate), the deed will include a *habendum clause* (Latin for "to have and to hold"). This is not necessary if the grantor is conveying a fee simple interest.

A valid deed does *not* require some things you might expect, including: the signature of the grantee, a date, witnesses, acknowledgment (also known as *notarization*), or *recordation*.

Recordation (also known as *recording*) is the act of making the title transfer public record at the county *registry of deeds*. Although recordation isn't necessary for the validity of the deed, it is strongly recommended. Recording provides *constructive notice* (public notice – as opposed to *actual notice*, where you are specifically told the information) of the title transfer and can help the seller and buyer avoid any number of headaches associated with an off-the-books title transfer.

### Types of Deeds

There are four basic types of deeds that transfer title to real estate. The type of deed impacts the extent of the grantor's liability for any future issues with the title to the property. These deeds are:

*General Warranty Deeds (Warranty Deeds)* require the grantor to accept liability for any claims made against title to the property, even if the claim originated prior to the grantor's term of ownership. The warranties provided by a General Warranty Deed are the *covenant of seisin* or *seizin* (the grantor warrants they own, and may convey, the property), *covenant against encumbrances* (the grantor warrants the property is unencumbered), *covenant of further assurances* (the grantor promises to obtain and deliver any instruments necessary to provide good title), *covenant of quiet enjoyment* (the grantor guarantees that the grantee's title will be good against any court actions), and the

*covenant of warranty forever* (the grantor promises to compensate the grantee for any losses associated with claims against title any time in the future).

General Warranty deeds are no longer commonly used, but they can be useful when the buyer wants protection against unknown *title defects* (clouds on title or other ownership issues). That said, General Warranty Deeds have largely been replaced by title insurance. We'll discuss title insurance in greater detail later in this section.

*Special Warranty Deeds (Limited Warranty Deeds)* state only that the grantor received title to the property, and that they did not cause any issues with title. This means that the grantor is only liable for claims against title if those claims originated during their term of ownership. The grantor is not liable for issues that they did not cause. They are the most common type of deed in most states, since it often makes sense for the seller to take responsibility for any title issues they themselves caused.

*Bargain and Sale Deeds* are deeds where the grantor states that they have the right to convey ownership of the property, even if they may not own it, and provides no warranties about ownership. They are often used in tax foreclosures and estate sales.

*Quitclaim Deeds (Non Warranty Deeds)* state that the grantor conveys only whatever interest the grantor has at the time of conveyance. No warranties are made, which means that the grantor is not liable for any claims against title. Quitclaim deeds are often used in bank foreclosures, and can also be used to correct mistakes in the public record (e.g. a misspelled name on a previous deed).

There are also other special use deeds.<sup>2</sup> Those are:

*Deeds of Trust (or Trust Deeds)*, which are used to transfer interests in real estate into trusts. They are used in some states in lieu of a mortgage, since putting the property into a trust that the lender has access to can expedite and simplify the foreclosure process in some states.

*Reconveyance Deeds*, which trustees use to return property to trustors (e.g. remove property from a trust).

*Trustee's Deeds*, which are deeds executed by a trustee to convey real estate to anyone besides the trustor.

*Deeds executed pursuant to a court order*, which are any deeds issued as a result of a will or a court order.

### **How Property Transfers Work**

Transfers (or *conveyance*) of real estate usually follow a standard sequence of events. Note that not every transfer will follow this sequence, nor will transfers exhibit every part of the sequence. This is simply a common, example sequence:

First, the property is listed and put under agreement (refer to the "*The Basics*" section). After the P&S is signed, the buyer's *lender* (usually a bank) hires an attorney or a *title company* (used instead of attorneys in many states) to perform a *title search* in order to examine the chain of title and determine if there are any problems with the ownership of the property (*clouds on title*). If there are any issues, the seller must rectify them before closing. The status of title is then outlined in an *abstract of title*, and a corresponding *opinion of title*.

At the closing, the seller's broker brings the buyer's deposit (usually 5% of the purchase price that was given at the P&S signing). This deposit, plus the loan and the buyer's remaining down payment, pay for the property. In exchange for this money, the seller (*grantor*) provides a deed to the buyer (*grantee*), transferring ownership of the property. The buyer gives the lender a note to evidence their debt, and a mortgage to secure the debt. The bank's attorney conducts this process, and also performs another last-minute title search to double check that nothing has changed with the property. If nothing has changed, the bank's attorney records all of the documents associated with the sale,

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<sup>2</sup> These special deeds are only on the PSI Broker exam

along with a *municipal lien certificate*, which creates a public record that the bank is the first *lienholder* on the property in the event of foreclosure.

Lastly, the attorney pays the seller and the seller's broker. The seller's broker then pays the buyer's broker their split of the commission. Any recorded documents are duplicated and digitized by the *registry of deeds* to provide a public record of the transfer. Public records are available online in Massachusetts at [www.masslandrecords.com](http://www.masslandrecords.com).

### Massachusetts Recording Stamps

Recording stamps are an expense paid by the seller (*grantor*) if their deed is recorded at the county registry of deeds. (If the seller does not record their deed, they are still supposed to pay for the recording stamps, although some people may try not to.) The stamps are a fee for recording and selling; they do not have any impact on the quality of title. They are also known as *documentary stamps*, *excise tax*, *revenue stamps*, *deed stamps*, *transfer tax*, *transfer stamps*, or *conveyance stamps*.

Recording stamps cost \$2.28 per \$500 (or sometimes seen as \$4.56 per \$1,000) of recorded value in every county in Massachusetts except Barnstable County; Barnstable County charges \$3.24 per \$500 (or \$6.48 per \$1,000). Stamps are only charged on the cash value of the sale, so if a loan is assumed as a part of the sale, that amount is subtracted from the purchase price before the calculation. You cannot purchase a partial stamp, so the sales price is always rounded up to an even \$500 increment before calculating the recording fee.

#### Math: Recording Stamps

A property sold for \$505,100 in Suffolk County. How much does the grantor pay for recording stamps?

$\$505,100$  rounds up to  $\$505,500$

$\$505,500 / \$500 = 1011$  stamps

$1011 \text{ stamps} \times \$2.28 \text{ per stamp} = \underline{\$2305.08 \text{ fee}}$

### Land Description and Surveys

One of the minimum criteria of a valid deed is a complete and accurate description of the land ("*full legal description*"). *Full legal description* of the land is the property's address, a land description (more on these below), and a *title reference* (reference to any public records for the property). A licensed *surveyor* performs a *survey* of the land and drafts the land description. A *survey sketch* shows the location and dimension of the land itself, and a *spot survey* shows the location and dimension of the land, plus the location, size, and shape of the improvements on the lot. Note that not all surveys include a warranty or surveyor liability. An *improvement location certificate (ILC)* is not a complete survey, for example, and might not satisfy the need for one in court or for a bank.

You might see a number of units of measurement used in the survey. They are:

1 *link*: 7.92 inches (call it 8 inches for memorization)

1 *foot*: 12 inches

1 *yard*: 3 feet

1 *rod*: 16 feet 6 inches

1 *chain*: 66 feet

1 *furlong*: 660 feet

1 *mile*: 5,280 feet

1 *acre*: 43,560 square feet (1 chain x 1 furlong)

1 *square mile*: 640 acres

There are several methods of land description that you might encounter:

### **Metes and Bounds Surveys**

A "metes and bounds survey" is the most common type of land description; it outlines the *lot lines* (boundaries of the property) by describing directions (*bounds*) and distances (*metes*) between *monuments* (markers, like concrete posts) or *benchmarks* (permanent markers established throughout the United States), starting and ending at a *point of beginning*. A *datum* is a point used to measure elevations, usually defined at the *mean sea level of New York Harbor*, or some *local official datum*. An example metes and bounds survey might read:

*"A plot of land located in Boston, Suffolk County, Massachusetts, beginning at the intersection of Canal and Causeway Street, running south along Canal Street 304 feet, West to Friend Street 150 feet more or less, North to the intersection of Causeway Street and Friend Street, then East along Causeway Street to the intersection of Canal and Causeway Street."*

### **Lot and Block Surveys**

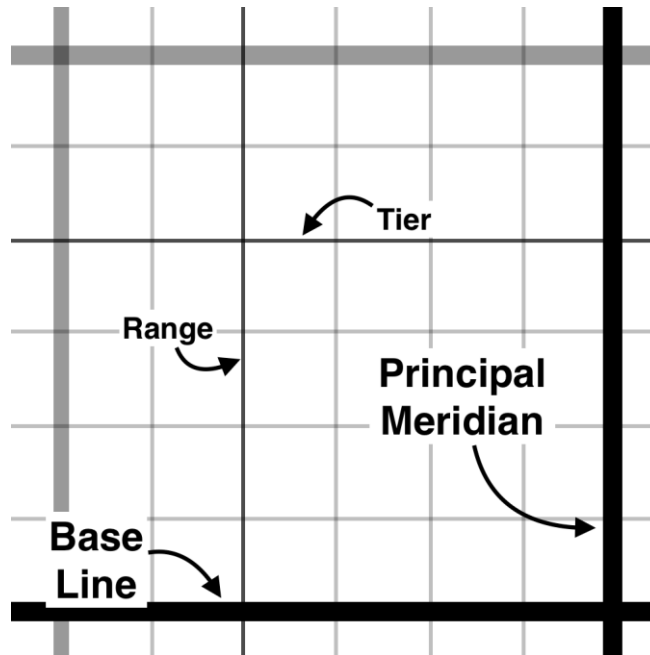
*Plat maps* are another method of surveying land. They are the recorded plans for a subdivision or municipality, and use the *lot and block* method. The lot and block method divides the property by streets into *blocks*, and then subdivides those blocks into *lots* using the metes and bounds method for each individual lot. The total area of the parcel of land is also described using a metes and bounds survey. An example Lot and Block survey might read:

*"Lot 43, Block 17, Green Acre Homes in the City of Portland, according to the plat thereof, recording in Volume 6 of plats, page 84, in Multnomah County, Oregon."*

### **Government Rectangular Survey System**

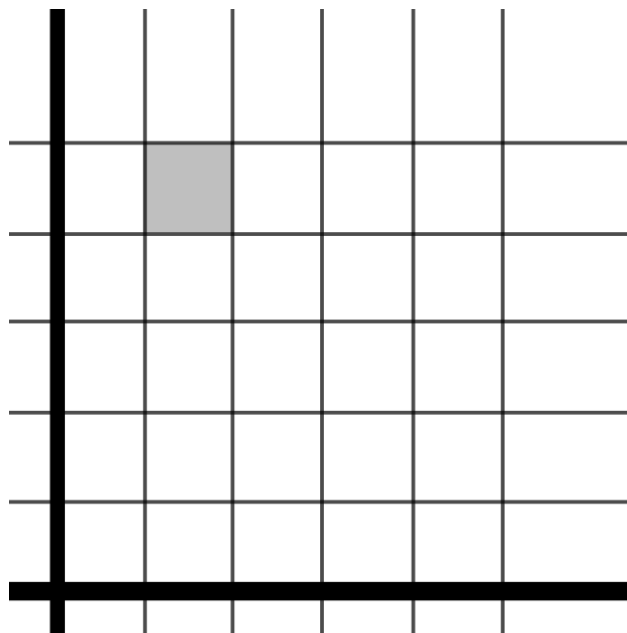
Also known as the *Public Land Survey System* or *rectangular survey system*. It was established by Congress in the *Land Ordinance Act of 1785* to standardize land descriptions, and is used in most of the United States (though not in the original 13 colonies). This method divides land into rectangles using intersection *principal meridians* (running north to south) and *base lines* (running east to west). There are 37 principal meridians in the United States, each referenced by name or number, and no parcel of land is described using more than one principal meridian. We don't use rectangular surveys in Massachusetts, but you have to know them for the test (sorry!)

A government rectangular survey outlines land using several different types of lines:



*Tiers* are also referred to as *township lines*. The squares created by the intersections of these township lines and range lines are known as *townships*.

A township is 6 miles by 6 miles, and contains 36 square miles (23,040 acres):



*A township in a rectangular survey*

Each township is designated based on the tier it's located in, its range, and the name or number of its principal meridian. Townships are then divided into *36 sections* sized 1 mile by 1 mile, and numbered from 1 to 36 running east to west then west to east on alternating lines, from north to south. The northeastern corner is always the 1<sup>st</sup> section. The 16<sup>th</sup> section is called the *school section* since it was traditionally used for school purposes.

<b>6</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>1</b>
<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
<b>18</b>	<b>17</b>	<b>16</b>	<b>15</b>	<b>14</b>	<b>13</b>
<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>
<b>30</b>	<b>29</b>	<b>28</b>	<b>27</b>	<b>26</b>	<b>25</b>
<b>31</b>	<b>32</b>	<b>33</b>	<b>34</b>	<b>35</b>	<b>36</b>

*A township with labeled sections*

Each of these sections is then divided into *halves* of 320 acres, and *quarters* of 160 acres. Those are then further subdivided into quarters and halves, and so on and so forth. These subdivisions are then described using the directions and portions of each section. For example, "SE  $\frac{1}{4}$ , N  $\frac{1}{2}$ " would be the southeast quarter of the northeastern half of the section (which would cover an area of 80 acres in total: 320 acres in the half section x 0.25 (the southeast quarter) = 80 acres).

As a cheat sheet, the sizes for each area in a government rectangular survey are:

*Quadrangle/Check:* 24 miles by 24 miles, 576 square miles, or 368,640 acres

*Township:* 6 miles by 6 miles, 36 square miles, or 23,040 acres

*Section:* 1 mile by 1 mile, 1 square mile, or 640 acres

*Half-Section:* 1 mile by  $\frac{1}{2}$  mile,  $\frac{1}{2}$  square mile, or 320 acres

*Quarter Section:*  $\frac{1}{2}$  mile by  $\frac{1}{2}$  mile,  $\frac{1}{4}$  square mile, or 160 acres

*$\frac{1}{2}$  of a Quarter Section:*  $\frac{1}{2}$  mile by  $\frac{1}{4}$  mile,  $\frac{1}{8}$  square mile, or 80 acres

*$\frac{1}{4}$  of a Quarter Section:*  $\frac{1}{4}$  by  $\frac{1}{4}$  miles,  $\frac{1}{16}$  square mile, or 40 acres

Putting this all together, a land description using the government rectangular survey might read:

*"The S  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 16, Township 7 North of the 2<sup>nd</sup> Parallel, Range 9 West, of the 6<sup>th</sup> Principal Meridian (P.M.)."*

To work this out, you'd work backwards from the end of the description, reading right to left. So, we'd find the sixth principal meridian, and find its base line (2<sup>nd</sup>). On a regional map, you'd then find the township by counting nine range sections west of the sixth principal meridian, and then seven townships north of the base line. This would be our township. You'd then divide the 16<sup>th</sup> section of the township into quarters, divide the SE  $\frac{1}{4}$  in quarters (the SE  $\frac{1}{4}$  would be the lower right quarter), divide the NW  $\frac{1}{4}$  (top left) into halves, and the Southern half of that NW  $\frac{1}{4}$  would contain the property (the southern half would be the bottom half). Rectangular land descriptions will usually include the county and state where the property is located, since meridians often cross multiple states or several base lines.

Also, note that a rectangular survey might also include a metes and bounds survey if the tract of land is irregular, too small to describe using quarters, or if it does not follow the proscribed lot and block lines, quarter-section lines, or other fractional lines.

## Title Insurance

Title insurance is an insurance policy for protection against *undiscoverable* title defects – problems with the ownership of the property that exist at the time of closing but will not, or cannot, be discovered in a title search (e.g. forged deeds, undisclosed heirs, granting party lacked the capacity to grant title, etc.). Title insurance companies often perform their own title searches using internal records called *title plants*, and inform the insured of the status of title via a *preliminary report*.

Unless otherwise agreed upon, title insurance does *not* cover ownership issues that could be discovered by looking at the publicly available records for a property, such as zoning issues, or publicly recorded restrictions. This means that title insurance companies often require that a property have good and clear or marketable title (ownership free from any known defects), though they will sometimes also cover a property with *insurable title* (ownership with some known defects that an insurance company agrees to cover). That said, insurable title can create problems on resale because there is no guarantee that a future buyer or title insurance company will also accept insurable title, so buyers often prefer to only purchase properties with marketable title. On the exam, assume that known defects are not covered by title insurance unless otherwise specified in the question.

Title insurance is paid as a one-time payment at closing (usually \$2-\$4 per \$1,000 covered). The title insurance company will then pay for any legal defense and provide financial protection against title claims for the owner and/or lender. The title insurance company gains the right to defend against any title insurance claims (usually title related lawsuits against the person who purchased the insurance) by *subrogation*.

The coverage provided by title insurance can vary, but generally it is either *standard coverage* or *extended coverage* (sometimes called an *ALTA policy*, or *American Land Title Association policy*). Standard coverage covers basic title issues such as forged deeds, incompetent parties, delivery issues, or improper marital settlements. Extended coverage usually adds coverage for issues like tenants and squatters, survey issues, unrecorded easements and liens, and mineral/water right claims.

Title insurance is often offered as two separate policies:

*Mortgagor or Owner Protection* – Protection for the purchaser up to the full purchase price of property.

*Mortgagee or Lender Protection* – Protection for the lender up to the outstanding loan balance.

**Activity:** Break out into groups. Come up with an example of a situation or title defect that title insurance would help with. Remember, title insurance is for undiscoverable title issues.

## **The Torrens System (Land Court)**

The *Torrens System* is a way of addressing conflicts about property ownership. If petitioned (in an *action to quiet title*), Land Court will perform a title search and hold hearings to determine who owns a piece of property. In practice, this basically looks like a lawsuit; the parties to the case hire attorneys and go to land court to plead their case. The main difference is that land court cases are often complicated, slow, and rather expensive. Hence why people buy title insurance!

Once the Land Court decides who owns the property, it issues its decision as a *Certificate of Title*, which *registers* the land. If land is registered, the person named on the Certificate of Title owns the land, overriding any other documents concerning the property. Transfers of registered land must be recorded; any transfer of registered land is not valid until a new Certificate of Title is issued in the name of the new owner.

As a rule of thumb, in the event of a dispute, the property transfer that is recorded first usually wins, though possession or other circumstances can supersede recordation, so it's best to consult an attorney about this!

## **Other Methods of Title Transfer**

Besides being sold, some of the other common ways real estate might be transferred are:

### **Wills**

*Wills* are how the property of the deceased is transferred. Those who die with a will are said to be *testate*; those who die without one are said to be *intestate*. *Probate* proceedings (the legal process by which the deceased's belongings are distributed) generally take place in the county where the deceased last resided, and/or in the county where any real estate owned by the deceased at the time of death is located.

The *testator* names an *executor* in the will to represent their estate. This is the person that carries out the deceased's last wishes. The executor *devises* (transfers) real property to the *devisees* (heirs receiving real property), and *bequeaths* (transfers) the personal property (the *bequest* or *legacy*) to the *legatees* (heirs receiving personal property).

On the other hand, if the deceased passed intestate, then the courts will appoint an *administrator* to administer the estate. The laws of *descent and distribution* (or *statute of descent*) will govern who receives the property of the deceased.

Remember that if the deceased died intestate and did not have heirs, their property *escheats* to the state (see the Property Right Limitations section for more information on this).

There are a number of other vocabulary terms to be familiar with regarding wills. Amendments to wills are known as *codicils*. Handwritten wills are referred to as a *holographic*, in contrast to *formal* (or *witnessed*) wills. A verbal will is a *nuncupative* will, and is not enforceable in most states.

Property owned with a wife is said to be owned *et ux.*; with a husband, *et con.*; property owned with others is *et al.*

### **Adverse possession**

*Adverse possession* is the legal term for squatter's rights. If a piece of property is used openly and without permission for more than 20 years, the squatter may take legal title to the property. You can remember the rules about adverse possession with the acronym *O.N.C.H.A.*: **O**pen, **N**otorious, **C**ontinuous, **H**ostile, and **A**dverse. Squatter's rights do not apply to public land, or to registered land.

### **Dedication**

*Dedication* is the donation of property rights (ownership, rights of way, etc.) either permanently or temporarily for the public use, e.g. the donation of a piece of property for use as a park.



## Real Estate Agency

Real estate is a relationship-based business so it is critical to understand the rules surrounding client-agent relationships. The *Law of Agency* governs the relationship between clients and agents in a real estate transaction. The legal terms for the parties to an agency relationship are:

*Principal* – The person hiring an agent. In this context, think of “agent” as a legal term for a person hired to represent someone in some matter, and not necessarily a real estate agent. In real estate, the principal could be the client (hiring the broker) or the principal could be the broker (hiring the real estate salesperson), depending on the context. The principal has *vicarious liability* for their agents' actions. This means that if you are a client who has hired a real estate agent, anything they do on your behalf within the authority you have given them is as if you have done it yourself. Similarly, anything a real estate salesperson does on behalf of their broker, within the scope of the authority they have been given, is as if the broker did it him or herself.

*Universal Agent* – May represent their principal on any matter. The best example here is a CEO of a business who has been given full board approval to make any decisions for any aspect of the business (hiring, investing, purchasing, product development, etc.).

*General Agent* – May represent their principal on matters related to one particular business or activity. This could be a property manager who handles all aspects of a client's real estate business or a sport's agent who handles the entirety of someone's career.

*Special Agent* – May only represent their principal on a particular matter or transaction. In real estate, this is the real estate broker (referred to as the employing broker or broker of record). This could be a property manager who handles one single apartment building or a broker who handles the sale of a condo for a client.

*Subagent* – The agent's agent. In real estate, this is the salesperson, co-broker, etc. A subagent works indirectly for the transaction's principal via the special agent's authority, and works directly for the special agent. This is the salesperson or associate broker who works on behalf of their employing broker or broker of record.

*Binding power* refers to an agent's ability to enter into a legally binding agreement on the principal's behalf. A universal agent has unlimited power to bind the principal. A general agent has limited power to bind the principal. And, even though they are special, a special agent has no power at all to bind the principal.

There are three types of agency that might exist between these parties:

*Express Agency* – Explicitly stated verbally or in writing (e.g. via a listing contract).

*Implied Agency* – Authority that exists because of the principal and agent's actions, even though it is never directly stated. The *equal dignities rule* states that an authorization of agency must have the same formality as the services rendered (so if a written final agreement is required, written agency agreements are probably required as well – think of this as the agency corollary to the Statute of Frauds).

*Apparent/Ostensible Agency* – Authority that does not exist, even though it appears to.

Real estate agents (both brokers and their salespeople) owe *fiduciary obligations* (obligations of trust) to their principals. You can remember these obligations with the acronym **O.L.D. C.A.R.:**

**Obedience** – You must do everything the principal tells you to do, and you may not exceed the authority they give you. However, obeying a principal's instructions is not an acceptable defense for unlawful or unethical behavior. If the principal gives unlawful instruction, the agency relationship must be refused or terminated.

**Loyalty** – You must put the principal's interests ahead of all others, including your own.

**Disclosure** – You must affirmatively disclose all information about the transaction that might affect the principal's best interests.

**Confidentiality** – You must not disclose any confidential information about the principal to others (e.g. the highest price they might pay, or a weakness in their bargaining position) that you are not legally required to disclose.

**Account** – You must account for, and return, any money belonging to the principal.

**Reasonable Care** – You must protect the principal from foreseeable risks of harm, exercise care and competence, and recommend expert advice when the principal's needs are beyond your expertise or *area of competence* (note that no legal advice is allowed under the licensing law).

Massachusetts law also requires brokers to engage in *fair and honest dealing* with the principal (known as an "*implied duty of good faith*") under MGL 93A.

When it comes to fiduciary obligations and O.L.D. C.A.R., it's important to be aware of the difference between clients and customers.

*Clients* – People that you represent and owe fiduciary obligations.

*Customers* – People that you are working with but do not represent, and therefore do not owe any fiduciary obligations (for example, an unrepresented buyer who attends an open house that you are hosting for your client). Even though you do not owe them fiduciary obligations, you will have other limited legal obligations to them, like fair and honest dealing, some required disclosures (more on those below), state licensing law requirements, etc.

### **Confidentiality and Required Disclosure**

When it comes to confidentiality, information about your client will usually fall into one of three categories:

1. Information that must be affirmatively disclosed.
2. Information that must not be disclosed.
3. Information that might have to be disclosed.

Both sellers' and buyers' agents are required to inform the buyer of any *material defects* (also called *material facts*) impacting the subject property. A material defect is anything that would objectively impact a buyer's decision to purchase a piece of real estate. Disclosure is required even if the seller wants to keep the defects confidential. The buyer must be told not only about any material defects that impact the property for sale, but also about any that are *rooted in the land* (permanent) and impact the area around the property. This includes special tax districts, environmental hazards, and in many states it also includes nuisances like airports, highways, cell towers, etc.

When a buyer purchases a house on an "as is" basis, all known defects still must be disclosed to the buyer. Selling "as is" or "where is" does not relieve sellers or agents from their obligation to disclose defects – the notion of *caveat emptor* ("let the buyer beware") is not a defense for any failure to disclose material information in a real estate sale. It is recommended that agents use a *seller's disclosure* form to ensure that everyone is aware of all the defects of the property offered for sale.

Buyers must be informed about material defects regardless of when they are discovered. For example, if a defect is found after the purchase contract is signed, the buyer must still be told about it.

Buyer's agents also have an obligation to affirmatively disclose any information about the buyer that would materially impact the buyer's ability to purchase the property (for example, if the buyer does not yet have the funds to purchase the property). That said, information about the parties to the transaction that does not materially impact the property or their ability to conduct the transaction must never be disclosed (e.g., the lowest price a seller will take, the highest price a buyer will pay, or why the seller is selling).

If an agent does somehow learn confidential information about the other party in the transaction, though, they must disclose the information to their client as soon as possible. For example, if the buyer's agent hears that the sellers are moving and are therefore desperate to sell, the buyer's agent must tell the buyer.

What about information you *might* have to disclose? That information has to do with *stigmatized* property – properties that were the site of deaths, murders, suicides, criminal activity, and paranormal activity. Buyers may find the situation disturbing, but there is no objective impact on their use of the property.

Every state handles the disclosure of stigmatized property differently. In Massachusetts, the *seller's agent is not obligated to affirmatively disclose the information, but if the buyer or buyer's agent directly asks the seller's agent about a property stigma, they must truthfully respond with any information they know. The buyer's agent, on the other hand, has an affirmative duty to disclose property stigma information to the buyer.*

Finally, watch out for *Megan's Law* issues surrounding sex offender registries. Each state has their own laws regarding the disclosure of sex offenders. **Massachusetts strictly punishes the misuse or misrepresentation of those registries by an agent. Therefore, it is advised that agents provide buyers with the information they need to access the registry and check the information themselves, rather than represent its contents as the agent.**

**Tristram's Landing v. Wait**

*Tristram's Landing v. Wait* is a Massachusetts court case that establishes the criteria to determine when real estate brokers are entitled to earn a commission. These criteria are similar to the criteria used in most states, and will therefore appear on the National portion of the exam as well. It is therefore critical to understand so that you know when a client has unfairly withheld payment versus when they are within their rights in doing so.

In this court case, a real estate broker sought to recover a commission for a sale of real estate that was ultimately not completed.

In the final judgment, the court adopted the following rule. When a broker is engaged by an owner to find a purchaser, the broker earns a commission when: (1) They produce a purchaser ready, willing and able to buy on the terms provided by the owner; (2) The purchaser enters into a binding contract with the owner as a result of the agent's efforts (the broker is the "*procuring cause of sale*"); and (3) The purchaser completes the transaction by closing title in accordance with the provisions of the contract.

If a deal is not consummated because the buyer lacks the financial ability, or because of another default with the buyer, then the seller does not need to pay the commission. However, if a wrongful act or interference from the seller leads to the contract's failure, then the commission must still be paid (unless contracts say otherwise).

In summary, the general rule regarding whether a broker is entitled to a commission is that, absent special circumstances, the broker is entitled to a commission if he or she produces a buyer who is ready, willing and able to consummate the deal under the terms and price the owner has given the broker.

**Real Estate Commission Math**

Based on what information is available, you can calculate the commission using one of these formulas:

***Formulas:***

- Sales Price x Commission % = Commission \$*
- Sales Price – Costs (Including Commission) = Seller's Net Profit*
- (Net Sales Price + Costs) / (1 – Commission %) = Sales Price*

**Problem Type #1**

A seller wants to net \$100,000 after paying your 5% commission. What price should they sell for?

$\$100,000 / .95 = \mathbf{\$105,263.16}$  (Answer)

**Problem Type #2**

A seller wants to net \$210,500 on sale of their home. They will pay a 6% commission plus estimated expenses of \$1,212. What should the property sell for?

Step 1: Add expenses to the net to get the sale price before commission

$210,500 + 1212 = \$211,712$

Step 2: Calculate the commission

$\$211,712 / .94 = \mathbf{\$225,225.53}$  (Answer)

**Problem Type #3**

A brokerage pays an agent a 1% commission on the first \$500,000 of any sale plus 2% of any selling price over that amount. What was the sale price if the total commission was \$6,000?

