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## Version 2019-1

### Exam Cram Instructions

- You should watch all the Exam Cram Videos one time (Student Login on [www.tonymesarealestateschool.com](http://www.tonymesarealestateschool.com)) before reading this outline.
- Then read this Cram outline from beginning to end.
- Then repeat the Day Before the Test Videos and the Test Taking Tips Video.
- Then reread highlights in this Cram outline.
- The day before your state exam repeat the Day Before the Test Videos and the Test Taking Tips Video and read the highlights from this Cram outline.
- If you have additional time available to study for the state exam then repeat the Day Before the Test Videos and the Test Taking Tips Video and read the highlights from this Cram outline.
- Please note if any conflict exists between the most recent version of this outline and any video then the most recent version of this outline is correct.

### Test Taking Tips

- The state exam is a challenging test. Do not expect an easy test. Some questions will be easy. Some questions will be tricky. While you are taking the test do not think about whether it is difficult or easy. Instead, focus on each question.
- Read the test. Really read it. Do not skim. Also, read all the answer choices. Some questions have a pretty good answer in a prior answer choice, but a better answer in a later answer choice. Always pick the best answer.

Example:

A. Pretty good answer.

B.

1 C.

2 D. Better answer (Pick D because this is the best choice).

- 3
- 4 • **Do not add information into the questions. Do not assume information. Answer the question**
  - 5 **based on only what is written.**
  - 6
  - 7 • **Use the time allowed. You will have 3 ½ hours. Take a bathroom break(s) if you are losing**
  - 8 **concentration or need to rest. Some students take as many as 4 breaks during the test.**
  - 9
  - 10 • **Skip questions you are not sure about. Many students skip 10 to 25 questions. You will go back**
  - 11 **to these once you finish going through the test the first time. The computer allows you to return**
  - 12 **to the skipped questions. By doing this you will be able to concentrate better throughout the**
  - 13 **exam because you are not getting bogged down by the difficult questions. Also, sometimes-**
  - 14 **skipped questions are answered by other test questions.**
  - 15
  - 16 • **Do not second guess yourself and change a bunch of answers. Only change an answer if you are**
  - 17 **100% sure you have made a mistake.**
  - 18
  - 19 • **Use the answer choices. Use process of elimination. Use your knowledge to eliminate answer**
  - 20 **choices that are incorrect.**

- 21
- 22 • **Except Questions or Which is not true Questions**

23 Ask yourself: “Are they asking me for what is true or what is false.” Mark each answer choice

24 true, false or question mark to clarify. If 3 answer choices are true and one answer choice is

25 false, then the question is asking for what is false.

26 Example:

27 A. T

28 B. T

29 C. F

30 D. T

- 31
- 32 • **Do not take it easy on the licensee. Do not go out of your way to get licensees out of trouble. The**
  - 33 **exam is designed to teach you that if licensees do something wrong they will face penalties.**
  - 34

- 35 • **3 Answer Choices Similar and 1 Answer Choice Different Questions**

36 Pick the different answer choice.

37 Example:

38 A. This is legal.

39 B. This is allowed by law.

40 C. This is illegal.

41 D. This is legal behavior.

- 42
- 43 • **3 Short Answer Choices and 1 Long Answer Choice Questions**

44 If not sure pick the long answer choice.

1 • **Answer Choices with “and”**

2 Both sides must be correct to have a correct answer choice. If one side is wrong then eliminate  
3 the answer choice.

4 Example: An appraisal is an estimate of value and the appraiser determines the value.

5 An appraisal is an estimate of value is true. The appraiser determines the value is false.

6 Therefore, the entire answer choice is false.

7  
8 • **Long Questions**

9 Read the last sentence of the question. The last sentence usually tells you what the question is  
10 about.

11  
12 • Look for key word in question or answer choice. If you say to yourself this is how they are  
13 trying to “trick” me, then you will probably pick the correct answer choice.

14  
15 • In the end if you are not sure guess C. Do not leave unanswered questions.

16  
17 • You may have 103 questions. If you have 103 questions then 3 questions will not count towards  
18 your score but these 3 are not the last 3 questions. You will not know which 3 questions do not  
19 count.

20  
21  
22 **CHAPTER 1 REAL ESTATE BUSINESS**

23  
24 **Real Estate Business**

25 • The real estate business or industry consists of various areas of specialization including  
26 brokerage, development and construction, investment, operations and government services.

27  
28 **Real Estate Brokerage**

29 • Brokerage involves real property transactions (sales or leasing) in which **licensed** real estate  
30 **professionals** provide assistance **to others** in exchange for compensation.

31 • Real estate brokers provide real estate services for others. Sales associates and broker  
32 associates work under the supervision of brokers or owner developers or the government and  
33 provide real estate services for others.

34 • The term real estate licensee is a term which refers to a person with any of the real estate  
35 licenses and may be a broker or a sales associate or a broker-associate.

36 • The majority of licensees are involved in brokerage.

37 • The licensee has expertise in 3 areas:

38 1. Details of property transfer.

39 2. Knowledge of market conditions.

40 3. Knowledge of how to market real estate or businesses (includes knowledge of finding  
41 prospects).

42 • Property that is sold by a licensee is normally sold faster and with less price reduction than  
43 property sold by owner without involvement of a licensee (For Sale by Owner = FSBO).

44  
45 • Real estate brokerage may be divided into two areas:

46 • Sales brokerage (seller = vendor, buyer = vendee).

47 • Leasing brokerage (landlord = lessor, tenant = lessee).

- When a word ends with “or” then giving or doing and when a word ends with “ee” then receiving or getting. For example, a landlord gives a lease to tenant and a tenant receives a lease from the landlord. The landlord is also called the lessor and the tenant is also called the lessee. Landlord and lessor are synonymous. Tenant and lessee are synonymous. **Two terms are synonymous if they mean the same thing.**

#### Five major sales brokerage specialties:

1. Residential (for example, houses, townhouses, condominiums).
  - Advising buyers regarding financing is important because many homebuyers are not familiar with the mortgage loan process. However, must have mortgage loan originator’s license to arrange financing.
2. Commercial (for example, office buildings, retail centers).
  - Must be able to analyze income-producing properties.
3. Industrial (for example, manufacturing facilities, warehouses, trucking terminals).
  - **Must have technical knowledge of the requirements of different industries.** For example, energy requirements, transportation requirements, floor load-bearing capacity requirements, etc.
4. Agricultural (farms and farm land).
  - Must understand farm operations and federal programs affecting farms.
5. Businesses.
  - **Must have an active real estate license to engage in business brokerage** (because an interest in real property (title or lease) is usually transferred along with the sale of a business.
    - There is not a license called a business broker’s license.
    - When acting as a business broker a licensee is assisting in the purchase and sale of an existing business.
    - **Business opportunities are smaller businesses.** For example, a neighborhood beauty salon or pizzeria.
    - **Business enterprises are larger businesses.** For example, Ford Motor Company or Apple Computer.
    - **Memory Aid: Star Trek Starship Enterprise very big (enterprise = big).**
    - In addition to understanding real property, a business broker must be able to understand and value personal property and goodwill.
    - Goodwill is the name recognition and expected continued customer loyalty. Goodwill is an intangible asset. An intangible asset is an asset that is not physical and cannot be touched.

#### Farm Area

- The geographic area and/or property type a licensee specializes in and becomes expert in and markets to.

#### Follow-Up

- Anything a licensee does after the sale (example: visit after closing, send cards during holidays, provide information regarding March 1<sup>st</sup> homestead tax exemption application deadline, informing seller they may be entitled to refund for paid and unused property insurance, etc.).
- It is very important that licensees do proper follow-up.
- Follow-up is especially important in Florida because people move frequently. Proper follow up will lead to repeat customers and referrals.

#### Property Management

- Leasing, managing, marketing and maintenance of property for another.

- 1 • **Property management is different from rental brokerage. In rental brokerage the licensee may**  
2 **owe duties to the landlord or the tenant or both the landlord and the tenant. In property**  
3 **management the property manager owes duties to the landlord/owner (not to the tenant).**
- 4 • **Property manager's primary goals are to protect an owner's investment and to produce highest**  
5 **net income over longest possible period of time.**
  - 6 • **Highest net income today and highest net income over the long run are at odds.**
  - 7 • **Achieve highest net income today by reducing spending, but this eventually leads to**  
8 **deterioration of property, reduced rents and higher vacancy and collection losses.**
- 9 • **Property manager's functions:**
  - 10 • **Leasing, rent collection, maintenance, repair, tenant relations, advertising and**  
11 **merchandising the space.**
  - 12 • **Services to be provided by property manager and compensation to property manager are**  
13 **detailed in property management agreement between owner and property manager.**
  - 14 • **Compensation: Negotiated between owner and property manager. Commonly a property**  
15 **manager is paid a percentage of effective gross income.**
- 16 • **Reasons for growth of property management:**
  - 17 • **More complex properties.**
  - 18 • **Expertise required to manage properties and many investors (for example, doctors) are not**  
19 **real property experts.**
  - 20 • **Time-consuming to manage properties.**
  - 21 • **Absentee ownership: owners do not reside in the property.**
    - 22 • **Absentee ownership is the principal reason for growth of property management.**

#### 23 Appraising

- 24 • **Appraisal: Process of estimating (not determining) the value of real property.**
- 25 • **Appraisal is an art, not a science (an appraiser uses mathematical calculations, but an appraiser**  
26 **also uses judgment).**
- 27 • **An appraisal must be defensible.**
- 28 • **An appraiser performing an appraisal must conform to the Uniform Standards of Professional**  
29 **Appraisal Practice (USPAP). Note: know exactly what USPAP stands for.**
- 30 • **An Appraiser is paid a fee based on time and difficulty of appraisal, not a commission. A**  
31 **commission would result in a conflict of interest.**
- 32 • **The most common reason an appraisal is completed is that a lender requires an appraisal to**  
33 **provide financing but appraisals are completed other reasons. For example, appraisals ordered**  
34 **by government in eminent domain takings of properties during condemnation proceedings.**
- 35 • **The Florida Real Estate Commission (FREC) regulates real estate licensees. FREC does not**  
36 **regulate appraisers. The Florida Real Estate Appraisal Board (FREAB) regulates state certified**  
37 **general appraisers, state certified residential appraisers and registered trainee appraisers.**
- 38 • **Licensees may perform an appraisal pursuant to 475 F.S. (are legally allowed to do so and may**  
39 **be compensated for the appraisal):**
  - 40 • **A real estate licensee that is not also an appraiser may not refer to him or herself as an**  
41 **appraiser.**
  - 42 • **A real estate licensee performing an appraisal must conform to the Uniform Standards of**  
43 **Professional Appraisal Practice (USPAP).**
  - 44 • **If the real estate transaction is a federally related transaction then the appraisal must be**  
45 **completed by a state-certified or licensed appraiser (not a licensee that is not also an**  
46 **appraiser). In reality, appraisals are almost always performed by appraisers (not a licensee**  
47 **that is not also an appraiser).**
- 48 • **Licensees more commonly perform a comparative market analysis (CMA).**
  - 49 • **A CMA is not required to conform to USPAP.**

- 1 • CMA may use active listings (properties currently available for sale), closed sales  
2 (properties that have closed) and expired listings (properties that were listed and did not  
3 sell). Expired listings are used in CMAs. Expired listings are not used in appraisals.
- 4 • Usually CMAs performed for free to acquire a listing; however, may be compensated for a  
5 CMA. If charging for a CMA compensation must be paid to the brokerage/broker and then  
6 brokerage/broker pays the compensation to the sales associate or broker associate.
- 7 • May not refer to a CMA as an “appraisal.”
- 8 • A Broker Price Opinion (BPO) is an estimate of value usually provided to a lender.  
9 • A BPO is not required to conform to USPAP.  
10 • A fee is usually charged for a BPO.  
11 • May not refer to a BPO as an “appraisal.”
- 12 • If a sales associate or broker associate is performing a CMA or BPO and there is compensation  
13 then compensation must be paid to the brokerage/broker and then brokerage/broker pays the  
14 compensation to the sales associate or broker associate.

### 15 Financing

- 16 • Most purchases involve financing.  
17 • It is important to understand how to help and advise buyers with financing.  
18 • However, must have mortgage loan originator’s license to arrange financing.  
19 • Must have a mortgage loan originator’s license to receive any compensation from a lender  
20 for a loan.

### 21 Counseling

- 22 • A counselor is paid to analyze problems and recommend solutions.
- 23 • Usually complex problems. Therefore, counselor must have high degree of knowledge.

### 24 Development and construction

#### 25 3 Phases:

#### 26 1. Land acquisition:

- 27 • Sometimes land is purchased using a purchase and sale contract but often option contracts  
28 or contracts for deed are used to acquire rights to land.
- 29 • Must study zoning and land-use plans to determine if can build desired improvements.
- 30 • An improvement is the most general term for anything constructed on land by humans. For  
31 example, an apartment building, house, mall, shed, etc.

#### 32 2. Subdividing and development:

- 33 • Subdividing = dividing land into smaller parcels.
- 34 • Development = improving raw land.
  - 35 • Development includes clearing trees, excavating for roads and utilities, grading, street  
36 paving, building curbs, storm drains, water systems and sewer systems.
- 37 • Subdivision plat map (= plat map = plat): Map of subdivision that shows size and location of  
38 individual lots, streets and public utilities.
  - 39 • The subdivision plat map must be approved by the government and it will be recorded  
40 in the public records.
- 41 • Dedication is a gift of land from an owner (= developer = private party) to the government  
42 for public use (examples: street, park).
- 43 • Concurrency of infrastructure and subdividing means that the local government will  
44 require that infrastructure be in place as building of improvements proceeds. For example,  
45 must put in sewer lines while building houses. If government tells a builder to stop building  
46 this is called a moratorium.
- 47 • Deed restrictions: Recorded in public records to achieve conformity and maintain values  
48 (example: establishing minimum square footage of house that may be built).

- 1 • A deed restriction affects one property and a subdivision restrictive covenant affects all
- 2 properties in a subdivision.
- 3 • If all property owners cannot block view of lake because each deed includes this restriction
- 4 then these are deed restrictions.
- 5 • On state exam if restrictions are recorded with each deed even if affecting all the
- 6 properties in subdivision called deed restrictions.
- 7 3. Construction:
- 8 • Construct improvements on the site.
- 9 • 3 categories of residential construction:
- 10 1. Spec homes:
- 11 • Spec = on speculation. On speculation because construct before have buyers. The
- 12 builder is speculating that will find buyers.
- 13 • Spec building is on a smaller scale. For example, if buy three lots and will build
- 14 three houses.
- 15 2. Tract homes:
- 16 • Also on speculation (build before have buyers), but on larger scale than spec homes.
- 17 For example, if building 200 houses.
- 18 • Usually project includes model homes, internal sales force and possibly cooperation
- 19 with licensees.
- 20 3. Custom homes:
- 21 • Construct for existing owner.
- 22 • Not on speculation (already have the owner).
- 23
- 24 • Each level of government has effects on real estate business:
- 25 • Local government:
- 26 • Property taxes: Property taxes paid to county, city and school board.
- 27 • Occupational licenses.
- 28 • Building permits.
- 29 • Building moratoriums. A moratorium is when the government orders a builder to stop
- 30 building. For example, the government may impose a moratorium until more
- 31 infrastructure is completed.
- 32 • **Zoning.**
- 33 • **The local government establishes the zoning code.** Zoning is not done on the state or
- 34 federal level.
- 35 • State government (State of Florida):
- 36 • Owns and manages a large amount of property.
- 37 • Identifies areas to be protected from development (examples: coastal areas, the everglades).
- 38 • **State documentary taxes on deed and/or intangible tax on the mortgage and/or note stamp**
- 39 **tax due when there is a transfer of title and/or financing of property.**
- 40 • These taxes are paid to the state.
- 41 • Federal government:
- 42 • Federal government's fiscal and monetary policies affect real estate market.
- 43 • Federal agencies:
- 44 • Department of Housing and Urban Development (HUD).
- 45 • **Federal Housing Administration (FHA).**
- 46 • **Note: know exactly what FHA stands for.**
- 47 • Insures loans by conventional lenders.
- 48 • Department of Veterans Affairs (VA).
- 49 • Guarantees loans by conventional lenders.
- 50 • Environmental Protection Agency (EPA).



- 1 • Internal Revenue Service (IRS).
- 2 • Tax code provides for tax treatment of residential and investment property.
- 3 • Federal Reserve System (the Fed).
- 4 • Fed takes actions to control inflation or stimulate economy and these actions affect
- 5 the real estate market.

### 6 Professional Organizations

- 7 • National Association of Realtors® (NAR):
- 8 • The NAR is the largest trade organization in real estate industry. On the state exam, the
- 9 NAR is the largest trade organization in the world.
- 10 • The NAR promotes ethical standards in the real estate business.
- 11 • Join local board or association of Realtors® then automatically become a member of the
- 12 Florida Association of Realtors® (FAR) and the National Association of Realtors® (NAR).
- 13 • Local boards provide education and operate the multiple-listing service (MLS). FAR and
- 14 NAR provide publications.
- 15 • “Realtor®” is a registered trademark and not the name of a real estate license. Must be a
- 16 Realtor® (be a member of the NAR) to use “Realtor®.”
- 17 • All Realtors® are licensees, but not all licensees are Realtors®.
- 18 • Realtor® is not synonymous with real estate licensee.
- 19
- 20
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## 23 CHAPTER 2 LICENSE LAW AND QUALIFICATIONS FOR LICENSURE

### 24 Real Estate Law

- 25 • Real estate business was very unorganized and competitive before Real Estate License Law.
- 26 • Caveat Emptor means let the buyer beware and caveat emptor prevailed.
- 27 • Then the Florida legislature passed the Real Estate License Law, Chapter 475 of the Florida
- 28 Statutes (= 475 F.S.) and created the Florida Real Estate Commission (= FREC = the
- 29 Commission).
- 30 • FREC was later placed within the Department of Business and Professional Regulation (=
- 31 DBPR = BPR = the Department).
- 32 • FREC is administratively within the DBPR, but has separate decision making powers.
- 33 • The Division of Real Estate (= DRE = the Division) provides support to FREC and is one of the
- 34 divisions of the DBPR.
- 35 • The DRE is not separate from the DBPR. The DBPR has many divisions and one of those
- 36 divisions is the DRE.
- 37
- 38

39 Purpose of regulation is to protect the public.

- 40 • Protect the public by regulating licensees.
- 41

### 42 Theory of Regulation of Professions and Occupations

- 43 • Entitled to engage in profession if qualified.
- 44 • Qualified if meet certain:
- 45 • Application requirements.
- 46 • Academic requirements. Demonstrate minimal competence in the real estate business.
- 47 • Regulation appropriate only if:
- 48 • Unregulated practice can harm public.
- 49 • Public not adequately protected by the laws.
- 50 • Less restrictive means of regulation are not available.