Step 1: Take out the \$500,000 commission to determine the amount of the sale that's over \$500,000

$$\begin{aligned} \$500,000 \times .01 &= \$5,000 \\ \$6,000 - \$5,000 &= \$1,000 \end{aligned}$$

Step 2: Divide \$1,000 by .02 to get the total amount \$1,000 is 2% of

$$\$1,000 / .02 = \$50,000$$

Step 3: Add \$50,000 to the \$500,000 to get the total sale price

$$\$50,000 + \$500,000 = \$550,000 \text{ (Answer)}$$

**Other Rules That Impact Real Estate Agents**

**FTC (Federal Trade Commission) Do Not Call**

Agents are treated as businesses under the law, and since agents often call residential *for sale by owner* listings as a way to generate business, FTC Do Not Call is in play. The FTC *Do Not Call List* (created in the *Do Not Call Implementation Act of 2003*) prohibits unsolicited business calls to residential and mobile phone numbers on the Do Not Call List. Fines for violations of Do Not Call are up to \$43,792 per call. As of 2013, pre-recorded calls (*robocalls*) are also banned without the prior written consent of the consumer being called. Also note that text messages are included under the Do Not Call rules.

Note that an agent *can* call a for sale by owner listing to show the property to a buyer, since the owner is soliciting that sort of call (unless the ad says "No Agents" or "Principals Only"). Existing relationships (under 18 months) are also excluded from the legislation.

**Telephone Consumer Protection Act (TCPA) and the Junk Fax Prevention Act**

Both of these acts prohibit most unsolicited fax advertisements. In order to legally send an advertisement via fax, you must typically have an existing business relationship with the recipient.

**CAN-SPAM**

The Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM) of 2003 prohibits commercial electronic messages that do not provide both the address of the sender, and some means of unsubscribing or "opting out" of future messages.

**The Children's Online Privacy Protection Act (COPPA)**

COPPA requires that businesses provide consumers with a detailed privacy policy if they collect information via websites, mobile apps, and other networks. It also strictly limits the collection of personal information from children under the age of 13, even if the website or app is not specifically targeted towards children.

**Interstate Land Sales Disclosure Act**

Requires sellers of subdivisions to file their intent to sell those lots on an interstate basis with the Consumer Financial Protection Bureau if they meet one of the following criteria: 1) The subdivision contains more than 100 lots or condominiums, 2) They are offering more than 25 lots or condominiums for sale simultaneously, or 3) The subdivision contains lots sized 20 or more acres. This act is designed to avoid fraud when properties are sold without

purchasers seeing them, by requiring developers to provide purchasers with a written *property report* detailing title issues, development details, utility costs, soil conditions, etc., and to provide buyers with a minimum of 7 days to rescind their purchase agreement.

### **Sherman Anti-Trust Act**

The *Sherman Anti-Trust Act* of 1890 prohibits anticompetitive business activities and requires the US government to investigate organizations suspected of engaging in those business activities (e.g. monopolies).

The act forbids *price fixing* (establishing uniform pricing), *group boycotting* of a consumer or non-competitor by a group of competitors, any agreements regarding a *division of the market* by geography or services offered (also known as *market allocation*), and *contingent sales* (also known as *tying* or *tie-in arrangements*, which make a sale contingent on the purchase of another item).

Recently, the NAR adopted policies to provide for greater transparency of commissions. MLSes must now show the buyer's commission to consumers, and REALTORS® may no longer represent the buyer's commission as "free" to consumers or that the seller pays the full fee. Some regional MLSs and brokerages have also adopted their own version of these commission transparency rules. Since all these changes were made to encourage agents to work in their client's best interests, it is best practice to follow these guidelines even if you aren't a member of NAR.

The penalties for anti-trust violations are fines of up to \$1 Million per offense for corporations, and fines for up to \$100,000 and 3 years' imprisonment for individuals. In order to be fined, an antitrust *conspiracy* must occur, defined as 1) Two or more people agreeing to act (either explicitly or implicitly), and 2) The agreed-upon act having the effect of restricting trade (e.g. limiting competition).

The key to avoiding anti-trust violations is to remember that commissions, contracts, and other hiring terms are always negotiable (determined by "*agreement of parties*"). There are no standard commissions, and it may be unlawful for agents to even discuss commissions with their colleagues or for two brokerages to discuss the splits they offer their agents.

## Fair Housing

*Fair housing law* prohibits discrimination in real estate based on a number of *protected classes* (groups of people with a common characteristic who are legally protected from discrimination on the basis of that characteristic). It covers real estate agents, sellers, buyers, landlords, appraisers, and anyone else involved in a real estate transaction. It is important that you understand and follow fair housing law, and do not discriminate in your real estate practice. As a general rule you should only talk about real estate when selling or renting properties, not people, and every client of yours should receive the same level of service.

### **Federal Fair Housing Law**

There are several important pieces of Federal legislation covering fair housing:

- The *Civil Rights Act of 1866* (not a typo!) prohibits discrimination based on race.
- The *Fair Housing Act of 1968* (the common name for *Title VIII of the Civil Rights Act of 1968*) extends the *Civil Rights Act of 1964's* protections to private housing.
  - It prohibits housing discrimination on the basis of race, color, religion, and national origin.
- The *Housing and Community Development Act of 1974* added sex to the list of protected classes under the 1968 act.
- The *Fair Housing Amendments Act of 1988* adds protections for people with disabilities (both mental and physical disability, including HIV/AIDs and drug or alcohol addiction) and for familial status (pregnancy, having children under 18 years old, or adoption).
- The *Americans with Disabilities Act of 1990* also addresses the rights of people with disabilities.

Under the Fair Housing Act and Amendments, there are seven total Federally protected classes: race, color, religion, national origin, sex (this includes sexual harassment in housing, and also sexual orientation and gender identity per *Bostock v. Clayton County*), disability (mental or physical), and familial status.

### **Disability Protections**

After March 1991, all new and renovated residential 4+ unit homes must have adaptable design features for the first floor, and any floors serviced by an elevator. Landlords must allow reasonable modifications of residential rental properties at any time during the tenancy (e.g. lowering the entry threshold of a unit, providing a ramp into a building). The tenant may be required to pay for any needed modifications (e.g. installing grab bars in a bathroom or lowering countertops). The landlord can require a tenant to return the rented property to its original condition when they move out, again at the tenant's expense.

Under the Americans with Disabilities Act, commercial properties built or renovated after 1991 must also have accessible design features, since businesses that occupy them and are open to the public will qualify as places of *public accommodation*. Brokerages fall under a place of public accommodation and should always comply with all laws regarding fair housing and ADA accessibility. Business tenants will also need to comply with ADA requirements if they have 15+ employees. Different types of businesses (e.g. restaurants or hotels) may also have special, additional ADA requirements. Both the landlord and tenant are held responsible for compliance under the laws, though commercial leases will often spell out who is responsible for exactly what parts of compliance.

Those with disabilities are permitted to receive reasonable accommodations such as having a parking space close to the front entrance, adjusting rent pay periods to match income assistance, or having assistance animals.

Tenants with disabilities can adjust the date their rent is due (e.g. moving it from the 1<sup>st</sup> to the 8<sup>th</sup>), but the change must be agreed to in writing with the landlord.

Disabled tenants and property owners must be allowed to have assistance animals. Pet policies, condo breed restrictions, pet deposits, etc. do not apply to these animals. There are two different types of assistance animals: *service animals*, which are trained and perform a task, and *support animals*, which are any animal a health professional

(e.g. therapist, social worker, doctor, etc.) deems to be a support animal. Both types of assistance animals must be permitted in housing, though the rules surrounding documentation are slightly different.

If an applicant uses a service animal, a landlord or condo association is entitled to ask only two things: 1) If it is a service animal, and 2) What task it performs. The landlord or condo association is not entitled to documentation, and must not ask those questions if the person's disability is obvious (e.g. a blind person). If the animal is a service animal, the service animal must be allowed, no exceptions. Under the ADA, service animals can only be dogs, or when reasonable, miniature horses.

If a person has a support animal, a note from a health professional can be requested (but not the reason the person needs the animal), but disability must never be mentioned. If a note from a healthcare professional is provided, the support animal must be allowed, no exceptions. Support animals can be any animal approved by a health care professional.

Disabilities are not simply limited to mobility issues or physical disabilities. Individuals with AIDS, alcoholism, recovering from drug addiction, and/or mental illness are also protected under ADA.

### Disability Protections in Massachusetts

Massachusetts Fair Housing Law builds on Federal Fair Housing Law. It prohibits the same discriminatory behaviors, and also adds additional protected classes. Discriminatory advertising is also prohibited under MA Fair Housing.

Under *MGL 151B*, the Massachusetts protected classes are: age, sex, marital status, sexual orientation, gender identity, gender expression, veteran status, race, color, religious creed, public assistance status, ancestry, disability (mental or physical), genetic information, national origin, and familial status.

In homes with lead paint, discrimination against potential tenants with children under age 6 is always prohibited as well, with no exceptions. If there is lead paint, the landlord must de-lead the home and cannot refuse to rent to the tenants with children under age 6 (see the Consumer Protection section for more information on lead paint).

Under MGL 151B 804 CMR 2.03, all public housing and landlords with 10+ units must provide modifications at their expense for persons with disabilities. They are also required by law to permit service and support animals. As of March 1991, any new residential construction for 3+ unit homes must include basic access (e.g. accessible public paths/public areas, wheelchairs must fit through doors both into and inside a unit, bathroom and kitchens must provide ample space for maneuverability).

### **Public Assistance Programs**

*Public assistance* status is a protected class under MA Fair Housing Law, without exception. It covers people receiving housing assistance, as well as other government assistance (e.g. food stamps). Real estate agents cannot refuse to work with someone because they are receiving public assistance, and landlords and sellers can never discriminate against someone based on their use of public assistance. The source of someone's income is not a factor, only ability to pay. You should be familiar with two major housing assistance programs:

*MassHousing* – An independent, quasi-public agency created in 1966 that is charged with providing financing for affordable housing in Massachusetts. It provides financing for affordable housing construction, oversees affordable housing developments, and provides low down payment and affordable loans for first-time homebuyers.

*Section 8* – A federal program designed to provide renters with affordable housing via a voucher system that subsidizes rentals provided by private landlords. It is a program for assisting very low-income families, the elderly, and the disabled in the private market. Participants are not limited to units located in subsidized housing projects and are free to choose any housing that meets the requirements (decent, safe, sanitary) of the program. Local public housing agencies (PHAs) administer vouchers to eligible families. Eligibility is based on the total annual gross income and family size. The family income must under 50% of the median income for the county or metropolitan area in which they choose to live. Once a family is found eligible and the PHA approves the housing unit, not only do the

landlord and family sign a lease, but the landlord and the PHA sign a housing assistance payment contract that runs for the same term as the lease.

Other types of public assistance programs include social welfare programs (Temporary Assistance for Needy Families, Supplemental Food Nutrition Assistance Program, Supplemental Security Income, etc.) and social insurance programs (social security income, Department of Veteran's Affairs benefits, unemployment insurance compensation, and worker's compensation). Note that these are not the only housing assistance programs in existence, but they are the most common you might encounter.

In some states, a landlord must agree to the request for a different due date if the tenant's main source of income is government assistance. However, if the majority of income comes from other sources, the landlord is not required to change the due date.

### **Prohibited Activities**

Under the above fair housing laws, agents, sellers, buyers, and others involved in a real estate transaction must never discriminate against someone on the basis of one of the above-mentioned protected classes.

Examples of prohibited behavior include:

- Refusing to work with someone (renting, representing them in a purchase, listing their home, etc.).
- Differentiating on terms or conditions (for example, charging extra rent because someone has children, or requiring additional paperwork or qualifications because of someone's race).
- Advertising in a discriminatory way (for example, "no children").
  - This includes less obvious discrimination, like "ideal for a single young professional" (implying children or married people might not be welcome), "his and hers" (potential sex or sexual orientation discrimination), or "no drinkers" (alcohol addiction is a disability).
  - Phrases such as "short walk" or "walk-in closets" are usually not construed as discriminatory by HUD, but caution is typically recommended, and the exam does sometimes use them as examples of potential discrimination on the basis of disability.
- Falsifying availability (usually a pretext to avoid working with someone).
  - This is particularly common with housing assistance programs like Section 8, where agents will pretend that a listing has been rented to unlawfully avoid working with a tenant using assistance.
- Engaging in *blockbusting*, which is any solicitation of property for sale or lease on the grounds of an alleged change in property values due to the presence or prospective entry into a neighborhood of people covered by a protected class. It creates *panic-selling* (also known as *panic peddling*).
  - In plain English, someone is potentially guilty of blockbusting when they talk about property values in relation to the people living in or moving to a neighborhood. Historically, this practice was especially prevalent in the 1950's and 60's, when real estate agents in predominantly white neighborhoods would spread rumors that black families were moving in. The real estate agents would then buy departing white families' homes at discounted prices, and sell those homes to their black clients at much higher prices. The agents would then use those sales as evidence to induce more white homeowners to sell their properties to the real estate agents at discounted prices, and repeat the process.
- *Steering* prospective purchasers or renters away from, or towards, certain areas based on the protected class.
  - For example, a real estate agent suggesting certain neighborhoods to a client because of their race, or declining to show a client a particular neighborhood because of their race.
- Using covenants or restrictions to limit occupancy based on race (banned in the supreme court case *Shelley v. Kraemer*).
  - A notorious example of this outlawed practice occurred in Levittown, NY. Many of the original deeds for homes sold in Levittown included a stipulation limiting ownership of the property to members of "the Caucasian race."
- Prohibiting someone from joining professional real estate organizations (e.g. REALTOR® associations or MLS).



- Inquiring about anything with regards to a protected class (e.g. Asking a client "where are you from?" or "do you have children?")

### **Exemptions from Fair Housing Laws**

There are some exemptions from fair housing laws for real estate owners that you need to know for the exam. It is crucial to note that these exemptions are never allowed for discrimination on the basis of race (under the 1866 Civil Rights Act, per the supreme court case *Jones v. Alfred H Mayer Co.*) **In Massachusetts, exemptions are also never allowed for discrimination on the basis of public assistance status.** It is also important to note that real estate agents must always follow fair housing laws; they are never exempt, even if the owner is exempt. Fair housing laws also always cover advertising, even if the property being advertised is exempt. The only exception to this rule is a roommate seeking a same sex roommate in the event that there are shared living spaces per Title 24 of the Code of Federal Regulations.

If a property owner who is exempt from fair housing laws wishes to use a real estate agent, they cannot make use of the exemption. If they wish to make use of the exemption, you cannot represent them. So while you must know these exemptions for the exam, they will never be a part of your real estate practice.

The following situations are exempt from fair housing protections (except for race and **public assistance status**, which are always protected and have no exemptions):

- A private individual who owns 3 or fewer single-family houses, provided that they have not sold more than one property in the past 24 months.
- **Rentals in owner-occupied two family homes in Massachusetts**, and two to four family homes elsewhere.
- **State** and Federally approved housing developments for senior or retired homeowners (for those 62 and over only, or >80% occupancy by people 55 years or older) are exempt from housing laws regarding familial and age status under the *Housing for Older Persons Act of 1995*.
- Housing provided for non-commercial purposes to the members of a religious organization, assuming that membership in that religion is not discriminatory.
- Housing provided for non-commercial purposes to the members of a private club, so long as the housing is never open to the public.
- Roommates are usually not covered by fair housing laws, so long as a real estate agent or management company is not involved in the search.

### **Penalties Under Fair Housing Law**

Any person may file a fair housing complaint with the Department of Housing and Urban Development (HUD) within 300 days of the date of the alleged discrimination and have up to two years to file a private lawsuit. Fair housing discrimination complaints may be proven by testing, which means that the enforcement agency (HUD, etc.) may send people out to test the accused landlord or real estate agent, in order to prove a pattern of discrimination as a result of those interactions. For example, a landlord who has been accused of racial discrimination in renting a property may have non-white agents posing as potential tenants to see if the landlord discriminates against them. These testing situations are not considered entrapment because the landlord is not tricked into doing anything they would not normally be doing; they were simply tested for existing discrimination.

Penalties for fair housing law violations are severe: a HUD *administrative law judge (ALJ)* can fine up to \$21,663 for a first violation of federal fair housing law, \$54,157 for the second, and up to \$108,315 for repeat offenders, in addition to civil penalties between \$50,000 and \$100,000.

In addition to or in lieu of a complaint to HUD, a lawsuit may be filed in federal court within two years of the date of the alleged discrimination, in which case there are potential criminal penalties and no specific limit on damages.

In Massachusetts, findings against an agent by the Massachusetts Commission Against Discrimination (MCAD) will result in an automatic license suspension for a minimum of 60 days. A second violation within two years results in an automatic minimum 90-day suspension.

A HUD Equal Housing Opportunity poster must be posted in every real estate office (any place where a dwelling is offered for sale or rent). The same is true of an MCAD Fair Housing Law Poster. Failure to post these posters represents *prima facie* (presumed to be true) evidence of discrimination.

## Introduction to Real Estate Financing

*Financing*, for our purposes, is receiving, or providing, money for the purchase of real estate. Getting a loan for the purchase of real estate usually follows the same steps:

1. The buyer (*mortgagor*) applies to a lender (*mortgagee*) for a loan. Usually this happens before the buyer begins looking for a property to purchase, in which case the buyer will receive approval for the loan as a *pre-approval* or *pre-qualification* from the lender.
2. The lender assesses the buyer's ability to pay for the loan by looking at their gross salary (used to determine their *debt to income ratio*, or *DTI*) and their credit history (*FICO score*).
3. Assuming the buyer began the loan process before looking for properties to purchase, the buyer receives a *pre-approval letter* from the lender. This commitment is not necessarily binding on the lender, and is contingent on the buyer finding a property that is worth enough to cover the loan amount. Some lenders will call the pre-approval letter a *commitment letter* or *letter of commitment*, but for most lenders, the letter of commitment comes after the *loan underwriting* process is complete.
4. The buyer finds a property they want to purchase, and the lender hires an appraiser to determine if the *collateral* (the property) for the loan is sufficient to cover the loan in the event of a *default* (failure to make payments). If the collateral is insufficient to cover the loan, the buyer will typically need to make a larger down payment, or back out of the sale.
5. The lender's attorney checks the public records at the county registry of deeds to determine if the property suffers from any title defects. If it does, the seller must fix them before the closing.
6. Assuming the lender is satisfied with the collateral, they give a *letter of commitment* to the buyer. This requires them to make the loan, so long as the buyer satisfies the lender's *conditions* stated in the letter.
7. At closing, the lender makes the *loan* for the borrower. In return, the borrower gives a *note* (also known as *promissory note* or *mortgage note*) as evidence of the debt, along with a *mortgage* securing the debt, to the lender. (See below in this section for more detail.)
8. Ideally, the buyer pays back the loan over some number of years. Upon repayment, the lender returns the note and mortgage to the buyer, and the buyer owns the property free and clear. Alternatively, if the buyer fails to pay off the loan (they *default* on the loan), the lender forecloses on the property in order to secure payment.

### **Foreclosures**

If a borrower does not repay their loan in accordance to the loan's terms, the lender can initiate a *foreclosure* to recover the money that they are owed. In a foreclosure the lender takes possession of the collateral for the loan (typically the house) and sells it. The proceeds from that sale are then used to repay the loan balance.

Foreclosures are usually *judicial* (under the supervision of a court, and initiated by lawsuit), but some states permit *non-judicial* foreclosures if a *deed of trust* was used for the financing arrangement instead of a mortgage.

Foreclosure sales are usually done by public auction. At the auction, the lender grants title to the highest bidder (which may be, and often is, the lender itself) by signing and delivering a new deed (often a quitclaim deed- see "Transfer of Property"). If, prior to the auction, the borrower has the ability to pay the lender what they owe plus the costs of the foreclosure, they can prevent the foreclosure by exercising their *equity right of redemption*. A lender might also agree to a *loan modification*, where the loan is changed so that the borrower can afford to make their payments and avoid foreclosure.

Another way that a homeowner might avoid foreclosure is a *short sale*, where the homeowner sells the home "short" of what they owe the bank. This typically happens if a homeowner is *underwater* (they owe more than they can sell their home for). A short sale is effectively a settlement with the bank, where the bank agrees to accept less money to pay off the loan than they are owed. Usually this amount is more than the bank would likely be paid at a foreclosure auction, which is why they might agree to it. In a short sale, the bank settles with the homeowner for whatever sales price the homeowner can obtain on the open market, and writes off the remaining loan balance as a loss. Real estate

agents often help homeowners sell their home in a short sale, though the process can take quite a bit of time due to the need for the bank's approval of any offers.

If the proceeds from a foreclosure auction are in excess of the borrower's debt plus the lender's expenses, the borrower will receive their leftover *equity* (monies in excess of debt). On the other hand, if the auction fails to cover the debt and the lender's expenses, the borrower is personally liable for the *deficiency*, and can be sued for the outstanding debt by the lender, resulting in a *deficiency judgment*. That said, lenders rarely pursue homeowners for the deficiency in residential foreclosures, and the lender most often loses any money they are still owed after the foreclosure auction. If the lender owns the property after foreclosure, they will sell it on the market as an *REO* or "*Real Estate Owned*" property.

Note that some states also provide for *strict foreclosure*. In those states, an auction may not be required; the lender can sue the borrower, and if the borrower does not pay what they owe within the timeframe ordered by the court, the lender receives title to the property automatically. Usually this is used for *underwater* properties, which are properties that are worth less than what is owed on the loan.

### **The Note and the Mortgage**

Real estate financing involves two legal instruments: the *note* and the *mortgage*.

#### **The Note**

The *note* is the evidence of the debt. Think of it as an IOU. Be aware of two clauses that might appear in the note:

*Acceleration clause* – Permits the lender to accelerate the *maturity date* (due date) of the loan in the event of a default on the terms of the mortgage. This is called *calling in the note*, and is the lender's first step in the foreclosure process.  
*Prepayment penalty clause* – Requires the borrower to pay a penalty for prepayment of the loan. It is used to guarantee that the lender gets paid the interest on the loan. Prepayment penalty clauses are uncommon in residential loans, but are common in commercial loans.

#### **The Mortgage**

The *mortgage* is the security for the note. It provides a piece of property as *collateral* for the loan. Under the mortgage, the borrower *hypothecates* their property (gives it up as security while retaining possession). Depending on if a state is a *lien theory* state or a *title theory* state, either the bank (*title theory*) or borrower (*lien theory*) will hold legal title during the life of the loan. Under the loan, the borrower in a title theory state has *equitable title* (a future right to gain legal title).

*Intermediary theory* states, like [Massachusetts](#), apply lien theory until there is a default on the mortgage and then title theory is applied. The Deed of Trust lists the borrower, the lender, and a third party (trustee). The borrower retains title, but the bank can take it back without any judicial proceedings by proving to the trustee that the borrower defaulted. When the lender requests foreclosure to begin, the trustee takes over control of the property and sells it on behalf of the lender.

Some common features of mortgages are:

*Mortgage covenants* – Everything the borrower promises to do: make monthly payments, pay their property taxes as *impounds* to the bank (escrow funds paid to the bank by the borrower that the bank then uses to pay any property taxes owed on the property, so that the borrower doesn't fail to pay their property taxes and get foreclosed on), keep the property insured, etc.

*Power of sale clause* – Permits the lender to take the property and sell it in the event of a default on the terms of the loan (most often non-payment of the loan).

*Defeasance clause* – When the loan is paid back, the bank's claim to the collateral is automatically relieved

*Due on sale clause (or alienation clause)* – Permits the bank to accelerate the maturity date of the loan in the event of most (but not all) title transfers, which prevents transferring the mortgage to a third party. Under the *Garn-St. Germain*

*Act*, the due on sale clause cannot be triggered upon death, devising of the property, leasing, marriage, divorce, or transfer to a family trust.

*Subordination clause* – Makes the mortgage junior to any future mortgage. *Junior mortgages* are those mortgages that get paid second (or third, or fourth, etc.) in a foreclosure auction after any *senior mortgages*. You will see junior mortgages commonly referred to as second mortgages (or third mortgages, or fourth mortgages, or...you get the idea).

*Partial release clause* – Used in *blanket mortgages* (mortgages that cover several parcels of land). This clause releases a portion of the collateral in exchange for partial payment of the loan. Might be seen in subdivision developments or cross-collateralized loans.

### **Points**

A *point* is one percent of the loan.

Points are often used to increase the value of a loan. Basically, if the interest rate on a loan is so low that it isn't worth making, a lender can charge the borrower points as an *origination fee* (a fee for getting the loan) to increase their profit on the loan and make it worthwhile to them.

*A property was sold for \$100,000 with a loan for \$80,000. The lender charged the borrower two points. How much did the points cost the borrower?  $\$80,000 \times .02 = \$1,600$*

### **Discount Points**

A borrower can use *discount points* paid up front to *buy down* the loan interest rate. This means the borrower owes less interest every month because they have paid some of the interest up front, which reduces their monthly payment.

### **Mortgage Brokers**

*Mortgage brokers* are third parties that do not originate the loan, but instead broker the loan between the borrower and lender. They are not the same as *mortgage bankers*, who work directly for the lender and *do* originate the loan.

Mortgage brokers may offer more, and more flexible, loan options for clients by comparing different banks' offerings, though often at a higher cost (because the broker charges a fee).

## Real Estate Financing

### The Secondary Mortgage Market

Banks don't have to keep the loans they make on their books; they have the option to sell the loans off to investors on the *secondary mortgage market*. After the loan is sold (either at a *discount* for less than it is worth, or at a *premium* for more than it is worth), the mortgagor may either make payments directly to the loan's new owner, or they might keep paying their original lender, and the lender will handle forwarding those payments.

The mortgagor doesn't need to consent to the sale of the loan, but they must be informed of the sale per the *Helping Families Save Their Homes Act* (part of the *Truth in Lending Act*).

There are three major loan buyers on the secondary mortgage market. All three were established by the US Government to make loans more readily available. By buying loans from banks, the banks then have more money (*liquidity*) available to make additional loans.

*Federal National Mortgage Association (Fannie Mae)* – Founded in 1938. Focuses on conventional, FHA, and VA loans (more on FHA and VA loans in the Government Financing section).

*Federal Home Loan Mortgage Corporation (Freddie Mac)* – Founded in 1970. Specializes in conventional, FHA, and VA loans. Innovated by implementing the securitization of mortgages, which Fannie Mae later adopted as well.

*Government National Mortgage Association (Ginnie Mae)* – Founded in 1968. Specializes in FHA low-income loans.

After the 2007-2008 housing crash, Fannie and Freddie are now in government conservatorship (meaning they are more or less run by the government), under the umbrella of the *Federal Housing Financing Agency (FHFA)*.

### Types of Real Estate Financing

Real estate financing can be structured in a number of ways. Structures might include, but are in no way limited to:

#### **Fully Amortized Loans**

*Amortization* is the payment of debt in equal installments. *Fully amortized loans* (also known as *direct reduction loans*) are loans that are completely paid off when the last payment is made. All payments (known as *debt service*) pay both the *principal* (debt) and the interest of the loan, as well as any insurance payments and taxes due. This is known as *PITI*, or the Principal, Interest, Taxes, and Insurance (usually *homeowners insurance*, which covers physical damage to the house, and might include additional *broad-form insurance* for extra damages). The amounts going toward principal and interest change over the lifetime of the loan, and are usually recalculated monthly. The payments on the loan are calculated such that the final loan payment pays off any remaining principal and interest, discharging the loan and freeing the borrower from their obligations under it. Home loans and second mortgages typically take this form.

The accounting for amortized home loans assumes that there are only 12 days in a year (the first day of each month). This accounting begins on the first day of the month following the day the loan closes. Borrowers normally pay "*interim interest*" for the period between their closing day and that first day. The first monthly payment is then due on the first day of the following month.

#### **Amortization Tables**

Amortization tables provide an easy (though somewhat outdated) way to calculate mortgage payments. An example amortization table might look like this:

Annual Interest Rate	15 Year PI	20 Year PI	30 Year PI
5.0%	\$7.91	\$6.60	\$5.37
6%	\$8.44	\$7.16	\$6.00
7%	\$8.99	\$7.75	\$6.65

To calculate the payments on an amortized loan, the formula is: **(Loan / 1000) \* PI = Monthly Payment**. *PI* (or a *PI factor*) is the first half of *PITI*, or the payments of **Principal, Interest, Taxes, and Insurance**. Using the above table, the payments on a \$200,000 loan at 5% interest amortized over 30 years would have a PI of \$5.37 and be calculated as:

$$(\$200,000 / 1000) * 5.37 PI = \$1,074$$

**Math: Amortized Loans**

*Formula: Remaining Balance = (Starting Balance x (1 + (Interest Rate / 12)<sup>number of payments</sup>) - (Monthly Payment x ((1 + (Interest Rate / 12)<sup>number of payments</sup>) - 1) / Payment)*

Tom has a loan for \$375,000 for 30 years with 4% interest. The monthly payment of principal and interest is \$1,790.31. What is the outstanding principal after the first monthly payment?

$$\$375,000 \times .04 = \$15,000 / 12 = \$1,250 \text{ 1st months' interest}$$

Payment: \$1,790.31

Lender's Interest: \$1,250

Amount Applied to Principal: \$540.31

**Outstanding Principal: \$374,459.69**

What is the outstanding principal after the second payment?

$$\$374,459.69 \times .04 = \$14,978.38 / 12 = \$1,248.19 \text{ 2nd months' interest}$$

Payment: \$1,790.31

Lender's Interest: \$1,248.19

Amount Applied to Principal: \$542.12

**Outstanding Principal: \$373,917.57**

**Practice Question: What is Tom's outstanding principal after his third payment?**

**Balloon Mortgages**

A *balloon mortgage* or *balloon loan* is a loan with an amortization period that is longer than its payment period (e.g. a 10-year loan whose payments are calculated on a 30-year amortization schedule). This longer amortization period means that the monthly payments for the loan will be lower than they would be if the payments were calculated using the loan's payment period. This makes the payments more affordable for the borrower. However, because the amortization period used to calculate these payments is longer than the loan's repayment period, it also means that there will be unpaid principal left over at the end of the loan's payment period that needs to be paid as part of the final loan payment (a *balloon payment*). Hence the name "balloon mortgage": the repayment of the loan looks like a balloon, with small payments at first (the string attached to the balloon) and one big payment at the end (the balloon).

Balloon mortgages are often *refinanced* (paid off by getting a new loan that replaces the old loan) to pay for the balloon payment.

**Second Mortgages**

*Second Mortgages* (or *junior liens*) work the same way as other mortgages, except they are not the primary mortgage – they come second (or third, or fourth, etc.) They are often used to pay for a portion of the down payment for the first mortgage, or for renovations. In the event of a foreclosure, the first mortgagee has the first claim on the property; junior mortgagees have claims in the order that they placed their lien against the property. Junior mortgagees thus have greater risk of not being paid in a foreclosure, and often charge more for their loans for this reason.

**Straight Loans**

*Straight loans* are interest-only loans; the principal is paid in one lump sum on the last payment. This is common in home flipping, where an investor takes out a short-term loan to purchase and renovate a property, and pays the loan back in full once they have re-sold the property.

**Simple Interest Loans**

*Simple interest loans* are non-compounding loans. This is a common feature of short-term investment (like a straight loan). In simple interest loans the debt is typically calculated daily, instead of monthly.

**Purchase Money Mortgages**

Also known as *seller financing* or *seller carry back loans*. In this type of mortgage, the seller acts as the “bank” for the buyer. The buyer makes mortgage payments directly to the seller, and if the buyer does not make their payments, the seller can foreclose on the buyer, just like a bank would. To accomplish this, the buyer gives the seller a note and a mortgage, like they might give a bank in a more traditional financing arrangement. The seller is therefore the mortgagee in a purchase money mortgage.

**Wraparound Mortgages**

A way of structuring seller financing that “wraps” the seller financing around the seller's existing debt. In a wraparound mortgage, the seller has not finished paying off his or her own home loan to the bank, but wants to set up seller financing. To accomplish this, the buyer makes payments to the seller, who will then “forward” the buyer’s payments to pay off their own debt to the bank. Typically, the buyer will pay more to the seller than the seller owes to the bank, so the seller makes some profit. Watch out: if the seller does not “forward” the payments to the bank, the bank can still foreclose on the property, even though the buyer has been paying! Note that a *due on sale clause* typically prohibits wraparound mortgages.

Example:

	<u>1<sup>st</sup></u>	<u>2<sup>nd</sup> (Wraparound)</u>
Loan	\$180,000	\$50,000
Note	\$180,000	\$230,000
Interest	4%	6%
Premium	2% on \$180,000	N/A

**Construction Loans**

Financing used to pay for property construction. Rather than getting all of the money at once, the borrower receives the funds from the loan in *draws* or *stages*. This protects the lender in the event of foreclosure. Usually the loan must be replaced by a permanent *take out lender* when the project reaches completion. New construction often comes with a *construction warranty* that covers faulty construction for some number of years after purchase (stated in the warranty contract).



### **Package Mortgages**

A package mortgage covers both real property and personal property. For example, you might use a package mortgage to purchase both a physical restaurant (the real estate) as well as the personal property within it (dishwashers, stoves, tables, etc.) Note that if you default on a package mortgage, foreclosure includes both the real estate *and* the personal property.

### **Chattel Mortgages**

A *chattel mortgage* is secured by personal property only. These are often used when businesses purchase large equipment (for example, farm or manufacturing equipment). If you default on a chattel mortgage, foreclosure only impacts the equipment.

### **Home Equity Line of Credit**

Also known as an *Equity Loan*, *Equity Line of Credit*, or *Open-End Mortgage*. It gives the borrower a line of credit against the *equity* (value in their home) that they can borrow against as they see fit. Usually the HELOC is a junior lien.

### **Reverse-Annuity Mortgage (RAM)**

A way for homeowners aged 62 years or older to access the equity they have in their home. The bank makes payments to the borrower against the equity in their home, and the loan plus interest is repaid when the homeowner passes away, or sells their home.

### **Fixed Rate Mortgage**

A loan with an interest rate that is locked in when the loan originates. The interest rate does not change over the lifetime of the loan.

### **Adjustable Rate Mortgage (ARM)**

A loan with an interest rate that adjusts, sometimes over an initially low *teaser rate* or *discounted rate*. Usually it adjusts based on the *prime interest rate*, or the lowest interest rate available at a bank (e.g. the prime rate + 2 points). ARMs often have interest rate caps, but sometimes the interest rate does increase higher than the cap. In that case, the bank typically takes the excess interest above the cap and carries it over to the next rate increase as a *carryover*. If an ARM has a *payment cap* that prevents the payments from exceeding a certain dollar amount, the bank will take that excess interest and roll it into the loan principal itself.

### **Graduated Payment Mortgage (GPM)**

A loan aimed at homebuyers with predictably rising incomes (e.g. doctors). Initially the payments on the loan are adjusted down so as to be affordable, and increase over time as the borrower's income increases. The payments made at the outset of the loan often fail to cover the interest charged on the loan, resulting in *negative amortization* of the interest.

### **Growing Equity Mortgage (GEM)**

A loan where any extra payments are credited directly to loan principal. This allows homeowners to pay off the loan more quickly, and save money on interest.

### **Participation Mortgage**

A loan where the lender participates as an equity partner in a development project.

### **Shared Appreciation Mortgage (SAM)**

A loan where an investor makes the down payment for the buyer in exchange for a share of the property equity or appreciation value.

### **Blanket Mortgage**

A loan that covers several *parcels* (pieces) of land. These are typically used by real estate developers or other investors. Remember that buyers would be unlikely or unable to purchase a property that has an existing mortgage on it (in this case, the real estate developer's mortgage). Thus, although blanket mortgages cover several parcels of land, they usually include a *partial release clause* that allows partial payment of the developer's mortgage every time an individual property is sold, and for that property to be released from the mortgage. This clause prevents a catch-22 situation where the real estate developer can't sell any of the parcels of land covered by the blanket mortgage because they can't pay off the loan, which they can't pay because they can't sell any of the parcels of land that are covered by the mortgage.

### **Bridge Loans and Swing Loans**

*Bridge loans* are short-term loans designed to bridge the borrower over some gap in cash flow, e.g. a shortfall in construction between stages of a project. *Swing loans* are a type of bridge loan that allow a homebuyer to borrow against a new home they're purchasing to carry two mortgages while they sell their old home.

### **Non-Recourse Loan**

A loan where the borrower is not personally liable for loan deficiency in a foreclosure. There is no personal guarantee; the property is therefore the only security for the loan, and a deficiency judgment is impossible to obtain (see the Foreclosures section in "Introduction to Real Estate Financing" for more on deficiency judgments). Important for real estate developers.

### **Buy Down or Pledged Account Mortgages (PAMs)**

*Buy down or pledged account mortgages* are used to mitigate very high interest rates that make loan payments unaffordable. You might see them in a market that has historically high interest rates (e.g. the United States in the 1970s).

For example, the monthly payment on a \$500,000 30-year loan with 10% interest is \$4,388.00. If this monthly payment places the buyer outside of the lender's guidelines for lending (e.g. 28% of income), the seller (*buy down*) or buyer (*pledged account*) can deposit a subsidy with the bank to subsidize the interest rate on the loan for some number of years. For example, if the borrower subsidized the loan for three years, they would be slowly eased into the high rate of interest (e.g. the 1<sup>st</sup> year is 7.5%, then 8.5%, then 9.5%, then finally 10%). The assumption is that the buyer can then either afford the payments at 10% interest, or refinance to a lower rate.

### **Take Over Mortgages**

Think of *take over mortgages* as subletting the mortgage. If the seller doesn't have a due on sale clause, the buyer can take over the seller's mortgage. The buyer would pay the seller their *equity* (the difference between the selling price and the assumed debt), and receive a deed and the right to redeem title by paying off the loan. In a take over mortgage, the buyer is credited the amount of the mortgage at closing (since they are "paying" that amount by taking over the loan), and the seller is debited that amount.

There are three methods of taking over the seller's lien:

*Subject to* – Only the original mortgagor is legally responsible for the loan, and is liable if there is a deficiency after a foreclosure auction. Best for the buyer.

*Assumption of* – Both the original mortgagor and new owner are responsible for the loan, and any potential deficiency. The buyer and seller are jointly responsible.

*Novation* – The seller's note is cancelled, and a new note is written between the lender and the new buyer. Only the buyer is responsible for the debt; the seller is released from their obligations. Best for the seller.

## Government Financing Programs and Regulations

The Federal government has several programs that encourage home ownership by making home loans more affordable. These programs do not make loans; instead, they encourage lenders to make affordable loans by insuring affordable loans made to qualified homebuyers. *Conventional loans* are loans that are not part of these programs.

How do these programs make loans affordable? The main way is by allowing borrowers to use more *leverage* (borrowed money) than a bank would normally allow. Banks typically want a *loan to value ratio* (LTV) of no more than 80%. This means that the borrower must have at least 20% of the purchase price in cash, and can borrow up to 80% from the bank. Since 20% cash is difficult for homeowners to come up with in many markets, the government *insures* lenders that make loans under certain lending programs so that borrowers can make a smaller down payment. Lenders are willing to do this because, with the insurance, the lender effectively still has the 20% down without the borrower actually needing 20% in cash (e.g. 3.5% from the borrower + 16.5% insured by the US Government). There are three main programs you should be aware of:

### Federal Housing Administration Financing

The *Federal Housing Administration (FHA)* was created in 1934 as part of the New Deal. The FHA insures lenders that make loans with more than 80% LTV for homebuyers (usually up to 96.5% LTV – the FHA always requires some sort of down payment, even if it is small), and puts in place limitations to make loans more friendly for borrowers (lower FICO requirements, higher debt to income ratios, and no pre-payment penalties). Under the *203(b)-program*, anyone qualifies for FHA financing so long as they are purchasing a *primary residence* (the property the borrower will occupy for the majority of the year, with FHA guidelines allowing borrowers to establish residency after about 1 year) that meets the FHA's requirements. Generally, these loans are for 1-4 family owner-occupied homes (though the FHA will also approve some condos and co-ops) that are under the FHA's purchase price limit. This limit is determined based on the county where the home is located. Also, note that any FHA loans originated before 1989 are assumable.

Remember, the FHA only insures the loan (and charges the borrower for the insurance); they do not *make* the loan. *Qualified lenders* make the loan, and market conditions dictate the interest rate on the loan. The insurance for FHA loans is called *Mortgage Insurance* or *MI*.

### Veterans Affairs Financing

*Veterans Affairs (VA) financing* is like FHA financing, and is available for honorably discharged veterans. It was established in 1944 as part of the *GI Bill*, and is provided by the *Department of Veterans Affairs*. The rules work more or less the same way as the FHA, except that no down payment is required. There can be a financing fee, but veterans are allowed to roll the fee into their loan. For the purposes of the exam, VA financing is the only no down payment loan available to borrowers.

Like FHA, the VA only insures the loan; qualified lenders still make the loan. Veterans may reuse VA financing several times, but may only have one loan in their name at any time. VA loans originated before 1988 are assumable (see Take Over Mortgages in the Real Estate Financing section).

### USDA Financing

The *United States Department of Agriculture (USDA)* offers loans, grants, and loan guarantee programs to low- and moderate-income, rural Americans who would like to purchase a home and/or farm land. The programs also offer funding to improve homes in rural areas to bring them into compliance with the building and sanitary codes.

The *USDA Multi-Family Housing Program* offers *Rental Housing Loans* that provide affordable multi-family rental housing for very low, low, and moderate-income families, as well as the elderly and those with disabilities. The USDA, through the *Farm Service Agency*, provides loans to new farmers and ranchers who would otherwise be unable to obtain traditional financing for their farms.

### **Private Mortgage Insurance (PMI)**

PMI is the private market version of FHA or VA financing. It is insurance for the lender provided by a private insurer, rather than the government. With PMI, buyers can make a down payment of less than 20%, but they must pay a monthly insurance premium on behalf of the lender until their LTV dips below 78%. At 78% the PMI will automatically discharge per the *Homeowners Protection Act of 1998*. PMI is sometimes referred to as MGIC financing, since MGIC is one of the largest PMI providers.

### **Monetary Policy**

*Monetary policy* has a real impact on the pricing and availability of credit, and consumer purchasing power. Since credit and purchasing power directly affect consumer demand, and thus home prices, a basic understanding of monetary policy is critically important to understanding why real estate values change.

### **The Federal Reserve<sup>3</sup>**

Also known as *The Fed*. Created in 1913 in response to the Panic of 1907, the Federal Reserve was established with the goals of maximizing employment, stabilizing prices, and moderating interest rates. Over time, it has further expanded to regulate banks and conduct much of the nation's monetary policy. It is, very basically, the banks' bank; when a bank needs a loan, it can turn to the Fed. It is private, but has Congressional oversight.

While the Federal Reserve has many powers and authorities, we are primarily concerned with three:

*The Federal Funds Rate (and the Discount Rate)* – The *Fed Funds Rate* is the rate for *interbank lending* (short term loans made between banks). The *Discount Rate* is the rate at which the Fed loans to the banks. Since these rates are effectively the cost of money for banks, it has the effect of setting the floor on interest rates.

The theoretical lowest rate charged by the banks to their best customers is called the *prime rate*. It floats higher than the Fed Funds Rate, so even at the best possible rate, consumers still receive a higher rate than the banks do. This also means that small changes in the Fed Funds Rate can have significant impacts on interest rates throughout the economy.

*The Reserve Requirement* – How much banks must maintain on hand as "cash" (*reserves*) for their deposits and other liabilities. The higher the reserve requirement, the less lenders can lend; the lower the reserve, the more they can lend. This impacts the availability of credit. Also note that borrowing at the Federal Funds Rate can be used to maintain reserve requirements, which is part of why it's so important.

*The Federal Open Market Committee (FOMC)* – The buying and selling of US debt to and from Fed member banks. The more the FOMC buys, the more money is available for banks to lend out, and vice-versa. This also stabilizes the cost of borrowing for the US government.

### **Lending Regulations**

#### **The Real Estate Settlement Procedures Act, TILA-RESPA, and Dodd-Frank**

The *Real Estate Settlement Procedures Act (RESPA)* is a federal law that requires lenders to provide borrowers with information on *closing costs* for financing for 1-4 family residential homes (any fees, points, or other costs charged at closing, along with proration, commission payments, etc.). It also prohibits certain kickbacks, referral fees, and unearned fees. Under RESPA, the lender is responsible for reporting the transaction to the IRS.

*Affiliated Business Arrangements (ABAs)*, where brokerages and mortgage companies, title companies, home inspectors, or other service providers package services together, are permitted under RESPA if the firms share at least 1% common ownership, the consumer is fully informed, the consumer is not required to participate in the ABA, other

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<sup>3</sup> The Federal Reserve is no longer on the exam, but still important to know in practice.

providers are made available to the consumer, and the only thing of value returned is payment for services and a return on the 1% or greater ownership interest. In plain English, this means that the only compensation a broker may receive as part of an ABA is payment for any services rendered on behalf of the ABA (e.g. listing and selling a home), and the distribution of profits based on how much of the ABA the broker owns. They can't get any additional fees beyond that (for example, a "consulting" fee or referral fees).

Under RESPA, banks need to provide a *bona fide* ("good faith") estimate of the amount and range of charges for real estate *settlement* (closing). A *Uniform Settlement Statement* (or *Form HUD-1*) from the Department of Housing and Urban Development was used before October 2015 to list all of the details of the transaction.

As of October 2015, the *Dodd-Frank Act* and *Consumer Financial Protection Bureau* (CFPB) have changed some of the RESPA requirements and processes. RESPA now uses the *TILA-RESPA Integrated Disclosure* (TRID) forms, which combine many of the Truth in Lending and Real Estate Settlement Procedures Act rules. A *Loan Estimate Form* (previously the *Good Faith Estimate*) detailing estimated settlement costs must be given to consumers no later than 3 business days after the loan application and at least 7 days before the closing date. This gives the lender enough time to mail the Loan Estimate Form if the consumer doesn't acknowledge receipt of the form within 3 days. Consumers must also receive a *Closing Disclosure* (which replaces the HUD-1) detailing the actual costs of closing no later than 3 days before the date of closing. If the Closing Disclosure is not available 3 days before closing, the closing usually must be delayed. Changes to the loan or changes to the interest rate of more than 1/8% trigger a new 3-day waiting period.

### Proration

If there is an expense prepaid or unpaid at closing, or income that must be divided between the buyer and seller, it will be prorated and reflected on the Closing Disclosure. Prepaid expenses are a credit to the seller, and a debit to the buyer; conversely, unpaid expenses would show as a debit to the seller and a credit to the buyer. For example, if the seller pays for property taxes for the full year on January 1<sup>st</sup> and the closing is June 1<sup>st</sup>, then the seller is credited the property tax amount for June - December and the buyer is debited that amount. On the other hand, if a repair or upgrade is needed then the seller may be debited for the cost, while the buyer is credited.

The math for proration is fairly straightforward. However, you should note that the exam will specify if the buyer or the seller owns the home on the date of closing (if no one is specified, assume it is owned by the seller on the day of closing), and the exam assumes a 360-day year unless otherwise specified. Also note that property taxes run on a fiscal year from July 1<sup>st</sup> - June 30<sup>th</sup>. Finally, note that unlike other payments, mortgage interest is paid in arrears, not in advance. So a mortgage payment made on June 1<sup>st</sup> is for May's interest, not June's.

#### Example

A landlord is selling their property on June 20<sup>th</sup>. Their tenant paid the rent of \$3000 on the first of the month. How much does the seller owe the buyer?

#### Answer

$\$3,000 / 30 \text{ days} = \$100 \text{ per day}$

*Seller keeps: 20 days x \$100 = \$2000*

*Buyer receives: 10 days x \$100 = \$1,000 (Answer)*

### The Truth in Lending Act

*The Truth in Lending Act* (also known as *Regulation Z* or *TILA*) is a law enforced by the *Consumer Financial Protection Bureau* (CFPB). Its purpose is to provide consumers with a full disclosure of the costs of credit. This gives the public a way of comparing various lenders. To achieve this, TILA requires lenders to calculate their costs of credit and express them as an *annual percentage rate* (APR) if they advertise specific loan terms. It also allows a consumer to cancel certain loans within 3 business days (but not on first mortgages for homes).

APR includes the interest rate, points, loan fees, finder's fees, and a disclosure of any mortgage penalties. The APR does not include municipal taxes and attorney fees, credit reports, appraisal fees, survey fees, and other closing expenses. As a rule of thumb, if some third party (and not the bank) is charging a fee, it is not included in APR.

Note that the APR disclosure requirement is only triggered if specific loan terms are disclosed (e.g. "3% down payment"). It is not triggered if the lender uses vague terms that do not include a specific loan term (e.g. "liberal financing" or "low down payment").

The law covers any person advertising consumer credit in their ordinary course of business (e.g. banks, mortgage brokers, etc.). It covers all forms of advertising. It does not cover seller financing, commercial loans, or any other non-consumer credit. Real estate agents who advertise loan arrangements for a referral fee fall under TILA.

### **The Equal Credit Opportunity Act (ECOA)**

Passed in 1974, the *ECOA* prohibits discrimination in lending similar to the Fair Housing Act's protections for real estate, and requires that credit applications only be considered on the basis of income, the stability and source of that income, net worth, and credit rating. *ECOA* protects against discrimination based on race, color, religion, national origin, gender (including sexual orientation and gender identity per *Bostock v. Clayton County*), age, marital status, and public assistance status. The term *redlining* is used to refer to any type of credit discrimination.

Under the *ECOA*, it is legal to make lending decisions based on factors other than the protected classes listed in the act. For example, lenders may make or deny loans based on credit score, income amount, source of income (e.g. salary vs commission based), or debt to income ratio.

### **Predatory Lending**

*Predatory lending* is unfair, deceptive, or abusive lending. It occurs when lenders fail to disclose loan costs and risks, steer borrowers towards unfairly high interest rates, frequently refinance loans to generate fees (*loan flipping*), or bait and switch borrowers. Laws like TILA are meant to prevent predatory lending.

### **Usury**

*Usury* occurs when someone charges an illegally high rate of interest. *Usury laws* outlaw usury in many states, but the *Depository Institutions Deregulation and Monetary Control Act (DIDMC)* exempts many mortgage loans from state usury laws.

### **Tax Concerns**

The *United States Department of the Treasury* was established in 1789 to manage government revenue and pay the costs of running the federal government. It has three main ways to pay for US Government operations, each of which has a drawback for the economy:

*Raising revenue (taxes)* – The Treasury Department can raise money by charging taxes. However, this directly removes money from the economy, reducing the purchasing power of US citizens.

*Borrowing* – The Treasury can borrow to pay for the cost of government by issuing US Government securities (*bills, notes, and bonds*). However, by borrowing, the US Government competes directly with consumers for loans, and increases demand for them (potentially raising interest rates). Most critically, this can have the effect of *crowding out* private borrowers, making credit less freely or easily available to those borrowers.

*Printing Money* – The Treasury Department can print money to pay for US Government debts. However, since money is affected by supply and demand, printing more money reduces the value of money (inflation).

Real estate sales must be reported to the IRS (along with the sales price, names of the parties, tax ID numbers or social security numbers, and other any other pertinent information) on a form *1099-S* by the lender or escrow agent. 10% of

the proceeds from the sale of property by non-citizens must be withheld by the buyer and forwarded to the IRS under the *Foreign Investment in Real Property Tax Act (FIRPTA)*.

Residential and investment properties are handled differently for income tax purposes:

### Investment Taxes

Investment properties usually generate income. This means that their owners have an income tax liability. To reduce their tax liability, income property owners may write off *depreciation* (also known as *book depreciation* or *cost recovery*). Depreciation is the loss given to you by the IRS, calculated based on the economic life of the property (27.5 years for residential property, 39 years for commercial). Depreciation can only be deducted from rental income or other *passive income* (the income made from passive activities). Depreciation and other investment property losses cannot be deducted from *active income* (like a salary) unless the property owner qualifies as a *real estate professional* (usually by spending at least 750 hours annually actively engaged in real estate activities).

Note that only improvements may be depreciated. Land may not be depreciated. As a rule of thumb, about 20% of the property value is usually land value.

When an investment property is sold, its owners must pay *capital gains taxes* on the profits from the sale. Capital gains can either be *short-term* (if the property was held for less than 12 months) or *long-term* (if the property was held for more than 12 months). The long-term capital gains tax ranges from 0% to 20%, depending on the seller's income for the year. Any depreciated value that is made back at the sale will be subject to a *depreciation recapture tax* of 25%.

### 1031 Like Kind Exchanges

A *1031 exchange* is a way to defer the payment of capital gains taxes. It helps to alleviate the disincentive for business growth created by the tax code. 1031 exchanges are called "like kind" exchanges because the property owner must reinvest the proceeds from the sale into a property of the same type (e.g. another piece of real estate) within approximately six months in order to defer their taxes. The exchange does not need to be simultaneous, but does need to be done within the time limit. This may be done multiple times, but remember that the 1031 exchange defers the taxes, but it does not eliminate them; they are still due if the property owner ever makes a profit when selling the property. Similarly, losses are deferred along with the gains.

When the seller sells the property, if they do not fully replace the value of the property by buying a new one, or if they reduce their mortgage debt, they will pay taxes on the unreplaced value or reduced debt (known as a "*boot*").

### Residential Taxes

Residential taxes are much simpler than investment taxes. Residential homeowners may write off the *mortgage interest deduction* (up to \$750,000 of mortgage debt) and their municipal property taxes (capped at \$10,000, including any State taxes that are written off). Note that the mortgage interest deduction is only available if the property qualifies as a *primary residence* (it is the main home that you have lived in for at least two of the last five years, or will live in for the next two years). The deduction allows homeowners to write off a portion of their mortgage interest, calculated based on their tax bracket. Some second or vacation homes can qualify for a mortgage interest deduction, but they must meet the current tax guidelines. It's best to discuss qualification guidelines with a tax professional.

When it comes to profits on a sale, a portion of the profit of your primary residence is sheltered from capital gains tax per the *Taxpayer Relief Act of 1997*. The extent of the shelter depends on your marital status:

*Single taxpayers*: \$250,000 profit on sale sheltered from capital gains tax

*Married taxpayers*: \$500,000 profit on sale sheltered from capital gains tax



## Consumer Protection Laws

### Massachusetts General Law Chapter 93A

Also known as the *Consumer Protection Act*, MGL Chapter 93A was originally enacted in 1967, and amended in 1969 to allow for private right of action. The law is designed to protect consumers from unfair and deceptive practices employed by some businesses. It empowers consumers who feel they have been unfairly deceived by a business with the ability to easily bring a claim against a business, and receive compensation for any monetary loss they suffered. Under 93A, all a consumer has to do to bring a claim is send the business a letter, and provide the business with 30 days to respond. Note that real estate licensees are treated as businesses under 93A.

93A creates the disclosure requirements that agents must follow when selling a property, and also creates liability when misleading or otherwise harming buyers and sellers (for example, if an agent knowingly violated the law or was informed about a violation and did not correct the problem). Under 93A, real estate agents and other businesses are required to disclose everything they know that materially impacts the quality of a property offered for sale or rent. Note that there is no intent standard; the material fact of unfair or deceptive practices is enough to trigger MGL 93A protections, even if those practices were accidental. Also note that unlike agents, private sellers in Massachusetts are not obligated to disclose material defects, except for those defects relating to lead paint and septic systems (*Title V*).

The minimum amount a consumer can be awarded under 93A is double damages, and the maximum is *treble* (triple) damages plus attorneys' fees and court costs. There is a crucial exception to these damages under 93A, however: if the business makes a reasonable settlement offer that the prospective plaintiff rejects, then the court may limit the plaintiff's recovery to the amount of the settlement offer.

The following guidelines must be met in order for a case to fall under Chapter 93A of MGL:

- The matter must involve a business (including licensees). Private party sales (those that do not involve a business) are not covered by 93A.
- A consumer must have suffered actual monetary damages (e.g. wasted money) or be able to prove that the unfair business practice *may* cause a loss of money or property (which can be difficult to prove).
- The complaining party must write a 30-day demand letter, send it to the business, and give the business 30 days to respond. The time window is not optional. Without the 30 days, it is not a 93A claim.

Some examples of practices that might fall under Chapter 93A:

- A consumer is not fully informed of the nature of a product or is misled (e.g. failing to disclose a material defect, or *puffing*, which is overselling a property in a misleading way).
- A business does not uphold its refund/return policy.
- A business does not meet its warranty agreement.
- A business engaged in false advertising (watch out, future real estate agents!).

### Home Inspection Regulations

Buyers in Massachusetts must be given the Massachusetts home inspection brochure when they sign a purchase agreement, but they are not required to get a home inspection.

An agent representing the seller (including dual agents) may not recommend a specific home inspector, since it is a potential conflict of interest. They are prohibited from sharing literature on home inspection companies or even sharing their personal experience with an inspector. Buyer's agents are allowed to recommend a specific inspector. Buyer's agents can recommend one or many inspectors. There is no set number that they must refer. It's always best practice to encourage consumers to ask their friends and family for recommendations as well.

Many home inspection contingencies have a time limit (e.g. 7 days to obtain an inspection), so it is important that clients are informed of any time limit, and ensure that any inspections are completed before the time limit elapses.

## **Hazardous Materials**

Environmental hazards are a serious concern. This is especially true for commercial and industrial properties, because business activities often involve toxic materials. Any known hazards (i.e. underground fuel tanks, asbestos, chlordane, mold, or radon) need to be disclosed as defects, but they do not prohibit the sale of real estate.