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## Important Real Estate Laws and Rules

- **475 F.S. Real Estate License Law. This law deals specifically with the real estate business.**
  - **475 F.S. has 4 parts:**
    - **Part 1: applies to real estate licensees.**
    - **Part 2: applies to appraisers.**
    - **Part 3: applies to commercial sales transaction lien rights for commissions.**
    - **Part 4: applies to commercial leasing transaction lien rights for commissions.**
  - **455 F.S. Regulation of Professions and Occupations. This law applies to all professions that the DBPR regulates including the real estate profession.**
  - **120 F.S. Administrative Procedures Act. This law covers administrative proceedings.**
  - **61J2 F.A.C. Rules of Florida Real Estate Commission (rules, not law).**
    - **FREC writes rules to implement the law.**
    - **F.A.C. = Florida Administrative Code.**
- **Law is superior to rules. If conflict between law and rules then law wins. For example, if conflict between 475 F.S. (law) and 61J2 F.A.C. (rules) then 475 F.S. (law) wins.**
- **Federal law is superior to state law.**

## 3 Real Estate License Categories

- **Sales Associate, Broker, Broker-Associate**
- **Sales Associate:**
  - **A sales associate may be inactive (not employed) or active (employed).**
    - **Initial license is voluntary inactive (= inactive when pass state exam).**
      - **Send in form to become active. Form is effective when received by DBPR/DRE. Not active when broker sends the form. Active when DBPR/DRE receives the form.**
  - **To provide services of real estate for others and to be compensated you must be licensed and active. If licensed and inactive cannot provide services of real estate for others and be compensated.**
  - **A sales associate must be supervised by another. They may not work independently.**
    - **A sales associate may not open an office of their own but may manage an office for a broker under the direction of a broker.**
- **Broker:**
  - **A broker may be inactive (not operating an office) or active (operating an office) or a broker-associate (working for another).**
    - **If a broker-associate becomes inactive then he or she is an inactive broker (not an inactive broker-associate).**

## Sales Associate Qualifications for Licensure

- **Must be 18 years of age or older.**
- **Must have social security number.**
- **High school diploma or equivalent (GED: General Education Development).**
- **Honest; truthful and trustworthy; good character; reputation for fair dealing.**
- **Disclosures:**
  - **Criminal issues must be disclosed on application.**
  - **Licensing issues must be disclosed on application.**

## Application Requirements

- **Must submit completed application.**
- **Must pay fee.**

- 1 • **Must have electronic fingerprints taken.**
- 2 • **DBPR/DRE has a 30-day period to check for errors and omissions on application and to notify**
- 3 **the applicant.**
- 4 • **Applicant must be informed of approval or denial within 90 days of receipt of last correctly**
- 5 **submitted application.**

#### 6 Academic Requirements

- 7 • **FREC Course I for sales associates: 63 hours.**
- 8 • **FREC Course II for brokers: 72 hours.**
- 9 • **50-minute hours.**
- 10 • **May not miss more than 8 hours (if you miss more than 8 hours, you may not take end-of-**
- 11 **class exam):**
- 12 • **Must make up missed class time above 8 hours and take end-of-class exam within 30**
- 13 **days from date that the end-of-class exam was scheduled. If do not, must take the entire**
- 14 **course again.**
- 15 • **Must pass end of class exam with 70% or higher.**
- 16 • **If fail end-of-class exam must wait at least 30 days to take a different version of end-of-class**
- 17 **exam (or if course available repeat course) and take end-of-class exam. If fail end-of-class**
- 18 **exam a second time must repeat course.**
- 19 • **State Exam:**
- 20 • **Must pass state exam with 75% or higher.**
- 21 • **Have 2 years to pass state exam from successful completion of course (= from date that**
- 22 **passed end-of-class exam).**
- 23 • **Application is good for 2 years from the date submitted.**

#### 24 Nonresident Application Requirements

- 25 • **U.S. citizenship is not required.**
- 26 • **Florida residency is not required.**
- 27 • **If the applicant is not a resident of Florida, they must comply with all nonresident**
- 28 **requirements.**
- 29 • **The applicant is a FL resident if he/she has resided in FL for 4 months within the preceding**
- 30 **year or currently resides in FL with intention to reside for 4 months or longer.**
- 31 • **If you are a Florida resident and you become a nonresident you must notify DBPR/DRE and**
- 32 **comply with nonresident requirements within 60 days.**
- 33 • **If you do not then you may (not must) be issued a citation and \$300 fine.**

#### 34 Mutual Recognition Agreements

- 35 • **Available to licensees of Florida and certain states that Florida has entered into mutual**
- 36 **recognition agreements with because similar education and experience requirements between**
- 37 **Florida and the mutual recognition states.**
- 38 • **Do not need to take course. Instead, take a 40 question law exam. 30 correct out of 40 (75%)**
- 39 **required to pass.**
- 40 • **Mutual: available to Florida licensees who wish to become licensed in mutual recognition states**
- 41 **and to licensees in a mutual recognition states who wish to become licensed in Florida.**
- 42 • **Mutual recognition is only available if not resident of the state in which you want to become**
- 43 **licensed. If you are already a resident of the state you want to become licensed in then must**
- 44 **complete entire course and state exam.**
- 45 • **Florida does not have reciprocity with any state: never automatically licensed in Florida**
- 46 **because have license in another state.**

## Registration and Licensure

- **Registration: DBPR/DRE has records.**
  - **Sales associate or broker-associate can only be registered with one employer at a time. Only one employer in real estate in Florida at a time.**
- **Licensure: Have a license.**
  - **To provide services of real estate must be licensed and must have an active license.**
  - **May only have one employer in real estate at a time in Florida.**
  - **Sales associate or broker associate cannot work for a broker weekdays and a developer weekends.** Sales associate or broker associate cannot work for two separate brokers that share office space. Sales associate or broker associate cannot work for two separate brokers that are brothers (it does not matter that brokers are related to each other).
- **Everyone who is licensed is registered, not everyone who is registered is licensed (example: unlicensed director or officer of a real estate brokerage corporation or an unlicensed general partner of a real estate brokerage general partnership or real estate brokerage limited partnership).**
- **Unlicensed people involved in running a brokerage must be registered for identification purposes.**

## License Periods

- **Licenses always expire on a March 31 or September 30.**
- **Initial licenses are for 18-24 months.**
- **Calculating the initial license expiration/renewal date:**
  - **Step 1: Determine date 2 years after pass exam.**
  - **Step 2: Go earlier in time to either the March 31 or Sept. 30 preceding this date.**
- **After initial period license is always for 2 years.**

**Prior to first expiration/renewal date complete post-licensing and every 2-year licensing period after first renewal complete continuing education.**

## Post-Licensing Education

- **Must be completed before the first renewal of license.**
- **Must complete if active or inactive.**
- **Post-licensing courses require end-of-class exams but not state exams.**
- **Sales associate post-licensing is 45 hours.**
  - **If do not complete sales associate post-licensing then sales associate license is null and void. Initial license is probationary or conditional. If do not complete post-licensing must begin from the start (apply to state for license, complete FREC Course I and pass state exam). Requalify for licensure means begin from the start.**
- **Broker post-licensing is 60 hours.**
  - **Only required for brokers.**
  - **If do not complete broker post-licensing then broker license is null and void.**
  - **If a broker does not complete the broker post-licensing, they have 6 months to complete continuing education requirements and receive a sales associate's license but the broker license is void.**

## Continuing Education

- **Every 2-year licensing period following the initial period must complete 14 hours of continuing education.**
  - **2 options:**
    - **In class course: No test.**

- Home course (correspondence or online): open-book test.
- Must complete if active or inactive.
- Must complete at least 14 hours of continuing education is a more correct answer than 14 hours of continuing education. It is OK if a licensee exceeds 14 hours.

#### Broker Experience Requirements

- At least 24 months during previous 5 years active with broker or government. Time active under an owner developer does not count, unless brokerage set up by owner developer and working for brokerage.
- Time active does not have to be continuous. Must add up to a total of 24 months during 5 years prior to becoming a broker.
- Experience from other states and some countries counts towards the experience requirement.

#### Broker Education Requirement:

- Must complete FREC Course II and pass state exam.
- Must fulfill sales associate's post-licensing (if Florida sales associate) prior to becoming a broker.
- If applying experience from another state or country as a sales associate or broker and directly become a Florida broker without first becoming a FL sales associate then are not required to fulfill sales associate's post-licensing prior to becoming a broker.

#### Real Estate Services

- Must have a real estate license in order to perform any of the 8 real estate services for another for compensation or the expectation of compensation, unless exempted by law.
- Must have FL real estate license to perform real estate services in FL.
- Compensation means anything of value paid, promised to be paid or expected to be paid.

#### 8 Services of Real Estate

- A Advertise Real Estate Services.
- B Buy.
- A Appraise.
- R Rent or Provide Rental Information or Lists.
- S Sell.
- A Auction.
- L Lease.
- E Exchange.
- To auction real property must be an auctioneer and also must have a real estate license.
- To assist others in the purchase or lease of mineral rights must have a real estate license.
- Also need a real estate license to:
  - Engage in business brokerage.
  - To sell time-share for others (unless salary only or registered with Securities and Exchange Commission).
- Surveying is not one of the services of real estate.

#### Exemptions from 475 F.S. means situations in which do not need a real estate license.

#### Exempt from 475 F.S. in the following situations:

- For yourself. Do not need a license to perform any of the 8 services of real estate for yourself.
- Sell cemetery lots (are considered personal property).

- 1 • Rent lots in mobile home parks or recreational travel park.
- 2 • Radio and television announcers.
- 3 • Radio, television or cable enterprises.
- 4 • Will (personal representatives do not need real estate licenses to settle estates).
- 5 • Instructed by a court of law. For example, if court of law instructs a farmer to appraise a farm
- 6 the farmer may appraise the farm and be compensated even though the farmer is not licensed
- 7 or if court of law instructs a gas station owner to appraise a gas station the gas station owner
- 8 may appraise the gas station and be compensated even though the gas station owner is not
- 9 licensed.
- 10 • Manage a condominium or cooperative:
  - 11 • Salaried employees (not commission; not transactional basis; no bonuses) who rent
  - 12 condominiums or cooperatives for no more than 1 year.
  - 13 • If either compensation on a transactional basis or leases for more than a year then need a
  - 14 license.
- 15 • Work for owner/developer and only receive salary:
  - 16 • If leasing for owner/developer more than one year lease ok without license but salary only
  - 17 (no commission, bonus or payment per transaction).
- 18 • Attorneys-in-fact. A person who has power of attorney to act on behalf of another is called an
- 19 attorney-in-fact.
- 20 • Attorneys and accountants when acting within the normal scope of their work as attorneys or
- 21 accountants.
- 22 • Mortgage loan originators. Mortgages are personal property not real property. Therefore, do
- 23 not need a real estate license to work in the loan business.
- 24 • Appraisers do not need real estate licenses to perform appraisals.
- 25 • Transient occupancy of any public lodging establishment (hotels/motels).
  - 26 • For people working in hotel/motel business license is not required even when compensated
  - 27 by commission.
- 28 • A property management firm or owner of an apartment complex may pay up to a \$50 finder's
- 29 fee or referral fee to an unlicensed person who is a tenant in such apartment complex.
- 30 • May not pay compensation to an unlicensed person for real estate services or referral of real
- 31 estate business.
  - 32 • If licensee pays compensation to unlicensed person then it is both illegal for licensee to pay
  - 33 and illegal for unlicensed person to receive compensation.
- 34 • May pay compensation to a party to the transaction with disclosure to all parties because not
- 35 providing service of real estate for another. For example, may pay buyer buying a property
- 36 part of the commission from the transaction in which the buyer is buying the property.
- 37 • An unlicensed person may assist for free (no compensation).
  - 38 • For example: If friend at a party agrees to help me for free then no license is required.
- 39 • May give compensation to out-of-state broker, but out-of-state broker may not assist in
- 40 transaction unless licensed in FL.
  - 41 • If out-of-state licensee assists in the transaction in Florida this is illegal and Florida
  - 42 brokerage may no longer pay compensation to the out-of-state broker.
- 43 • May not give compensation to out-of-state lawyer, but may give compensation to out-of-state
- 44 lawyer if in that state lawyers are considered brokers (however, out-of-state lawyer may not
- 45 assist in transaction unless licensed in FL).
- 46 • May pay compensation to any person from a country without license law.
- 47
- 48
- 49

### CHAPTER 3 LICENSE LAW AND ADMINISTRATION

51

1 Purpose of regulation (= laws and rules) is to protect the public by regulating licensees.

2  
3 **Florida Real Estate Commission (= FREC = the Commission)**

- 4 • Administratively part of DBPR but separate duties and powers.
- 5 • Composition and Qualifications:
- 6 • **7 members:**
- 7 • 4 must be brokers with active license during the 5 years prior to appointment.
- 8 • 1 must be either a broker or sales associate with active license 2 years prior to appointment.
- 9 • 2 must be consumer members who have never held a real estate license.
- 10 • 1 must be at least 60 years old.
- 11 • Appointed by governor and confirmed by state senate.
- 12 • Appointed to 4-year terms expiring on October 31 (maximum of 2 consecutive terms).
- 13 • **Accountable to Governor.**
- 14 • Exempt from civil liability while performing duties.
- 15 • Reason: so that can impose penalties on licensees without fear of being sued.

16  
17 **Compensation:**

- 18 • Members of FREC do not receive a salary because they are not employees. FREC members
- 19 do receive compensation of \$50 per day + expenses (for example, travel and hotel).

20  
21 **Meetings:**

- 22 • Monthly meeting includes hearing disciplinary matters.
- 23 • During annual meeting elect chairperson and vice chairperson.
- 24 • Meetings (need quorum to have meeting; 51%; 4 members).
- 25 • **On state exam FREC requires a quorum to make most of its decisions.**

26  
27 **Commission (= FREC = the Commission) General Powers and Duties**

- 28 • Adopt a seal. The seal is prima facie evidence that document is authentic.
- 29 • **Prima facie means courts accept document as authentic on its face without need for**
- 30 **additional evidence.**
- 31 • **Seals are no longer required on deeds, mortgages, notes or contracts.**
- 32 • Foster education of applicants and licensees (FREC specifies areas to be tested on
- 33 examinations).
- 34 • Make determinations of violations.
- 35 • Regulate professional practices (record keeping, escrow rules, escrow disbursement orders
- 36 (EDOs)).
- 37 • **Brokers must maintain records for 5 years.**
- 38 • Create and pass rules and regulations (61J2 F.A.C.).
- 39 • Establish fees.
- 40 • Fees collected may only be used for regulation of real estate.
- 41 • Grant or deny applications for licensure.
- 42 • **Suspend (maximum 10 years) or revoke licenses.**
- 43 • **Revocation is permanent and the most severe penalty FREC may impose.**
- 44 • Impose administrative fines:
- 45 • **Maximum fine per offense:**
- 46 • **Under 475 F.S. fine is up to \$5,000.**
- 47 • **Under 455 F.S. fine is up to \$5,000.**
- 48 • Up to \$5,000 per violation. For example, if three separate violations then may face a
- 49 maximum of \$15,000.

- 1 • **FREC can only impose administrative penalties. FREC cannot impose civil or criminal**
- 2 **penalties.**
- 3 • **“Quasi” when added to the beginning of a word means resembling:**
- 4 • **When FREC writes rules this is a quasi-legislative power because FREC is acting similar to**
- 5 **a legislature.**
- 6 • **When FREC imposes penalties this is a quasi-judicial power because FREC is acting similar**
- 7 **to a court.**
- 8 • **When FREC regulates or enforces license law then quasi-executive (for example, setting**
- 9 **fees).**

#### 10 Department of Business and Professional Regulation (DBPR) has Various Divisions

- 11 • **Division of Technology, Licensure and Testing.**
- 12 • **Division of Regulation.**
- 13 • **Division of Professions.**
- 14 • **Division of Real Estate (DRE).**
- 15 • **Division of Florida Condominiums, Timeshares and Mobile Homes. This division regulates**
- 16 **cooperatives even though Cooperatives is not in the name of the division.**
- 17 • **FREC shall/must inform the Division of Florida Condominiums, Timeshares, and Mobile**
- 18 **Homes of any disciplinary action that FREC has taken against any licensee registered with the**
- 19 **Division of Florida Condominiums, Timeshares and Mobile Homes.**
- 20
- 21
- 22 • **The head person of DBPR is the Secretary of the DBPR. The Secretary of the DBPR is**
- 23 **appointed by the Governor and is subject to confirmation by the Florida State Senate.**
- 24

#### 25 Division of Real Estate (a division of the DBPR)

- 26 • **Provides support services to FREC (examples: record keeping, investigations, etc.).**
- 27 • **Funding (fees assessed by FREC used only to fund real estate regulation; may not be used in**
- 28 **other areas).**
- 29 • **Employees:**
- 30 • **Some employees of the DBPR are assigned to the DRE.**
- 31 • **Director of DRE is a career official who serves as contact with FREC.**
- 32 • **Director of DRE appointed by secretary of DBPR with approval by majority vote of**
- 33 **FREC.**
- 34

#### 35 Change of Mailing Address

- 36 • **Must notify DBPR/DRE within 10 calendar days.**
- 37 • **If fail to notify may (not must) receive a citation and \$500 fine.**
- 38 • **If move out of state must both notify of change in address within 10 days and comply with**
- 39 **nonresident requirements within 60 days.**
- 40

#### 41 License Renewal Periods

- 42 • **The 2-year renewal periods always end on either March 31 or Sept. 30.**
- 43 • **The Initial license is for 18 to 24 months (at least 18 months but no longer than 24 months).**
- 44 • **Military: military men and women with real estate licenses are exempt from renewal**
- 45 **requirements while on active duty in military + 2 years after discharge from active duty (if**
- 46 **military service is out of state this exemption also applies to spouse of the member of the**
- 47 **military).**
- 48 • **Does not apply to member of military or spouse if provide services of real estate.**
- 49 • **The spouse of a member of the military relocated to Florida may apply for a 6 month**
- 50 **temporary real estate license if the spouse is a real estate licensee in another state or foreign**
- 51 **jurisdiction.**



1  
2 **Inactive Status:**

- 3 • **2 types of inactive status: voluntarily inactive vs. involuntarily inactive.**
- 4 • **Voluntarily inactive (choose to be inactive; may be inactive indefinitely; may become active; must complete post-licensing and CE (continuing education) even if inactive).**
- 5
- 6 • **Involuntarily inactive (when do not renew, usually because do not complete CE).**
- 7 • **After 2 years involuntary inactive, license expires automatically (null + void).**
- 8 • **If involuntary inactive for 12 months or less must complete 14 hours of CE and an**
- 9 **additional 14 hours of CE prior to end of next 12 months.**
- 10 • **If involuntarily inactive for more than 12 months but less than 24 months must take 28**
- 11 **hours of FREC I course (also called reactivation education) and a 50 question end-of-**
- 12 **course exam (70% required to pass).**
- 13 • **There is a late fee for late renewals.**
- 14 • **If choose not to renew or choose not to complete continuing education, then are**
- 15 **involuntarily inactive.**
- 16
- 17 • **Note: now if lost or destroyed license self-print license from DBPR website. However, if self-**
- 18 **print not an answer choice on the state exam then choose answer choice need duplicate license,**
- 19 **same license number, pay fee.**
- 20
- 21 • **Voluntary relinquishment of license also called cancellation of license: Licensee has not done**
- 22 **anything wrong but will no longer be using license.**
- 23

24 **Void and Ineffective Licenses**

- 25 • **Null and Void = Void:**
- 26 • **Void means license is gone forever (permanent).**
- 27 • **A license is void if the license expires or is revoked or is cancelled.**
- 28 • **Ineffective:**
- 29 • **Ineffective means license cannot be used for some period of time (temporary).**
- 30 • **A license is ineffective if the license is inactive or suspended.**
- 31

32 **Involuntarily Inactive**

- 33 • **Sales associate or broker associate becomes involuntarily inactive when there is only one**
- 34 **employing broker and this broker is suspended or revoked or dies.**
- 35 • **Involuntary inactive even if broker suspended for short period of time (for example, 30**
- 36 **days).**
- 37 • **To become active again either the brokerage resolves the problem or the sales associate or**
- 38 **broker associate finds another employer and submits the appropriate form to the DBPR/DRE.**
- 39

40 **Cease to be in Force**

- 41 • **License ceases to be in force until notify DBPR/DRE of change of business address of real estate**
- 42 **brokerage office or real estate school or change of employer for a sales associate, broker**
- 43 **associate or instructor.**
- 44 • **10 calendar days to notify DBPR/DRE of change.**
- 45

46 **Multiple and Group Licenses**

- 47 • **Multiple License:**
- 48 • **A broker may acquire multiple licenses to operate more than one brokerage entity.**
- 49 • **Only a broker may have multiple licenses. A sales associate or broker associate may not**
- 50 **have multiple licenses. A sales associate or broker associate may have only one employer in**
- 51 **real estate in Florida.**

- 1 • **Group License:**
- 2 • **Must work directly for a developer (not broker).**
- 3 • **A broker-associate or sales associate may acquire a group license to work at more than one**
- 4 **location.**
- 5 • **Owner-developer owns properties under name of different entities but the ownership is**
- 6 **common.**
- 7 • **Are considered to have only one employer.**
- 8 • **No distinction is made on the face of the license.**
- 9
- 10
- 11

## 12 CHAPTER 4 AGENCY AND ETHICS

### 14 A Real Estate Licensee May Work In One of Three Capacities or Relationships with Customers

- 15 • **Single agency.**
- 16 • **Transaction broker.**
- 17 • **No brokerage relationship.**
- 18

### 19 Law of Agency

- 20 • **Agent: A person entrusted with another's business.**
- 21 • **Principal: A person who authorizes the agent.**
- 22 • **The agent represents the principal.**
- 23 • **Principal may be held responsible for acts of agent.**
- 24 • **3 types of agents:**
- 25 • **Universal Agent: Principal authorizes agent to perform all acts.**
- 26 • **General Agent: Principal authorizes agent to perform all acts related to a particular**
- 27 **business or employment (example: property manager).**
- 28 • **A sales associate or broker associate is a general agent to his or her broker.**
- 29 • **Special Agent: Principal authorizes agent to perform only a specific business transaction or**
- 30 **specific act.**
- 31 • **If single agency exists then real estate brokers are usually special agents.**
- 32

### 33 Fiduciary Relationship

- 34 • **Relationship of trust and confidence (opposite of dealing at arm's length).**
- 35 • **Fiduciary: An agent is a fiduciary to his or her principal.**
- 36 • **An agent owes a duty of loyalty to his or her principal.**
- 37

### 38 Disclosure Requirements Apply Only in Residential Sales

- 39 • **Brokerage Relationship Disclosure Act is the section of 475 F.S. that covers allowed brokerage**
- 40 **relationships and under this act the disclosure notices are only mandatory in residential sales**
- 41 **transactions.**
- 42 • **475 F.S defines a residential sale as sale of:**
- 43 • **Improved property of 4 units or fewer.**
- 44 • **Unimproved property (empty land) in which zoning only allows 4 or fewer units.**
- 45 • **Property zoned agricultural of 10 acres or less.**
- 46

### 47 Single Agent Representation

- 48 • **Duties:**
- 49 • **Dealing honestly and fairly.**
- 50 • **Loyalty.**

- 1 • Loyalty is a duty in single agent representation.
- 2 • Loyalty is not a duty in a transaction broker relationship.
- 3 • Loyalty is not a duty in no brokerage relationship.
- 4 • Confidentiality.
- 5 • Duty of confidentiality survives end of agency relationship.
- 6 • Obedience.
- 7 • Agent must obey all legal instructions from the principal.
- 8 • Full disclosure.
- 9 • Accounting for all funds.
- 10 • Using skill, care and diligence in the transaction.
- 11 • Presenting all offers and counteroffers in a timely manner, unless instructed otherwise in
- 12 writing.
- 13 • Disclosing to buyer all known facts that materially affect the value of residential real
- 14 property and are not readily observable (= must disclose all latent defects).
- 15 • The duties of loyalty, confidentiality, obedience and full disclosure are single agent duties
- 16 and do not exist in the transaction broker and no brokerage relationships.
- 17
- 18 • Dual agency is illegal: Prohibited to be an agent to both the seller and buyer in the same
- 19 transaction.
- 20 • A direct legal relationship exists between the customer (seller, buyer, landlord or tenant) and
- 21 the brokerage/broker.
- 22 • Whichever brokerage relationship is established between the brokerage/broker and the
- 23 customer then all the sales associates and broker associates employed by this brokerage will
- 24 owe the same set of duties to the customer.
- 25 • For example, if single agency established with a buyer the brokerage/broker owes the duties
- 26 of an agent to the buyer then all sales associates and broker associates employed by the
- 27 brokerage owe the same duties of a single agent to this buyer.
- 28 • A sales associate is a subagent to the broker's principal.
- 29

### Transaction Broker Relationship

- 31 • Transaction Broker represents a customer in limited manner.
- 32 • On state exam limited representation = transaction broker relationship.
- 33 • Duties:
- 34 • Dealing honestly and fairly.
- 35 • Accounting for all funds.
- 36 • Using skill, care and diligence in the transaction.
- 37 • Disclosing to buyer all known facts that materially affect the value of real property and are
- 38 not readily observable to the buyer.
- 39 • Presenting all offers and counteroffers in a timely manner, unless instructed otherwise in
- 40 writing.
- 41 • Limited confidentiality, unless waived in writing by a party.
- 42 • Confidentiality regarding price, terms and motivation.
- 43 • Any additional duties that are mutually agreed to with a party.
- 44
- 45 • May work as a transaction broker to both sides.
- 46 • Customer is not responsible for acts of transaction broker.
- 47 • If no notice given to customer then transaction broker is default relationship.
- 48

### No Brokerage Relationship

- 49 • Duties:
- 50

- 1 • **Dealing honestly and fairly.**
- 2 • **Disclosing to buyer all known facts that materially affect the value of residential real**
- 3 **property and are not readily observable.**
- 4 • **Accounting for all funds.**
- 5
- 6 • **May work as a single agent to one side and no brokerage relationship to other side (owe**
- 7 **fiduciary duties to the side you are a single agent to).**
- 8

9 **Notices:**

- 10 • **Single Agent Notice used to establish single agency.**
- 11 • **Transaction Broker Notice used to establish transaction broker relationship.**
- 12 • **No Brokerage Relationship Notice used to establish no brokerage relationship.**
- 13 • **Consent to Transition to Transaction Broker Notice: to change from single agency to transaction**
- 14 **broker.**
- 15

16 **Transitioning to another Relationship**

- 17 • **May transition from any one of the three relationships to any of the other relationships.**
- 18 • **To transition from Single Agency to Transaction Broker status must use the Consent to**
- 19 **Transition to Transaction Broker Notice.**
- 20 • **This notice must be signed (the other notices must be presented).**
- 21 • **If single agency with a seller and a buyer and then buyer becomes interested in seller's home**
- 22 **and will transition to transaction broker then must transition to transaction broker prior to**
- 23 **showing the home to the buyer.**
- 24

25 **Buyer Representation**

- 26 • **May represent a buyer as a single agent or as a transaction broker or no brokerage**
- 27 **relationship.**
- 28

29 **Allowed (Legal):**

- 30 • **May be a transaction broker to both sides in the same transaction.**
- 31 • **May be no brokerage relationship to both sides in the same transaction.**
- 32 • **May be a single agent to one side and no brokerage relationship to the other side in the same**
- 33 **transaction.**
- 34 • **May be a transaction broker to one side and no brokerage relationship to the other side in the**
- 35 **same transaction.**
- 36

37 **Not allowed (Illegal):**

- 38 • **May not be a single agent to both sides in the same transaction. **Called dual agency and dual****
- 39 **agency is illegal.**
- 40 • **May not be a single agent to one side and transaction broker to the other side in the same**
- 41 **transaction.**
- 42

43 **Designated Sales Associate**

- 44 • **One sales associate is the single agent to the buyer; one sales associate is single agent to the**
- 45 **seller.**
- 46 • **Broker advises each sales associate but is not an agent to the buyer or seller.**
- 47 • **This form of representation is not available in residential transactions.**
- 48 • **Available in commercial transactions.**
- 49 • **Buyer and seller must request in writing.**
- 50 • **Buyer and seller must each have assets of 1 million or more.**
- 51

## Terminating a Brokerage Relationship

- **Brokerage relationship ends with:**
  - **Fulfillment of the brokerage relationship's purpose.**
  - **Mutual agreement to terminate the brokerage relationship.**
  - **Expiration of the terms of the agreement.**
  - **Broker renunciation of the brokerage relationship by giving notice to the customer.**
  - **Revocation by the customer: The customer may be liable for damages (such as advertising expenses) incurred by revoking the brokerage relationship prior to the termination date.**
  - **Death of the broker or seller customer or death of the broker or buyer customer.**
    - **Brokerage relationship is not terminated if other party to the transaction dies.**
      - **Example: If broker is agent to seller and the buyer dies then agency relationship between broker and seller is not terminated.**
  - **Destruction of the property or condemnation by eminent domain.**
  - **Bankruptcy of the seller customer.**

## Misrepresentation and Fraud

- **Misrepresentation: A misstatement or omission or concealment of a factual matter.**
  - **Usual (not must) penalty for misrepresentation or concealment is revocation.**
- **Fraud: In order to sustain a charge of fraud, must have all of the following 4 elements:**
  1. **Misrepresentation: Misstatement or omission of material fact.**
  2. **Licensee knew or should have known that was making a misrepresentation.**
  3. **Buyer relied on misrepresentation.**
  4. **Damages to buyer.**
    - **If there are no damages, then fraud does not exist.**
    - **Even if no damages and therefore no fraud for misrepresentation alone FREC will usually revoke.**
- **Example of fraud: if owner induces someone to buy with agreement that will buy property back in the future. However, if actually do buy property back at agreed terms then not fraud.**
- **Lotteries or raffles to win real property are illegal under Florida law.**

## Professional Ethics

- **Professionalism and a code of ethics.**
- **The National Association of REALTORS® code of ethics has greatly affected laws and rules in many states.**
- **The National Association of REALTORS® promotes ethical practices in the real estate business.**
- **Being ethical is good for business.**

## CHAPTER 5 REAL ESTATE BROKERAGE OPERATIONS

### Brokerage Offices

- **An active broker must have an office.**
  - **Must have at least one enclosed room.**
  - **Office must be stationary.**
  - **A broker may have their office at home if allowed by the zoning code and sign requirements are met.**
- **Sales associates may not have an office (must work and be registered in office of employer).**

1 **Principal Office (= primary = main office) vs. Branch Office**

- 2 • **Principal office registration is transferable from one location to another.**  
3 • **Branch office registration is not transferable.**  
4 • **A new registration must be acquired for a new location.**  
5 • **However, if time remains on a previous branch office registration may move back and use**  
6 **time remaining on previous registration.**

7  
8 **Temporary Shelter is Not a Branch Office**

- 9 • **If trailer on construction site only for protection from elements then trailer does not need to be**  
10 **registered as a branch.**  
11 • **A location must be registered as a branch office if any of the following:**  
12 • **Advertising to the outside world leads people to the location.**  
13 • **Brochures stored in the location is not an example of advertising to outside world.**  
14 **Therefore, does not have to be registered as a branch.**  
15 • **Sales associates are assigned to the location.**  
16 • **Transactions are concluded at the location.**

17  
18 **Signs (on or about entrance)**

- 19 • **Sign may be inside or outside but must be at principal office and any branch office and must be**  
20 **easily observed as enter.**  
21 • **Must include brokerage firm name or trade name (if operating under a trade name), name of**  
22 **broker and “Licensed Real Estate Broker” or “Lic. Real Estate Broker”. Realtor® is not on**  
23 **this sign.**  
24 • **May (not must) include other brokers, broker-associates and sales associates.**  
25 • **Mandatory information must appear on top part of sign (above allowed/non-mandatory**  
26 **information).**  
27 • **Space or line between mandatory information and allowed information.**  
28 • **License status must be disclosed next to names of any other brokers, broker-associates and**  
29 **sales associates.**

30  
31 **Advertising (includes ads in newspapers, television, radio, internet, business cards, pens, etc.)**

- 32 • **All ads must include brokerage name (not name of broker).**  
33 • **False advertising:**  
34 • **Blind advertisement: No information given that are dealing with a broker.**  
35 • **Blind advertising is illegal.**  
36 • **2<sup>nd</sup> degree misdemeanor.**  
37 • **When advertising on the internet the name of brokerage firm must appear by point of contact**  
38 **information (usually telephone number or email address).**  
39 • **If licensee places his name in advertising then must include real last name. For example,**  
40 **Thomas Smith may advertise as Tom Smith.**  
41 • **Sales associate or broker associate is advertising under name of brokerage with permission of**  
42 **brokerage.**  
43 • **Sold signs are considered advertising.**  
44 • **Illegal to place Sold sign on For Sale sign prior to closing without written consent of seller.**  
45 • **Only at closing is property actually sold.**  
46 • **May place pending sale or under contract sign on For Sale sign once under contract without**  
47 **written consent of seller.**

48  
49 **Telephone cold calling restraints**

- 50 • **No solicitation list (also called do not call list):**

- 1 • **May be subject to fine if call someone on the no solicitation list.**
- 2 • **Exceptions (no fine even if individual is on the no solicitation list): Past customers,**
- 3 **sellers who are advertising if you really have a buyer interested in the property.**
- 4 • **FL Law**
  - 5 • **\$10,000 per violation.**
  - 6 • **FSBO could be called without fine.**
  - 7 • **Past client could be called without fine.**
  - 8 • **Florida telemarketing law administered by Florida Department of Agriculture**
  - 9 **and Consumer Services.**
- 10 • **Federal Law**
  - 11 • **\$16,000 per violation.**
  - 12 • **If call FSBO subject to fine unless really have an interested buyer.**
  - 13 • **Past clients can be called for 18 months without being subject to fine.**