*A 21E Certificate (see the Property Right Limitations section on Environmental Limitations) is used in Massachusetts to certify that real property is free of contamination. 21E certificates are most often used for commercial properties, but may also be used for residential real estate. Hazards may also be tested for if the seller agrees to the testing.*

*Brownfields are lands that have been previously used for commercial purposes, and are contaminated by hazardous waste or pollution (in contrast to greenfields, which are uncontaminated lands). The Massachusetts Department of Environmental Protection (DEP) provides for liability relief and financial incentives under the Brownfields Act of 1998 to encourage the cleanup and redevelopment of brownfields.*

There are a number of environmental hazards to be aware of:

### **Lead Paint**

Lead-based paint is a common hazard, since it was used in many homes before it was banned in 1978 under the *Residential Lead-Based Paint Hazard Reduction Act*. If someone ingests lead (either by eating it or inhaling lead dust), it can cause damage to the brain and other vital organs, like the kidneys, nerves and blood. Lead exposure is closely linked to behavioral issues, ADHD, learning disabilities, and lowered IQ scores.

Because lead paint is prevalent in homes built before 1978, it is important to be aware of the rules surrounding lead paint. They work differently for sales and rentals:

*Sales Lead Paint Law:* Prospective purchasers of residential property built prior to 1978 must be notified of their lead paint rights prior to signing the P&S with both the Federal *Protect Your Family from Lead in Your Home Pamphlet* created by the EPA, HUD, and Consumer Product Safety Commission, and the *Massachusetts Property Transfer Lead Paint Notification Form*. It is your responsibility as a real estate agent to ensure that the buyer receives these forms and acknowledges the disclosure of potential lead paint. The buyer is granted a 10-day lead paint inspection provision by federal law. They may waive the inspection, but if a child under 6 lives in the home, or someone becomes pregnant, the property owner must de-lead within 90 days. There are no exceptions or parental waivers allowed under any circumstances.

*Rental Lead Paint Law:* Federally, there is no law that requires landlords to delead, however the presence of any lead based paint must be disclosed, and tenants may withdraw from the lease if they do not find the lead conditions to be satisfactory. In Massachusetts, all property constructed prior to 1978 and occupied by a child less than 6 years old must be tested for lead paint and de-leaded if lead paint is present. Landlords cannot deny a rental to tenants on the basis of lead paint, even if the landlord has an exemption under fair housing law, and parents cannot waive de-leading under any circumstances. The only time a child under 6 can occupy a property with lead paint is for short term vacation rentals (<100 days Federally, or <31 days in Massachusetts). Landlords must bear all of the costs of de-leading, including any moving costs the tenant incurs (tenants may not live in the property while it is being de-leaded), and any costs of alternate housing in excess of the tenant's monthly rent.

*All new tenants (whether or not they have children under age 6) must be given the mandatory Massachusetts Tenant Lead Law Notification Form before signing a lease for a property built before 1978.*

### **Other Hazards**

*Asbestos:* Asbestos was primarily used (and sometimes still is) as an insulation material and fire retardant. Prolonged exposure causes Asbestosis, Mesothelioma, and lung cancer. The EPA banned all use of Asbestos in 1989, but the courts overturned the ban in 1991. It is therefore legal to manufacture asbestos in many industries in the US, though

its use has declined dramatically. Its use in homes and flocked ceilings ("popcorn ceilings") was banned in 1978, though installers were permitted to use up their existing stocks until 1986.

In Massachusetts, there is no law specifically banning the use of asbestos (though products containing more than 1% asbestos are strictly regulated), or requiring its removal from real estate. That having been said, if asbestos is in poor repair or is present in a *friable* state (can be crumbled or made particulate, and thus inhalable) the State mandates that it must be removed. Real estate agents should disclose the presence of asbestos per MGL 93A.

Asbestos removal and property demolition is subject to 310 CMR 7.00, which strictly controls removal so as to avoid air pollution and the release of asbestos fibers. The requirements for removal include using specially licensed contractors, notifying the DEP (Department of Environmental Protection) and DLS (Department of Labor Standards) 10 days prior to removal or demolition, using special containers, double bagging removed asbestos to prevent its release, and other precautions. Since removal is expensive, *encapsulation* (where a hazardous material is covered and sealed off) is often used as an alternative to removal.

**Radon:** A colorless, odorless gas that is radioactive, and causes cancer. It is a result of the natural breakdown of radioactive elements in certain soil. Homes can be designed in ways to minimize radon contamination, and homes should be tested if they are located in a higher-risk area, though it is always good practice to test, since 1 in 15 homes are impacted by radon. The EPA suggests taking action when a level of 4 pCi/L (picocuries per liter) is present in a home.

**Mold:** Mold must be disclosed, but does not prohibit the sale of real estate. In sales, watch out for vinyl wallpaper and exterior insulation finish systems (*EIFS*), which are prone to mold. Homeowners' insurance policies often do not cover mold, which can be an issue in real estate sales.

*Stachybotrys* is a genus of molds that contains around 50 different species. Of particular concern are *S. chartarum* and *S. chlorohalonata*, commonly known as "black mold" or "toxic black mold." Black mold is linked to health issues and poor indoor air quality.

In rentals, a mold disclosure form must be provided with every lease, which details the health harms caused by mold (primarily respiratory), and the conditions that contribute to mold growth (moisture, poor ventilation, etc.). Landlord failure to mitigate mold in a reasonable period of time may constitute a violation of the state sanitary code, and be grounds for constructive eviction (see the Leases section).

**Urea-formaldehyde:** Urea-formaldehyde, or UFFI, is an insulation material. Under some circumstances, it can break down, resulting in formaldehyde vapor being released into a home. It was banned in 1979. Under a Massachusetts law passed in 2002, UFFI does not need to be affirmatively disclosed, but lenders remain liable. The disclosure requirements were removed because the material was banned so long ago, and testing has shown that the aged material is not toxic.

**Chlordane:** Used to treat pest infestation in the 1940s -1980s. Acts as a chemical barrier to insects entering the home, and persists for 30+ years. It is toxic, can impact well water and air quality, and must be disclosed.

**Polychlorinated Biphenyls (PCBs):** More than 200 different chemical compounds that are not found naturally. Banned in 1979, PCBs were used for flame resistance in electrical equipment, and are carcinogenic. Mostly a concern for commercial and industrial properties.

**Chlorofluorocarbons (CFCs):** Nontoxic, nonflammable chemicals used as refrigerants in air conditioners, refrigerators, and freezers, as well as aerosol sprays, paints, and other products. They are safe in the lower atmosphere, but cause ozone layer depletion, and have mostly fallen out of favor since 1996 except in limited applications (e.g. asthma inhalers).

**Underground Storage Tanks (USTs):** Typically, USTs are storage tanks for chemicals or gas (e.g. fuel tanks) that are more than 10% buried in the ground. In Massachusetts, they are banned under 21E, and represent a hazard. Disposal

requires the presence of the fire department and DEP (Department of Environmental Protection); personal removal and disposal (e.g. at the dump) is prohibited.

*Title V:* Requires septic systems to pass inspection within 2 years prior to a sale (3 years if they are pumped every year). If weather conditions prevent an inspection before a sale, the inspection can be done up to 6 months afterwards, provided that the seller notifies the buyer in writing of the need to complete the inspection. Seller and buyer decide who brings the system into compliance if it fails inspection. Many people may be approved to perform the inspection, including certified engineers, health officers, home inspectors, Board of Health members, septic installers and haulers, and registered sanitarians.

*Drinking Water:* The Safe Drinking Water Act (*SDWA*) of 1974 permits the EPA to set standards for drinking water. Drinking water issues must be disclosed, and buyers should usually test wells and other non-municipal water systems for contamination.

### **Massachusetts Smoke Detector Regulations**

The sale of real estate built prior to 1975 requires a smoke detector certificate signed by local fire chief. Most real estate sales will receive an inspection even if it's not legally required because of lender or buyer requirements. Smoke detector rules are based on the year the property was built (or permitted) and the type or number of units in the property. Requirements regarding placement are based on the size and number of floors in the dwelling. In addition to national code, every town has their own specific laws regarding smoke detectors.

Single or 2 family properties built prior to 1975, may have battery operated smoke detectors (photoelectric). Single or 2 family properties built or permitted after Jan. 1<sup>st</sup> 1975, must have interconnected, hardwired detectors. Those built or permitted after 1997, must have interconnected, hardwired detectors with battery back-up. For 3+ unit properties, the rules are based on the international building codes. Fire inspectors typically follow each town's code regarding these properties.

Smoke detectors must be placed on every habitable floor, in the basement, on the ceiling at the base of the stairs, within ten feet of each bedroom or sleeping area, and if the attic is finished, there must be one on the ceiling. Photoelectric detectors are required within 20 feet of kitchens or bathrooms. There is usually a requirement that a detector is required for every 1,200sqft. of living space. If the property was built after August 1997, an additional requirement is that there must be a smoke detector inside each bedroom. After September 2008, heat alarms (detectors) must be placed outside any attached garages.

Typically for common areas of 2+ unit dwellings, alarms are required in the lobby, any common areas, and stairwells. Whether they are battery operated, hardwired or a type 1 or 2 alarm system depends on the total number of units in the property.

Note that in Massachusetts, as of December 2016, 10+ year old battery-operated detectors must be replaced with photoelectric sealed 10-year detectors (no more replaceable 9v batteries). Any smoke alarms that were installed prior to this date and met the requirements at that time, are permitted until the detector reaches 10 years of age or exceeds the manufacturer's life of the device. Combination smoke and carbon monoxide detectors are permitted, but must have a tone and voice feature.

### **Massachusetts Carbon Monoxide Detector Regulations**

Effective March 31, 2006, all homes in Massachusetts that are equipped with fuel-burning equipment that produces carbon monoxide or which have indoor parking (a garage) adjacent to living areas are required to have Carbon Monoxide detectors installed on every level. The law applies to ALL homes, not just those that are being sold. New home construction or renovations must have hard wired detectors; older homes may be brought into compliance with battery-operated detectors.

## **Construction Warranties**

People frequently assume that there is a guaranteed 1-year warranty for all new construction. This is not the case. Generally, construction warranties state that a builder or contractor must use materials that are “new” and “good.” Their work must be free from defects, and executed according to the agreed-upon contract. These sorts of warranties are quite general, and do not include a specific time frame. Only a court can determine the validity of any claim arising from improper construction practices under such a warranty.

Builders or contractors sometimes offer more robust construction warranties for a short period of time after the purchase. These warranties cover any construction defects in the newly built property. There is no legally required timeframe for these warranties, and the warranty will be based on the particular agreement.

In Massachusetts, there is an automatic 3-year *Implied Warranty of Habitability* for any purchasers of newly constructed property. Neither the buyer nor the seller can waive this warranty. The warranty covers the structural integrity of the property, and the systems and mechanics that keep the property habitable and free from the elements. A judge determines if there has been a breach of the warranty on a case-by-case basis.

## Massachusetts Real Estate Licensing Law

Massachusetts Real Estate Licensing law governs real estate licensees in the State of Massachusetts. The State Legislature makes the laws (and they're permanent unless otherwise stated). Licensing law is designed to protect consumers.

Who enforces the license law? The *Board of Registration of Real Estate Brokers and Salespersons*. The Board of Registration is part of the *Division of Occupational Licensure*, and is located at 1000 Washington Street Boston, MA 02118. You will often hear real estate agents refer to the Board of Registration as the "Real Estate Board."

The Board was created in 1960, and is made up of 5 members, all appointed by the Governor. Each member has a 5-year term, with one member's term expiring each year. Three of the Board members must be brokers with at least 7 years of experience, and two members must be unlicensed and represent the public. One of the Board members is appointed the Chairperson. Board members are unpaid, and must meet at least four times a year (with a *quorum* of at least three members present) at a location of their choosing. Written records of the meetings are made available on their website. Their budget comes from the State Budget, and any fees they collect go to the State Treasury.

**The big takeaway on Massachusetts licensing law is this:** Massachusetts law requires a real estate license for anyone that does any of the following things on behalf of someone else and gets paid (or expects to get paid): assists in, advertises, and/or holds themselves out as engaged in, the business of selling, renting, leasing, negotiation, exchanging, purchasing, or dealing in real estate (including options for real estate), or assists with the procuring of prospects for the sale, exchange, purchase, leasing or renting of real estate.

### Licensing Law Exceptions

This said, not everyone needs to be licensed. The following people don't need a license to do the things listed above:

- People buying, selling, or renting property for themselves.
- Lawyers and other people holding written powers of attorney.
- *Lawyers are entitled to their broker's license. If someone is a licensed lawyer in Massachusetts, they can pay a fee to get their broker's license, without any real estate experience, classes, or a test.*
- Regular hourly or salaried employees of a company that engage in daily activities related to property management (i.e. property managers).
- Public officers/employees performing official duties.
- Auctioneers, appraisers, and the employees of lenders/insurance companies.
- Persons acting under a court order, e.g. executors, administrators, or guardians.
- Trustees.

### Broker vs Salesperson

A *broker* is allowed to work for him or herself and can handle client money (e.g. *escrow funds*). A *salesperson* must work under a broker as either an employee or an independent contractor, and may not handle client money. Brokers must be bonded; salespersons do not need to be bonded.

### Broker Bonds

Broker bonds are effectively insurance policies for escrow accounts. Every licensed broker, including corporations and inactive licensees, must provide the Board with a surety bond for \$5,000. This bond is for the benefit of any person harmed if the broker loses escrow funds; it is not insurance for the broker.

### Escrow Accounts

*Escrow* or *trust accounts* are special bank accounts for holding client money, typically used by brokers to hold deposits on offers and purchase and sale contracts. Brokers that act as escrow agents must have a binding agreement between

the parties to the transaction, and specific instructions on when funds should be delivered. Some important notes about escrow accounts to keep in mind are:

- Brokers must keep escrow funds in a separate account from their business funds. *Commingling* client money with business money is strictly forbidden. Brokers do not need separate accounts for each client, and can use one account for all of their deposits. The account does not have to bear interest, but if it does, the client must agree (in writing) to whom the interest will be paid.
- Salespersons must not have access to the escrow account; this would result in both the salesperson and their broker losing their licenses. Salespersons should turn deposit checks over to their broker. The broker must deposit the checks into the escrow account as soon as possible.
- Brokers must maintain escrow records for at least 3 years. Those records must include all of the information about the money going into, and out of, the account (e.g. copies of checks, dates, transaction information). The Real Estate Board is entitled to inspect escrow records at any time.
- Clients who are entitled to their deposit money back (e.g. a client who withdrew their offer, or whose offer was rejected) must be given their deposit money back as soon as possible.
- Escrow deposits are client money. Escrow deposits are not the broker or agent's commission. The *conversion* of a deposit into a commission requires written permission from both parties to the transaction. *Unauthorized conversion* is a sure way to lose your license, and causes a *trust fund shortage*.
- If there is a dispute about escrow money, a broker needs a court order to remove the money from escrow.

### License Law Study Points

- Licenses are renewed every two years on your birthday (*biennially*).
  - Agents must complete 12 hours of continuing education classes (you can take it online with us!) before renewing their license.
- *Inactive licensees* may make referrals to active licensees, and receive a referral fee from the agent to whom they made the referral.
- Salespersons may receive their broker's license after 3 years of work experience (at least 25 hours per week).
  - You may not hold both a salesperson and a broker license.
- Brokers must inform the Board when they hire real estate agents.
  - Agents may not work for more than one MA broker at a time.
  - Brokers have *vicarious liability* for their agents' activities.
  - Agents and brokers must display their licenses in their usual place of business.
  - Brokers cannot hire unlicensed salespersons.
- Some states have *reciprocity* with Massachusetts, meaning that your Massachusetts license permits you to receive a license in those states without taking another real estate class or test.
  - The states that currently have full reciprocity agreements with Massachusetts are: Connecticut, Georgia, Iowa, Nebraska, New Mexico, Pennsylvania, Rhode Island, and New York.
  - The states that currently have limited reciprocity agreements with Massachusetts are: Colorado, Delaware, Idaho, Kentucky, Maine, New Hampshire, North Carolina, South Carolina, South Dakota, Washington, and West Virginia.
  - Note that some of these states place limitations on reciprocity (e.g. New York only allows full reciprocity for brokers with at least two years of experience), and other states have very narrow forms of reciprocity with Massachusetts (e.g. New Hampshire, where you still need to pass the New Hampshire state portion of the exam to receive a New Hampshire license, but won't need to retake the class or the national portion of the exam).
- Massachusetts is a *physical location state*. This means that out of state licensees are not permitted to perform real estate services in Massachusetts, but they may receive a commission for a transaction in Massachusetts so long as any services they performed on behalf of clients occurred outside of Massachusetts.
  - This is contrast to *cooperative states*, which permit out of state licensees to perform real estate services in the state if they enter into a written co-broker agreement with an in-state licensee for the transaction, and *turf states*, which only permit out of state licensees to receive a referral fee.
- Entities involved in real estate (e.g. LLCs) must have a broker's license, and must designate one of their officers the *broker of record*. The broker of record must have a broker's license.

- If the broker of record passes away, the entity may operate independently for up to a year.
- If a sole proprietor passes away, the board may issue a temporary license good for one year to anyone designated by the estate of the deceased. The temporary licensee does not need to have any real estate experience.
- All money paid to the agent must come from their employing broker.
- Brokers must keep records of rental fees paid to the broker for three years.
- Real estate commissions are established by negotiation. There is no standard commission rate.
  - Agents who are not licensed at the time real estate services are rendered are not entitled to a commission.
  - The fine for practicing without a license is \$500.
- Agents and brokers need written permission to list property on MLS, and to place a for sale sign on the seller's property.
- All offers (both written and verbal) must be presented to the client.
- Brokers must maintain records that listings were available at their time of advertisement for three years.
  - *Bait and switch tactics* are not permitted.

### **Advertising**

The following regulations apply to real estate agent advertising:

*No Blind Advertising* – Salespersons may not advertise under their own name only; this is known as *blind advertising*. They must include the name of their brokerage in any advertisements. Broker ads must disclose the name of broker, and include their title of “real estate broker.”

*No Discriminatory Advertising* – Brokers and salespersons must never engage in discriminatory advertising.

*Registration of the Promotional Sale of Out of State Properties* – Out of state property developments must be registered with the Board by their developer, at the developer's expense. The developer must note this registration on their advertisements. Brokers who accept out of state property development listings must inform the Board within 7 days of accepting the listing.

### **Conflicts of Interest**

Agents must provide a written disclosure to all the parties of the transaction when they represent themselves (even indirectly), their family (by blood or marriage), or their business associates. Furthermore, an agent may not lease or buy property (even indirectly) from their own client without making a written disclosure to the client to say that they are leasing or buying the property.

### **Agency and Fee Disclosures**

#### **Mandatory Agency Disclosure**

Every state has specific disclosure forms, but almost all require that the real estate agent disclose their relationship to a client. Real estate agents must provide real estate buyers and sellers the mandatory agency disclosure notice developed by the Real Estate Board. This notice discloses the relationship of the agent with the prospective purchaser or seller. The notice must be provided at the time of the first personal meeting for the purpose of discussing a specific property. If there is no first personal meeting, (e.g. virtual meeting or phone call) then the form must be presented electronically or mailed before the consumer and agent enter into any type of contract. The form applies to any residential property (1-4 family properties or land that could potentially become the site of a 1-2 family property). All agency disclosure records and notices are subject to inspection by the Board.

Prospective purchasers or sellers sign and date the notice, and the agent gives them the original copy. The employing broker keeps a copy of the notice for three years. If a prospective purchaser or seller declines to sign the notice, the agent must note the date the notice was given to them, that the person declined to sign it, and any reason they gave for not signing.



Open houses do not require a written notice for each prospective purchaser or seller who attends the open house, but agents must – by sign, poster, distributed listing literature, or property description form – conspicuously disclose their agency relationship with the seller.

### **The Types of Agency (As listed on the MA Mandatory Disclosure)**

*Seller's Agent:* When a seller engages the services of a listing broker, that seller becomes the broker's client. The broker and its subagents represent the seller. They owe the seller undivided loyalty, utmost care, disclosure, obedience to lawful instruction, confidentiality, and accountability. They must put the seller's interests first and negotiate for the best price and terms for the seller. The seller may also authorize subagents to represent him/her.

*Buyer's Agent:* When a buyer engages the services of a broker, that buyer becomes the broker's client. The broker owes the buyer undivided loyalty, utmost care, disclosure, obedience to lawful instruction, confidentiality and accountability. The broker must put the buyer's interest first and negotiate for the best price and terms for the buyer. The buyer may also authorize subagents to represent him/her.

*Disclosed Dual Agent:* A broker can work for both the buyer and seller on the same property, if the broker obtains the informed consent of both parties. The broker is then considered a disclosed dual agent. The broker owes the seller and buyer a duty to deal with them fairly and honestly, but they cannot expect the broker's undivided loyalty.

*Non-Designated Agent:* Also called *traditional agency*. This is the default type agency in the absence of any written disclosure. Non-designated is when all agents of the broker represent the seller or buyer. All agents of the broker therefore owe all of the responsibilities of a seller or buyer's agent to the client, not just those agents working directly with the client. If two agents in the same office represent both parties to the same transaction, the broker and all of their agents are dual agents.

*Designated Agent:* When a broker (the appointing or designating agent) designates another agent to represent the seller or buyer, that agent is the agent for that party with all the responsibilities of a seller or buyer agent. If the designating broker also designates another agent in the same office to represent the other party, the broker becomes a dual agent with all of the limitations stated above. The seller and buyer must consent to this arrangement in writing.

*Facilitators (Non-Agents, Transaction Brokers, Transaction Coordinators, or Contract Brokers):* An agent acting as a facilitator assists the seller and buyer in reaching an agreement, but does not act as an agent. Such an agent must act honestly and accurately by disclosing known defects on the property, but has no duty of confidentiality unless agreed to by the parties.

### **Rental Fee Disclosure**

Agents renting real estate must provide every prospective tenant with a written notice at their first meeting that states whether the prospective tenant will pay a fee, along with the fee's amount, timing, and manner of payment, and whether or not a fee is due if a tenancy is not created.

The notice must be signed by the agent, contain his/her license number, be signed by the tenant, and contain the date the notice was given. If a fee will be charged, tenants must agree to pay that fee. If a tenant declines to sign, the agent must note on the notice the tenant's name and refusal to sign. Note that there is no requirement for an agent to work with tenants that refuse to pay the fee. Brokers must maintain copies of the fee disclosure for three years from the date that the notice was provided. Fee disclosures are subject to Board inspection.

### **License Suspensions and Revocations**

- The Board can suspend or revoke a real estate license for any number of reasons:
- The license was obtained or renewed using false or fraudulent representation.
- A licensee acted as an undisclosed dual agent.
- A licensee did not disclose that they were the principal in a real estate transaction.

- A licensee acted as a real estate agent while intoxicated.
- Any failure to return client money within a reasonable period of time.
- The payment of referral fees or real estate commissions to unlicensed persons.
- The acceptance of an undisclosed rebate or commission on an expenditure by the principal (a.k.a. a kickback).
- Commingling client money with business or personal funds.
- Inducing a party to a real estate contract to break the contract for the personal gain of the licensee.
- Failure to provide a copy of a real estate contract to one of the parties to the contract.
- Failure to disclose a conflict of interest in writing.
- Failure to report a conviction of crime (felony or misdemeanor) to The Board within 30 days.
- Accepting a net listing (a listing where the commission is not specified).
- *Only accept listings where the commission is an explicitly agreed upon fee or a percentage of the sales price. You may also charge a "fee for services" for additional services rendered to the client.*
- Any violation of Massachusetts Fair Housing Law (the only automatic suspension).

### **License Hearings**

The Board and its agents have the power to conduct public hearings upon written complaint, or of their own initiative. They will provide the accused with at least 10 days' written notice of the hearing, and will hold a hearing at a place of their choosing (usually their offices at 1000 Washington Street). The accused party may have legal representation, but they are not *entitled* to it (no public defender). The Board has subpoena power and may call witnesses. License suspensions and revocations can be appealed within 20 days to a superior court, but the licensee must return their license to the Board within 7 days of the suspension or revocation.

**Massachusetts Real Estate  
Pre-Licensing Course**

*Practice Questions and Test Preparation*

## Practice Quiz 1

1. The real estate board is made up of the following *except*:
  - a. Two lay people
  - b. Three real estate brokers
  - c. An annually selected chairperson
  - d. Governor appointees
2. Francis buys a house for \$100,000. When selling he wants to, at a minimum, recoup what he paid. He will have to pay \$1100 in attorney's fees, \$650 in recording fees, and 5% to a broker. What should he sell for?
  - a. \$106,838
  - b. \$107,106
  - c. \$101,750
  - d. \$96,663
3. A home is contaminated by radon. Which is true?
  - a. The home cannot be sold until decontaminated
  - b. The home can be sold
  - c. The home can be sold, but radon must be disclosed
  - d. A broker cannot sell the home, but the owner may sell it on their own
4. The following is not a requirement for licensing as salesperson:
  - a. Age over 18 years
  - b. Education at a licensed real estate school
  - c. Passing an examination
  - d. Bonding
5. Tom owns a property that receives a net operating income of \$14,000. The cap rate for similar properties is 6.87%. How much is his property worth?
  - a. \$203,785
  - b. \$20,378
  - c. \$14,961
  - d. \$490,000
6. A property line is listed as 12 rods and 2 links in the deed. How long is the property line?
  - a. 200 feet
  - b. 41 feet
  - c. 14 feet
  - d. 48 feet
7. An executor of an estate is likely to use what sort of deed?
  - a. Quitclaim deed
  - b. Special warranty deed
  - c. Warranty Deed
  - d. Bargain & Sale Deed
8. Who would have a Reverse Annuity Mortgage?
  - a. Homeowner borrowing against their equity
  - b. Homeowner with growing income
  - c. 62 year-old homeowner
  - d. Person renting to own
9. Which property is owned in severalty?
  - a. Estate in Common
  - b. Interest in Entirety
  - c. Estate for Years
  - d. Cooperative
10. Unit deeds transfer:
  - a. Ownership in condominiums
  - b. Ownership in cooperatives
  - c. Life estates
  - d. Timeshares
11. A reciprocity agreement:
  - a. Permits co-brokering
  - b. Renders a license valid in another state
  - c. Allows a broker to compensate a facilitator
  - d. Binds the offer
12. Maximum damages under MGL 93A are:
  - a. Double damages
  - b. Good faith settlement
  - c. Triple damages
  - d. Treble damages and attorney's fees
13. An amortization schedule longer than the payment schedule is indicative of what sort of financing arrangement?
  - a. Contract for Deed
  - b. Balloon
  - c. FHA
  - d. Open end
14. Which party typically pays the broker fee?
  - a. Buyer
  - b. Seller
  - c. Attorney
  - d. Seller's Broker

15. Franklin is looking to buy an investment property. He is seeking a GRM of 153. If a property is priced at \$453,000 how much should the rent be to hit his target?
- \$69,309
  - \$2,020
  - \$2,975
  - \$3,370
16. How many hours of continuing education are taken every two years to maintain a valid license?
- 6
  - 24
  - 40
  - 12
17. Which of the following constitutes an involuntary alienation?
- Foreclosure for unpaid condo fees
  - Mechanic's lien
  - Unpaid taxes
  - Purchase & Sale Contract
18. An estoppel certificate:
- Informs a buyer of the status of a financial instrument or rental
  - Precludes a bank from foreclosing
  - Is issued as the prelude to foreclosure
  - Is never permitted under MA law
19. A broker is unlicensed, and as a result a salesperson in the office is not paid by their client, who claims they do not have to pay their commission. The salesperson should:
- Sue the buyer
  - Complain to the board
  - Sue their broker
  - Can prevent the sale from taking place to secure payment
20. Sarah makes an offer on Tuesday with an expiration date of Wednesday at 5 PM. She withdraws the offer Tuesday night, citing a change in circumstances. The offer:
- Is valid until Wednesday at 5 PM
  - Is void
  - May be enforced by a court of law
  - None of the above
21. A buyer is concerned that a murder occurred on a property you are offering for sale. You know that a murder took place. Which is true?
- You must tell them about it if asked
  - You must affirmatively disclose this information
  - You must keep this information confidential
  - It is incumbent upon the buyer to search the public records
22. Which has a pre-defined time limit?
- Fee simple ownership
  - Ownership in Severalty
  - Ownership subject to Life Estate
  - Tenancy at Will
23. Title insurance insures against:
- A leaky roof
  - Default on mortgage
  - An easement in gross written into the deed
  - An undiscovered encroachment
24. The following *must* be disclosed affirmatively:
- The spooky ghost that haunts the property
  - The new porch on the property
  - The seller's need to sell before moving to California at the month's end
  - The buyer's plans to file for bankruptcy
25. Government power to take property for public good is:
- Eminent Domain
  - Foreclosure
  - Illegal
  - Subject to judicial approval
26. Thomas purchases a property for \$200,000 with a down payment of \$40,000. He finances the rest of the purchase at 10% interest for 15 years with payments of \$1,363.72. What is his outstanding balance after his first payment?
- \$160,000
  - \$133,000
  - \$159,970
  - \$199,969

27. The mortgagee would want to see which clause in the note?
  - a. Defeasance
  - b. Due on sale
  - c. Acceleration
  - d. Pre-payment penalty
28. The seller is the:
  - a. Grantor
  - b. Grantee
  - c. Lessor
  - d. Mortgagee
29. In the event the buyer backs out of an accepted offer, which is most likely to occur?
  - a. Liquidated damages
  - b. Forfeiture
  - c. Specific performance
  - d. Nothing
30. The Wetlands Protection Act permits minor alterations of property bordering a wetland after:
  - a. 150 feet
  - b. 100 feet
  - c. 75 feet
  - d. 50 feet
31. You receive an offer to buy a condominium, but the offeror refuses to give a deposit with the offer. You should:
  - a. Refuse to submit the offer
  - b. Submit the offer
  - c. Submit the offer if the offeror will give consideration
  - d. Submit the offer only if it is the best offer
32. Licenses are renewed:
  - a. Biannually
  - b. Biennially
  - c. Triennially
  - d. Annually
33. Three lots sized 150' x 150' are sold for \$250,000 total. What was the price per square foot?
  - a. \$3.71
  - b. \$11.11
  - c. \$0.27
  - d. \$555.56
34. A licensed salesperson has signing power over an escrow account. The following is most accurate:
  - a. They are the manager of the office
  - b. Their broker will lose their license, and they may as well
  - c. Their broker must accept funds for the office
  - d. They may accept funds for the office
35. Agency disclosure documents must be kept for:
  - a. 1 year
  - b. 2 years
  - c. 3 years
  - d. 5 years
36. A septic system has been pumped annually. Under Title V how long prior to sale does it have to pass inspection?
  - a. 1 year
  - b. 2 years
  - c. 3 years
  - d. 6 months
37. Tom owns subject to a life estate. When he passes, ownership will transfer to Tim, named in the original deed by Tina, the grantor. Tim is the:
  - a. Grantee
  - b. Remainderman
  - c. Pur Autre Vie
  - d. Equitable Owner
38. A married couple likely owns their home in:
  - a. Entirety
  - b. Common
  - c. Severalty
  - d. Joint
39. An agent is paid \$125,000 this year. They are paid 1% on all property sales up to \$5,000,000, and some percentage over that amount. They sold \$8,500,000 in real estate this year. Their commission over \$5,000,000 was:
  - a. 2%
  - b. 1.5%
  - c. 3.5%
  - d. 2.15%
40. A homeowner pays \$5600 in taxes on their home this year. If their market value was \$475,000 assessed at 75% what was the town tax rate per \$100 of value?
  - a. \$1.60
  - b. \$1.17
  - c. \$8.48
  - d. \$8.34
41. After what date are CO detectors required in all homes?
  - a. 03/13/1991

- b. 03/31/2006
  - c. 01/01/1978
  - d. 01/01/1969
42. Rental fee disclosure statements *must* include:
- a. Whether a fee will be paid
  - b. Agent signature
  - c. Manner of payment
  - d. All of the above
43. The following is chattel:
- a. A dog-leash
  - b. An above-ground pool
  - c. A garage
  - d. A built-in bookcase
44. Your ownership in a navigable waterway adjoining your property extends to:
- a. The mid-point
  - b. The accretion-line
  - c. The low-tide line
  - d. The opposite bank
45. An option must be signed by the:
- a. Grantee
  - b. Agent
  - c. Grantor
  - d. Optionee
46. Grant is confused about a species of turtle, which is allegedly endangered, living on his property. He asks you, his agent, about what he can do with his property and if this turtle impacts his plans to build an addition on his home. You should tell Grant:
- a. It may, but you are unsure
  - b. It may, and he should speak to an attorney
  - c. He should move the turtles to his neighbor's yard
  - d. Not to worry about it
47. Who is covered by mortgagee title insurance?
- a. The buyer
  - b. The seller
  - c. The bank
  - d. The agent
48. Truth in Lending will require disclosure of APR based in the following ad:
- a. Low down payments!
  - b. Low interest rates!
  - c. Lowest rates this year!
  - d. As low as 1% interest rates!
49. Who pays the excise fee?
- a. Grantor
  - b. Grantee
  - c. Buyer
  - d. Optionee
50. Tammy is looking to invest in property, and develop a number of lots sized 125' x 125', the minimum sized permitted by zoning. The site she is considering is 3 acres in size. Zoning will also require she set aside 50,000 sq. ft. for access ways. If she sells each lot for \$100,000 what will she make?
- a. \$517,000
  - b. \$500,000
  - c. \$836,000
  - d. \$800,000
51. Why does the real estate board require bonding for brokers?
- a. For insurance in the event of a legal claim against the broker
  - b. To secure escrow accounts in the event of a loss of funds
  - c. As a fee for licensing
  - d. None of the above
52. Who makes real estate law?
- a. The board of registration
  - b. The board of REALTORS®
  - c. The state legislature
  - d. The governor
53. Which best describes the relationship between broker and client?
- a. Fiduciary
  - b. Financial
  - c. Customary
  - d. Legal
54. Rick planted corn on his property. He is selling the land the corn was planted on. What sort of property are his plants?
- a. Real
  - b. Real estate
  - c. Rooted
  - d. Chattel
55. Compensation payable to a real estate buyer's agent comes from:
- a. Client
  - b. Co-Broker
  - c. Employing Broker
  - d. Cooperating office
56. Rita wants to sell her property at a 25% profit. She purchased it for \$150,000, and put \$23,000 in improvements into it. How much should she sell for?
- a. \$216,250

- b. \$187,500
  - c. \$231,000
  - d. \$273,000
57. You are a seller's broker. The buyer asks for a home inspector recommendation. Which is true?
- a. You may recommend an inspector
  - b. You absolutely must not make any recommendation
  - c. You should give them the state approved list of inspectors
  - d. You should demur
58. The citizens of a town, zoned exclusively residential, wish to bring a supermarket to the area. If approved the business will likely be issued:
- a. A variance
  - b. A conditional-use permit
  - c. A nonconforming use
  - d. Business will not be permitted per zoning
59. A home is built prior to 1978. One of the owners becomes pregnant. How long do they have to de-lead?
- a. 60 days
  - b. 90 days
  - c. 180 days
  - d. No requirement to de-lead since not a rental
60. An owner wants to net \$300,000 on the sale of their home. Assuming that they have \$2000 in costs, and are paying a broker a commission of 6%, how much should they sell for at a minimum?
- a. \$321,277
  - b. \$315,000
  - c. \$302,000
  - d. \$317,800
61. Randy, a broker, is given a gift certificate to his favorite restaurant as thanks for sending his client to his friend, a real estate attorney, to deal with the purchase and sale agreement for the home his client was selling. Has he risked his license?
- a. No
  - b. No, since it was not cash
  - c. Yes, since his client was not an attorney
  - d. Yes, it is a potential conflict of interest
62. Which of the following would trigger the due on sale clause?
- a. Transferring title to a newly formed corporation
  - b. Giving property as a gift
  - c. Closing of a sale of property
  - d. All of the above
63. Ronaldo is interested in purchasing a \$350,000 rental property with a biannual NOI of \$12,000. What would Ronaldo's ROI be?
- a. 29%
  - b. 3.4%
  - c. 14.5%
  - d. 6.8%
64. A sale-leaseback provides what for the seller?
- a. Favorable tax treatment
  - b. Capital
  - c. Relief from debt service
  - d. All of the above
65. A spouse wants to sue for their dower rights. The deceased did not leave heirs. What are their dower rights?
- a. 1/2
  - b. 1/3<sup>rd</sup>
  - c. The entire estate
  - d. Nothing
66. Nick's property is surrounded on all sides by other properties. He might be granted what by a court of law?
- a. Easement in gross
  - b. Easement by prescription
  - c. Easement by necessity
  - d. Easement in common
67. Redlining is:
- a. Refusal to negotiate with persons of a protected class
  - b. Differentiation on credit terms based on protected class
  - c. Differentiation on price to sales of protected classes
  - d. Moving buyers away from certain areas based on protected classes
68. A home sold for \$250,000 at a 10% profit. What was the original purchase price?
- a. \$227,275
  - b. \$225,000
  - c. \$275,000
  - d. \$277,778



69. Tenancy by the Entirety is distinct in that it provides for:
- a. Co-occupancy
  - b. Sole possession and ownership
  - c. Creditor shielding
  - d. Inheritance
70. A tenant paying some operating expenses is likely renting under a:
- a. Gross lease
  - b. Percentage lease
  - c. Net lease
  - d. Ground lease
71. Betty will be charged 2 points for the origination of her home loan. She is buying her home for \$150,000 with 20% down. How much will her two points be?
- a. \$3,000
  - b. \$2,400
  - c. \$1,500
  - d. \$1,200
72. A property is valued at \$500,000, and assessed at 60%. Tax rate is \$33.33 per \$1000. If property taxes are due on 1/1 and unpaid, and we assume a 360-day year, how much would the seller owe to the buyer for the tax debt if property is sold on 5/15?
- a. \$3,750
  - b. \$4,600
  - c. \$37,500
  - d. \$12,000
73. The members of the board of registration of brokers and salespersons have term limits of:
- a. 1 year
  - b. 2 years
  - c. 3 years
  - d. 5 years
74. A lot, sized 1250' x 1500', sold for \$9 per square foot. How much did it sell for?
- a. \$16,900,000
  - b. \$1,690,000
  - c. \$2,470,000
  - d. \$1,567,000
75. The right of redemption at a tax sale extinguishes when?
- a. The date of sale
  - b. Upon foreclosure
  - c. One year from date of sale
  - d. Six months from date of sale

## Practice Quiz 1 Answers

1. C
2. B
3. C
4. D
5. A
6. A
7. D
8. C
9. D
10. A
11. B
12. D
13. B
14. B
15. C
16. D
17. A
18. A
19. C
20. B
21. A
22. C
23. D
24. D
25. A
26. C
27. C
28. A
29. B
30. D
31. B
32. B
33. A
34. B
35. C
36. C
37. B
38. A
39. D
40. A
41. B
42. D
43. A
44. B
45. C
46. B
47. C
48. D
49. A
50. B
51. B
52. C
53. A
54. D
55. C
56. A
57. C
58. B
59. B
60. A
61. D
62. D
63. D
64. D
65. B
66. C
67. B
68. A
69. C
70. C
71. B
72. A
73. D
74. A
75. D

## Practice Quiz 2

1. A sales associate gets a signed contract from a buyer and mails it to the seller. The seller has agreed to the terms and the escrow deposit is safely in the broker's escrow account. The sales associate has a disagreement with his broker and quits. The broker refuses to pay a commission because the sales associate was not in his employ when the contract was actually received and signed. The sales associate's best recourse is:
  - a. Notifying the board
  - b. Suing the seller
  - c. Suing the broker
  - d. Agent is not entitled
2. A licensee who has passed the broker's state examination, but desires to continue to operate under an owner-employer will, be a what under law?
  - a. Salesperson
  - b. Sales Agent
  - c. Broker
  - d. REALTOR®
3. A buyer gives a sales associate a deposit check made out to the seller. The sales associate should:
  - a. Immediately turn over the check
  - b. Deposit it to escrow
  - c. Hold the check until close
  - d. Hold the check until offer is accepted
4. Jane is a broker and accepts a deposit made out to her firm for \$5,000. What is her legal requirement?
  - a. She must place it into the business account
  - b. She must place it into the escrow account within 7 days
  - c. She must place it into the escrow account immediately
  - d. She must hold the check for 7 days
5. Which person is exempt from licensing requirements when performing real estate services?
  - a. Brokers
  - b. Salespersons
  - c. Auctioneers
  - d. None of the above
6. Who can receive compensation directly from the principal?
  - a. Managing broker
  - b. Salesperson
  - c. Associate broker
  - d. Employing broker
7. Which of the following best describes the relationship of a broker and his principal?
  - a. Caveat Emptor
  - b. Bona Fide
  - c. Fiduciary
  - d. Ad Valorem
8. Who is required to disclose known facts that materially affect the property?
  - a. Listing broker
  - b. Buyer's broker
  - c. Salesperson
  - d. All of the above
9. A broker designated two agents in his office to represent each party in a transaction. With respect to the parties, the broker is a:
  - a. Facilitator
  - b. Co-Broker
  - c. Dual Agent
  - d. None of the above
10. The Board of Registration was established in:
  - a. 1944
  - b. 1960
  - c. 1969
  - d. 1991
11. Which of the following is not required on a valid contract?
  - a. Offer and acceptance
  - b. Consideration
  - c. Legal object
  - d. Acknowledgement
12. Which of the following acts as an insurer?
  - a. FNMA
  - b. Freddie Mac
  - c. FHA
  - d. GNMA
13. The most common method used by the Federal Reserve Board to control the supply of money is:
  - a. The FOMC

- b. The UDAG
  - c. Affirmative Action
  - d. Tandem Markets
14. If the capitalization rate increases, the value:
- a. Increases linearly
  - b. Increases logarithmically
  - c. Decreases
  - d. Does not change
15. Plottage is:
- a. Combining parcels
  - b. Selling plots in a subdivision
  - c. Increase in value from assemblage
  - d. Lot of plot value
16. When considering a borrow a lender considers:
- a. The property
  - b. Their credit
  - c. Their income
  - d. All of the above
17. Tom purchases an investment property, puts work into it, and sees a return of 44% over their investment. They did \$27,000 in renovations on the property, and sold for \$303,000. What was the purchase price?
- a. \$191,667
  - b. \$183,417
  - c. \$202,000
  - d. \$260,000
18. Which of the following forms of depreciation is usually found in external obsolescence?
- a. Inherent
  - b. Absolute
  - c. Incurable
  - d. Curable
19. What is not available to the Federal Reserve System in controlling the money supply?
- a. Open Market Operations
  - b. The discount-rate
  - c. Changing the reserve requirement
  - d. Changing depreciation
20. Which of the following expenses is not deducted from effective gross income in calculating net operating income?
- a. Depreciation
  - b. Utilities
  - c. Advertising
  - d. Management
21. A seller tells a real estate licensee that he does not want his house shown to ethnic buyers. The sales associate should:
- a. Comply
  - b. Show the house to those buyers anyways
  - c. Refuse the listing
  - d. Argue with him
22. Cash flow is an expression of:
- a. Income less expenses
  - b. Expenses less income
  - c. Utility payments
  - d. Income less debt service
23. The Fair Housing Act of 1968 (with amendments) prohibits discrimination:
- a. On religion
  - b. On race
  - c. On nationality
  - d. All of the above
24. Section 8 is:
- a. A housing project program
  - b. A type of subdivision plan
  - c. A housing voucher program
  - d. A mortgage financing program
25. Which is correct about Regulation Z?
- a. It is published by the Federal National Mortgage Association
  - b. It requires the disclosure of pertinent information such as down payment and annual percentage rate if a "triggering" item such as interest rate is advertised.
  - c. It requires disclosure of estimate of settlement costs by the lender.
  - d. None of the above
26. Which requires the lender provide a good faith estimate of settlement costs?
- a. The Baby FTC
  - b. Regulation Z
  - c. TIL
  - d. RESPA
27. Maximum fines under FTC Do-Not-Call are:
- a. \$43,792 per call
  - b. \$51,821 per call
  - c. \$27,012 per call
  - d. \$82,865 per call

28. Title to real property passes to the grantee when the deed is
  - a. Recorded
  - b. Signed and witnessed
  - c. Written
  - d. Accepted
29. A home is valued at \$500,000 and assessed at 44% value for tax purposes. It is taxed at \$2.23 per \$100. How much is the tax bill?
  - a. \$4,907
  - b. \$11,150
  - c. \$4,403
  - d. \$2,231
30. An owner wishes to have a survey made of a commercially-zoned parcel. It is 150 feet on the front, 200 feet on the north side, 100 feet on the back and 77 feet on the south side. It is not in a subdivision. Which survey method would be most appropriate for the parcel?
  - a. Plat plan
  - b. Links and rods
  - c. Lots and blocks
  - d. Metes and bounds
31. An easement created when a person has been using a roadway without permission for over 20 years is called an easement by:
  - a. Necessity
  - b. Deed
  - c. Prescription
  - d. Gross
32. REMTs are financial entities that invest in:
  - a. Properties
  - b. Portfolios of properties
  - c. Portfolios of mortgages
  - d. Apartment buildings
33. A lender differs on credit terms between two borrowers with similar credit profiles, but different geographic locations. The lender may be guilty of:
  - a. Blockbusting
  - b. Steering
  - c. Redlining
  - d. RESPA
34. An increase of your property by action of wind would be:
  - a. Alluvion
  - b. Accretion
  - c. Erosion
  - d. Disposal
35. A property sized 400' by 300' sold for \$210,000. What was the price per square foot of the property?
  - a. \$0.57
  - b. \$1.75
  - c. \$2.24
  - d. \$3.32
36. Fannie Mae was founded by the US Government to:
  - a. Insure lenders to increase home ownership
  - b. Provide housing for veterans
  - c. Inject liquidity into the credit market
  - d. Police lending practices
37. A mile is:
  - a. 1,000 feet
  - b. 2,538 feet
  - c. 5,280 feet
  - d. 43,560 feet
38. A seller needs to clear \$514,000 to discharge their existing loan. They have costs of \$5,000, back taxes of \$7,600, and are paying a commission of 4.5%. How much should they sell for?
  - a. \$538,220
  - b. \$550,820
  - c. \$551,414
  - d. \$555,325
39. Who is legally *entitled* to hold an escrow deposit?
  - a. Buyer
  - b. Seller
  - c. Agent
  - d. Salesperson
40. How many acres are in a square mile?
  - a. 100
  - b. 440
  - c. 500
  - d. 640

## Practice Quiz 2 Answers

1. C
2. C
3. A
4. C
5. C
6. D
7. C
8. D
9. C
10. B
11. D
12. C
13. A
14. C
15. C
16. D
17. B
18. C
19. D
20. A
21. C
22. D
23. D
24. C
25. B
26. D
27. A
28. D
29. A
30. D
31. C
32. C
33. C
34. B
35. B
36. C
37. C
38. C
39. B
40. D

### Practice Quiz 3

Bob needs to sell his home because his company has transferred him to another office. He wants to be able to cover all the costs of selling and pay off his mortgage, along with making a profit of \$50,000. He meets with his broker, Robert and they agree a listing contract with a 7% commission. Bob wants to close within 4 months of listing the property for sale. Bob's remaining loan amount on his property is \$568,900 and his gas and electric bill are \$428 and there's \$340 worth of oil remaining in the oil tank. Bob tells Robert he is unaware of any defects in the property and he has maintained it well since ownership.

The following week Robert has the property professionally cleaned, staged, photographed and a video walk through done for \$2,460. Bob has agreed to pay this fee to ensure the home sells fast and within the timeframe he needs. Robert has referred his real estate attorney who charges Bob \$1,270 in attorney fees for the sale.

Robert hosts an open house and a buyer, Brett and his broker Billy attend. The open house is busy with foot traffic so when Brett tells Billy he wants to buy the home, Billy instructs him to submit an offer for full asking price with no contingencies the next day.

The following day Robert receives several offers. The first offer is from Betsy for \$5,000 above asking, and includes an inspection contingency and a home sale contingency. The second offer is Brett's. It's lower – he is offering the asking price – but there are no contingencies. After Bob and Robert review the offers and discuss them at length, Bob decides to accept Brett's offer even though it's a bit lower than Betsy's, since there are no contingencies.

One month after closing there is a rain storm and Brett discovers the roof has leaked in several places. He has the roof inspected, and the contractor tells him he needs a new roof that will cost \$21,000 and an additional \$3,000 for the water damage that leaked down into the walls.

1. How much should Bob list his home for to net an additional \$50,000 after paying cost and commission?

- A - \$669,494
- B - \$666,628
- C - \$641,886
- D - \$622,630

2. Does Bob need to pay the cost of the new roof \$21,000 and water damage \$3000 to Rob?

- A - Yes, he is responsible for the damages
- B - No, Brett waived a home inspection
- C - No, he was unaware of the defect in the roof
- D - No, the listing agent is responsible

Maggie and Mark sign a one-year lease for a two bed one bath apartment in a triple-decker on the top floor near Carson Beach in Boston for \$4500 with heat and hot water included, starting on September 1st. On March 14th the following year the landlord Nancy informs them that she is putting the house that they are renting up for sale.

Maggie decides she and Mark should buy the property from Nancy before she has it listed publicly. Maggie calls Nancy to let her know that they are interested in purchasing the property and asks what she wants for it. Nancy knows she is in a desirable area and that the other units are rented and under lease with a guaranteed income for whoever buys the property. She decides on \$1,100,000.00 as her proposed listing price.

Mark and Maggie ask about the remaining two-unit leases and rent. Nancy tells them that both are under lease. The first floor is leased until the end of July with a rent of \$3500 with heat and hot water included. The second floor is leased until the end of June with a rent of \$4000 with heat and hot water included. Nancy shows them both the current leases and banking statements where both units security deposit and last month's rent are being held.

Mark and Maggie get financing and hire a real estate attorney to facilitate the purchase directly from Nancy. The sale of the property closes on April 12th. At closing Nancy brings the current tenants' leases and certified bank checks for all of the security deposits and last month's rent for Maggie and Mark to create new accounts in trust to the tenants.

That day Mark creates the accounts for each unit with the tenants are listed as beneficiaries. Mark then takes the security deposit and last month's rent from his and Maggie's unit and deposits them into their personal checking account. Mark then meets with the tenants and lets them know that they can send their rent checks to him and Maggie. The tenants on the first floor ask Mark if he will still be paying for the heat, hot water, and electric. Mark informs them that per the lease he and Maggie will only be paying for the heat and hot water for the unit.

3. How do Mark and Maggie show that they are not responsible for the electric in the first-floor unit?

- A - Doctrine of Privity
- B - Doctrine of Estoppel
- C - Doctrine of Capture
- D - Dominant Tenement

4. When Mark deposits his and Maggie's security deposit and last month's rent from Nancy into their personal checking account, has he done this illegally?

- A - Yes, this is considered commingling
- B - Yes, these monies should be help separate until his and Maggie's lease has expired
- C - No, now that he and Maggie own the property so they are no longer tenants but owners, their lease is terminated.
- D - No, Nancy should have kept their monies at closing



Barbara and Ann are neighbors who have lived next to each other for 30 years. Ann tells Barbara she is thinking about selling her house and moving to a new community on Cape Cod. Barbara is a real estate agent and tells her that she can get the house sold quickly for her. She can even host an open house to show the property to her fellow agents' clients. Ann thinks an open house is a great idea and if a buyer comes from it, she will pay a 4% commission.

The following day Barbara goes into the office and tells the other agents that she is hosting an open house and if anyone has clients looking for a well maintained, 3 Bedroom Victorian home, they should stop by. She mentions that the seller is paying a 2% commission to the buyer's agent. On Saturday Barbara gets to the home early, and stops by Ann's house to ask Ann to leave so that she can run an open house. When Ann leaves, Barbara bakes up a batch of cookies, puts out the brochures on the coffee table, makes sure all of the lights are on and the window shades are open.

Soon after the open house starts several of the agents show up with their clients, they all sign in and tour the house. At the end of the open house all of the cookies are gone but Barbara is holding three over asking offers! When Ann finally returns, Barbara gives her the great news, Ann is happy and accepts the best offer with the advice of Barbara.

5. What is the agency agreement between Ann and Barbara?

- A - Implied Agency
- B - Express Agency
- C - Fiduciary
- D - Apparent

6. If Barbara's actions lead to a written Purchase and Sales contract between buyer and seller, what rule might make it difficult for her to collect a commission?

- A – Procuring Cause
- B – Equal Dignities
- C – Sherman Anti-Trust
- D – Tristram's Landing vs Wait

Drew stops by an open house for a stately colonial home with a large eat in kitchen featuring brand new, state of the art appliances, expansive living room with a mounted 80" flat screen and fully finished basement for a listing price of \$445,000.00. During the tour, Lisa, the real estate agent, informs Drew that she is hosting the open house for an agent in her brokerage. Drew surprisingly likes what he sees and wants to do another quick walk through before he leaves.

As Drew walks through the house on his own he notices the modern chandelier in the hallway and the crown molding throughout the entire property. In the kitchen he sees a high-end range, a wine cooler under the counter along with a dishwasher. The fridge is a new model that has a digital surface on one side. As Drew leaves he lets the agent know he will be in touch if he decides to move forward.

Back at the office Lisa tells Charles, the listing agent about the open house, 7 visitors and all seemed interested. Only one buyer was unrepresented. Charles informs Lisa that she can have the unrepresented buyer. He then tells her that the owners need to sell fast because they are in the middle of a divorce and neither wants to buy the other out.

The following day Lisa calls Drew to see if he is still interested in purchasing the property. Drew has not been able to stop thinking about this property and decides to move forward as a cash buyer. He signs a buyer's agency agreement with Lisa, and then Lisa tells Drew what Charles had said about the current owners. She tells Drew he should under bid the property and fast because there were other parties interested. Knowing this information, Drew decides to act quickly.

Drew submits an offer for \$425,000.00, cash with no contingencies, and a quick 7 day close date. Within the day the sellers have accept Drew's offer. A few days later Drew and Lisa do a final walk through with Charles. In the kitchen the fridge is missing, and there are 8 rather large holes in the living room where the 80" flat screen tv was mounted. Drew is not happy. Charles reaches out to the sellers and they will not bring the fridge back, but agree to bring the TV mount back. The sellers do as they say and Charles has the mount reinstated.

7. Why do the sellers have to bring the TV mount back and not the fridge?

- A - The TV mount is real property and the fridge is personal property
- B - Because they need the home to close so they can move on
- C - The seller does not need to bring either of them back, he paid for both so they both belong to him
- D - None of the above

8. Was Lisa wrong to tell Drew what Charles had confided in her about the sellers' motivation to sell?

- A - No, because it is a cash sale
- B - Yes, Charles told her that in confidence
- C - Yes, She hosted an open house for Charles so they are part of the same team
- D - No, she does not work for Charles, she works for her client and she owes Drew the fiduciary responsibilities of OLD CAR.

There is a broker open house for a condo in one of the new high-rises in the Seaport district of Boston. There are at least 40 agents roaming around the 37th floor. The property overlooks the water, and is turnkey and fully integrated with all of the newest technology.

A small group of agents head out onto the balcony overlooking the city side of the unit. There is champagne being passed around and all of the agents are discussing the unit and the building's amenities. One agent says, "I can't believe this is only listed at 2.5 Million, they could get so much more than that." Another says, "clearly buyer demand is changing."

The listing agent joins the group and asks what they think. The agents all give glowing reviews of the listing, and the listing agent happily tells them that the developer is from Michigan, where he was told that the average listing commission there is 7%. All of the agents are astounded by the number, and one says, "We only get the standard 5% here in Massachusetts. Hey, if we up our price we can start making way more money and be able to buy this unit!" Most of the agents laugh and some openly agree, while all of them raise their glasses of champagne and cheers to 7%.

9. What is the standard commission rate for Massachusetts?

- A - 7%
- B - 5%
- C - 1%
- D - None of the above

10. All of the following are violations of Sherman Anti-Trust, except?

- A - The agent mentioning, "We only get the standard 5% here in Massachusetts"
- B - All of the agents raising their glasses to a 7% commission
- C - An agent saying, "I can't believe this is only listed at \$2.5 Million"
- D - Many agents discussing commissions

## Practice Quiz 3 Answers

1. A - \$669,494 : To determine the net listing price we first need to add the current loan amount and what the seller wants to profit ( $\$50,000 + \$568,900 = \$618,900$ ) Now we add the costs up, where Bob has agreed to pay for the cleaning and staging we will include that fee ( $\$2,460 + \$1,270 = \$3,730$ ) Now we add this together ( $\$618,900 + \$3,730 = \$622,630$ ) Now we need to find the commission of 7%. ( $\$622,630 / .93 = \$669,494$ ) We do not include utilities or the remaining oil as they are not closing costs in the sale.
2. B - No, Rob waived a home inspection. When Rob put in an offer that waived his inspection prior to the sale he understood that something may be wrong that the seller does not know about and is assuming that risk. An inspection would have likely seen this defect.
3. B - Doctrine of Estoppel. The doctrine of Estoppel states that once you cause someone to act in a certain way based on information given, you can't go back on your word. This prevents the tenant from attempting to renegotiate or defraud the new property owner.
4. C - No, Now that he and Maggie own the property they are no longer tenants but owners, so their lease is terminated.
5. A - Implied Agency. Authority that exists because of the principal and agent's actions, even though it is never directly stated. Barbra and Ann never sign a contract but their actions make it seem like Barbara has the power to be the listing agent.
6. B - Equal Dignities Rule. The Equal Dignities Rule states that authorization of agency agreements must match the formality as the service rendered. So, if there ends up being a signed P&S, then there will need to be a signed agency agreement.
7. A - The TV mount is real property and the fridge is personal property. When the TV mount was affixed to the wall it became real property that must be included in the sale, the fridge is something that can be moved and unplugged, this is personal property and if not listed as part of the sale in the listing can be removed by the seller.
8. D - No, she does not work for Charles, she works for Drew and she owes him all of the fiduciary responsibilities of OLD CAR. Lisa was correct by telling her client the information, it is Charles who was in violation of his clients' loyalty when he gave information to another agent who was not a co-listing agent.
9. D - None of the above. There is no standard commission in Massachusetts, commission is always negotiable.
10. C - An agent saying, "I can't believe this is only listed at \$2.5 Million" The Sherman Antitrust Act of 1890 forbids price fixing and establishing uniform pricing. Real estate agents discussing the listing price of a property for sale is not illegal by itself.