### 14 Escrow or Trust Accounts

- 15 • **Escrow account = trust account.**
- 16 • **Escrow money must be kept in an escrow account not in a personal or business account.**
- 17 • **Funds must be deposited immediately:**
  - 18 • **Sales associate (or other employee: secretary or receptionist): Must give to**
  - 19 **broker/employer no later than end of next business day.**
  - 20 • **Broker: Must deposit in escrow account not later than end of 3<sup>rd</sup> business day from original**
  - 21 **receipt.**
  - 22 • **These are business day calculations: Saturdays, Sundays and legal holidays do not count.**
  - 23 • **On state exam immediately is a correct answer if other answers are incorrect.**
- 24 • **Post-dated check or promissory note: Seller must approve a post-dated check or promissory**
- 25 **note before it is accepted by licensee.**
- 26 • **Broker must be signatory on escrow account (others may be signatories).**
- 27 • **Account may bear interest or not bear interest.**
- 28 • **Must be in a Florida institution.**
- 29 • **Broker must review and sign monthly reconciliation statement.**
- 30 • **A broker is not required to maintain an escrow account.**
- 31 • **Instead escrow money may be held by an attorney or a title company.**
  - 32 • **If attorney or title company is holding escrow funds then the sales contract (purchase and**
  - 33 **sale contract) must state name, address and telephone number of attorney or title company.**
  - 34 • **If attorney or title company is holding escrow funds and attorney or title company chosen**
  - 35 **by buyer then buyer's broker must request within 10 business days in writing a written**
  - 36 **verification from the attorney or title company verifying that they are holding the escrow**
  - 37 **funds and provide a copy of such verification to seller's broker.**
- 38 • **To move money from one escrow account to another escrow account everyone must agree (both**
- 39 **the buyer and the seller).**

### 40 Disposition of Escrow Deposits

- 41 • **Commingling (also called intermingling): Mixing of escrow funds with any other funds is illegal.**
- 42 • **Conversion: Converting another's property for own use.**
- 43 • **A broker may have a maximum of \$1,000 of non-escrow money in a sales escrow account and a**
- 44 **maximum of \$5,000 of non-escrow money in a property management escrow account.**
  - 45 • **If a broker has \$5,000.01 of non-escrow money in an escrow account then illegal.**



### **Conflicting Demands on Escrow Funds or Good-faith Doubt Regarding Disposition of Escrow Funds**

- **Notify FREC within 15 business days of conflicting demands or good faith doubt and follow one of 4 settlement or escape procedures within 30 business days of conflicting demands or good faith doubt.**
- **If a broker notifies FREC on business day 10 from the date of conflicting demands then from date of notification 20 more business days to institute one of the settlement or escape procedures.**

#### **4 settlement or escape procedures:**

##### **1. Mediation.**

- **Not binding.**

##### **2. Escrow Disbursement Order.**

- **FREC may issue (in some cases FREC may decide not to issue an EDO).**
- **If request EDO and escrow dispute is going to litigation or is settled broker must notify FREC within 10 business days.**

##### **3. Arbitration.**

- **Binding.**

##### **4. Litigation.**

- **Declaratory Judgment: Broker asking for declaration that he/she is entitled to funds.**
- **Interpleader: Deposit escrow funds in court.**
  - **Memory aid: Interpleader (In: Put money in the court).**
  - **Broker attempting to distance him or herself from litigation.**

#### **Rental lists and rental companies:**

- **Notice must state:**
  - **Refund of 75% if list is not used to obtain rental.**
    - **75% refund even if the buyer of the list does not try to use list.**
  - **Refund of 100% if list is not current or inaccurate.**
  - **30 days to obtain refund. Request may be in writing or oral. After 30 days zero refund.**
- **Violation is 1<sup>st</sup> degree misdemeanor.**
- **May also face administrative penalties.**

#### **Licensee's Role as an Expert**

##### **• Opinions of title:**

- **A licensee may not give an opinion of title. A licensee may acquire an opinion of title from an attorney and convey the opinion of title to the purchaser or advise the purchaser to contact an attorney or advise the purchaser to get title insurance.**
- **A licensee should never state that title is ok. However, if licensee knows that title to property is not marketable or lien exists then must inform purchaser.**

##### **• Representation of value:**

- **Must be careful not to misrepresent value.**

#### **Broker's Commission**

- **Antitrust laws (Sherman Act, Clayton Act and Federal Trade Commission Act) are designed to promote fair competition.**
  - **Brokers may not conspire to fix commissions.**
  - **MLS may not fix commissions or commission splits.**
- **Sales Associates and broker associates accept listings, deposits and commissions on behalf of their broker with broker's express consent.**
- **Sales associates and broker associates may sue employer, but cannot sue seller or buyer.**

- Customer pays brokerage and then sales associate is paid by their brokerage. This includes all compensation including broker price opinions (BPOs).

#### Kickback

- It is usually a kickback when a licensee receives money from someone other than the seller or buyer.
- If parties are informed then it is acceptable, unless category that is always illegal:
  - Title insurance kickbacks are always illegal.
- Miniblinds installers, plumbers, electricians and interior decorators on state exam OK to pay referral fee as long as disclosed to all the parties.

#### Policy Manual

- States rules and regulations of office.
- Provides information to new sales associates.

#### Change of Employer

- Agency relationship duties survive the end of the agency relationship.
  - Confidential information learned during agency must be kept confidential after agency relationship is terminated.
- Must notify DBPR/DRE of change of employer within 10 calendar days.
- A sales associate or broker associate may not divert buyers or sellers from completion of a transaction.
- Records:
  - Breach of trust: If duplicate records.
  - Larceny (theft): If take original records.

#### Membership in Organizations

- Violation of 61J2 F.A.C. to claim membership in any real estate organization if you are not a member.

#### These Business Entities May Register as Brokers or Brokerages

- Sole Proprietorship.
- Partnerships:
  - General Partnership.
  - Limited Partnership.
- Limited Liability Partnership.
- Corporation.
- Limited Liability Company.

#### Business Arrangements and Entities That May Not Register as Brokers or Brokerages

- Corporation Sole.
- Joint Venture.
- Business Trust.
- Cooperative Association.
- Unincorporated Association.

#### Types of Business Entities That May Register As Brokers or Brokerages

- All brokerages no matter how structured must be registered with the DBPR/DRE. FREC knows about it.

- All brokerages no matter how structured must have the name they operate under registered with the DBPR/DRE. FREC knows about it.

#### Sole Proprietorship

- Definition: Business owned by one person.
- Taxation: Single. At the individual level.
- Liability: Personal liability for business debts.
- Real Estate Brokerage Sole Proprietorships:
  - Sole proprietor must be an active broker.
  - Sales associate or broker-associate may be employees only.

#### General Partnerships

- Definition: Association of two or more persons for the purpose of jointly conducting business, each being responsible for all debts incurred and having power to bind the other(s).
- How formed: written agreement or oral agreement or implied by actions.
- Structure: General partners run general partnerships.
- Taxation: Single. At the individual level.
  - Partnership not taxed, individuals are taxed.
- Liability: Unlimited liability (individuals are personally liable).
- Real Estate Brokerage General Partnerships:
  - At least one general partner must be an active broker.
  - All general partners that will engage in the services of real estate with the general public must be active brokers.
  - Other general partners that will not engage in services of real estate with general public may be active brokers or inactive brokers or unlicensed but registered (unlicensed general partners must be registered for identification purposes).
  - Sales associates or broker-associates may not be general partners.
  - Sales associates or broker-associates may be employees.
- 14-day Rule:
  - During 14-day period may perform ongoing business (example: go to a closing); however, may not perform new business (example: acquire a listing).
  - After 14 days if a new broker is not found or the problem is not resolved, then automatic involuntarily inactive.

#### Limited Partnership

- How formed: File written instrument/register with Florida Department of State.
- Structure: General partners run the business. Limited partners contribute money or property but do not run the business.
- Taxation: Partnership not taxed, individuals pay tax.
- Liability: General partners are personally liable for partnership's debts; Limited partners have limited liability.
- Real Estate Brokerage Limited Partnership:
  - At least one general partner must be an active broker.
  - All general partners that engage in the services of real estate with the public must be active brokers.
  - All general partners that do not engage in the services of real estate with the public must be active brokers or inactive brokers or unlicensed but registered (unlicensed general partners must be registered for identification purposes).
  - Sales associates or broker-associates may not be general partners.
- Sales associates or broker associates may be employees or limited partners.

1  
2 **Both a general partnership and limited partnership must notify DBPR/DRE if add or subtract a**  
3 **general partner (not a limited partner).**

4  
5 **Limited Liability Partnerships (LLP)**

- 6 • **Formed by filing with the Department of State.**
- 7 • **Limited liability partners run a limited liability partnership.**
- 8 • **Liability: Limited liability partner only liable for own acts or those under his/her**  
9 **supervision/control.**
- 10 • **Taxation: Single.**

11  
12 **Corporations**

- 13 • **Definition: Artificial person or legal entity created by law.**
- 14 • **How formed: Charter must be approved by Florida Department of State.**
- 15 • **Structure: Board of directors and officers run a corporation.**
- 16 • **Taxation:**
  - 17 • **2 X unless S-Corp then 1 X at individual level.**
- 18 • **Liability: Limited to corporation, individuals not liable for corporation debts.**
- 19 • **Real Estate Brokerage Corporations:**
  - 20 • **One of the directors or officers must be an active broker. Called the principal broker or**  
21 **qualifying broker.**
  - 22 • **All directors or officers that will engage in the services of real estate with the general public**  
23 **must be active brokers.**
  - 24 • **All directors or officers that will not engage in the services of real estate with the general**  
25 **public may be active brokers or inactive brokers or unlicensed but registered.**
  - 26 • **Sales associates or broker-associates: May not be directors or officers.**
    - 27 • **May be employees or shareholders (owners).**
  - 28 • **14-day Rule:**
    - 29 • **During 14-day period may perform ongoing business (example: go to a closing);**  
30 **however, may not perform new business (example: acquire a listing).**
    - 31 • **After 14 days if a new broker is not found or the problem is not resolved, then**  
32 **automatic involuntarily inactive.**

33  
34 **Limited Liability Companies (LLC)**

- 35 • **Formed by filing with the Department of State.**
  - 36 • **Liability: Limited.**
    - 37 • **Individual not responsible for debts of LLC.**
  - 38 • **Taxation: Single.**
- 39  
40

1

	Sole Proprietorship	General Partnership	Limited Partnership	Limited Liability Partnership - LLP	Corporation	Limited Liability Company - LLC
Tax	Single – Individual Level	Single – Individual Level	Single – Individual Level	Single – Individual Level	C-Corp. Double– Corporate and Individual Level  S-Corp. Single – Individual Level	Single – Individual Level
Liability	Unlimited Personal Liability	Unlimited Personal Liability	General Partners Unlimited Liability  Limited Partners Limited Liability (Cash/Property)	Liable for own actions and those who work under your control.	Limited Liability	Limited Liability
Other	<p>← Must register the brokerage with the DBPR/DRE; FREC knows. →</p> <p>← Must register the name with the DBPR/DRE; FREC knows. →</p> <p>14-day Rule</p> <p>← Must register with the Florida Department of State. →</p> <p>A sales associate or broker-associate may be a limited partner.</p> <p>A sales associate or broker-associate may be a shareholder or stockholder.</p>					

2

3

**Trade Name (= fictitious name)**

4

- Trade names must be registered with Florida Department of State.

5

- Required by the Florida Fictitious Name Act.

6

- Exception: Sole proprietorship only registered with the DBPR.

7

- **One name per brokerage** (if operated under more than one name, public would be confused).

8

9

10

**Business Arrangements and Entities That May Not Register as Brokers**

11

- **Corporation Sole: An ecclesiastical or church organization.**

12

- **Joint Venture: Two or more parties combine efforts to complete one or a fixed number of business transactions.**

13

- **Broker cooperation is a common joint venture in the real estate business.**

14

- **Business Trust: A form of business entity that may be formed to engage in transactions involving its own real property.**

15

- **Cooperative Association (= cooperatives).**

16

- **Unincorporated Association: Groups of people associated for some noncommercial purpose.**

17

18

19

20

21

**Real Estate Investment General Partnership**

22

- **An investment general partnership is not a brokerage. Two or more persons buy and sell or rent properties as investments.**

23

- **Uneven profit splits.**

24

- **Even profit splits acceptable even if some partners are licensed and some partners are not licensed.**

25

- **Uneven profit splits are prohibited if there is no written agreement and no one licensed and equal contributions.**

26

27

28

1  
2 **Ostensible Partnership (= quasi partnership)**

- 3 • **Not intentionally created. Imposed by a court of law.**  
4 • **Act in a manner that the public would believe is a partnership. Therefore, courts will treat like**  
5 **a partnership.**  
6 • **Are acting in violation of law.**  
7

8 **Personal Assistants**

- 9 • **Unlicensed assistants:**  
10 • **If work for sales associate then sales associate pays salary.**  
11 • **An unlicensed assistant may not show properties or negotiate.**  
12 • **An unlicensed assistant may not do anything that involves judgment.**  
13 • **An unlicensed assistant may not give an opinion about values or repair costs.**  
14 • **An unlicensed assistant may attend an open house for security purposes, to distribute**  
15 **flyers and to answer factual questions based on printed material.**  
16  
17 • **Licensed assistants:**  
18 • **If work for sales associate then sales associate pays salary but broker pays any**  
19 **commission.**  
20 • **May provide services of real estate.**  
21  
22  
23

24 **CHAPTER 6 COMPLAINTS, VIOLATIONS AND PENALTIES**

- 25  
26 • **120 F.S. governs administrative proceedings.**  
27

28 **Complaint Process**

- 29 • **The complaint Process involves the following steps:**  
30 • **Filing the complaint.**  
31 • **Investigation.**  
32 • **Probable Cause.**  
33 • **Formal Complaint.**  
34 • **Informal Hearing.**  
35 • **Formal Hearing.**  
36 • **Final Order.**  
37 • **Judicial Review (Appeal).**  
38

39 **Filing the Complaint**

- 40 • **Complaint: Alleges a violation of a law or rule.**  
41 • **Complaint is filed with DBPR.**  
42 • **Complaint is legally sufficient if it states the violation of Florida Statute, DBPR rule or FREC**  
43 **rule.**  
44 • **If in writing and legally sufficient then must be investigated.**  
45 • **May be on a uniform complaint form.**  
46  
47 • **Notice of non-compliance.**  
48 • **Given for 1<sup>st</sup> time minor offense (minor if not a threat to the public).**  
49 • **15 days to correct the offense/problem.**  
50

## Investigation

- The DBPR/DRE may investigate an anonymous complaint.
- The DBPR/DRE may decide to investigate on its own.
- The DBPR/DRE may continue investigation if complainant withdraws complaint.
- Copy of complaint is sent to subject of the investigation (= usually a licensee) when investigation begins.
  - Unless may jeopardize criminal investigation.
- Subject may respond in writing to the complaint.
- The DBPR/DRE produces an investigative report.
- Investigative report submitted to probable cause panel.

## Probable Cause

- 2 members of FREC.
  - 1 may be a former member.
  - 1 must be a professional member.
  - **Panel Segregation:** Those members of FREC on the probable cause panel may not be involved in the informal hearing or the final order.
- Determine if probable cause exists (reasonable grounds to prosecute).
- If no probable cause exists then dismissal.
- If probable cause exists then instructs DBPR to produce a formal complaint.
- Once probable cause panel is concluded notice sent to complainant and subject of investigation.

## Formal Complaint

- Outline of charges against licensee.
- If ignore formal complaint license is usually (not must) revoked.
- A stipulation is an agreement between the DRE and the respondent (the subject of the investigation is also called a respondent because is responding to a complaint) in which the parties are agreeing as to the facts and the penalty. FREC must approve a stipulation.

## Informal Hearing

- FREC members (less those on the probable cause panel) conduct informal hearing.
- If no dispute of material fact.
- Licensee given opportunity to explain and provide evidence and witnesses.

## Formal Hearing

- If dispute of material fact.
- Conducted by administrative law judge (member of FL Bar for at least the previous 5 years).
- Subpoena: Command to appear to give testimony.
  - If ignore subpoena then contempt of court.
- Administrative law judge prepares and submits a recommended order.
- Licensee may submit exceptions to recommended order.

## Final Order

- FREC members (less those on the probable cause panel) issue the final order.
- Impose penalty.

## Judicial Review (Appeal)

- May appeal to District Court



1 • **Memory Aid – FREC D**

2 I  
3 S  
4 T  
5 R  
6 I  
7 C  
8 T

- 9 • **Appeal does not stay enforcement:**
- 10 • **A stay is when the court decides that the penalty will not yet take effect while appealing.**
  - 11 • **Licensee is given notice and opportunity to defend himself or herself on many occasions during**
  - 12 **process.**

13

14 **Summary Suspension**

- 15 • **Only if immediate danger to public is involved.**

16

17 **Violations and Penalties**

- 18 • **FREC authorized to deny, suspend or revoke licenses, issue citations, fine up to \$5,000 per**
- 19 **violation of 475 F.S. and 455 F.S. and otherwise discipline licensees.**

20

21 **Grounds for Denial**

- 22 • **Without prejudice = minor; can apply again.**
- 23 • **With prejudice = serious; usually cannot become licensed.**
- 24 • **If denied two times can apply for a hearing.**

25

26 **Suspension**

- 27 • **Suspension is a temporary penalty: 10 years is the maximum period for a suspension.**
- 28 • **Second suspension for the same or a different violation may well result in revocation.**

29

30 **Revocation**

- 31 • **The most serious/severe penalty FREC imposes.**
- 32 • **Permanent:**
  - 33 • **2 Exceptions (after 5 years may apply again):**
  - 34 **1. Application with false information.**
  - 35 **2. False renewal (did not complete post-licensing or continuing education).**
- 36 • **If only broker at a brokerage is suspended (even if very short suspension) or revoked then**
- 37 **sales associates and broker associates become involuntary inactive.**

38

39 **Revocation or cancellation without prejudice:**

- 40 • **If license was issued through mistake or inadvertence of the Commission, the FREC may**
- 41 **revoke a license and allow the former licensee to apply again.**

42

43 **Types of Penalties: Administrative Penalties vs. Civil Penalties vs. Criminal Penalties**

- 44 • **Administrative Penalties:**
  - 45 • **Imposed by FREC.**
  - 46 • **Denial of application.**
  - 47 • **Refusal to renew.**
  - 48 • **Revocation.**
  - 49 • **Suspension.**
  - 50 • **Up to \$5,000 for each violation of 455 F.S.**
  - 51 • **Up to \$5,000 for each violation of 475 F.S.**

- 1 • DBPR/DRE investigators may issue a citation for minor violations (\$100 - \$500); have
- 2 30 days to dispute in writing.
- 3 • FREC imposes administrative penalties. FREC cannot impose civil or criminal
- 4 penalties.
- 5 • FREC cannot impose imprisonment or criminal fines because FREC cannot impose
- 6 criminal penalties.
- 7 • Civil penalties:
- 8 • Imposed by courts.
- 9 • Sued in civil court.
- 10 • Criminal penalties:
- 11 • Imposed by court.
- 12 • Violation of 475 F.S. or any lawful order, rule or regulation is a 2<sup>nd</sup> degree
- 13 misdemeanor:
- 14 • Up to \$500 and/or up to 60 days.
- 15 • One exception to maximum criminal penalties:
- 16 • Inaccurate rental information and rental list violations are a 1<sup>st</sup> degree
- 17 misdemeanor: Up to \$1,000 and/or up to 1 year. Memory Aid: 1 1 1
- 18
- 19 • For one violation may face administrative penalties and civil penalties and criminal penalties.
- 20
- 21 • Unlicensed activity is a 3<sup>rd</sup> degree felony: up to \$5,000 and/or up to 5 years
- 22
- 23 • DBPR must report criminal matters to state attorney.
- 24
- 25 • FREC shall/must inform the Division of Florida Condominiums, Timeshares, and Mobile
- 26 Homes of any disciplinary action that FREC has taken against any licensee registered with the
- 27 Division of Florida Condominiums, Timeshares and Mobile Homes.
- 28

### 29 FREC Disciplinary Guidelines

- 30 • Range of penalties normally imposed.
- 31 • These are not “must” penalties. These are ranges of penalties that may be imposed.
- 32 • FREC has discretion. Therefore, FREC may impose a penalty, probably will impose a
- 33 penalty, usually will impose a penalty is correct but FREC must impose a penalty is
- 34 incorrect.
- 35
- 36 • The word deemed is used on the state exam. Deemed means considered. If something is
- 37 deemed to be legal it is considered to be legal. If something is deemed to be illegal it is
- 38 considered to be illegal.
- 39

### 40 Real Estate Recovery Fund

- 41 • 2 purposes:
- 42 1. To reimburse public:
- 43 • If suffered monetary (= compensatory) damages.
- 44 • Not punitive damages.
- 45 • Because of act committed by holder of current, valid and active license during real
- 46 estate transaction in Florida.
- 47 • Licensee must be unable to pay judgment.
- 48 • As shown by an asset search.
- 49 • Member of public makes claim from Recovery Fund (do not sue FREC).

- 1 • Member of public must make a claim within 4 years of violation and within 2 years of
- 2 discovery of violation.
- 3 • **Mandatory suspension.**
- 4 • Suspension until payback to Real Estate Recovery Fund.
- 5 • Unless bankruptcy.
- 6 • **\$50,000 per transaction or \$150,000 per licensee.**
- 7 • **\$50,000 per transaction not per buyer. If FREC will pay out \$50,000 and one**
- 8 **transaction and four buyers then each buyer receives \$12,500.**
- 9 • FREC pays judgment but not attorney's fees and court costs.
- 10 2. To reimburse broker who must pay money damages as result of EDO.
- 11 • Broker must notify FREC.
- 12 • Broker must defend diligently.
- 13 • Broker is not suspended in this case.
- 14 • FREC pays reasonable attorney's fees and court costs in addition to judgment.

### 15 Legal Terms

- 17 • **Failure to Account for and deliver:**
- 18 • **The act of failing to pay money to a person entitled to receive it. Example: Broker does not**
- 19 **pay a sales associate.**
- 20 • **Breach** (= default = nonperformance):
- 21 • The breaking of a promise or obligation, either by an act of commission or omission.
- 22 • Breach of duty, for example, if violate agency duty or breach of contract if violate contract
- 23 obligation.
- 24 • **Commingle (intermingle):**
- 25 • **To mix the money or other personal property of a buyer or seller with a broker's own**
- 26 **money or property; to combine escrow money with other funds.**
- 27 • **Conversion:**
- 28 • **Unauthorized control or use of another's personal property; the taking of another person's**
- 29 **property.**
- 30 • **Concealment:**
- 31 • **The withholding of information or a material fact.**
- 32 • **Culpable negligence:**
- 33 • **Guilty of failing to use the care a reasonable person would exercise.**
- 34 • **Example: Licensee on vacation and does not know about zoning change that everyone else**
- 35 **knows about.**
- 36 • **Fraud:**
- 37 • **Intentional deceit for the purpose of inducing another to rely on information so as to part**
- 38 **with some valuable thing belonging to him or her or to surrender a legal right.**
- 39 • **Must have damages to have fraud.**
- 40 • **Material fact:**
- 41 • **A piece of information that is relevant to a person making a decision.**
- 42 • **Misrepresentation:**
- 43 • **An untrue statement of fact. An incorrect or false representation of the facts.**
- 44 • **If misrepresentation but no fraud FREC may revoke.**
- 45 • **Moral turpitude:**
- 46 • **A vile act: Conduct contrary to honesty, good morals, justice or accepted custom.**
- 47 • **Examples: Embezzlement and crimes of larceny, including writing bad checks.**
- 48
- 49 • **Usual (not must) penalty for imprisonment (incarceration) is revocation.**
- 50 • **Usual (not must) penalty for temporary mental instability is suspension.**

## CHAPTER 7 FEDERAL AND STATE HOUSING LAWS

### Federal Fair Housing Laws

- **Civil Rights Act of 1866:**
  - **Racial discrimination in sale or rental of property is illegal (deals with race only; no exceptions).**
  - **Upheld by Supreme Court in Jones vs. Mayer.**
- **Civil Rights Act of 1968 (Title VIII: Fair Housing Act).**
  - **Discrimination illegal in sales, leasing, advertising sales or rentals, financing or brokerage services if such discrimination is based on race, color, religion, sex, national origin, handicap or familial status.**
    - **Familial status (families with children under 18, pregnant women).**
    - **Handicap status: physical, mental or emotional impairment.**
    - **Age not a protected class.**
  - **Categories of housing covered:**
    - **Single-family housing:**
      - **All residential property not privately owned.**
      - **All privately owned residential properties if a broker or sales associate is employed to sell, rent or lease such properties.**
      - **All residential property owned by a person who owns four or more residential units in total.**
      - **Any residential property owned by a person who, during the immediate past two-year period, sells two or more houses in which he or she was not residing at the time or was not the most recent resident.**
    - **Multifamily housing:**
      - **All multifamily dwellings of five or more units.**
      - **All multifamily dwellings of four or fewer units if none of the units is occupied by the owner.**
  - **Housing for older persons exempt from law.**
  - **Housing operated by religious organizations and private clubs exempt from law.**
- **If Civil Rights Act of 1968 does not apply but discrimination based on race then illegal due to Civil Rights Act of 1866.**

### Prohibited activities under Civil Rights Act of 1968:

- **Steering**
  - **Also called channeling.**
  - **Violation for licensees to steer protected class to neighborhood where residents are of that class.**
  - **Illegal even at request of protected class.**
  - **If African-American buyer asks to see houses in African-American neighborhoods then steering and illegal. If African-American buyer asks to see a particular house that is in an African-American neighborhood then not steering.**
  - **If show African-American buyer a house in an African-American neighborhood OK to assume the buyer likes the style/architecture of house (not OK to assume that buyer only wants to see homes in African-American neighborhoods).**

- 1 • **Blockbusting**
- 2 • **Violation for licensees to spread rumor that a protected class is moving into a**
- 3 **neighborhood to get listings.**
- 4 • **Redlining**
- 5 • **Violation for lender or insurance company to charge different interest rates or offer**
- 6 **different terms in protected class area.**
- 7
- 8 • **Civil Rights Act of 1968 requires Equal Housing Opportunity Poster which must be**
- 9 **displayed at brokerages.**
- 10
- 11 • **HUD oversees the Civil Rights Act of 1968.**
- 12

### 13 Americans with Disabilities Act of 1990 (ADA)

- 14 • **Provides access for disabled Americans to public accommodations, commercial facilities and**
- 15 **certain multi-family housing.**
- 16 • **Mandates design specifications. For example, width of doors and hallways and location of grab**
- 17 **bars in bathrooms.**
- 18

### 19 Federal Laws Regarding Land and the Environment

- 20 • **Interstate Land Sales Full Disclosure Act:**
- 21 • **If 25 or more lots then property report to purchaser.**
- 22 • **If 100 or more lots then statement of record with Consumer Financial Protection Bureau.**
- 23

### 24 Federal Laws Regarding Mortgage Lending

- 25 • **Consumer Credit Protection Act (Title I: Truth-in-Lending Act = TILA)**
- 26 • **Truth in Lending Act and Regulation Z used interchangeably on state exam.**
- 27 • **Supervision and enforcement by Consumer Financial Protection Bureau as per Dodd Frank**
- 28 **Law.**
- 29 • **Trigger terms.**
- 30 • **If advertise credit terms (amount or percentage of down payment, number of payments,**
- 31 **period, payment amount or finance charge) then must disclose amount or percentage of**
- 32 **down, terms of repayment and APR.**
- 33 • **General terms like “Great interest rate” or “Super Terms” are not trigger terms and do**
- 34 **not require disclosure of other key terms.**
- 35 • **Federal Reserve Regulation Z: Annual Percentage Rate (APR).**
- 36 • **Only applies to residential.**
- 37 • **For many years the Truth in Lending Act required a disclosure to the borrower called the**
- 38 **Truth in Lending Disclosure. In 2015 the Truth in Lending Disclosure was combined with**
- 39 **the Good Faith Estimate required by RESPA and is now called the TILA-RESPA**
- 40 **Integrated Disclosure. This disclosure must be given to borrower at time of loan application**
- 41 **or within 3 business days.**
- 42 • **3 business day right of rescission from signing of loan documents if home equity loan,**
- 43 **second loan or refinance.**
- 44

### 45 • **Equal Credit Opportunity Act (ECOA)**

- 46 • **Credit available without discrimination.**
- 47 • **Additional categories.**
- 48 • **Age.**
- 49 • **Memory aid: ECOA**

**G**  
**E**

- 1           • Public assistance program income.
- 2
- 3   • **Real Estate Settlement Procedures Act (RESPA)**
- 4       • **RESPA requires:**
- 5           • The use of a standardized closing statement called the closing disclosure.
- 6           • The borrower must be provided an information booklet explaining the home buying
- 7           process, loan process, good faith estimate and closing disclosure.
- 8           • For many years the RESPA required a disclosure to borrower of estimated settlement
- 9           costs called the Good Faith Estimate. In 2015 the Truth in Lending Disclosure required
- 10          by the Truth in Lending Act was combined with the Good Faith Estimate and is now
- 11          called the TILA-RESPA Integrated Disclosure. This disclosure must be given to
- 12          borrower at time of loan application or within 3 business days.
- 13          • Kickbacks or referral fees. Illegal for licensee to receive referral fee from lender. Under
- 14          RESPA if do work entitled to compensation but referral fees without doing work illegal.
- 15          • Purchase of title insurance. If buyer paying for title insurance seller cannot force buyer
- 16          to use a particular title insurance company.
- 17          • **RESPA requires that lenders that escrow taxes and insurance perform an annual**
- 18          **escrow account analysis and RESPA limits how much the lenders may maintain in the**
- 19          **escrow account.**
- 20

#### 21 **State Housing and Land Sales Laws**

- 22   • **Florida Fair Housing Act.**
- 23       • **If Florida law conflicts with Federal law then federal law wins.**
- 24   • **Growth Management Act.**
- 25       • **Leapfrog development discouraged.**
- 26       • **Concurrency.**
- 27

#### 28 **Deceptive and unfair trade practices act (“Florida’s Little FTC Act”)**

- 29   • **Deceptive and unfair practices in any trade or business illegal.**
- 30

#### 31 **Florida Residential Landlord and Tenant Act**

- 32   • **Dwelling unit.**
- 33   • **Landlord (= lessor).**
- 34   • **Tenant (= lessee).**
- 35   • **Landlord must notify tenant at time of lease or within 30 days regarding how deposit or**
- 36   **advance rent is held.**
- 37   • **Deposits and advance rents must be held in one of the following three manners:**
- 38       1. **Separate non-interest-bearing account (no commingling; cannot use the money),**
- 39       2. **Separate interest-bearing account: Pay tenant 75% of interest earned on deposit or 5% on**
- 40       **deposit (no commingling; cannot use the money), or**
- 41       3. **Surety bond: pay tenant 5% on deposit (Commingling allowed; may use money).**
- 42   • **Landlord is obligated to maintain premises.**
- 43   • **Tenant is obligated to maintain premises.**
- 44   • **Landlord has reasonable access to premises but may not abuse right of access and unless**
- 45   **emergency must have tenant’s permission to access premises.**
- 46
- 47   • **Termination of rental agreements by the tenant.**
- 48       • **Tenant must give notice to landlord and landlord has 7 days to remedy problem.**
- 49   • **Termination of rental agreements by the landlord.**
- 50       • **Landlord must give notice to tenant and tenant has 7 days to remedy problem.**

- 1 • If nonpayment of rent, landlord must give notice to tenant and tenant has 3 business days to
- 2 pay rent.
- 3 • If landlord returning all security deposit then must return deposit in 15 days.
- 4 • If landlord claiming all or part of deposit must notify tenant in 30 days.
- 5 • Tenant has 15 days to respond to landlord claim on deposit.
- 6 • Eviction requirements.

## 7

## 8

## 9 CHAPTER 8 PROPERTY RIGHTS: ESTATES, TENANCIES AND MULTIPLE OWNERSHIP

## 10 INTERESTS

### 11

### 12 Allodial System

- 13 • Allocates full property ownership rights to private individuals.

### 14

### 15 Land

- 16 • Land = surface and everything attached to it by nature, including what is beneath and above.
- 17 Legal definition of land includes water.

### 18

### 19 Real Estate

- 20 • Real estate = land + improvements permanently attached to the land.

### 21

### 22 Real Property

- 23 • Real property = real estate + legal bundle of rights that go along with ownership.

### 24

### 25 Physical Components of Real Property Each Have Rights Associated with Them:

### 26 (Surface Rights, Subsurface Rights and Air Rights)

- 27 • Surface Rights: (= land + water rights).
- 28 • 2 types of water rights:
- 29 • Littoral rights: Rights to ocean, sea or lake (Large body of water).
- 30 • Riparian rights: Rights to river, stream or other watercourse (Running water).
- 31 • Memory Aid: Littoral Large, Riparian Running.
- 32 • Water rights terms:
- 33 • Erosion: Loss of land.
- 34 • Accretion: Increase of land.
- 35 • Alluvion: The deposits resulting from accretion.
- 36 • Reliction: Receding water, uncovering additional land.
- 37 • Subsurface Rights: Minerals, petroleum, natural gas, etc.
- 38 • If brokering minerals a real estate license is required.
- 39 • Air Rights: Space above to a height established by law.
- 40 • Usually sell and buy all (surface, subsurface and air rights) but possible to buy and sell
- 41 separately.

### 42

### 43 Personal Property

- 44 • Assets are either real property (= realty) or personal property (= personalty = chattel).
- 45 • Personal property becomes real property by attachment.
- 46 • Real property becomes personal property by severance.
- 47 • Timber is personal property.

### 48

### 49 Fixtures

- 50 • Personal property that by attachment became real property (a fixture is real property).



- **The real estate contract should state the items that are included in the sale. If it does not, the courts will use the following tests:**
  1. **Intent of the parties.**
  2. **Relationship between the parties.**
    - **In the commercial landlord tenant relationship a Trade fixture is personal property (not real property).**
  3. **Method of annexation.**
    - **If removal causes damage more likely to be a fixture.**
  4. **Adaptation of the article.**
    - **If customized or adapted to real property more likely to be a fixture.**

### General Property Rights or the Bundle of Rights

- **D** disposition.
- **U** use (control).
- **P** possession.
- **E** exclusion (= quiet enjoyment = no trespassing).