## Math Problems

1. Buyer offers to buy property for \$100,000 with a 20% down payment. Balance is due by a three-year balloon contract for deed with interest at 10% per annum. How much simple interest will the buyer pay during the term of the loan?
2. An income property gains a biannual income of \$5000 with a rate of return of 10%. What should the client pay?
3. Owner borrowed \$7,500 at 7.75% to remodel his home. If he repaid the loan plus interest at the end of 7 months what was the total amount repaid to the lender?
4. A property sold for \$100,000 with financing arranged for 25 years with 20% down payment and 9% interest. The monthly debt service (principal and interest) is \$671.36. After the first monthly payment, what is the outstanding loan balance?
5. Using the above data, what is the outstanding amount owed to the lender after the second monthly payment has been made?
6. John purchases a home for \$150,000 with a 20% down payment, and finances the rest of his purchase with a 5% amortized loan with payments of \$533. What is his outstanding balance after his second payment?
7. Rita purchases three lots of land sized two acres each. She plans to subdivide the lots into the smallest possible lots per local zoning, 100' x 400'. Assuming she sets aside 55,000 sq. ft. for access ways, how many lots can she build?
8. Tom bought his house for \$200,000. He wants to clear at least that on the sale of it. If he has costs of \$5000 and an agent commission of 4% how much should he sell for at a minimum?
9. John manages several apartment complexes. One of the complexes grossed \$50,000 last year, had cleaning costs of \$12,000, insurance of \$3600, and miscellaneous costs of \$6,000, and he is paid 6% on gross, what was John's pay for managing this complex?
10. Tracey was paid \$75,000 in commissions last year. She was paid 1% on everything up to \$5,000,000, and some percentage over \$5,000,000. If she sold \$6,000,000 total, what was her commission rate on the amount over \$5,000,000?
11. Nick is selling his home for \$501,343. If a loan for \$301,203 is assumed as part of the sale, what will he pay in recording stamps in Suffolk County?
12. Taxes due on a home are \$3567 for the year. If the home has a market value of \$503,000, and is assessed at 42.3%, what is the tax rate per \$100 and \$1000 of value?
13. George is selling his three-unit owner occupied building to Sarah in June. The top two units are currently rented out for \$1800/month and \$1100/month. If rents are prepaid on the first of the month, and closing (which belongs to Sarah) is scheduled for 6/23, how much will George owe Sarah in pro-rated rent?
14. Josh buys a house for \$304,000 at the start of 2007. The market turns, and he loses 7% of his home value per year for three years. He finally sells at the end of the three years, and pays a 4% commission. What are his total losses?
15. Alfonso buys a house for \$57,000. He does \$37,000 in renovations, and wants to sell for a price that puts his costs at no more than 75% of the total sale price. How much should he sell for, at a minimum?
16. Ally buys three lots sized 400' x 200'. She paid a total of \$323,000 for them. What was her price per square foot?
17. A property receives a semi-annual net operating income of \$50,750. Properties of this sort typically have a cap rate of 5.67%. How much is the property worth, assuming the cap rate is accurate?
18. Betty owns a few rental properties, and is trying to price a potential acquisition. It is currently on the market for \$503,000, and has three units: one renting for \$3000/month, and two renting for \$875/month each. If her target GRM is 125 should she buy this property? And what is its GRM?
19. A house has a market value of \$403,000 and is assessed at 72%. If the tax rate is \$5.50 per \$1000 what is the annual tax?
20. Manny has three lots sized 300' x 1000'. He plans to sell them for \$8/sq. ft. How much will he gross?

21. A property sells for \$531,010. How much will the grantor pay in recording stamps in Suffolk County?
22. A property is sized 400' x 120'. The owner intends to sell it for \$33/sq. ft. How much will they sell for?
23. A seller wants to net \$450,000 on their sale. They have costs of \$5,000 and a commission of 5%. How much should they sell for at a minimum?
24. A property is sold on 6/17. If rents of \$550, \$350, and \$750 were prepaid on the first of the month how much is owed to the buyer in prorated rent, assuming the date of close belongs to the buyer?
25. A property with a market value of \$500,000, assessed at 44% for tax purposes, has a tax bill of \$2010. How much is the tax rate per \$1000?
26. A seller wants sell their investment property. If it receives a gross income of \$40,000 with cleaning costs of \$3600 and management fees of 10%, and cap rates for this sort of property are approximately 4.67%, what is the property worth?
27. A property with a GRM of 123 and a monthly rent of \$3600 should sell for how much?
28. An agent receives \$65,000 in commissions for the year. If they sold \$2.5 million in real estate, and received a commission of 1% on the first million sold, what was their commission rate on the amount over 1 million?
29. A property is purchased for \$550,000, and the purchaser puts in \$55,000 worth of work. If they want to see a 10% profit on their costs when they sell what should they sell for?
30. A property is sold in Barnstable County for \$301,101. As part of the sale a loan is assumed for \$102,030. How much will the grantee pay in recording stamps?

## Math Answers

1.  $\$100,000 \times .8 = \$80,000 \times .1 = 8000 \times 3 = \mathbf{\$24,000}$
2.  $(5000 * 2) / .1 = \mathbf{\$100,000}$
3.  $(7500 * .0775) / 12 = 48.43 * 7 = \$339$  interest + \$7,500 borrowed = **\$7,839**
4.  $100000 * .8 = 80000 * .09 = 7200 / 12 = 600$ 
  - a. Payment of  $671.36 - 600 = 71.36$
  - b.  $80000 - 71.36 = \mathbf{\$79,928.64}$
5. Same steps as above but with a starting loan balance of 79,928.64 = **\$79,856.74**
6.  $150000 * .8 = 120000 * .05 = 6000 / 12 = 500$ 
  - a.  $533 - 500 = 33$  b.  $120000 - 33 = \mathbf{\$119,967}$
  - b. Repeat the steps above but use the new loan balance of 119967 to recalculate the interest = **\$119,933.86**
7.  $3 \times 2 \times 43560 = 261360 - 55000 = 206360 / (100 * 400) = 5$  (round down on lots)
8.  $205000 / .96 = \mathbf{\$213,541.67}$
9.  $50000 * .06 = \mathbf{\$3000}$
10.  $.01 * 5000000 = 50000$ 
  - a.  $75000 - 50000 = 25000 / (6000000 - 5000000) = \mathbf{2.5\%}$
11.  $501343 - 301203 = 200140$  round up =  $200500 / 500 = 401 * 2.28 = \mathbf{\$914.28}$
12.  $503,000 \times .423 = 212,769 / 1000 = 212.76$ ,  $\$3567 / 212.76 = \mathbf{\$16.76}$  and  $212,769 / 100 = 2127.69$ ,  $\$3567 / 2127.69 = \mathbf{\$1.67}$
13.  $1800 + 1100 = 2900 / 30 = 96.67 * 8 = \mathbf{\$773.33}$
14.  $304000 * .07 = 21280 * 3 = 63840$ 
  - a.  $304000 - 63840 = 240160 * .04 = 9606 + 63840 = \mathbf{\$73,446.40}$
15.  $57000 + 37000 = 94000 / .75 = \mathbf{\$125,333}$
16.  $323000 / (3 * 400 * 200) = \mathbf{\$1.34}$
17.  $(50750 * 2) / .0567 = \mathbf{\$1,790,123}$
18.  $3000 + (875 * 2) = 4750$ 
  - a.  $503000 / 4750 = \mathbf{105.89 / Yes}$
19.  $403000 * .72 = 290160$ 
  - a.  $290160 / 1000 = 290.16 * 5.50 = \mathbf{\$1,595.88}$
20.  $3 * 300 * 1000 * 8 = \mathbf{\$7,200,000}$
21.  $531010$  round up =  $531500 / 500 = 1063 * 2.28 = \mathbf{\$2423.64}$
22.  $400 * 120 * 33 = \mathbf{\$1,584,000}$
23.  $(450000 + 5000) / .95 = \mathbf{\$478,947.37}$
24.  $550 + 350 + 750 = 1650 / 30 = 55$ 
  - a.  $55 * 14 = \mathbf{\$770}$
25.  $500000 * .44 = 220000 / 1000 = 220$ 
  - a.  $2010 / 220 = \mathbf{\$9.14 (\$9.136 \text{ rounded up})}$
26.  $40000 * .1 = 4000$ 
  - a.  $40000 - 4000 - 3600 = 32400 / .0467 = \mathbf{\$693,790.5}$
27.  $123 * 3600 = \mathbf{\$442,800}$
28.  $1000000 * .01 = 10000$ 
  - a.  $65000 - 10000 = 55000$
  - b.  $55000 / 1500000 = \mathbf{3.6\%}$
29.  $550000 + 55000 = 605,000 * 1.1 = \mathbf{\$665,500}$
30. **\$0** (grantor pays stamps, not grantee)

# **Massachusetts Real Estate Pre-Licensing Course**

## ***Appendix: Resources, Interview Questions, Definitions, and Math Equations***



## Additional Resources

### **Study Materials**

#### **Online**

- *Quizlet* – Free quizzes and tests. <https://quizlet.com> (search "Massachusetts Real Estate")
- *Real Estate Math* – Video series on real estate math that many students have found helpful. <https://www.youtube.com/watch?v=8gNXz5DsZmI>

#### **Books**

- *All the Math You'll Ever Need* by Steve Slavin – A math book for adults. Designed to help you brush up on the math you learned in school.
- *Real Estate License Exams for Dummies* by John Yoegel – Surprisingly good practice exams and review content.
- *Massachusetts Real Estate Practice & Law 9th Edition* by Anita Hill – One of the best Massachusetts specific real estate books available.

### **Sales Resources and Recommended Reading**

- *How to Master the Art of Selling* by Tom Hopkins – Provides a good overview of the basic skills you'll need to succeed as a salesperson.
- *The Millionaire Real Estate Agent* by Gary Keller – The classic guide for new agents.
- *The Little Red Book of Selling* by Jeffrey Gitomer – Exactly what it sounds like: a little red book about how to be a better salesperson.
- *How to Win Friends and Influence People* by Dale Carnegie – The classic people and sales skill book.
- *Getting to Yes* by Roger Fisher, William L. Ury, and Bruce Patton – Great negotiation book

### **General Real Estate Resources**

- *The State of the Nation's Housing* – The Harvard Joint Center for Housing Studies' annual report on the housing market. [http://www.jchs.harvard.edu/research/state\\_nations\\_housing](http://www.jchs.harvard.edu/research/state_nations_housing)
- *Bigger Pockets* – Real estate blog, podcast, and forum. Focuses on investors, with extra info for agents and property managers. <http://www.biggerpockets.com>
- *Banker and Tradesman* – A weekly periodical focusing on Massachusetts real estate and finance news. <http://www.bankerandtradesman.com>
- *Curbed Boston* – Local Boston blog focusing on real estate and lifestyle topics. <http://boston.curbed.com>
- *Boston Business Journal* – Boston business news, including real estate. <https://www.bizjournals.com/boston/>
- *Massachusetts Real Estate Law Blog* – Blog focusing on Massachusetts real estate law. Useful for keeping up to date on regulatory changes. <http://massrealestatelawblog.com>

### **Taxes and Bookkeeping**

- *Quickbooks* – Bookkeeping and accounting software. <http://quickbooks.com>
- *Xero* – Bookkeeping and accounting software. <http://xero.com>
- *Bench* – Online bookkeeping service. <https://bench.co>
- *Shoeboxed* – Receipt and mileage tracking. <http://shoeboxed.com>

## Salesperson Resource: Questions to Ask When Interviewing

### **Training**

- Is training provided?
- Is there a structured training program? What is the program?
  - *Watch out for "My door is always open" style answers. While the broker's door should be open, you also want a structured approach to training.*
- Does training cost anything?
- Is there any mentoring or coaching program in place? Can you shadow an experienced agent?

### **Business and Support**

- What is the commission split like? Are there any incentives or scaling commission schedules (i.e. can you earn more as you sell more)?
- Does the agency provide leads or business support to agents? Do they do any advertising of the brokerage itself?
- What office support staff (if any) are available to agents?
- Are there any required office or "floor" hours?
- What does the average agent make in the office? How about the top producer? Do they track agent commissions?
  - *This is useful for determining how organized the broker is, in addition to agent and office performance. Keep in mind that agent income is highly dependent on the individual agent, and the interviewer will almost certainly try to avoid answering this question by noting that fact. See if you can get the info anyway. If the office manager or broker has no idea what the answer is, and can't find out because they don't track agent performance, take note of that fact.*
- Are there any monthly or yearly quotas?
- What costs are required to start at the office (business cards, signage, MLS, etc.)? Are there any monthly desk or insurance fees?
- Will you be required to join the local association of REALTORS®?
- What happens to your listings if you have to leave the office due to a move, etc.? Do they have any offices in other cities or states?

### **General Questions**

- *(If doing rentals)* What exclusive landlord relationships does the brokerage have? Where are the exclusive listings located?
- What software and technology does the agency use (online signature services, paperless document services, CMSs, etc.)?
- Could you have a copy of their agent contracts for review (independent contractor agreement, company policies, etc.)?
  - *Do not work anywhere that requires their agents to sign a non-compete agreement.*
- How many listings does the office currently have?
  - Is that the usual amount?
  - How many does the average full-time agent have?
  - What is the average sales price?
- Do they have weekly meetings or property tours?
- Is there an office dress code?
- What is the office culture like? Cooperative? Competitive? Etc.
- What are the office's goals for the future? Expansion? Focusing on a market niche? Etc.

## Definitions

**6D Certificate** – Certifies that all condo fees have been paid up to the date of closing; required for all condo closings in Massachusetts

**21E Certificate** – certifies that property is free from contamination

**203(b)** – FHA financing program for anyone purchasing a primary 1-4 family, owner-occupied residence

**1031 Exchange** – way to defer capital gains tax; property owner must re-invest profits from the sale of an investment property into another investment property within 6 months

**1099** – independent contractor status according to the IRS tax classifications

**1099-S** – tax form used to report real estate sales to the IRS

**ABAs** – Affiliated Business Arrangements; service providers, such as mortgage brokers and real estate attorneys, package their services together as an offering to their clients

**Abandonment** – when the tenant leaves the property before the lease expires, without consent

**Abatement** – a reduction of municipal property taxes; must file taxes before requesting

**Abstract of title** – a history of property ownership (title), summarizing all instruments in chain of ownership; provided by lender's attorney and paid by borrower

**Abutting** – neighboring land with a common boundary

**Acceleration Clause** – a clause in the note protecting the lender by permitting them to demand the loan balance be paid immediately in the event of a default

**Acceptance** – indication by the offeree (most often by signature) that they are willing to be bound by terms of offer from offeror

**Accretion** – increase of property by gradual natural additions (usually wind or water)

**Accretion line** – the water's edge; often the mean high tide line

**Accrued depreciation** – difference between cost of replacing property new as of date of appraisal and present value; already occurs when property is purchased

**Acknowledgement** – an act of executing a legal instrument such as a deed, mortgage or discharge before a lawyer or other officer of state such as a notary public; this act declares signing to be free and voluntary; this is necessary before recording at registry

**Acre** – 43,560 square feet

**Action of law** – a way in which a lease can be terminated; includes eminent domain taking, tax sale, etc.

**Active income** – income generated from active activities, such as a salary; cannot deduct depreciation from this income unless you are a real estate professional

**Actual Eviction** – legal action originated by lessor whereby lessee in default is physically ousted pursuant to a court order (*unlawful detainer*)

**Actual Notice** – specific notice of something (e.g. being served a lawsuit)

**Adjacent** – nearby or abutting

**Adjoining** – touching and contiguous

**Adjustments** – the proration of costs and income (taxes, rents, HOA fees, etc.) between buyer and seller at closing of title (passing of papers)

**Administrator/Administratrix** – person appointed by court to probate or prove and settle estate of person leaving no will

**Ad Valorem** – tax assessment based on actual value

**Adaptability** – one of the tests to determine if something is real or personal property; was it custom built to fit the space or can it fit anywhere

**Adverse possession** – the right to acquire legal title to privately owned property if held openly, notoriously, adversely and without permission for 20 years; also known as squatter's rights

**Aeolian soil** – soil deposited by wind, such as sand dunes or silt

**Affidavit** – a sworn written statement

**Affirmation** – a solemn declaration

**Agency** – a contract by which someone represents another in a transaction or area of business

**Agency for Toxic Substances and Disease Registry** – created by CERCLA as part of their environmental protection programs

**Agent** – an individual, corporation, or other person, acting on behalf of another person with permission and legally binding authority

**Agreement** – one of the tests to determine whether something is real or personal property; buyer and seller agree to make that decision; this overrides all other tests, but should be in writing per **Statute of Frauds**

**Agreement of sale** – a bilateral contract whereby buyer promises to buy and seller promises to sell by execution and delivery of deed; also known as Purchase and Sale Agreement (P&S); Agreement means the same as Contract

**Air rights** – ownership or lease of air space over a specific parcel of realty, such as a building over a turnpike; also known as air lots or vertical interests; typically extend no more than 80-500ft above real estate, depending on where navigable air space begins

**Alienation** – loss of ownership; can be voluntary, such as in a real estate sale or involuntary, such as in a foreclosure

**Alienation clause** – also known as due on sale clause or assumption clause; permits lender to speed up the due date of the loan in the event of a title transfer; prevents transfer of mortgage to a third party

**Alluvion** – increasing of land area along a shore by deposited alluvium or by the recession of water

**Alluvium** – clay, silt, sand, gravel, or similar detrital material deposited by running water

**Amenities** – the features of a property that make it desirable like fitness centers, access to transport, views, etc.

**Amortization** – the payment of a debt in equal installments; each payment is the same, and pays down the debt over time, with a portion of each payment going to the principal and interest on the loan

**Anchor tenants** – major tenants which draw consumers to a shopping center, such as department stores

**Annexation** – when property that was personal becomes real

**Annual Property Operating Data (APOD Sheet)** – sheet that shows the annual income of a rental property; profit and loss statements for investment properties; looks at vacancies, operating expenses (, debt service (mortgage), and capital expenditures (improvements).

**Anticipation** – the benefit a property owner expects to receive over the lifetime of their ownership

**Appraisal** – an estimate of value

**Appraiser** – professionals with an appraisal license who estimate what buyers will pay for real estate

**Appreciation** – increase in value resulting from market forces such as demand stronger than supply

**Approaches to value** – three methods used by appraiser to form an estimate of value such as cost, market and income approaches

**Appurtenance (appurtenant)** – an item or right belonging to and passing with a property such as having a right of way through adjoining property (belonging to something else, either by attachment or by law)

**ARM** – Adjustable Rate Mortgage; loan with an interest rate that adjusts

**Arm's length transaction** – an open and willing sale without cooperation or coordination between the buyer and seller

**Asbestos** – hazardous material that was used as an insulation material and fire retardant; carcinogenic; most often seen in homes with **popcorn ceilings**; most dangerous in a **friable** state

**Assemblage** – the act or process of combining two or more lots into one

**Assessed value** – also known as tax value; value given to realty by assessor's office for property taxation purposes

**Assets** – all of the property someone owns

**Assignment** – transfer of one's remaining interest in a lease or option to a third party

**Assignee** – person receiving a portion of rights or obligations under someone else's contract

**Assignor** – person assigning a contract

**Associate broker** – a broker who chooses to work for another broker

**Assumption of mortgage** – method of taking over a mortgage; borrower and original mortgagor are both responsible for the loan and liability for any deficiency after foreclosure; joint responsibility

**At risk** – the total amount a limited partner has invested and can lose; any tax deduction for losses by a limited partner is limited to this at risk amount

**Attachment (court action)** – a writ issued, beginning or during a legal action commanding sheriff to attach ("seize") property, rights and effects of defendant to satisfy possible credit demands of plaintiff if judgment comes out in plaintiff's favor; involuntary lien

**Attachment (test)** – one of the ways to test whether something is real or personal property; whether or not the property is attached with roots or nails to the land

**Attest** – affirmation that something is true or authentic

**Attestation** – testimony or evidence given under oath

**Attorney-at-law** – a licensed lawyer

**Attorney-in-fact** – someone holding a written **power of attorney**

**Auction** – public sale of property to highest bidder

**Avulsion** – sudden separation of land from one property and its attachment to another typically by flooding or changing course of a river

**Bait and switch** – form of fraud where an agent advertises a certain property that may or may not be available, with the intention of switching it out for something more expensive or lower quality when the client comes into the office to view; prohibited under licensing law

**Balance** – the notion that value is created and maintained when there is equilibrium in the market

**Balloon mortgage** – principal loan amount paid off in lump sum at end of term as opposed to amortized direct reduction method

**Bargain and Sale Deed** – also known as a certificate of sale; provides no warranties; typically used in tax foreclosures

**Benchmark** – mark on stone or cement permanently fixed to ground; used as measuring point by surveyors

**Beneficiary** – someone receiving money from a trust

**Bequeath** – to transfer personal property in a will

**Bequest** – an item of personal property transferred in a will

**Betterments** – improvements adding to value of realty, done by local government and paid for by gainers of value; sidewalks, streets, etc. Results in a **special assessment**

**Biennially** – every 2 years; real estate licenses are renewed on this time frame

**Bilateral contract** – one person's promise in exchange for another person's promise such as purchase and sale agreement

**Bill of sale** – a written instrument that is the evidence of transfer of one person's right in personal property to another

**Binder** – deposit or earnest money given as evidence of good faith by buyer to secure property until sale is consummated; it can also refer to a temporary memorandum outline a real estate deal, similar to a *letter of intent*.

**Binding power** – agent's ability to enter into a legally binding agreement on the principal's behalf

**Blanket mortgage** – a single mortgage covering more than one piece of real estate as collateral for a loan; usually includes **partial release clause**

**Blind advertising** – when real estate agents advertise property under their own name, without disclosing the name of their broker/brokerage and that they are a licensed agent; prohibited under licensing law

**Blockbusting** – employing fear tactics to induce panic selling or panic peddling in a neighborhood: illegal

**Board of Registration of Real Estate Brokers and Salespersons** – licensing authority in Massachusetts under the **Division of Occupational Licensure**; issues real estate licenses

**Bona fide** – in good faith and without fraud

**Bond** – a type of insurance that provides a guarantee from a third party that they will make good any loss, up to a certain amount, suffered by someone dealing with the covered party; insurer is the surety or obligor, and the person or entity the insurance is payable to is the obligee

**Boot** – unreplaced property value or reduced mortgage debt; taxable

**BPO** – Broker Price Opinion; a broker or their subagent's opinion of real estate's value based on evaluating data of comparative properties; used to determine listing price

**Bounds** – directions

**Breach** – violation of the terms of a contract

**Bridge loan** – short-term loans designed to bridge the gap in cash flow, such as between development projects

**Broker** – a type of real estate license, must take a 40-hour course, state exam and be bonded for \$5,000; may handle client money

**Broker of record** – owner of the brokerage; may also be known as employing broker

**Brownfields** – lands previously used for commercial purposes and are contaminated by hazardous waste or pollution

**Brownfields Act of 1998** – encourages cleanup and redevelopment of land contaminated by hazardous waste

**Buffer zones** – used to ease transitions between zoning areas

**Building code** – regulations establishing minimum structural requirements; a police power

**Building inspector** – a municipal employee who ensures that buildings are built in accordance to local rules

**Building line** – line drawn certain distance from lot lines; no building can be erected between building line and lot lines

**Build out** – the modification of the leased premises to fit a particular business; also known as a **fit out** or a **fit up**

**Building permits** – approval to build something

**Bundle of rights** – all of the rights that included with the ownership of realty; include rights of possession, exclusion, control, disposition and enjoyment

**Buy down mortgage** – the seller pays to subsidize the interest rate on a buyer's loan for a number of years; in a high interest rate market, this allows buyers to have more affordable mortgage payments

**Buyer's agent** – Broker or their subagent who represents a buyer; owes obedience, loyalty, confidentiality, disclosure, account and reasonable care to the buyer

**Buyer's agency agreement** – agreement that covers exclusivity of buyer and their broker, but not compensation

**Calling the note** – first step in the foreclosure process; when the lender accelerates the maturity date of the loan

**Capital expenditures** – also known as capital improvements; investments of cash for improvements to remain competitive in a business; seen on **APOD** sheets

**Capital gains** – tax paid on profits from the sale of an investment property; can be short term (property held for <12months) or long term (property held for > 12months)

**Capital reserves** – money held in a reserve fund account by condo associations and investors to pay for improvements to a property

**Capitalization** – process of computing current value from expected future income by dividing annual net income by selected rate of return desired for that type of property; the cap rate

**Capitalization rate** – also known as cap rate; profit expressed as a percentage that an investor expects from an investment on a yearly basis. A rate of return.

**Carrying charges** – any expenses incurred from holding a property while awaiting zoning or construction approvals; also known as carrying costs

**Cash flow** – profit left over after debt service and capital expenditures are paid from net operating income

**Cash on cash return** – percentage of total investment received as cash flow, before taxes; method of the income approach to value, similar to the **cap rate**, except it is based on an investor's cash investment in the property, rather than the property's total value; helps an investor determine how a property is performing compared to their investment goals

**Caveat emptor** – let the buyer beware

**CERCLA** – Comprehensive Environmental Response, Compensation and Liability Act of 1980; federal superfund act; cleans up contaminated sites where hazardous materials have been dumped; holds responsible parties liable for clean up

**Certificate of no defense** – also known as an **estoppel certificate**; used to confirm debt or a lease when a property is sold; prevents current tenants from defrauding new owner

**Certificate of occupancy** – shows that a building has been inspected and found to satisfy building codes

**Certificate of reasonable value (CRV)** – document issued by the VA determining the maximum value for a VA guaranteed loan

**Certificate of title** – a written opinion by an attorney or title company that certifies condition of title; registers land

**CFCs** – Chlorofluorocarbons; non-toxic, non-flammable chemicals used as refrigerants and cause ozone layer depletion

**Chain** – 66 feet

**Chain of title** – the history of ownership for a piece of property

**Change** – with respect to principles of value, real estate cycles are cyclical and change over time in response to economic climate, interest rates, employment rates, inflation, etc.

**Chapter 21E** – Massachusetts Oil and Hazardous Material Release Prevention and Response Act; MA superfund law that regulates storage, transportation and disposal of oil and other hazardous waste; establishes liability and creates **Office of Brownfield Revitalization**

**Chapter 40A** – Zoning Enabling Act; Massachusetts zoning laws that create a comprehensive or master plan for towns

**Chattel** – an article of personal property

**Chattel mortgage** – mortgage where personal property is used as collateral

**Chlordane** – used to treat pest infections, such as termites, during the 1940s-1980s by acting as a chemical barrier around the home; toxic and can impact well water and air quality; must be disclosed

**Clear title** – also known as good and clear title or marketable title; title free of encumbrances

**Client** – person who hires an agent

**Closing costs** – costs to transfer real estate

**Closing Disclosure** – a written accounting of funds to seller and buyer at passing of papers.

**Cloud on title** – outstanding claim or encumbrance that, if proved to be valid, would impair title and marketability of property.

**CMA** – Comparative (or competitive) Market Analysis; used to determine listing price; typically based on price per square foot; a broker or their subagent's opinion of real estate's value based on evaluating data of comparative properties; also known as **BPO**

**Coastal Zone Management Act** – federal law; protects coastal zones by limiting or prohibiting development these areas

**Collateral** – property pledged to satisfy a debt if payment is not made

**Collusion** – agreement to defraud another

**Colonial Ordinances of 1641-1647** – littoral rights in Massachusetts extend from the mean high tide line to the mean low tide line or 100 rods, whichever is less; Public has easement between high and low tide lines.

**Color of title** – someone has instrument which appears to provide good title, but actually does not

**Commercial** – refers to property that may be used for business

**Commingling** – the mixing of client money with the broker's personal or business funds; prohibited under licensing law

**Commission** – money paid to a broker for services rendered; negotiable

**Common area load** – the percentage of rentable square footage above any usable square footage. Typically covers shared common areas (lobbies, elevators, etc.)