### Estates and Tenancies

- **Estate (= tenancy): Degree, quality, nature and extent of bundle of rights in real property.**
- **Estates are either freehold or leasehold.**
  - **Freehold: of unknown duration.**
  - **Leasehold: of known duration.**
    - **Freehold estates are either fee simple or life estates.**
      - **Fee Simple Estate (= fee = fee simple absolute).**
        - **Most comprehensive form of ownership.**
        - **Can be inherited.**
        - **Complete ownership.**
        - **DUPE.**
      - **Life Estate:**
        - **Own property for lifetime.**
        - **The person that owns the property for his or her lifetime has a life estate.**
          - **UPE.**
        - **Life estate owner must maintain property (prevent waste).**
          - **Pay taxes.**
          - **Make mortgage loan payments.**
      - **At end of life the estate the property either reverts back to the grantor or to a remainderman or remaindermen.**
        - **Estate in Reversion: Estate returns to grantor.**
          - **Jack owns the property and grants a life estate to Sue. If when Sue dies the property goes to Jack then Jack has an estate in reversion during Sue's lifetime.**
          - **Remainder Estate: Estate goes to remainderman or remaindermen.**
            - **Jack owns the property and grants a life estate to Sue. If when Sue dies the property goes to Beth (not to Jack the grantor) then Beth has a remainder estate and she is a remainderman during Sue's lifetime.**
          - **Lifetime may be life estate owner's lifetime or someone else's lifetime.**
            - **It is OK to leave a life estate to Susan based on the lifetime of Mark. Susan has a life estate as long as Mark is alive.**
  - **If one owner then own in severalty (= sole owner).**

- 1 • **If more than one owner then co-ownership.**
- 2
- 3 • **3 Types of Co-ownership: Tenancy in common, joint tenancy or tenancy by the entireties.**
- 4
- 5 • **Tenancy in Common:**
- 6 • **Any number of owners.**
- 7 • **Equal or unequal shares (undivided).**
- 8 • **Become tenants in common at same or different times.**
- 9 • **Unilateral disposition is allowed.**
- 10 • **Unilateral disposition means that one owner may sell his or her interest without**
- 11 **the consent of the other owner or owners.**
- 12 • **No right of survivorship. May leave to heirs. Willable.**
- 13 • **Since an ownership interest in tenancy in common is willable this is the most**
- 14 **favorable form of co-ownership for family members that are not owners.**
- 15
- 16 • **Joint Tenancy:**
- 17 • **Any number of owners.**
- 18 • **Possession (undivided).**
- 19 • **Interest (equal).**
- 20 • **Time (same).**
- 21 • **Title (same).**
- 22 • **Estate not implied (= not assumed).**
- 23 • **Unilateral disposition is allowed.**
- 24 • **Right of survivorship: one owner dies automatically the deceased owner's interest**
- 25 **goes to the remaining owner or owners.**
- 26
- 27 • **Four Unities of Joint Tenancy:**
- 28 • **P Possession: Joint tenants have the same rights of undivided possession.**
- 29 • **I Interest: Joint tenants have equal ownership interests.**
- 30 • **T Title: Joint tenants acquire title on the same instrument (deed).**
- 31 • **T Time: Joint tenants acquire their interest in the property at the same time.**
- 32
- 33 • **Tenancy by the Entireties:**
- 34 • **Available to married couple only. Only two owners.**
- 35 • **Estate is implied. If married couple then law assumes tenancy by entireties.**
- 36 • **Each spouse owns the whole property.**
- 37 • **No unilateral disposition.**
- 38 • **Both spouses must agree to sell. Both will sign deed. Both spouses must sign a**
- 39 **sales contract as sellers.**
- 40 • **Right of survivorship: if one spouse dies then the deceased spouse's interest goes to**
- 41 **the surviving spouse.**
- 42

#### Leasehold Estates (= non-freehold estates = less-than-freehold)

- 44 • **Ownership for definitive period of time.**
- 45 • **Leasehold estates are either estate for years or tenancy at will or tenancy at sufferance.**
- 46 • **Estate for years (= tenancy for years)**
- 47 • **Created by lease.**
- 48 • **Does not have to last a year. May be many years or less than a year.**
- 49 • **For fixed term.**
- 50 • **Conveys interest (not title).**

- 1 • Conveys UPE: use, possession and exclusion. Does not convey the right of disposition.
- 2 • Tenancy at will:
- 3 • Possession with owner's permission (no fixed term).
- 4 • Conveys UPE: use, possession and exclusion. Does not convey the right of disposition.
- 5 • **Statutory determination of notice for termination:**
- 6 • 15 days for month-to-month.
- 7 • 7 days for week-to-week.
- 8 • **The longer the time period between payments, the longer the notice for**
- 9 **termination.**
- 10 • Tenancy at sufferance:
- 11 • Tenant continues possession after right of possession has ended.
- 12 • Naked possession.
- 13 • Hold over tenant.

### 14 Homestead

- 15 • Descent of Homestead owned by decedent spouse in severalty:
- 16 • If lineal descendants then surviving spouse has life estate and lineal descendants are vested
- 17 remaindermen.
- 18 • If no lineal descendants then surviving spouse has fee simple estate.
- 19 • **Non-owning spouse must also sign deed. Non-owning spouse will also sign listing contract**
- 20 **and sales contract agreeing to sell property.**
- 21 • Exemption from forced sale:
- 22 • Property is not subject to foreclosure for outside debts (for example, credit card debts).
- 23 • Property is subject to foreclosure for debts related to property: real property taxes, special
- 24 assessments, mortgage liens, vendor's liens, construction liens.
- 25 • Restriction on size.
- 26 • 160 acres outside a municipality.
- 27 • ½ acre inside a municipality.
- 28 • **Tax exemption:**
- 29 • Base tax exemption is for \$25,000.
- 30 • Assessed value is reduced by \$25,000 to the taxable value.
- 31 • A second \$25,000 has been made law.
- 32 • Save Our Homes Amendment limiting increase in assessed value applies only to homestead
- 33 property.
- 34
- 35

### 36 Elective Share

- 37 • 30% of non-homestead property.
- 38 • Elective (not mandatory).

### 39 Exempt Property

- 40 • Furniture, furnishings and appliances up to \$10,000 and automobiles and \$1,000 of personal
- 41 items not disposed of by will.
- 42
- 43

### 44 Community Property

- 45 • Not recognized in FL. In Florida equitable distribution.
- 46 • In a community property state, property is either separate property, or community property:
- 47 • Community Property:
- 48 • Acquired during marriage.
- 49 • **Separate Property:**
- 50 • **Acquired before marriage or acquired by inheritance or gift.**

- Although Florida is not a community property state Florida does use the concept of separate property.

#### Cooperatives, Condominiums and Time-sharing

- **Cooperatives Governed by Cooperative Act. (719 F.S.)**
  - **Ownership:**
    - Corporation owns property.
      - Individual purchases shares in corporation.
    - Proprietary lease gives shareholder right to occupy a specific unit.
    - Tax advantages: **Deduction for interest and real property tax.**
    - New coop sold by developer: Buyer has 15 calendar days to cancel contract.
    - Resale coop: Buyer has 3 business days to cancel contract.
  - **Condominiums Governed by the Condominium Act (718 F.S.)**
    - **Ownership:** Own unit and undivided fractional share of common elements.
    - **4 main documents:**
      - Declaration.
      - Articles of Incorporation.
      - Bylaws.
      - Conveyance.
    - **Condominium advantages:**
      - Tax advantages: **deduction for interest and real property tax.**
    - **Condominium disadvantage:**
      - Condo board.
      - **New condo sold by developer: Buyer has 15 calendar days to cancel contract after receipt by buyer of condominium documents.**
      - **Resale condo: Buyer has 3 business days to cancel contract after receipt by buyer of condominium documents.**

#### Time-sharing Governed by Florida Real Estate Time-Share Act. (721 F.S.)

- **Ownership:**
  - **Interval Ownership:**
    - Receive deed.
    - Fee simple.
  - **Right-to-use:**
    - Rights granted are temporary (leasehold).
    - **New timeshare sold by developer – Buyer has 10 days to cancel contract after the later of signing contract or receipt by buyer of public offering statement.**
- **Division of Florida Condominiums, Timeshares and Mobile Homes also regulates cooperatives even though cooperative is not in the name of this division.**

### CHAPTER 9 TITLE, DEEDS AND OWNERSHIP RESTRICTIONS

#### Title to Real Property

- **Public Grant – Transfer of title from government to private party.**
- **Private Grant – Transfer of title from private party to private party.**

## Title

- A person who holds vested ownership rights to property has title.
- Title is a legal concept (not the document that transfers title).

## Acquiring Legal Title

- Transfer of title is called Alienation.
  - Alienation can be voluntary or involuntary:
    - Voluntary Alienation – With owner’s control and consent.
    - Involuntary Alienation – Without owner’s control and consent.

## Types of Voluntary Alienation

- Deed:
  - Sales contract is signed and performed. At closing deed transfers title.
- Will:
  - If died with a will then died testate (testate because testified).
  - The deceased person is the testator.
  - Gift of real property is a devise.
  - Recipient of real property is devisee.
- Gift of real property.

## Types of Involuntary Alienation

- Descent:
  - If died without a will then died intestate (intestate because did not testify).
  - Look to probate laws of state to see disposition of property.
  - Legal descendants are heirs.
- Escheat to the state:
  - If die intestate and without heirs, then property goes to state of Florida.
- Adverse possession:
  - Owner sleeps on his/her rights (does not exercise rights to have adverse possessor removed).
  - Elements required for alienation by adverse possession:
    - Hostile possession (without owner’s permission).
    - Open possession with no attempt to conceal occupancy.
    - Notorious and flagrant public possession of the property.
    - Taxes paid on the property by the adverse possessor during all the years of possession.
    - Claim of title, even an imperfect one, exists.
    - Adverse possession must continue for seven or more consecutive years without the consent of the owner.
- Eminent Domain:
  - Power or right of government to take property for public purpose.
  - Condemnation is the legal process.
  - Appraisals usually done.
  - Fair price must be paid.
  - Right to a jury trial if owner and government cannot agree on a fair price.
  - Railroads have the power of Eminent Domain.

## Legal Title

- Actual Notice:
  - Notice by reading, seeing or hearing.
- Constructive Notice:
  - Notice given by documents recorded in public records.

- 1 • Public records are maintained by counties.
- 2 • To be recorded in public records an instrument must be notarized.
- 3 • Actual notice and constructive notice are equal in legal priority.

#### 4

#### 5 Lis Pendens

- 6 • Notice of pending legal action recorded in public records (gives constructive notice that
- 7 property is subject to litigation).
- 8 • Broker may not record a lis pendens or place a lien against property or in any manner
- 9 encumber title without prior written consent of owner.
- 10 • If no prior written consent then first file lawsuit and win in court and then pursue judgment
- 11 and then may lien property.

#### 12

#### 13 Condition of Title

- 14 • Examination of title called title search or running chain of title.
- 15 • Chain of Title: History of conveyances affecting a particular property.
- 16 • Abstract of Title: Summary of documents in public records that may affect title of a particular
- 17 property.
- 18 • A cloud on title means that something is affecting title. For example, a mortgage lien against a
- 19 property is an example of a cloud on title.
- 20 • Florida Marketable Record Titles to Real Property Act:
- 21 • Root of title 30 years (begin title search 30 years prior).
- 22 • Certificate of title opinion.
- 23 • Title opinion given by attorney.
- 24 • An opinion not a guarantee.
- 25 • Title Insurance:
- 26 • Covers title issues and is not property insurance.
- 27 • Owner's title insurance (mortgagor's policy):
- 28 • For sales price.
- 29 • Not transferable.
- 30 • Lender's title insurance (mortgagee's policy):
- 31 • For balance of mortgage loan.
- 32 • Transferable.
- 33 • Licensee may not say title is OK. However, if licensee knows about title problem must disclose
- 34 to buyer.

#### 35

#### 36 Deeds

- 37 • Written instrument that conveys title to real property:
- 38 • Grantor(s):
- 39 • Must be competent.
- 40 • Must sign.
- 41 • Grantee(s):
- 42 • Need not be competent.
- 43 • Do not need to sign.

#### 44

#### 45 Valid vs. Legal Effect vs. Recording

- 46 • Valid means in proper form. To be valid a deed must be:
- 47 • In writing.
- 48 • Signed by grantor(s).
- 49 • Witnessed (2 witness signatures for each grantor).

- 1 • **Legal effect means title conveyed. A deed has legal effect when deed voluntarily delivered by**
- 2 **grantor and voluntarily accepted by grantee.**
- 3 • **Once deed is voluntarily delivered by grantor and voluntarily accepted by grantee then**
- 4 **grantee is owner even if not yet recorded in public records.**
- 5 • **Record to notify world of ownership (constructive notice) and to prevent fraud.**
- 6 • **Must be acknowledged and notarized to record.**

#### 7 Clauses in a Deed

- 9 • **Top of deed has empty space for recording information.**
- 10 • **Premises section names parties (grantor(s) + grantee(s)), legal description and date. Also**
- 11 **includes granting clause.**
- 12 • **Deed must have exact legal description.**
- 13 • **Habendum section states fee simple or life estate.**
- 14 • **Seizin (seisin) section: Grantor promises that owns, intends to convey, has right to convey.**
- 15 • **No encumbrances clause: Grantor states that has not encumbered (burdened) property other**
- 16 **than as stated in deed.**
- 17 • **Bottom of deed has space for grantor signatures and witness signatures and then space for**
- 18 **notary.**

#### 19 4 Types of Statutory Deeds

- 20 • **Quitclaim Deed:**
- 21 • **No covenant or warranty of title.**
- 22 • **No claim of ownership.**
- 23 • **Used to clear cloud on title.**
- 24 • **Bargain and Sale Deed:**
- 25 • **Contains granting clause, habendum clause and seizin clause.**
- 26 • **No covenant or warranty to defend title against future attacks.**
- 27 • **Special Warranty Deed:**
- 28 • **Contains granting clause, habendum clause and seizin clause.**
- 29 • **Only warrant title against grantor or grantor's representative.**
- 30 • **Used by corporations selling property (developers).**
- 31 • **General Warranty Deed:**
- 32 • **Contains granting clause, habendum clause and seizin clause.**
- 33 • **Provides most warranties of title.**
- 34 • **Quiet enjoyment.**
- 35 • **Quiet enjoyment in general warranty deed means that the grantor is stating that**
- 36 **there are no title issues.**
- 37 • **Further assurance.**
- 38 • **Warranty forever.**
- 39 • **Best for buyer.**
- 40 • **If contract does not specify type of deed then general warranty deed must be provided to**
- 41 **buyer.**

#### 42 Special Purpose Deeds - used when owner cannot or will not sign a deed.

- 43 • **When an owner cannot sign a deed:**
- 44 • **Personal Representative's Deed: Personal representative appointed by will or court to settle**
- 45 **estate of deceased person.**
- 46 • **Guardian's Deed: Minor not competent.**
- 47 • **Committee's Deed: Legally incompetent grantor.**

- 1           • All on committee must sign.
- 2 • When an owner does not sign a deed:
- 3           • Certificate of title transfers title at end of foreclosure.
- 4

#### 5 Ownership Limitations and Restrictions

- 6 • Restrictions are either government or private.
- 7 • Government Restrictions on Ownership:
  - 8   • Police power allows government to impose restrictions for protection of public.
  - 9    • Examples: Zoning, building codes.
  - 10   • Broadest power because owner not compensated for restriction on use of property.
  - 11   • Eminent Domain:
    - 12    • Eminent domain is the right of government to take property for a public purpose.
    - 13    • Condemnation is the proceeding.
    - 14    • Taking is for public purpose.
    - 15    • Cannot stop taking.
    - 16    • Owner entitled to just compensation.
    - 17    • Right to a Jury if do not agree with government regarding compensation for property.
    - 18    • Appraisals usually completed.
    - 19    • Railroads have right of eminent domain.
  - 20   • Rights of property taxation:
    - 21    • US Constitution: No federal tax on real property.
    - 22    • Florida Constitution: Only local government may tax real property.
    - 23    • Local Government: County, city and school board.
- 24 • Private Restrictions on Ownership:
  - 25   • Deed restrictions:
    - 26    • Found in deed.
      - 27      • If property owners in a subdivision cannot build structures blocking view of lake
      - 28      because deeds state this restriction then these are deed restrictions.
      - 29      • Most common private restriction.
  - 30   • Subdivision restrictive covenants:
    - 31    • Found in plat.
  - 32   • Easements:
    - 33    • Authorized legal use of another's property. Easements are legal.
      - 34      • Run with land.
      - 35      • Easement appurtenant = benefits an adjacent parcel
      - 36      • Easement in gross = utility easement.
        - 37        • An easement in gross does not benefit adjacent property.
      - 38      • Easement by prescription (without interruption for 20 years).
        - 39        • For example, if Bob travels through Sam's land for 20 years without
        - 40        interruption then Bob has an easement by prescription.
      - 41      • Easement by necessity (right to have access to property).
      - 42      • An easement may be terminated by court order.
    - 43   • Encroachment:
      - 44    • Unauthorized use of another's property (example: fence).
      - 45    • If uninterrupted for 7 years may create an implied easement.

#### 47 Leases

- 48 • Convey interest in real property but does not convey ownership.
- 49 • Types of lease (by rental payment method):



- 1 • **Gross Lease: Landlord (= lessor) pays expenses (taxes, insurance, mortgage interest, etc.).**  
2 **Residential leases are commonly gross leases.**
- 3 • **Net Lease: Tenant (= lessee) pays expenses.** Retail leases are commonly net leases.
- 4 • **Percentage Lease: Landlord receives share of gross sales.**  
5 • Percentage lease may be gross or net.
- 6 • **Variable Lease: Tied to an index.**  
7 • **For example, if index is 1.5 and rent is \$12 per square foot and the index increases to 1.8**  
8 **then the new rent would be \$14.40 per square foot.**  
9 •  **$1.8$  (new index)  $\div$   $1.5$  (old index) =  $1.2$  (the new index is 1.2 times the old index)**  
10 • **The new rent will be 1.2 times the old rent:  $1.2 \times \$12 = \$14.40$**
- 11 • **Assignment and Sublease:**  
12 • **Assignment: Full.**  
13 • All property and all remaining time.
- 14 • **Sublease: Partial.**  
15 • **Less than all property and all remaining time.**

### 17 Liens

- 18 • **Right given to a creditor or unit of government to have a debt satisfied out of a property**  
19 **belonging to a debtor.**
- 20 • **Lienor = holder of lien.**
- 21 • **Lienee = owner of property (lien placed against the property).**
- 22 • **Liens are either voluntary or involuntary:**  
23 • **Voluntary: Allowed by owner to be placed to secure a debt. Property owner agrees to lien.**  
24 • **Involuntary: Created by law. Property owner does not agree to lien.**
- 25 • **Liens are either general liens or specific liens:**  
26 • **General Liens: Not restricted to one property:**  
27 • **Judgment Liens: After judgment is obtained at court.**  
28 • **Income Tax Liens: Federal.**  
29 • **Estate Tax Liens: Federal.**
- 30 • **Specific Liens: Only apply to one property:**  
31 • **Mortgage Liens: Mortgagor (borrower) pledges property to mortgagee (lender).**  
32 • **Property tax and special assessment liens:**  
33 • **These are the two superior liens.**  
34 • **If foreclosure first all property taxes paid, second all special assessments are paid.**  
35 • **These are municipal liens.**
- 36 • **Construction liens (= mechanic's lien = materialman's lien = laborer's lien):**  
37 • **Based on theory of unjust enrichment.**
- 38 • **Vendor's Lien: When seller finances the purchase, the mortgage is called a purchase**  
39 **money mortgage (PMM) and a vendor's lien is recorded.**  
40 • **The buyer gives the PMM to the seller. The seller receives the PMM.**

### 43 CHAPTER 10 LEGAL DESCRIPTIONS

#### 44 Legal Description: Series of Boundary Lines.

- 46 • **Purpose for legal descriptions: To identify a parcel of property, to write descriptions for**  
47 **documents, to establish size, to reestablish lost boundaries, to subdivide.**
- 48 • **Boundary Line (= property line = lot line).**

### 3 Types of Legal Descriptions

- Metes-and-bounds.
- Government survey system.
- Lot and block.