**Community property state** – states where married persons share the ownership of all property, even if it was purchased before they were married



**Comparative-unit method** – cost of recently constructed similar properties divided by their square footage to produce a price per square foot cost of construction, which is called the **replacement cost**

**Competition** – with respect to principles of value, profit attracts competition; leads to supply which drives down price

**Comprehensive Loss Underwriting Exchange (CLUE)** – records past consumer claims that are used in homeowner’s insurance underwriting when determining **insured value**

**Comprehensive (Master) Plan** – a land use and infrastructure plan that sets forth local goals, objectives, and policies for community growth and/or redevelopment over a specified period

**Comps** – comparative properties used to help determine value; typically similar properties in size and style, within a 1-mile radius from the last 6 months of sales/rentals

**Condemnation** – the taking of private property by eminent domain

**Conditional sales contract** – a contract in which owner retains title until buyer has met all terms and conditions; a common device in land sales; also called land contract or installment contract, Buyer acquires “equitable title” until final payment; after delivery of deed, buyer has “legal title”

**Conditional use permit** – also known as limited variance or special use permit; special permission to do something otherwise forbidden in zoning laws as long as it is deemed to be in the interest of the public

**Condominium** – a form of ownership where owners share common space but own their individual units separately

**Conformity** – the idea that maximum value is achieved when a property is similar to other surrounding properties

**Consideration** – something of value exchanged between parties of a contract; money, services, goods or promises

**Consistent use** – value can’t be based on a higher speculative use; value must be based on current use and current improvements on the land

**Construction loan** – used in property construction; borrower receives money from lender in stages or draws during construction

**Constructive eviction** – tenant may vacate a property and end their obligations under a lease if the landlord violates the covenant of quiet enjoyment making the premises unfit for tenancy

**Constructive notice** – public notice of something (e.g. recordation of a title transfer at the registry of deeds)

**Contingency Clause** – makes the contract reliant on something else occurring

**Contract** – a legal instrument between two parties to do or not to do something; in realty, it must be in writing to be enforceable; essentials of a contract include offer and acceptance, legal object, consideration and reality of consent and competence

**Contribution** – additional investment in a piece of property as measured by an increase in value

**Conventional Loan** – loans outside of the government insured programs

**Converted use properties** – properties that have received a **limited variance** and changed from one zoning category to another

**Convey** – to transfer and grant; most commonly refers to a transfer of title in a deed

**Cooperative** – shared property owned by a corporation or company; owners have shares of interest in the building and **proprietary leases** for their individual units.

**Corporation** – a legal person created under state or federal law and owned by one or more people

**Cost approach** – uses construction costs to determine a property’s value; used for unique properties, such as a church or properties lacking comparable property data

**Cost of reproduction** – cost to create an exact duplication of a property

**Cost to cure** – method that calculates depreciation costs based on how much it will cost to repair any **curable depreciation**, plus any **incurable depreciation**

**Counter offer** – an offer made in response to an existing offer; voids the original offer

**Covenant** – a promise or guarantee in a deed; could also be considered a restriction created by a developer of a subdivision and considered a **private limitation**

**Covenant against encumbrances** – grantor warrants that the property is unencumbered under general warranty deed

**Covenant of further assurances** – grantor promises to obtain and deliver any instruments necessary for obtaining marketable title under a general warranty deed

**Covenant of quiet enjoyment** – tenant's right to undisturbed enjoyment of the property; premises must be suitable for occupancy at all times; landlord must not trespass; all services promised must be provided; under general warranty deeds for transfer of title, grantor guarantees that the grantee will never have an issue with title

**Covenant of seizin** – grantor warrants they own and may convey a property a under general warranty deed

**Covenant of warranty forever** – grantor promises to compensate grantee for any losses associates with claims against title now and in the future under a general warranty deed

**Covert** – hidden or concealed

**Cubage** – length x width x height of interior

**Cul de sac** – a road with one entrance and exit, usually ending in a circle

**Curable depreciation** – loss in property value that can possibly be fixed, such as a leaky roof

**Curtesy** – rights of husband to share in wife's realty upon her death only; **Dower** is rights of wife to share in husband's realty upon his death; both these rights are life interests only

**Customer** – an unrepresented party (e.g. a buyer at an open house without an agent)

**Damages** – monetary payment as compensation for harm

**Datum** – point used to measure elevation in **metes and bounds** survey method; usually defined as mean seal level of some local official point

**Debenture** – an unsecured note or debt

**Debt service** – mortgage payments; used in reference to investment properties and **APOD** sheets

**Decedent** – deceased person

**Dedication** – to convey private property over to public use, such as the giving of land for conservation use

**Deed** – a receipt for real estate; transfers title to real estate from one party to another

**Deed executed pursuant to a court order** – deeds issued as a result of a will or court decision

**Deed of trust** – also known as a **trust deed**; in some states used instead of a **mortgage deed**

**Deed restriction** – language in a deed somehow limiting the use of a property; can create a **fee simple defeasible** estate

**Default** – failure to perform under a contract

**Defeasance clause** – the clause in a mortgage which removes the mortgage on full payment of the loan

**Defendant** – the person being sued

**Deferred payments** – payments to be made at future date

**Deficiency judgment** – court award to a lender if an auction sale does not fully pay off a debt

**Delinquency** – a loan in default or overdue

**Delivery** – transfer of something, like a deed at closing

**Demand** – number of people willing and able to buy a property; if demand is high and supply is low, this generally creates higher value

**Demand loan** – a loan where the lender can demand repayment of the loan at any time

**Demise** – to lease

**Density** – number of dwellings and commercial units per acre

**DEP** – Department of Environmental Protection

**Depreciation** – book deprecation or cost recovery; decrease in value for various reasons

**Depreciation recapture tax** – tax of 25% applied to any depreciated value that is made back at the sale

**Designated agent** – when a broker or their subagent chooses another agent to represent a buyer or seller; can be used if an agent does not want to be a dual agent or if their client will not consent to dual agency

**Designated REALTOR®** – owner of a brokerage who participates in the National Association of REALTORS®

**Destruction** – when a property is destroyed; can be a way to terminate a contract

**Devise** – to transfer real property by will

**Devisees** – heirs receiving real property

**Devisor** – person leaving real property in a will

**DIDMC** – Depository Institutions Deregulation and Monetary Control Act; exempts many mortgage loans from state usury laws

**Direct reduction mortgage** – also known as a **fully amortized loan**; amortized debt repaid by installment payments; each payment credited first to interest and then to principal; each payment remains the same for entire term and at the end, the entire debt will be paid off

**Discount rate** – the rate that The Federal Reserve Board loans to banks

**Discount points** – **points** paid up front to buy down the interest rate; used to reduce the monthly payment

**Disintermediation** – outflow of funds from one investment instrument, such as thrift institutions to another, such as U.S. Treasury Instruments, in order to gain a higher yield.

**Doctrine of capture** – the owner of land has the right to capture any liquid minerals, such as gas or oil under their land

**Doctrine of estoppel** – states that once you cause someone to act in a certain way based on information given, you can't go back on your word

**Doctrine of laches** - the idea that you lose your rights if you fail to assert them within a reasonable timeframe, and can also be used to render a contract unenforceable.

**Doctrine of prior appropriation** – rights to a river where the ownership is based on whoever uses the water first; used in most Western states

**Dodd Frank Act** – changed RESPA requirements and processes to allow for more transparency; coupled with the Consumer Financial Protection Bureau to create more consumer protection in lender

**Domicile** – the place where someone has permanent residence, no matter where they are currently living

**Dominant tenement** – the property owner with the right in an easement appurtenant

**Dower's rights** – when a surviving spouse is granted a life estate for real property not willed to them; they are entitled up to 1/3 interest in place of whatever was left in the will; **abolished in Massachusetts**

**DTI** – Debt to Income Ratio; monthly gross salary one earns vs. their obligations to creditors each month; front end ratio includes housing expenses such as mortgage payments, insurance and property taxes and back end ratio includes personal obligations, such as credit card debt, car loans or student loans

**Dual agent** – a broker or subagent who works for both the buyer and the seller in the same transaction; must be disclosed and both parties must consent to it in writing per licensing law

**Due on sale clause** – also known as **alienation** or assumption clause; permits lender to accelerate maturity date of the loan in the event of a title transfer; prevents transfer of mortgage to a third party

**Duplex** – a home designated for two families

**Duress** – unlawfully forcing someone to do something against his or her will

**Earnest money** – deposit given with offer to purchase

**Easement** – a right which one person has in lands of another

**Easement appurtenant** – involve two adjoining lots of land where one owner has the right of way across another

**Easement in gross** – a personal right to use another's land.

**Economic life** – period of time in which property may be profitably used; each income property sale begins a new property economic life

**Economic obsolescence** – a loss in value due to economic factors; examples include loss of public transportation, high foreclosure rates, etc.; type of **incurable depreciation**; type of **external obsolescence**

**Egress** – an exit

**Ejectment** – legal action to regain possession of realty with damages payable for its unlawful retention

**Elements of value** – **D.U.S.T**; Demand, Utility, Supply and Transferability

**Emblements** – crops, such as wheat or corn, that require annual or semi-annual planting and harvesting; considered **personal property**

**Eminent domain** – right of government to take private property against owner's wishes for public use with fair compensation

**Employing broker** – a broker who hires real estate agents to work under their license/brokerage

**Encapsulation** – when a hazardous material is covered and sealed off

**Encroachment** – physical trespass of a property on that of another, such as an improperly placed fence; the discovery is by survey; may result in a loss of land through **ONCHA**

**Encumbrance** – anything that burdens (limits) the fee title to property, such as a lien, easement or restriction of any kind

**Endangered Species Act of 1973** – protects endangered species by restricting property use and development in any areas that could be habitats, breeding, or nesting grounds for those species; it is illegal to kill an endangered animal

**Entry-only listing** – also known as flat fee listing; type of listing agreement where broker is paid a flat fee to list the property on MLS, but does not represent the seller or conduct any showings or negotiations

**Environmental impact statement** – required to determine if there are any environmental impacts that a development might have on an area under the **National Environmental Policy Act** and how a developer might handle those issues

**ECOA** – Equal Credit Opportunity Act; prohibits discrimination in lending

**Economic Life** – the useful lifetime of a property

**EPA** – Environmental Protection Agency

**Equity** – the difference between the property value and any mortgage debt; the cash value in the property

**Equity participation** – a loan where the lender takes an equity position in the property in addition to receiving interest

**Equity right of redemption** – Also known as **statutory right of redemption**; property owners have the right to regain ownership of their property if they can pay back their debt plus the cost of foreclosure before the date of auction

**Equitable title** – a future right to obtain legal title

**Erosion** – the process by which the surface of the earth is worn away by the action of water, wind, etc.

**Escheat** – power of government to take property left without a will or heirs

**Escrow account** – also known as trust account; special bank accounts to hold client money; broker holding money is called the escrow agent

**Estate tax lien** – type of federal tax lien used to secure an estate's tax payments

**Et al** – and others

**Et con** – and husband

**Et ux** – and wife

**Eviction** – court action revoking someone's right to possess a property

**Exclusive agency** – seller or buyer hires one broker who earns a commission and can co-broke with other brokers, however, if a seller finds their own buyer, then no commission is paid; must be in writing with an expiration date

**Exclusive right to sell** – listing agreement where seller hires one broker who earns a commission and can co-broke with other brokers; seller must pay a commission even if they find their own buyer; must be in writing with an expiration date

**Executor/trix** – person named in will to execute or probate the will

**Executed contract** – when terms and obligations under a contract are satisfied and fulfilled; complete and finished

**Executory contract** – when a contract has been agreed to, but not yet completed

**Express Authority** – explicitly granted authority to do something (as opposed to implicit authority)

**External obsolescence** – loss in value due to outside forces, such as neighborhood deterioration; considered **incurable**

**Facilitator** – also known as a non-agent, transaction broker, transaction coordinator or contract brokers; a licensed agent that helps buyer and seller reach an agreement, but does not represent either party

**Factory built home** – homes manufactured in pieces in a factory and later assembled on land

**Farm Service Agency** – USDA agency that provides loans to new farmers or ranchers that wouldn't normally qualify for financing

**Federal Electronic Signatures in Global and National Commerce Act (E-Sign)** – electronic signatures on contracts are binding

**Federal Funds Rate** – rate for interbank lending

**Federal Home Loan Mortgage Corp. (FHLMC)** – commonly known as “Freddie Mac,” it is a secondary mortgage market buyer that buys conventional mortgages from lenders to keep market for mortgages fluid; focuses on FHA and VA loans

**Federal Housing Administration (FHA)** – part of the U.S. Department of Housing and Urban Development (HUD), it insures mortgage loans originated by qualified and approved lenders

**Federal income tax lien** – when the Internal Revenue Service places a lien on your real and personal property to claim debt owed to them; involuntary, general lien

**Federal National Mortgage Association (FNMA)** – commonly known as “Fannie Mae,” it is a secondary mortgage market buyer that focuses on FHA/VA loans

**Federal Open Market Committee** – buying and selling of US debt to and from member banks of The Federal Reserve Board

**Federal Reserve Board** – “The Fed”; U.S. central bank known as the ‘bank’s bank’; establishes and regulates monetary policy

**Fee simple absolute** – also known as fee, fee simple, or fee simple indefeasible; default, absolute type of ownership in real estate, type of estate that is inheritable and without limitations, except any public and private restrictions

**Fee simple defeasible** – a grant of title dependent on a specific condition named in the deed; also known as a qualified fee estate

**Fee simple determinable** – fee simple defeasible estate where when a limitation is violated, title is automatically lost

**Fee simple subject to a condition subsequent** – fee simple defeasible estate where when a limitation is violated, the grantor who wrote the limitation can request forfeiture of title via court action

**Fee simple subject to an executory limitation** – a fee simple defeasible estate where when a limitation is violated, the property transfers to a third party named by the grantor

**FHEO** – the Office of Fair Housing and Equal Opportunity; part of HUD, administers and enforces federal fair housing laws

**FICO score** – credit history based on an average of the three major credit bureau ratings; used to determine your financial risk to lenders during the pre-approval process

**Fiduciary** – a relationship of trust

**Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Title XI** – appraisers must have a valid appraisal license to make an appraisal for all federally related transactions and most real estate transaction in general

**Financing** – receiving or providing money for the purchase of real estate

**Finder’s fee** – fee to broker for arranging loan for client; can also mean fee to broker for locating a property for client (aka a commission)

**Fixed rate** – an interest rate that is locked and remains the same over the life of the loan

**Fixture** – something that was personal property, but is now real property because it is permanently attached to land

**Flocked ceilings** – also known as ‘popcorn ceilings’; ceilings with texture that were often created with asbestos based products, if applied before 1986

**Foot** – 12 inches

**Forcible entry** – legal action to recover possession of premises unlawfully held

**Foreclosure** – legal remedy whereby collateral is sold to pay debt because **note** terms, such as non-payment, were not met; typically, are **judicial**, meaning initiated by a law suit, however some states permit **non-judicial** foreclosure if a **deed of trust** was used

**Foreign Investment in Real Property Tax Act** – 10% of the proceeds of property sale by a non-US citizen are withheld by the buyer and forwarded to the IRS

**Forfeiture** – loss of money or anything of value due to failure to perform according to terms of contract; type of **liquidated damages**

**Forfeiture of title** – loss of title; can be voluntary (real estate sale) or involuntary (foreclosure)

**Four Stage Life Cycle** – properties will go through 4 stages: growth, stability, decline and revitalization

**Fraud** – intentional deception resulting in a loss of money

**Freehold** – an ownership interest in realty

**Friable** – crumbling or flaking; when friable, asbestos is in its most dangerous state because particles can disperse into the air

**Front foot** – number of feet of frontage on street side

**Fully amortized loans** – also known as direct reduction loans; loans are completely paid off when last payment is made

**Functional obsolescence** – loss in value due to out-of-date; examples include poorly designed or old-fashioned fixtures or equipment; may be **curable**

**Furlong** – 660 feet

**Garn St. Germain Act** – **due on sale clause** can't be triggered in the event of a death, divorce, marriage, leasing, **devising** on property, or transfer into family **trust**

**General liability insurance** – insurance coverage for personal or property damage that can occur at the brokerage or on showings

**General lien** – a lien on any and all property or assets of debtor such as: judgment, decedent's debts, inheritance taxes, state tax liens, IRS liens

**General warranty deed** – grantor accepts all liability for any claims made against title for all past, present and future owners of the property; includes a variety of warranties such as **covenant of seizin, covenant against encumbrances, covenant of further assurances, covenant of quiet enjoyment, and covenant of warranty forever**

**GI Bill** – what initiated the creation of VA financing in 1944

**Good consideration** – anything of a generous, affectionate, or moral nature (a hug, words of wisdom, etc.)

**Government limitations** – also known as public limitations; local, state and federal governments can restrict what property owners can do with their property; these limitations include **police power, eminent domain, taxes and escheat**

**Government National Mortgage Assoc. (GNMA)** – commonly known as "Ginnie Mae"; a government backed secondary mortgage market buyer that focusses on FHA affordable and low-income housing loans

**Government rectangular survey** – also known as public land survey system or rectangular survey system; not used by 13 colonies, but common in Western states; divides land using principle meridians that run north/south and base lines that run east/west, along with tiers and range lines that form townships

**Graduated lease** – a lease whose rent increases on an agreed upon schedule; **escalator clause** increases or decreases the rent

**Graduated loan** – lower payments are made early in the loan, resulting in **negative amortization**

**Graduated payment mortgage (GPM)**– payments on the loan are lower in the beginning of the loan term and gradually increase; for buyers with predictably rising incomes, such as lawyers or doctors

**Granting title** – transferring ownership

**Grantee** – the person receiving title to real estate

**Grantor** – the person giving title to real estate

**Greenfields** – uncontaminated lands

**Gross lease** – a lease where the landlord receives rent and pays for any common area expenses, like insurance or taxes

**Gross living area (GLA)** – all finished, heated and above grade parts of a property, as measured from the outside of the building

**Gross rent multiplier (GRM)** – how many months of gross rent it takes for a property to pay for itself; helps investors decide if a property is a good value

**Ground lease** – a lease where tenant rents the land and builds improvements on the land; at the end of the lease, improvements belong to the landlord; most common among fast food chains; typically, 99 years which is the max lease length

**Growing equity mortgage (GEM)** – extra payments on a loan are made to the principal; allows homeowners to pay off their debt faster and save on interest over the life of the loan

**Habendum clause** – the “to have and to hold” clause in deed which defines or limits the estate being granted; seen in life estate deeds

**Height** – under zoning laws there are restrictions with regards to how high property can be built

**HELOC** – Home Equity Line of Credit; also known as equity line of credit, equity loan, or open-end mortgage; borrower is given a line of credit against the **equity** in their home; **junior lien**

**Helping Families Save Their Homes Act** – part of Truth in Lending Act; states that while a mortgagor doesn't have to have consent from the borrower to sell off their loan to a third party, the mortgagor must inform the borrower of the sale of their loan

**Hereditaments** – all inheritable property

**Highest and best use** – the use of a property that produces the most net income

**Holographic** – handwritten wills

**Homestead laws** – laws designed to protect homeowners from the forced sale of their home to pay off unsecured debts

**Homeowners Protection Act of 1998** – when a homeowner's LTV dips below 78%, the **PMI** will automatically discharge per this act

**Holdover tenant** – a tenant that has retained possession of a property past their lease expiration without permission

**HUD** – the Department of Housing and Urban Development

**Hypothecate** – pledging something as security for a debt without giving up possession and use (for example, in a mortgage)

**Implicit authority** – authority that exists but is not explicitly granted

**Implied duty of good faith** – Under MGL 93A, brokers are required to engage in fair and honest dealings with the principal

**Implied easement** – when the seller of property implies an easement through the sale, but failed to create a legal easement

**Implied warranty of habitability** – Massachusetts automatic warranty on all newly constructed property; developer must warranty systems, structural components and mechanics that keep the property free from the elements for up to 3 years after sale date



**Impounds** – reserves held by a lender in escrow on behalf of the borrower for payment to a third party; for example, property tax payments

**Inactive licensees** – licensed real estate professionals who are no longer actively practicing real estate, typically for a year or longer; may make referrals to active licensees; must continue continuing education and pay their licensing fee to maintain this status, otherwise they become expired

**Income Approach** – also known as Investment Value; how appraisers determine value for investment property or property that produces income

**Increasing/decreasing returns** – money spent improving a property may or may not add value; function of **substitution**

**Incurable depreciation** – loss in property value that can't be fixed, such as high foreclosure rates in an area

**Index lease** – a lease whose rent is tied to a particular index, generally the consumer price index; when index changes, rent changes with it

**Influences on property value** – social trends (people's desires), economic (inflation, employment rates, etc.), government and legal (zoning and building codes), environmental and physical (location to transportation, highways, natural resources)

**Infrastructure** – the public facilities and utilities in an area

**Ingress** – entering or an entrance

**Injunction** – an order of court to restrain one or more parties to a suit from doing an inequitable or unjust act in regard to the rights of some other party to the suit

**Installment sales contract** – also known as a contract for deed, land contract, or conditional sales contract; essentially a rent to own contract

**Instrument** – a formal written document

**Insurable title** – ownership with some known defects that a title insurance company agrees to cover

**Insurable value** – value of a property for an insurance company

**Intention** – one of the tests to determine if something is real or personal property; the intent of the person who installed the property

**Interbank lending** – short term loans between banks

**Interim financing** – a bridge loan or other short term loan made before long term financing

**Intermediary theory state** – borrower, lender, and trustee hold legal title of a property that is financed, when the borrower defaults the lender can request the trustee to sell the property without judicial proceedings

**Intestate** – no will or a defective will left by the deceased

**Inverse condemnation** – if government action in taking neighboring land leads to a decrease in property value, the property owner can claim compensation

**Investment** – amount put into the property

**Investment value** – value of a property for investors

**Involuntary lien** – lien that is placed on a property by a third party, such as a **mechanic's lien**

**Ironclad Merger Clause** – also known as Integration Clause, Merger Clause, Entire Agreement Clause; states that any other agreements outside of the written contract will not have any force or effect and that there isn't a prior agreement in place

**Irrevocable** – cannot be taken back

**Joint tenancy** – ownership by two or more persons with a right of survivorship

**Judicial lien** – a lien put in place by a court

**Judgment** – the final decision of a court

**Junior mortgage** – any mortgage subordinate to the first mortgage (most often a second mortgage)

**Laches** – unreasonable delay in asserting one's rights causing the loss of such rights

**Land and surface rights** – rights associated with the land and often extend to approximately 30ft. below the earth's surface

**Land contract** – typical method of financing land sales; buyer makes down payment, then monthly payments until final price is paid; buyer does not receive deed until final payment

**Land locked** – when a property owner can't legally access their land and may need an **easement appurtenant** by necessity

**Lease** – also known as tenancy for years, estate for years, interest for years or demise; contract between **lessor** and **lessee** for exclusive possession of realty for specified period under specific terms after which property reverts to lessor

**Leaseback** – purchasing a property and then leasing it back to the seller; frees capital and creates favored tax treatment for seller

**Leasehold** – the interest held by a lessee; a rental

**LEED Certification** – Leadership in Energy and Environmental Design; system of ratings for design, construction, operation and maintenance of green buildings, homes and neighborhoods; encourages environmentally conscious building in exchange for permitting and financial incentives

**Legal description** – method of describing property so that it can be found by a surveyor; property's address, a land description and title reference

**Legal instrument** – a legal document

**Legal life estate** – life estate created by law; examples include **homestead** and **dower's rights**

**Legal title** – legal ownership

**Legatees** – heirs receiving personal property

**Lessee** – tenant

**Lessor** – landlord

**Leverage** – the use of borrowed money to purchase something

**License** – personal, revocable, non-assignable permission to enter someone else's property, such as with a ticket to an event

**Lien** – a debt; claim against property for payment of some debt

**Lienholder** – person or legal entity that has a lien against a property

**Lien theory state** – borrower holds legal title of a property that is financed

**Life estate** – ownership held for the term of someone's life; non-inheritable

**Life estate in remainder** – a life estate where, when the grantee dies, title will pass to a third party or remainderman

**Life estate in reversion** – a life estate where, when the grantee dies, title will revert back to the grantor

**Life tenant** – also known as the **grantee** in a life estate; person who receives property from grantor of a life estate; entitled to all of the **bundles or rights** except **devise**; has a present interest in the property

**Liquidated damages** – pre-agreed upon amount of money to be paid in the event of a **breach** of contract

**Liquidation value** – foreclosure value of a property; usually much lower than **market value**

**Liquidity** – a person's cash position

**Lis pendens** – notice filed in a registry of deeds warning all persons that title to certain property is in litigation

**Listing agreement** – also known as broker employment contract; used to hire a broker and their subagents to sell a property; indicates commissions to be paid, authority given, and deadline for sale

**Litigation** – court proceedings in a lawsuit

**Littoral** – shoreline of large body of water

**LLC** – a limited liability company; this is a pass through entity that is treated as a legal person

**Loan flipping** – when lenders encourage frequent refinancing in order to generate fees; an example of predatory lending

**Loan modification** – when a lender avoids the **foreclosure** process by agreeing to a change in the loan terms if a borrower can't afford their payments

**Lot and block survey method** – a type of land survey method that involves dividing land of a subdivision by streets into blocks and then subdividing those blocks into lots, then each individual lot is described using metes and bounds

**Lot line** – line marking the end of one lot and the beginning of another

**Lot size** – size of a plot of land; under zoning laws there are minimal permissible lot sizes for building

**LTV** – Loan to Value Ratio

**Mandatory agency disclosure** – must be presented upon first personal meeting with a prospective buyer or seller; discloses the relationship of the agent with the client

**MAR** – Massachusetts Association of REALTORS®; local chapter of the National Association of REALTORS®

**Market price** – actual amount paid for real estate

**Market value** – also known as fair market value; the theoretical price for which real estate can be sold for if there is a willing and able seller, a willing and able buyer, no time pressure, and an arm's length transaction

**Marketable title** – also known as good and clear title; title free from clouds that a buyer and lender would accept

**Massachusetts General Law Chapter 93A (MGL Chapter 93A)** – Massachusetts Consumer Protection Act; enacted in 1967 and amended in 1969 to allow for right of private action; protects consumers from unfair and deceptive business practices by allowing them to submit a 30-day demand letter to the business who wronged them, requesting monetary damages

**Massachusetts River Protection Act** – added to the **Wetlands Protection Act** in 1996; protects riverfront areas that are not designated wetlands; provides \$30M for acquisition and protection of riverfront areas

**Massachusetts Uniform Electronic Transactions Act (UETA)** – electronic signatures on contracts are binding

**Master deed** – document that creates a condominium and defines individual units and common areas

**Material defect** – something that would objectively impact a buyer's or seller's decision; also called a **material fact**

**MCAD** – the Massachusetts Commission Against Discrimination; enforces Massachusetts fair housing laws

**Mechanic's lien** – an involuntary lien placed against a piece of real estate to recover payment for work that improved it

**Meeting of the minds** – offer and acceptance

**Metes** – distances

**Metes and bounds** – boundaries of land described using **metes** and **bounds** between **monuments** or **benchmarks**; starts and ends at point of beginning

**MGL 151B** – Massachusetts anti-discrimination statute; protected classes include age, sex, marital status, sexual orientation, gender identity, gender expression, veteran status, race, color, religious creed, public assistance status, ancestry, disability (mental or physical), genetic information, national origin, and familial status.

**MI** – mortgage insurance on FHA loans

**Mile** – 5,280 feet

**Mills** – dollars per \$1,000; used to calculate **tax rate** or **millage rate**

**Millage rate** – varies by town; used to calculate property taxes; based on **mills**

**Mineral rights** – also known as subsurface rights or vertical interests, include solid and liquid mineral rights, typically extend to earth's core

**Mixed use developments** – properties containing multiple uses, such as a mix of residential and commercial real estate

**MLS** – Multiple Listing Service; database for real estate listings

**Modified gross lease** – a lease where the tenant pays a fixed amount a rent the first year, known as the base year and then the next year there is an increase based on the landlord's increase in operating expenses

**Modular home** – homes whose components are manufactured in a factory, and are later assembled on site

**Monument** – a visible marker, natural or artificial used to establish a land boundary

**Moratorium** – action by government temporarily halting public activities such as a "freeze" on apartment construction

**Mortgage** – a legal instrument that conveys conditional title to a lender to collateralize a debt

**Mortgage banker** – works directly for the bank and can only offer loan products from their bank; can originate loans

**Mortgage broker** – someone who brings together borrowers and lenders in exchange for a fee

**Mortgage commitment** – a written notice from lender promising a future loan under certain conditions and terms

**Mortgage covenants** – everything the borrower promises such as making payments, keeping property insured, etc.

**Mortgage interest deduction** – residential homeowners can write off their mortgage interest on mortgage debt up to \$750,000 on a primary residence

**Mortgagee** – the lender

**Mortgagee-in-possession** – a lender that has taken over a property and is collecting rent from it prior to a foreclosure auction

**Mortgagor** – the borrower

**Multi-family** – property containing several different units, but it not subdivided

**Municipal lien certificate** – a document required at closing issue by a municipality that confirms the status of payment for property taxes, water, etc.

**Municipal property taxes** – major form of revenue for towns/cities; helps pay for town services, schools, trash removal, etc.; if not paid, can be priority lien

**Mutual Release Papers** – an agreement by which the parties to a contract release each other from their obligations under the contract. Also known as a **mutual release agreement**

**National Flood Insurance Program** – established by Congress in 1968 by the **National Flood Insurance Act**; administered by **Federal Emergency Management Agency (FEMA)**; requires property owners in high-risk flood zones or who have a federally backed loan to purchase a flood insurance policy.

**NAR** – National Association of REALTORS®; a national private trade association with state and local chapters; members are referred to as **REALTORS®**; does not have any lawmaking or licensing capabilities, but does lobby the legislature

**Narrative form** – written form or report

**Negative amortization** – when the monthly payments of a loan fail to cover the entirety of the principal and interest due; unpaid interest is added on to the principal amount owed

**Net income** – also known as net operating income (NOI), it is the effective gross income minus operating expenses

**Net lease** – lease where the owner receives rent and tenant also pays building expenses normally paid by owner, such as property taxes, property insurance and operating expenses

**Net listing** – an illegal commission arrangement with an unspecified commission, most commonly arranged so that the agent receives all money over a certain fixed price in a sale

**Net worth** – assets minus liabilities (debts)

**Nominal consideration** – a small amount used as consideration for a contract (e.g. property sold for \$10)

**Nonconforming use** – a legal use that was in existence prior to current zoning, which may continue to exist; “grandfathered in”

**Non-designated agency** – a traditional form of agency where the client is represented by all of the agents who represent the broker. This is the “default” form of agency.

**Non-freehold** – type of interest in real estate with possession and use, but not ownership; a rental or lease

**Non-recourse loan** – loan where borrower is not personally liable for any deficiency in the event of foreclosure

**Note** – evidence of a debt; also known as a promissory note or a mortgage note

**Novation** – the cancellation of contract and the replacement of it by a new one

**Nuncupative will** – verbal will; not enforceable in most states

**Obsolescence** – a loss of value from outdated design

**Occupancy Rate** – the percentage of full (**occupied**) units in a rental property

**Offer** – a presentation of terms; a shortened letter version is known as a binder or letter of intent and serves similar purpose

**ONCHA** – Open, Notorious, Continuous, Hostile, Adverse use of land for 20 years + allows a person to claim an easement by prescription or potentially claim ownership to a piece of land that was not previously theirs

**Open listing** – any hired broker can sell property for a commission, but if owner finds their own buyer, no commission payable; can be verbal or written

**Open mortgage** – a mortgage that has matured or is overdue and subject to foreclosure

**Open end mortgage** – a HELOC or line of credit secured by real estate

**Operating expenses** – deductible costs associated with running an investment property; seen on **APOD** sheets

**Option** – a contract between a property owner (**optionor**) and a potential buyer or lessee (**optionee**) to buy or lease the property in the future at pre-agreed terms

**Ordinance** – local municipal laws and rules

**OSHA** – the Occupational Safety and Health Administration; oversee workplace and construction site safety

**Over improvement** – spending too much money improving a property; may not necessarily add value per concept of **substitution**

**Overt** – openly known

**Ownership** – an interest the excludes others; title

**Package mortgage** – a loan secured by a mortgage on both real and personal property

**Parol** – oral or verbal

**Partial release clause** – used in **blanket mortgages**; releases a portion of the collateral in exchange for partial payment of loan

**Participation mortgage** – loan where the lender participates as an equity partner in a development project

**Partition** – a legal action (e.g. lawsuit) to divide co-owned property

**Party wall** – a common shared boundary where all owners are responsible for its upkeep, like a wall or a fence

**Passive income** – income generated by passive activities, such as collecting rents

**PCBs** – Polychlorinated Biphenyls; > 200 chemical compounds not found naturally; were used for flame resistance in electrical equipment and are carcinogenic

**Percentage lease** – a lease contract where the rent is based on a percentage of gross sales, often with a fixed minimum; commonly used for department stores

**Percolation test** – a test that measures soil water absorption and drainage; often used for septic systems

**Performance** – a contract terminates because the obligations have been met, such as when a lease automatically terminates at the end of the lease term

**Personal property** – also known as personalty, chattel, or moveable property; anything not attached to the land

**Physical depreciation** – also known as physical deterioration; loss in value resulting from wear and tear, such as a leaky roof; a type of curable depreciation

**PITI payment** – principal, interest, property taxes and homeowners insurance payments

**Plaintiff** – person bringing a lawsuit

**Planned unit development** – a type of high density mixed use development with designated public space components

**Planning Commission** – Governmental body having the responsibility for planning the future development of a jurisdictional area

**Plat** – a plan or map used in a lot and block survey that shows the layout of a subdivision

**Plat book** – the public record of recorded plats

**Pledged account mortgage** – the borrower pays to subsidize the interest rate on their loan for a number of years; in a high interest rate market, this allows buyers to have more affordable mortgage payments

**Plot plan** – a diagram showing the existing or proposed use of a property, including any improvements

**Plottage value** – the increase in value from assemblage; a plottage increment

**Points** – an origination fee charged by lenders at closing; one point is 1% of the loan

**Point of beginning (P.O.B.)** – the starting point in a **metes and bounds** description of property, either from a **monument** or a reference point on the street; the description begins and ends at the P.O.B.

**Police power** – right of government to enact laws, such as building codes and zoning bylaws in the public interest

**Power of attorney** – a written instrument authorizing someone to act on someone else's behalf; person given power is an attorney-in-fact

**Power of sale clause** – permits lender to take the property and sell it in the event of a default on the terms of the loan

**Pre-approval letter** – sometimes known as commitment letter or letter of commitment on the exam; states that the buyer has been approved for a certain purchase price based on qualifying criteria such as income, credit history, and assets; non-binding

**Predatory lending** – unfair, deceptive or abusive lending

**Prepayment penalty** – a penalty for paying a loan before its due date

**Prescription** – a method of obtaining an easement by adverse use of someone else's property

**Primary mortgage market** – the market where loans are made by lenders to borrowers

**Primary residence** – owner-occupied residence where someone will live for at least 2 of 5 years

**Prima facie** – based on the first impression

**Prime rate** – the theoretical lowest interest rate a borrower can receive

**Principal** – the client; the person who is paying you

**Principles of value** – change, anticipation, substitution, progression, regression, four stage life cycle, balance, conformity, contribution, increasing and decreasing returns, competition, consistent use, highest and best use, and plottage value

**Private restriction** – a covenant, condition, or restriction placed on realty by the grantor at the time of sale that runs with the land

**Privity of contract** – doctrine that permits the right to sue under a contract

**Privity of estate** – legal relationship between two parties with a common interest in the same property

**Pro forma statement** – a projection of future income and expenses

**Probate** – legal process by which the deceased's belongings are distributed

**Procuring cause** – the effort of a broker who produced a ready, willing and able buyer

**Professional liability insurance** – also known as errors & omissions insurance; protection against mistakes made by the broker or their subagents, while providing real estate services to their clients

**Progression/Regression** – the increase and decrease of property value caused by **substitution**

**Promulgate** – to publish or make publicly known

**Property manager** – a person (legal or natural) hired to care for and maintain a rental property on behalf of the property's owner. They are hired to represent the property owner, and granted agency authority, in a **property management agreement**.

**Property tax lien** – when a property owner doesn't pay their property taxes, the town will place a lien on their real property, **involuntary, specific lien**; priority lien against real estate

**Proprietary leases** – lease that a corporation of a **cooperative** gives to its unit owners

**Prorate** – proportionally distributing money paid and owed for taxes, rents, etc.

**Prospectus** – an advertisement of a particular offering, most often securities, to members of the public

**Protected class** - group of people with a common characteristic who are legally protected from discrimination on the basis of that characteristic

**P&S** – Purchase & Sale Agreement; an agreement signed between buyer and seller, typically 5-14 days after the offer which outlines both buyer and seller promises and obligations

**Public restriction** – a government law or regulation restricting the use of real estate

**Puffing** – an exaggeration made by a salesperson or found in an advertisement that concerns the quality of goods offered for sale; can be cause for **Chapter 93A claim**

**Pur Autre Vie** – “for another’s life”; life estate not based on grantee’s life, but on another third party’s life

**Purchase money mortgage (PMM)** – also known as seller financing, this is when the buyer gives a note and a mortgage to the seller in exchange for the property

**Qualified lenders** – lenders who can originate government-insured loans, such as FHA, VA or USDA

**Quantity survey method** – determines the cost of rebuilding the property exactly as it appears today using local construction costs, permits, etc.; used for **reproduction** costs

**Quiet enjoyment** – the right of a property owner or tenant to possession of realty without interference

**Quieting title** – a land court action to determine the owner of a property

**Quitclaim deed** – also known as non-warranty deed; grantor not liable for any claims against title; conveys only whatever interest grantor has at the time of title transfer; can be used to correct mistakes on a deed or in bank foreclosures

**Radon** – colorless, odorless gas that is the result of the natural breakdown of radioactive elements in the soil; causes cancer; when levels are above 4pCi/L (picocuries per liter), mitigation is recommended

**RAM** – Reverse Annuity Mortgage; bank makes payments to the borrower against the equity in their home; only for homeowners 62 years of age and older; loan plus interest is repaid when homeowner passes away

**Real Estate** – land and the property attached to it, although not necessarily all of the rights associated with that land

**Real Estate professional** – under depreciation rules, someone who spends at least 750 hours annually actively engaged in real estate related activities, such as managing property

**Real property** – land and everything attached to it along with the property rights of that land; also referred to as real estate, realty and immovable property

**Reality of consent and competence** – agreement to a contract must be real and free from fraud, duress, undue influence, misrepresentation and error; parties signing a contract must be of sound mind, sober and of legal age

**REALTOR®** – members of the **National Association of REALTORS®**; not a type of license

**Reappraisal lease** – a lease where rent is based on an appraiser’s opinion of rent, rather than landlord and tenant negotiating it

**Reciprocity** – a state recognizing the license of another

**Recordation** – act of making a title transfer public record at the county registry of deeds; not required; provides **constructive notice** to the public



**Recording stamps** – Also known as transfer or conveyance stamps, documentary stamps, deeds stamps, excise tax, transfer tax, or a transfer fee; a tax to sell real estate paid per \$500 or \$1,000 of value; **\$2.28 per \$500 in most Massachusetts counties, except Barnstable County which is \$3.24 per \$500**

**Reconciliation** – the last step of the appraisal process; the appraiser weighs each finding through the sales, cost or income approach, determines value and then generates a report

**Redlining** – credit discrimination

**Refinanced** – paying off a loan by getting a new loan that replaces the old one

**Registration of the Promotional Sale of Out of State Properties** – Developers of out of state properties must register their properties with the Board; registration must be noted on advertisements; Brokers who accept these listings must notify Board within 7 days of taking the listing

**Reliction** – an increase of the land by the sudden retreat of the sea or a river

**Remainder depreciation** – depreciation that occurs after purchase of property

**Rental fee disclosure** – given at first personal meeting with a tenant; written notice that informs the prospective tenant if they will pay a fee, how much, manner of payment, time of payment and whether or not a fee is due if tenancy is created

**Rentable square footage** – the total amount of square footage including any common area load

**REO** – Real Estate Owned; a bank owned property which happens if a bank buys its own foreclosure property

**Reproduction cost** – cost to replicate a property; rebuild it with exactly the same materials, but with today's material costs

**Rescission** – the cancellation of a contract by mutual agreement

**Residential** – refers to property that is lived in

**Reserves** – cash on hand

**Reserve requirement** – amount of cash that banks must have against their deposits and liabilities

**RESPA (Real Estate Settlement Procedures Act)** – a law requiring full disclosure of closing costs to buyer and seller

**Restrictive covenant** – clause in deed limiting certain realty use

**Reversionary interest** – when a grantor or landlord have a right to regain possession of a property in the future

**Revocation** – cancellation or taking back

**Right of first refusal** – Effectively “dibs” on a property; provides the person holding the right to match a future offer and buy the property ahead of anyone else

**Right of way** – right of one person to pass over the land of another

**Riparian** – rights to or along a running body of water

**Riparianism** – Massachusetts and the other 13 colonies use this type of water right for rivers; properties bordering navigable waterways have rights up to the accretion line of the water and property bordering non-navigable waterways, have rights to the midpoint of the water

**Riverfront areas** – land between mean high-water line of a river or stream and 200ft. from that mean high water line or 25ft. in densely populated areas

**Rod** – 16 feet 6 inches

**Run with the land** – stays with the property, not the property owner; will pass to all future owners

**Safe Drinking Water Act of 1974** – permits EPA to set standards for drinking water; drinking water issues must be disclosed

**Sale-leaseback** – when property owner sells to an investor and rents back their property; allows businesses to pull their equity without giving up their enjoyment of the property; rent is tax deductible for the business

**Sales comparison approach** – also known as the Market Data Approach; this is the most common appraisal method used for most residential properties, where an appraiser looks at recent comparable sales in the last 6 months and makes adjustments to them to determine appraised value

**Salesperson** – a type of real estate license; must take a 40-hour course, pass a state exam and work under a broker; may not have access to escrow accounts

**SARA** – The Superfund Amendments and Reauthorization Act; federal law; provides for innocent landowner status

**Satisfaction piece** – also known as a mortgage discharge; this is the recorded evidence of the payment of a debt

**Secondary financing** – junior mortgages, not to be confused with secondary mortgage market

**Secondary mortgage market** – the marketplace for existing mortgages that were originated on the primary market

**Security deposit** – any money held in escrow by a landlord to pay for damage to a leased property by the tenant

**Seisin** – possession of real property with a freehold claim; also can be spelled seizin

**Seller's agent** – also known as listing agent; broker or their subagent who represent a seller; owes obedience, loyalty, confidentiality, disclosure, account and reasonable care to the seller

**Separate property state** – a state where married persons may own property separately and in their own name; Massachusetts is an example of a separate property state

**Servient tenement** – the property owner encumbered by the right of an easement appurtenant

**Setback** – the minimum distance from a road or other established line before you can build

**Settlement** – also known as the closing; when seller transfers ownership to the buyer

**Severability clause** – states that if a portion of the contract is voided, the rest of the contract shall remain in effect

**Severalty** – ownership by one person

**Severance** – property that was real becomes personal

**Severance damage** – a property owner may receive this, if the government takes only a portion of land under eminent domain

**Shared appreciation mortgage (SAM)** – a loan where an investor makes the down payment for a buyer in exchange for a share of equity in the property

**Shared equity loan** – a loan where the lender, in addition to providing financing, also pays a portion of the down-payment on behalf of the buyer

**Sheriff's deed** – a deed used to convey title to property sold to satisfy a court judgment

**Sheriff's sale** – the sale of property to satisfy a court judgment

**Short sale** – a settlement with the lender where the lender accepts a payment of less than what is owed on the home loan; typically happens if homeowner is "underwater" or they owe more than what the property can sell for

**Simple interest mortgage** – non-compounding mortgage where interest is calculated daily

**Sinking fund** – money saved over time to pay for future improvements and capital expenditures

**Single family** – a property containing only one unit

**Special agent** – may represent the principal on a particular matter or transaction, for example a broker

**Special assessment** – bill to property owners for a specific improvement project; could be on property taxes, condo or co-op fees

**Special warranty deed** – also known as a limited warranty deed; grantor guarantees that they did not cause any issues with title when they owned the property; grantor is only liable for any claims against title, if they occurred when they owned

**Specific lien** – a lien on one specific piece of property

**Specific performance** – a court order to do something previously agreed to in a contract

**Spot zoning** – permitted use inconsistent with zoning in area

**Square feet** – length x width

**Square mile** – 640 acres

**Stachybotrys** – genus of mold that contains around 50 different species; **S.chartarum** and **S.chlorohalonata** are some of the most dangerous and referred to as black mold or toxic black mold; linked to respiratory issues; must be disclosed

**Statute** – a law

**Statutory lien** – a lien put in place by law (statute)

**Statute of Frauds** – the law that only written real estate contracts are enforceable

**Steering** – directing clients to or away from certain areas or properties based on protected class status

**Stick built home** – a wooden house constructed entirely or largely on the site where it will remain

**Stigmatized property** – property that is psychologically impacted by events such as death, criminal activity, etc.

**Straight line depreciation** – method of calculating depreciation which calculates the annual loss in value based on economic life of the property; IRS uses economic life of 27.5 years for residential and 39 years for commercial

**Straight mortgages** – interest only mortgages; principal is paid in one lump sum on the last payment date

**Strict foreclosure** – when a foreclosure auction is not required because the lender can sue the borrower for the amount owed in court and if borrower doesn't pay, the lender automatically receives title in a timeframe ordered by the court

**Subagent** – an agent working on behalf of another agent to represent the client

**Subdivision** – the legal division of one parcel of land into two or more parcels

**Subject to** – a method for taking over a mortgage; original **mortgagor** is legally responsible for the loan and any deficiencies after a foreclosure; best for buyer

**Sublet** – transfer of a portion of one's interest in a lease to a third party

**Subordination** – to become junior to a future lien holder

**Subprime** – risky loans made to borrowers with high debt to income ratios or credit scores below 620

**Substitution** – the idea that consumers will choose the least expensive option when offered similar goods

**Superfund Site Assessment** – the testing of a piece of real estate under CERCLA to determine if it is contaminated and how it should be cleaned up

**Supply** – how many there are of something on the market; the more plentiful something is, the less value it has and vice versa

**Surety** – someone who guarantees and becomes legally responsible for another

**Surrender** – cancellation of a lease or other contract prior to expiration

**Survey** – examining an area to construct a map or description of property

**Swing loan** – a type of bridge loan used by borrowers purchasing a new home before selling their existing home

**Syndication** – a corporation formed for the investment in a piece or pieces of real estate

**Take over mortgage** – when a buyer assumes the debt of the seller during a sale

**Taxpayer Relief Act of 1997** – your primary residence is sheltered from capital gains tax up to \$250,000 for a single person and \$500,000 for a married couple

**Tax base** – total taxes collectable by the municipality or town

**Tax rate** – the municipal property tax rate expressed in mills (dollars per \$1,000 of value)

**Tax roll** – the list that shows every property subject to tax in a given town

**Tax sale** – sale of property by public auction to satisfy delinquent taxes

**Tax title** – ownership acquired at a tax sale

**Tenancy at sufferance** – a tenancy arising when a tenant remains in possession after a lease expires, without the owner's permission

**Tenancy at will** – a tenancy that may be terminated at any time by either the tenant or the landlord

**Tenancy by the entirety** – a type of co-ownership for married couples only

**Tenancy in common** – the default form of co-ownership where owners may have equal or unequal interests

**Term** – length; could refer to term of lease or other contract

**Testate** – having a valid will before death

**Testator** – person leaving a will

**The Board** – Board of Registration of Real Estate Brokers and Salespersons; enforces MA licensing law; office located at 1000 Washington St. Boston; made up of 5 members, 3 Brokers with 7+years of experience and 2 unlicensed members of the public

**The Clean Water Act of 1972** – regulates pollution of navigable waters

**Tidal flats** – land between the high and low water lines

**Time is of essence** – punctual performance is required

**Title** – ownership

**Title defects** – clouds on title or other ownership issues

**Title insurance** – insurance against the loss of funds due to unknown title defects

**Title reference** – book and page number stamped on a deed to indicate where recordation may be found at registry of deeds

**Title search** – an examination of public records to determine property ownership history

**Title theory state** – a state where the bank holds legal title to mortgaged property, and the borrower holds equitable title

**Title V** – Requires septic system to pass inspection within 2 years prior to sale (or 3 years if pumped every year) or if weather is severe, 6 months after sale; seller and buyer negotiate who brings into compliance if septic system fails inspection

**Topography** – the arrangement of natural features in an area

**Torrens system** – the US system of land registration

**Trade fixtures** – property that is permanently attached for business purposes, and treated as personalty despite its attachment

**Transferability** – real estate free from clouds on title

**TRID forms** – TILA-RESPA Integrated Disclosure forms which creates a more detailed outline of the costs of credit for the consumer

**Trustee's Deeds** – deeds executed by a trustee to convey real estate to anyone besides the trustor

**Trust fund shortage** – when a broker's escrow account has less money in it than what is owed to clients

**UCC** – the Uniform Commercial Code; the laws governing business and financial transactions

**UFFI** – Urea Formaldehyde; insulation material that produces formaldehyde vapor when it breaks down and was banned in 1979

**Under improvement** – not spending enough money improving a property; may lead to a **decreasing return**

**Underground storage tanks (USTs)** – any storage tanks for chemicals or gas that are 10% or more buried underground; in MA, banned under **21E**

**Unearned increment** – increase in value, not anticipated by owner, due primarily to outside forces rather than personal efforts of owner. For example: population growth and inflation

**Unenforceable** – when a contract or covenant is unable to be carried out due to something being unfair or impossible; for example, verbal contracts

**Uniform Settlement Statement** – lists all of the details and costs of the real estate transaction; used to be referred to as HUD-1 and then after October 2015 changed to ALTA Statement

**Unilateral contract** – one party makes a promise to another without a reciprocal promise

**Unimproved property** – raw land without improvements

**Unit-in place method** – evaluates the value of systems and components (ex. HVAC, plumbing) in the property; used for both **reproduction** and **replacement** costs

**United States Department of Treasury** – established in 1789 to manage government revenue; raises revenue through taxes, borrowing money, and printing money

**URAR** – Uniform Residential Appraisal Report; the most widely used method of communicating a residential appraisal, and required by Fannie Mae/Freddie Mac

**USPAP** – the Uniform Standards of Professional Appraisal Practice, a code of conduct for appraisers

**Usable square footage** – the square footage within the four walls of a leased premises

**USDA** – United States Department of Agriculture; USDA Financing offer loans to low and moderate-income Americans in rural areas

**USDA Multi-Family Housing Program** – rental housing loans for very low, low and moderate income

**Use** – under zoning, refers to how a property can be used

**USPAP** – the Uniform Standards of Professional Appraisal Practice, a code of conduct for appraisers in federally related transactions

**Usury** – charging a higher rate of interest than is legally allowed

**Utility** – how useful something is; the more useful something is, the more demand there is

**Utilization pooling** – property owner doesn't have the right to capture all liquid minerals that exist under their land, but is entitled to a fraction of them

**VA Financing** – Veterans Affairs financing offered to honorably discharged veterans that allows for 100% financing

**Vacancy Rate** – The percentage of empty (**vacant**) units in a rental property

**Valid** – legally binding; in terms of a contract it has all of the essentials of a contract: **offer and acceptance**, legal object, **consideration**, and **reality of consent and competence**

**Valuable consideration** – anything that could be considered valuable (money, goods, services, etc.) when exchanged as something of value between the parties of a contract

**Value** – how much a ready, willing and able buyer will pay for something

**Value-in-Use** – the value to a particular user of a property; for example, farm value vs. raw real estate value

**Variable interest rate** – found in an adjustable rate mortgage, this is when the interest rate changes over the lifetime of the loan

**Variance** – special permission from a city to use land in exception to zoning laws

**Void** – invalid, not legally binding

**Voidable** – a contract that is valid, but can be voided by a court

**Voluntary lien** – a lien or financial limitation to realty that a person willingly assumes, such as a mortgage

**W2** – employee status according to IRS classifications

**Warranty deed** – a deed where the grantor is liable for claims against title

**Weighted average** – an average where each number does not have an equal impact on the final average; used in appraising

**Wetlands** – areas that are either permanently or seasonably wet creating a certain soil and plant life that has adapted to the moisture

**Wetlands Protection Act** – Massachusetts law enforced by **DEP** and conservation commission; requires buffer zones of at least 100ft. from any wetlands with minor changes permitted after 50ft.

**Will** – how property of the deceased is transferred

**Wraparound mortgage** – seller financing that wraps around the seller's existing debt, so that the buyer pays not only their mortgage, but also the seller's existing mortgage

**Writ of execution** – a legal writing issued to enforce a judgment or court decree

**Yard** – 3 feet

**Zoning** – local land controls and regulations enacted for the public good

**Zoning Board of Appeals (ZBA)** – the local authority that approves variances and conditional use permits

**Zoning enforcement officer** – a municipal employee who enforces zoning

## Math Equations

Note: %s should be in decimal form when performing calculations, e.g. 79% = 0.79, 2% = .02, or 125% = 1.25

### Percentages:

- Total Amount x % = *Percentage Amount*
- Percentage Amount / Total Amount = %
- Percentage Amount / % = *Total Amount*

### Tax rate & Assessed Value:

- Market Value \$ x Assessment % = *Assessed Value \$*
- Property Tax \$ / Assessed Value \$ = *Annual Tax Rate %*
- Assessed Value \$ x Annual Tax Rate % = *Annual Property Tax \$*

### Tax Per Dollars Valuation (e.g. \$10 per \$100)

- Dollars Per Tax Unit / Total Tax Unit = *Annual Tax Rate %*
- Annual Tax Rate % x Total Tax Unit = *Dollars Per Tax Unit*

### Loans & Points

- Sales Price \$ x Down payment % = *Down payment \$*
- Down payment \$ / Sales Price = *Down payment %*
- 100% - Down Payment % = *Loan %*
- Sales Price x Loan % = *Loan Amount*
- Sales Price \$ - Down payment \$ = *Loan Amount \$*
- Loan Amount \$ + Down Payment = *Sales Price \$*
- Loan Amount \$ / Loan % = *Sales Price \$*
- Down Payment \$ / Down Payment % = *Sales Price \$*
- Loan Amount \$ x Points % = *Points \$*
- Points \$ / Loan Amount \$ = *Points %*

### Interest Rates

- Loan Total \$ x Interest % = *Annual Interest \$*
- Annual Interest \$ / Loan Total \$ = *Interest %*

### Commissions

- Sales Price \$ x Commission % = *Commission \$*
- Commission \$ / Sales Price \$ = *Commission %*
- Commission \$ / Commission % = *Sales Price*

### Profits and Investment Costs

- (Original Purchase Price + Investment Costs) x (1 + Profit %) = *Total Sales Price*
- (Sales Price / (1 + Profit %)) - Investment Costs = *Original Purchase Price*

### Sales Price & Net Profit

- (Net Seller's Profit \$ + Expenses \$) / (100% - Commission %) = *Gross Sales Price*
- (Sales Price \$ - Expenses \$) - (Sales Price \$ x Commission %) = *Net Seller's Profit \$*

### Proration

- Total Annual \$ to be Pro-rated / Days in Year = *Daily \$*
- Daily \$ x Days to Be Prorated = *\$ To Be Prorated*

### Square Feet & Price Per Square Feet

- Length x Width = *Square Feet*
- Total Square Feet x \$ Per Square Foot = *Total \$*
- Total \$ / Total Square Feet = *Price Per Square Foot*
- Total \$ / Price Per Square Foot = *Total Square Feet*

**Lots**

- Lot Length x Lot Width = *Lot Square Feet*
- Total Parcel Square Feet / Lot Square Feet = *Number of Lots*
- Number of Lots x Lot Square Feet = *Total Parcel Square Feet*
- Total Parcel Square Feet / Number of Lots = *Lot Square Feet*

**Acres**

- 43,560 x Number of Acres = *Square Feet*
- Square Feet / 43,560 = *Number of Acres*

**Amortized Loans**

- Annual Interest \$ / 12 = *Monthly Interest \$*
- Monthly Payment \$ - Monthly Interest \$ = *Principal Reduction \$*
- Total Outstanding Loan \$ - Principal Reduction \$ = *Total Outstanding Loan \$ After Payment*

**Capitalization (Cap) Rate**

- Total Price \$ x Capitalization Rate % = *Net Operating Income \$*
- Net Operating Income \$ / Capitalization Rate % = *Total Price \$*
- Net Operating Income \$ / Total Price \$ = *Capitalization Rate %*

**Gross Rent Multiplier (GRM)**

- Total Price / Monthly Rent = *Monthly GRM*
- Monthly Rent x Monthly GRM = *Total Price*

**Cash on Cash Return on Investment (CoCROI)**

- Cash Flow Before Taxes / Equity Invested = *CoCROI %*





## Study Guide Change Log

### **January 10, 2023**

- Fair Housing
  - Additional advertisement exception

### **December 27<sup>th</sup>, 2022**

- Changes to definition wording
- Addition of new definitions

### **December 21<sup>st</sup>, 2022**

- State specific color and subheading changes

### **December 14<sup>th</sup>, 2022**

- Definitions
  - MA specific coded purple
  - Line breaks fixed

### **July 1<sup>st</sup>, 2022**

- Math Problems
  - Question 25 updated

### **June 15<sup>th</sup>, 2022**

- Consumer Protection
  - Home Inspection Regulations updated

### **June 6<sup>th</sup>, 2022**

- Agency
  - Commission transparency updated

### **May 25<sup>th</sup>, 2022**

- Government Financing Programs and Regulations
  - Residential taxes updated

### **April 26<sup>th</sup>, 2022**

- Consumer Protection Laws
  - Title V updated

### **April 15<sup>th</sup>, 2022**

- Practice Quiz 2
  - FTC question updated

### **April 14<sup>th</sup>, 2022**

- MA RE Licensing Law
  - Mandatory agency disclosure update

### **March 30<sup>th</sup>, 2022**

- Contracts + Definitions
  - Revised P&S dates

### **March 22<sup>nd</sup>, 2022**

- Contracts + Definitions
  - Revised good consideration and valuable consideration

### **March 21<sup>st</sup>, 2022**

- Agency + Definitions
  - Added binding power

- Fair Housing
  - New information added to the Disability Protections section

**March 10<sup>th</sup>, 2022**

- Fair Housing
  - Edited landlord pays for exterior modifications to who pays for modification is based on the size of the building

**February 10<sup>th</sup>, 2022**

- Government Financing and Programs
  - Added information to Lending Regulations, Settlement Procedures section

**January 27<sup>th</sup>, 2022**

- Fair Housing
  - Added to Penalties section
  - Added information to the ADA section
- Removed Dyslexia Chapter

**January 12<sup>th</sup>, 2022**

- Added Learning with Dyslexia Chapter