#### Description by Metes-and-Bounds

- **Metes: Refers to distance.**
- **Bounds: Refers to direction (or angle).**
- **Begin at monument**
  - **Originally monuments were natural objects (for example, a tree) or manmade objects (for example, the corner of a church) but today monuments are placed deep in ground by surveyors.**
  - **From the monument go to the point of beginning (POB).**
    - **Begin the legal description at the POB and end the legal description at the POB.**
  - **Begin at a monument. Go a certain distance and direction (using the circle) to the POB. Then go certain distances and direction as many times as legal description states until return to POB.**
  - **The POB is where the legal description of the property begins and ends.**
  - **If POB is inaccurate then entire legal description will be inaccurate.**
  - **360 degrees in a circle.**
  - **Circle divided into 4 quadrants or quarters (each 90 degrees) by dividing North and South and by dividing East and West.**
  - **Always start with N or S.**
  - **Only go up to 90 degrees.**
  - **Always end with E or W.**
  - **Some legal bounds may be stated correctly in more than one way:**
    - **N 0 degrees E = N 0 degrees W = due north.**
    - **S 0 degrees E = S 0 degrees W = due south.**
    - **N 90 degrees W = S 90 degrees W = due west = a line running from east to west.**
    - **N 90 degrees E = S 90 degrees E = due east = a line running from west to east.**
  - **Degrees, minutes, seconds:**
    - **60 minutes in each degree.**
    - **60 seconds in each minute.**
  - **Metes and bounds is the most accurate method of legal description.**
  - **On state exam if asked to draw opposite line:**
    - **Draw circle, then draw line given, then draw opposite line and then name line.**

#### Description by Government Survey System

- **On state exam the government survey system is the method of surveying used most by the government.**
- **Principal meridians (run north south).**
- **Base lines (run east west).**
- **Correcting for earth's curvature:**
  - **Guide meridians and correction lines are drawn.**
  - **Check: a square 24 miles by 24 miles (24 miles square), containing 576 square miles.**
  - **The following would fit in one check: 16 Townships; 576 sections; 368,640 acres.**
- **Range: 6-mile-wide strip (runs north south), bounded by range lines.**
  - **Located east or west of principal meridian.**
  - **Range numbers increase the farther from the principal meridian.**
- **Tier: 6-mile-wide strip (runs east west), bounded by township lines.**
  - **Located north or south of the base line.**

- Tier numbers increase the farther from the base line.
- Townships:
  - Each intersection of a range and a tier form a township.
  - Each township is 6 miles by 6 miles (6 miles square), containing 36 square miles.
  - Each township contains 36 sections.
- Sections:
  - 36 sections in each township.
  - 1 mile by 1 mile (1 mile square or 1 square mile).
  - 640 acres.
- The correct way to state a legal description is Section then Tier then Range (for example, Section 10, T2N, R3E).

### Acre

- Each acre contains 43,560 square feet.

### Mile

- Each mile is 5,280 feet in length.

### Yard

- 1 yard = 3 feet

### How to Use the Government Survey System

- Locating sections: (if not sure, guess 0).
  - Once locate a section (or border or corner of a section) then can determine distance to some other point (usually the principal meridian, base line or Tallahassee).
  - Step 1: Must draw out principal meridian, base line, tiers, ranges and sections in a township.
  - Step 2: Calculate distance: each township 6 miles by 6 miles and each section 1 mile by 1 mile.
- Subdividing sections:
  - Must work backwards.
- Calculating size:
  - Divide 640 acres by each denominator (bottom number in fraction; either a 2 or a 4).
  - “And” in a legal description:
    - “And” refers to a different piece of land, therefore must begin again with 640 acres.
    - Add subtotals together for total size.

### Description by Lot and Block Numbers

- Plat map is recorded in public records showing lots, streets, etc.
- Plat map is on a particular page, in a particular book.
- Description by Lot and Block may only be used if plat map has been recorded. A plat map must be recorded in public records to use the lot and block method.

Metes and bounds is most accurate and government survey system used most by the government and lot and block can only be used if a plat map is recorded in public records.

## CHAPTER 11 REAL ESTATE CONTRACTS

### Preparation of Contracts

- Must be a lawyer to draft legal documents, including contracts. However, there are situations in which a licensee may either prepare or fill in an agreement:
  - Listing agreement.
  - Sales contract (= purchase and sale contract).
  - Standardized option contract.
  - Standard residential leases for a maximum of one year.
  - Buyer brokerage agreements.

### Statute of Frauds

- **The Statute of Frauds states that certain agreements must be in writing to be enforceable.**
  - Unenforceable does not mean illegal. If a contract is enforceable a party may go to court to seek their rights under the contract. If a contract is unenforceable they may not go to court to seek their rights.
- **Contracts to transfer title to real property must be in writing to be enforceable.**
  - Exceptions: (in these cases real estate contracts are enforceable even if not in writing):
    - An oral contract if buyer (a) paid part of price and (b) has possession or has made improvements.
    - A fully performed contract.
- **Contracts that require more than one year to fully perform must be in writing to be enforceable.**
  - For example, a two year lease must be in writing to be enforceable due to statute of frauds.

### Statute of Limitations

- **Limits how much time to begin a lawsuit.**
- May not begin a lawsuit after these time periods:
  - Written agreements: 5 years.
  - Oral (= parol) agreements: 4 years.
  - If an agreement is both written and oral then a lawsuit based on the written part (5 years) or based on the oral part (4 years).
  - Malpractice: 2 years.
    - Since licensees are considered professionals, they are subject to malpractice lawsuits.

### 4 Essentials of a Valid Contract

- Contractual capacity of the parties.
- Offer and acceptance.
- Legality of objective.
- Consideration.
  
- Contractual capacity of the parties:
  - Competent: Must be an adult and sane.
  - A contract with a minor or a legally declared incompetent is voidable by the minor or incompetent person.
  
- Offer and acceptance (= mutual assent = meeting of the minds).
  - **Contract is formed upon communication of acceptance.**

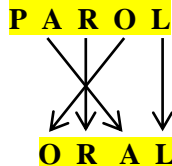
- 1 • **Legality of object:**
- 2 • Contract must be for a legal purpose.
- 3 • A contract for an illegal purpose is void.
- 4 • A contract to pay an unlicensed person a commission is an example of a contract for an
- 5 illegal purpose.
- 6
- 7 • **Consideration:**
- 8 • Something in exchange for something else.
- 9

#### 10 Void Contracts vs. Voidable Contracts vs. Unenforceable Contracts

- 11 • **Void:** A void contract does not meet all of the required elements of a valid contract and,
- 12 therefore, has no legal effect.
- 13 • **Voidable:** A voidable contract is a contract, but because of the manner or method in which it
- 14 was brought about, one of the parties is permitted to avoid his or her contractual duties. That
- 15 party may choose to make the contract void.
- 16 • **Unenforceable:** A contract is unenforceable if the parties may not seek to enforce the contract
- 17 in a court of law. If a contract does not satisfy the statute of frauds or runs beyond the statute of
- 18 limitations then a contract is unenforceable.
- 19

#### 20 Contract Categories

- 21 • **Contracts are either formal or informal:**
- 22 • **Formal (= written).**
- 23 • Seal or L.S. (locus sigilli)
- 24 • Seal is not required to make contract valid.
- 25 • **Informal (= parol = oral).**
- 26 • **Memory aid:**



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- 31 • **Contracts are either bilateral or unilateral contracts:**
- 32 • **Bilateral Contract:** Both parties are obligated to perform.
- 33 • Example: sales contract.
- 34 • **Unilateral Contract:** One party is obligated to perform.
- 35 • Example: option contract. An option contract is an example of a unilateral contract.
- 36 • **Contracts are either express or implied contracts:**
- 37 • **Express:**
- 38 • Stated means either in writing (= formal) or spoken (informal = oral = parol).
- 39 • Have a meeting of the minds.
- 40 • **Implied:** Implied from acts or transaction.
- 41 • **Contracts are either executory or executed:**
- 42 • **Executory:** Not yet fully performed.
- 43 • The sales contract from the time it is signed until closing.
- 44 • **Executed:** Fully performed.
- 45 • The sales contract once closing has occurred.
- 46

#### 47 Contract Negotiation

- 48 • Offeror makes offer to offeree.
- 49 • Counteroffer kills the offer.

- Party making the counteroffer becomes the offeror and the party receiving the counteroffer is the offeree.

#### Ways an Offer is Terminated

- **W** Withdrawal by offeror prior to acceptance and communication of acceptance by offeree to offeror.
- **I** Insanity of either party.
- **L** Lapse of time.
  - As stated in the contract.
  - If no time stated in the contract then offer will remain open for a reasonable length of time.
- **D** Death of offeror or offeree.
- **C** Counteroffer.
- **A** Acceptance.
  - A contract is created once have offer and acceptance (No longer have an offer. Now have a contract).
- **R** Rejection.
- **D** Destruction of the property.

#### Ways a Contract is Terminated

- **Performance.**
  - Once a contract is fully performed, it is terminated.
- Mutual rescission.
- Impossibility of performance:
  - Example: destruction of property.
- Withdrawal and substitution (novation).
  - New contract substituted for old contract.
- Bankruptcy:
  - Seller's assets under control of bankruptcy court and court may terminate a contract.
- Breach.

#### Remedies for Breach

- Specific performance:
  - Relief in equity.
- Liquidated damages:
  - Usually earnest money deposit is stated amount of liquidated damages.
- Rescission on breach of contract:
- Seek compensatory damages.

#### Assignment of Contracts

- Assignor assigns rights under a contract to assignee.
- The rights are assigned.
- The obligations are not assigned. If assignee does not perform then assignor still obligated to perform.

#### Contracts Important in Real Estate Business

- Listing contracts.
- Option contracts.
- Sales contracts.
- Buyer broker agreement.

- Residential lease up to 1 year.

### Listing Contracts

- May be written, oral or implied.
  - If listing for more than one year must be in writing to be enforceable (statute of frauds).
- If in writing within 24 hours must provide a copy to the owner.
- No automatic renewal (no self-renewing provision).
- Licensee may not bind principal or customer unless given power of attorney to do so.
- Conditions created by listing contract:
  - Compensation due either when find purchaser or effect a sale:
    - Find purchaser (= find a buyer who is ready, willing and able):
      - More common in residential listing contracts.
    - Effect a sale (= no deal, no commission).
      - More common in commercial listing contracts.

### Types of Listings

- Open listing:
  - May be given to more than one broker.
  - Only broker who performs is paid.
  - Owner him or herself may sell and not pay a commission to broker.
- Exclusive-agency listing (= exclusive listing):
  - Given to one broker only.
  - Owner may sell and not pay a commission to broker.
- Exclusive-right-of-sale listing:
  - Given to one broker only.
  - Owner must pay the broker even if the owner sells the property him or herself (Broker must be paid).
  - If seller cancels before end date of listing, then broker may sue seller for expenses.
- Open listings may not be listed in the MLS but exclusive-agency listings and exclusive-right-of-sale listings may be listed in the MLS.
- A listing contract does not allow a licensee to accept an offer on behalf of a seller. A power of attorney would be required for a licensee to accept an offer on behalf of a seller.
- Net listing:
  - Broker's commission is amount over stated amount to seller.
  - May cause problems if are acting as an agent (fiduciary).
  - While legal FREC does not like net listings.
- Implied listing:
  - Actions on the part of owner and broker may lead to an implied listing.

### Obligation for Two Commissions

- An owner might contractually obligate himself or herself to pay more than one commission. For example: exclusive-right-of-sale to one broker and open listing to another broker who performs.



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## **Procuring Cause**

- Procuring cause is entitled to compensation.
- Not necessarily the first to show property.
- **Broker with an exclusive-right-of-sale listing is always the procuring cause.**

## **Option Contracts**

- Optionor (owner of property) gives option to optionee (potential buyer).
- **Unilateral contract:**
  - Optionor is obligated.
  - **Optionee may exercise option or walk away. Therefore, optionee is not obligated.**
- Information required: price paid for option, purchase price, period of option and how to exercise option.
- **Consideration:**
  - Here consideration means money paid for option.
  - Reducing the purchase price by the amount paid for the option is OK.
  - Refundable consideration may be problematic.
  - Substantial.
- Options are assignable, unless the option states that it is not assignable.
- **A licensee (sales associate, broker or broker-associate) may enter into an option contract with a property owner and assign the option for money.**

## **Sales Contract = purchase agreement = contract for sale and purchase.**

- **Bilateral contract.**
- **A real estate contract must have offer and acceptance, competent parties, consideration, legal objective, in writing.**
- **A seal is not required.**
- **Acknowledgment and notarization is not required.**
- **Witnesses are not required.**
- **Must contain:**
  - **Unambiguous description of property.**
  - **Names of parties.**
    - **Seller (= vendor).**
    - **Buyer (= vendee).**
  - **Consideration.**
  - **Purchase price.**
  - **Cash or financing terms.**
  - **Closing date.**
  - **Other terms agreed to by the parties.**
- **Should contain:**
  - **Liquidated damages.**
    - **Usually earnest money deposit.**
  - **Time for acceptance.**
  - **Time for performance.**
  - **Time is of the essence clause.**
- **Contracts are assignable, unless the contract states that it is not assignable.**

- A licensee (sales associate, broker or broker-associate) may enter into a contract with a property owner and assign the contract for money.

#### Material Defects Disclosure

- In all residential sale transactions sellers and licensees must disclose to buyers material defects that are not readily observable.

#### Radon Gas Disclosure

- Disclosure.
- Testing/inspection is not required/mandatory.

#### Lead-based Paint Disclosure

- Lead-based paint used on houses built prior to 1978.
- If seller or landlord knows about lead-based paint must disclose to buyer or tenant.
- Disclosure with signatures.
- Testing/inspection is not required/mandatory.

#### Energy Efficiency Brochure.

#### Homeowner Association Disclosure

- 720 FS is the homeowners associations (HOAs) statute and requires the HOA disclosure.
- Owner must give to buyer if there is a homeowner's association (HOA) with mandatory membership.
- Disclosure has amount of assessments, special assessments if any and restrictive covenants.
  - Assessments = dues/association payments.
- 3 calendar days to cancel after buyer receives disclosure.

#### Property Tax Disclosure

- Buyer's taxes after change in ownership may be significantly higher than seller's current taxes.
  - Sometimes Save Our Homes Amendment results in significantly higher assessed value after change in ownership.
- Licensee should not speculate as to how much buyer's taxes will be.
- Property tax disclosure must be presented to buyer before or at the time of signing purchase and sale contract.

### CHAPTER 12 REAL ESTATE FINANCE

#### Legal Theories of Mortgages

- Some states are title theory states and some states are lien theory states:
  - Title Theory (not Florida):
    - Mortgage deed or deed of trust is conveyance of legal title.
    - When mortgagor (borrower) gives mortgage deed to mortgagee (lender), title conveyed to lender.
    - Defeasance clause conveys title to mortgagor (borrower) when loan paid off.
  - Lien Theory (Florida):
- Memory aid: F L I E N
  - Mortgage does not convey title.
  - Borrower retains title.

- Lender places lien against the property.
- A mortgage lien is a cloud on title.

#### Mortgage Loan Instruments

- 2 instruments in a mortgage loan:
  - Promissory Note.
  - Mortgage.

#### Promissory Note (= note = bond)

- This is a personal IOU.
- Evidence of debt.
- Contains specifics: Amount, interest rate, repayment method and term.
- Usually not recorded.

#### Mortgage

- The Mortgagor/borrower pledges the property as security (= collateral) for debt.
  - Must include legal description.
- Parties to a mortgage:
  - Mortgagor gives the mortgage to the mortgagee.
  - Mortgagor = borrower = debtor = lienee. These terms are synonymous.
  - Mortgagee = lender = creditor = lienor. These terms are synonymous.
- Hypothecation: Pledge property, but borrower maintains possession of the property.

#### Satisfaction of Mortgage (= release of mortgage)

- Lender/mortgagee executes the satisfaction of mortgage when debt is paid in full.
  - Recorded in public records to show that lien has been removed.

#### Assignment of Mortgage

- Shows existing loan has been sold to a new owner.

#### Default on the Mortgage Loan

- Mortgagee/lender has two options:
  - Initiate a suit on the promissory note.
  - Initiate a foreclosure proceeding based on the mortgage.
  - The final judgment authorizes the auction/sale. The certificate of title transfers the property to the highest bidder/new owner.
- Deficiency Judgment: Proceeds from auction insufficient to pay debt.

#### Equity of Redemption

- Borrower's/mortgagor's right to pay total loan + expenses of lender/mortgagee and stop foreclosure.

#### Mortgage Clauses

- Promise to repay: Promise to repay according to terms of note.
- Taxes and insurance: Mortgagor promises to pay property taxes and hazard insurance.
- Covenant of good repair (= maintenance clause): Mortgagor promises to keep property in good condition, maintain property, prevent waste.
- Covenant against removal: Mortgagor promises not to remove improvements or make major alterations without mortgagee's approval.
- Prepayment clause: Stipulates how may prepay without a penalty.

- 1 • **FHA insured and VA guaranteed loans have prepayment clauses: can pay early without**
- 2 **penalty.**
- 3 • **Prepayment penalty clause: Stipulates penalty if prepay.**
- 4 • **If no prepayment penalty clause, then borrower may prepay.**
- 5 • **Acceleration clause: Mortgagee may accelerate if mortgagor does not fulfill a covenant in the**
- 6 **mortgage.**
- 7 • **This clause allows the lender to foreclose.**
- 8 • **Right to reinstate. Based on equity of redemption.**
- 9 • **Due-on-sale clause. When mortgagor sells property must pay outstanding balance to**
- 10 **mortgagee.**
- 11 • **If due-on-sale clause mortgage loan may not be assumed.**
- 12 • **If no due-on-sale clause mortgage loan may be assumed.**
- 13

### 14 Special Mortgage Provisions

- 15 • **Escalator clause:**
- 16 • **Lender/mortgagee may raise interest rates under certain conditions.**
- 17 • **For example, if during 1<sup>st</sup> year change from owner occupied to rental then interest rate**
- 18 **raised.**
- 19 • **Exculpatory clause:**
- 20 • **Lender/Mortgagee waives right to deficiency judgment.**
- 21 • **Therefore, will only look to the property (foreclosure) in the event of default.**
- 22 • **Lender/Mortgagee will not pursue borrower personally for deficiency.**
- 23 • **Open-end clause:**
- 24 • **After paying back money may borrow money again.**
- 25 • **Home equity lines of credit include open-end clause.**
- 26

### 27 Land Development Loans

- 28 • **A subordination clause: Clause in land acquisition loan allows the subsequent construction loan**
- 29 **to take priority even though the land acquisition loan was recorded before the construction**
- 30 **loan.**
- 31 • **Blanket mortgages cover parcels of land and the partial release clause specifies that under**
- 32 **certain conditions (when a certain amount is paid to the lender) pieces of that larger parcel will**
- 33 **be released from the blanket mortgage.**
- 34 • **The mortgage is called a blanket mortgage.**
- 35 • **The clause that specifies that parcels will be released is the partial release clause or release**
- 36 **clause.**
- 37 • **If licensee knows about a blanket mortgage and does not disclose this to buyer then illegal.**
- 38 • **If licensee states to a buyer that the amount required for a release is less than amount that**
- 39 **is required for a release then illegal.**
- 40

### 41 Income Property

- 42 • **Receivership clause:**
- 43 • **Receiver appointed during foreclosure to handle income and obligations.**
- 44

### 45 Types of Mortgage Loans

- 46 • **FHA.**
- 47 • **VA.**
- 48 • **Conventional.**
- 49

### 50 FHA (Federal Housing Administration) Mortgage Loans

- 1 • **FHA insures loans made by conventional lenders.**
- 2 • **FHA part of HUD.**
- 3 • **Borrowers pay mortgage insurance premiums (UFMIP and MIP):**
  - 4 • **UFMIP = up front mortgage insurance premium paid once at closing.**
  - 5 • **MIP = mortgage insurance premium is a yearly premium but is paid monthly.**
  - 6 • **Paid by borrow/mortgagor.**
  - 7 • **Goes into a fund.**
  - 8 • **Used to pay lender (= mortgagee) if loan default.**
- 9 • **FHA 203 (b) loan:**
  - 10 • **FHA program for home ownership (1-4 units) and fixed-rate loan.**
  - 11 • **The FHA imposes loan limits or maximum loan amounts.** Maximum loan amounts vary by
  - 12 **area.**
  - 13 • **Down payment amounts:**
  - 14 • **Loan to Value Ratio (LTVR)**
    - 15 •  **$LTVR = \text{Loan Amount} \div \text{Value (sales price or appraised value whichever is less)}$**
    - 16 • **For example: loan of \$80,000, sales price of \$110,000 and appraised value of \$100,000**
    - 17 **then loan \$80,000  $\div$  appraised value of \$100,000 (because appraised value is less than**
    - 18 **sales price) = .8 or 80% LTVR**
    - 19 • **Lower down = higher LTVR.**
    - 20 • **FHA insured loans made in \$50 increments. FHA insured loans end with 00 or 50.**
  - 21 • **203 (b) loan assumption criteria:**
    - 22 • **Loans made prior to December 1, 1986 are assumable with no qualification of the buyer**
    - 23 **(can be owner-occupied or investor).**
    - 24 • **Loans made between December 1, 1986 and December 14, 1989 require credit approval**
    - 25 **of the buyer assuming the loan (can be owner-occupied or an investor).**
    - 26 • **Loans made after December 14, 1989 require complete qualification of the buyer who**
    - 27 **assumes the loan. All assumed loans (and new loans) are for owner-occupied use only**
    - 28 **(no investor loans).**
  - 29 • **No prepayment penalty.**

### **Veterans Affair Mortgage (VA or GI) Loans**

- 32 • **The VA guarantees a part of a mortgage loan (the larger the loan the larger the guarantee up to**
- 33 **a maximum \$104,250 in 2016).**
- 34 • **VA loan eligibility.**
- 35 • **Guarantee:**
  - 36 • **The larger the loan the greater the guarantee up to maximum guarantee amount.**
- 37 • **Guarantee entitlement.**
  - 38 • **Borrower must acquire certificate of eligibility from VA.**
- 39 • **Down payment negotiated.**
  - 40 • **On lower price homes no down payment but on higher price homes down payment in**
  - 41 **addition to VA guarantee.**
- 42 • **VA allows seller or buyer to pay points. A buyer may pay points.**
- 43 • **No prepayment penalty.**
- 44 • **FHA insures vs. VA guarantees.**
- 45 • **A funding fee is paid by the veteran and is used to control the costs (or defray costs) of the**
- 46 **government in providing the program.**

### **Conventional Mortgage Loans**

- 49 • **No government insurance or guarantee.**
- 50 • **Higher LTVR then mortgagor pays Private Mortgage Insurance (PMI).**

- If LTVR is greater than 80% the borrower pays PMI.

### MIP vs. Funding Fee vs. PMI

- FHA → MIP
- VA → Funding Fee
- Conventional → PMI if LTVR greater than 80%

### Subcategories of Mortgages:

- **Amortize: Extinguish or deaden**
  - Payment of principal amortizes the debt.
- **Term mortgage (= straight term mortgage):**
  - Pay interest only.
  - **Non-amortizing: At end owe all of original principal.**
  - Today, term mortgage loans are usually short-term mortgage loans (example: a construction loan).
- **Amortized mortgage (= fully amortized mortgage).**
  - In an amortized mortgage at end of term owe \$0.
  - At beginning pay mostly interest, but interest component decreases each month.
  - At beginning pay very little principal, but principal component increases each month.
  - At end pay very little interest and mostly principal.
  - Principal payments amortize the debt.
- **Partially amortized mortgage:**
  - Payments do not fully amortize loan: At end owe part of the original principal.
  - Balloon payment paid at end for outstanding principal.
  - A loan with a balloon payment at the end is called a partially amortized loan.
- **Package mortgage:**
  - In a package mortgage both real property and personal property are security for debt.
- **Purchase-money mortgages:**
  - Name of mortgage when the seller is financing.
  - Accepted by seller as part of purchase price. The buyer gives a purchase money mortgage to the seller. The seller receives/gets the purchase money mortgage. Seller receives purchase money mortgage = seller takes back a purchase money mortgage.
  - Can be first in priority or second in priority.
  - Seller (= Vendor) has a vendor's lien.
- **Methods of purchasing mortgaged property (property with existing mortgage loan):**
  - Buy cash. Existing loan paid off at closing.
  - Buy and new loan. Existing loan paid off at closing.
  - Buy subject to the mortgage.
    - Original loan remains on property.
    - Original loan does not have due on sale clause.
    - Buyer does not sign promissory note or mortgage.
    - Original Mortgagor (= seller) remains obligated.

- 1       • **Buyer not obligated.**
- 2       • **Assumption of the mortgage:**
- 3       • **Original loan remains on property.**
- 4       • **Original loan does not have due on sale clause.**
- 5       • **Buyer signs promissory note but does not sign mortgage.**
- 6       • **Both original mortgagor (= seller) and buyer are obligated.**
- 7       • **Novation:**
- 8       • **Original mortgagor (= seller) released from obligation.**
- 9       • **Buyer obligated.**
- 10
- 11       • **Estoppel certificate = estoppel letter = certificate of no defense:**
- 12       • **Used to verify loan balance.**
- 13       • **Commonly called payoff letter.**
- 14
- 15       • **Contract for deed (land contract = agreement for deed = installment sale contract).**
- 16       • **Title remains with seller until buyer makes last payment.**
- 17       • **Equitable title to buyer from the beginning.**
- 18       • **Must be prepared by a lawyer.**
- 19
- 20       • **Wrap-around mortgage:**
- 21       • **Encompass existing mortgage and is subordinate (junior) to existing mortgage which**
- 22       • **remains against property after sale.**
- 23       • **Seller makes new loan to buyer and seller pays on the existing mortgage loan.**
- 24       • **Existing loan does not have due on sale clause.**
- 25
- 26       • **Adjustable-rate mortgage (ARM):**
- 27       • **Components of adjustable-rate mortgages:**
- 28       • **Index:**
- 29       • **Varies.**
- 30       • **Margin (= spread).**
- 31       • **Usually fixed.**
- 32       • **Calculated interest rate:**
- 33       • **Index + margin = calculated interest rate.**
- 34       • **Caps (= ceilings) on increases.**
- 35
- 36       • **Shared-appreciation mortgage (SAM) = Equity Participation Loan.**
- 37       • **Lender provides favorable interest rate to borrower in exchange for a percentage of the**
- 38       • **appreciation of the property.**
- 39       • **Lender also acting as equity investor.**
- 40
- 41       • **Reverse-annuity mortgage (RAM).**
- 42       • **Do not repay while own home. When home sold then loan paid.**
- 43
- 44       • **Growing-equity mortgage (GEM).**
- 45       • **Agree to higher payments to pay off loan quicker.**
- 46
- 47       • **Home Equity Loans**
- 48       • **Line of credit or amount.**
- 49       • **Interest paid on home equity loan is sometimes deductible.**
- 50



- **Bi-Weekly Loan: Pay once every two weeks. Therefore 26 payments per year.**

- **Buydowns:**

- **Amount paid (usually by a developer) to the lender to reduce loan interest rate for a time period.**

### **Borrower Qualification vs. Buyer Qualification**

- **Buyer qualification (what a real estate licensee does) vs. borrower qualification (what a lender does).**

- **Buyer qualification (what a licensee does) involves:**

- **Determine potential buyers' real property needs.**
- **Determine potential buyers' economic capabilities.**

- **Qualifying for mortgage loans:**

- **FHA-insured mortgage loans.**
- **VA-guaranteed mortgage loans.**
- **Conventional mortgage loans.**
- **Housing Expense Ratio = monthly housing expenses (PITI) ÷ Monthly gross income (FHA 31%)**
- **Total Obligations Ratio = total monthly obligations (PITI + other monthly obligations) ÷ Monthly gross income (Conventional 36%; FHA 43%; VA 41%)**

### **Mortgage Loan Underwriting:**

- **Underwriter makes decision about risk involved in making a loan.**

- **Quantity and quality of income (ability to pay debt).**
- **Other assets of value (sufficient security for debt).**
- **Credit history (willingness to repay debt).**
- **Credit score.**
- **Loan to Value Ratio = loan ÷ value**
  - **Value is the lesser of the sales price or appraised value.**

- **If a foreclosure happens, the lender's main protection is the collateral property.**

## **CHAPTER 13 THE MORTGAGE MARKET**

### **The Mortgage Market and Money Supply**

- **Mortgage market is tied to the law of supply and demand:**
  - **Inverse relationship between supply of mortgage money and interest rates.**
    - **If the supply is greater than the demand then lower rates.**
    - **If the demand is greater than the supply then higher rates.**
- **Interest is rent paid for use of money:**
  - **Easy money market vs. tight money market:**
    - **Easy money market:**
      - **Supply of mortgage money is greater than demand for mortgage money.**
      - **Interest rates are lower.**
    - **Tight money market:**
      - **Demand for mortgage money greater than supply of mortgage money.**

- 1           • Interest rates are higher.
- 2
- 3 • Demand factors vs. supply factors:
- 4     • Demand factors:
- 5       • Number and size of households.
- 6       • Geographic preferences.
- 7       • Existing inventory of structures.
- 8       • Employment rate and income.
- 9       • Cost of real property services, taxes and maintenance.
- 10      • Construction costs.
- 11     • Supply factors:
- 12       • A portion of capital available will be made available for long term investments and a
- 13       portion of this capital will be made available for mortgage loans.
- 14

- 15 • Federal regulatory bodies:

#### 16 Federal Reserve System (= FRS = the Fed)

- 17     • Fed engages in monetary policy.
- 18     • Federally chartered commercial banks must be members of the Fed and the Fed regulates
- 19     federally chartered commercial banks.
- 20     • Fed writes regulations. For example, Regulation Z. Regulation Z implements the Truth in
- 21     Lending Act.
- 22
- 23
- 24 • 3 methods of monetary policy used by the Fed:
- 25     1. Open-market operations:
- 26       • The Fed. sells securities, holds money, reduces money supply, interest rates increase.
- 27       • The Fed. buys securities, money goes into circulation, increases money supply, interest
- 28       rates decrease.
- 29     2. Discount rate:
- 30       • Rate charged to member banks by the Fed.
- 31       • Rate is passed to borrowers.
- 32       • Discount rate is different from discount points.
- 33     3. Reserve requirements:
- 34       • Amount of deposits that must be held in reserve (not used to make loans).
- 35       • If reserve requirements increase then loanable funds decrease.
- 36
- 37 • The Fed cannot change tax depreciation rules because the Fed. cannot change tax code. The tax
- 38     code is federal law and the Fed cannot change federal law.
- 39

#### 40 Federal Home Loan Bank System (FHLBS)

- 41 • Federal Home Loan Bank System (FHLBS) was created for federally chartered savings
- 42     associations.
- 43
- 44 • Federal Deposit Insurance Corporation (FDIC):
- 45     • Accounts insured up to \$250,000
- 46     • Deposit Insurance Fund (DIF)
- 47

#### 48 Primary Mortgage Market

- 49 • Primary market made up of primary lenders that originate (make) loans. Primary lenders deal
- 50     directly with the public making loans.

- 1 • **Mortgage loan originator:**
- 2 • **Not a primary lender. Mortgage loan originator is the license an individual has and**
- 3 **sometimes a mortgage loan originator works for a primary lender but sometimes works**
- 4 **as a broker bringing together lenders and borrowers.**
- 5 • **Mortgage bankers = mortgage companies = mortgage lenders:**
- 6 • **Make the most home loans today.**
- 7 • **Mortgage companies make more than half of home loans today. Therefore, on state**
- 8 **exam if asked which lender makes the most home loans this choice alone is correct.**
- 9 • **Commercial banks.**
- 10 • **Commercial banks are the biggest of all the lenders in assets and numbers.**
- 11 • **Savings Associations.**
- 12 • **Credit Unions.**
- 13 • **Mutual Savings Banks.**
- 14 • **Life Insurance Companies. Usually do not make loans but provide funds to lenders to make**
- 15 **loans.**
- 16 • **Rural Housing Service.**
- 17 • **Originate, insure and guarantee mortgage loans.**
- 18
- 19 • **Commercial banks, savings associations and mutual savings banks are thrift institutions (can**
- 20 **make savings deposits at thrift institutions).**
- 21 • **Mortgage lenders/mortgage companies are not thrift institutions.**
- 22
- 23 • **Intermediation and disintermediation:**
- 24 • **Intermediation: More funds deposited into thrift institution than withdrawn.**
- 25 • **Intermediation: More funds IN.**
- 26 • **Disintermediation: More funds withdrawn from thrift institutions than deposited.**
- 27
- 28 **Secondary Mortgage Market**
- 29 • **Buy and sell existing mortgage loans.**
- 30 • **Secondary market main source of mortgage capital.**
- 31 • **On state exam if question asks main source of mortgage capital and secondary market or**
- 32 **secondary lenders is not an answer choice then investors or the public is also a correct answer**
- 33 **because secondary lenders receive much of their capital to purchase existing loans from**
- 34 **investors or the public.**
- 35 • **Different from second mortgages (second in priority).**
- 36
- 37 • **Fannie Mae (Federal National Mortgage Association):**
- 38 • **Fannie Mae buys existing loans.**
- 39 • **Now part of government.**
- 40 • **Purchases conventional, FHA and VA.**
- 41
- 42 • **Freddie Mac (Federal Home Loan Mortgage Corporation):**
- 43 • **Freddie Mac buys existing loans.**
- 44 • **Now part of government.**
- 45 • **Created to purchase loans made by Savings Associations.**
- 46
- 47 • **GNMA (= Government National Mortgage Association; nicknamed Ginnie Mae):**
- 48 • **Government agency. Part of HUD.**
- 49 • **Acts as a guarantor.**
- 50 • **Mortgage-backed securities.**

- 1       • **FHA, VA, RHS.**
- 2
- 3       • **Other secondary lenders:**
- 4           • **Investors.**
- 5           • **Life Insurance Companies.**
- 6           • **Mortgage Bankers.**
- 7           • **Pension funds.**
- 8           • **Mutual Savings Banks. Exist in many states but not in Florida.**
- 9
- 10       • **Lender charges (sources of income to lenders):**
- 11           • **Mortgage discounting:**
- 12               • **Discount points:**
- 13                   • **One point = One percent (1%) of loan amount.**
- 14                   • **Rule of thumb:**
- 15                       • **Each point paid to the lender increases the lender's yield or borrower's APR by**
- 16                       **1/8%.**
- 17                       • **8 points would increase a lender's yield by 1% because  $1/8\% + 1/8\% + 1/8\%$**
- 18                        **$+ 1/8\% + 1/8\% + 1/8\% + 1/8\% + 1/8\% = 8/8\%$  and  $8/8\% = 1\%$**
- 19                       • **4 points would increase a lender's yield by 1/2% because  $1/8\% + 1/8\%$**
- 20                        **$+ 1/8\% + 1/8\% = 4/8\%$  and  $4/8\% = 1/2\%$**
- 21
- 22       • **Other Sources of Income To Primary Lenders:**
- 23           • **Loan origination fee.**
- 24           • **Commitment fees:**
- 25               • **Takeout commitment from a permanent lender so that construction lender will make**
- 26               **loan.**
- 27           • **Servicing fees.**
- 28
- 29

## **CHAPTER 14 COMPUTATIONS AND TITLE CLOSING**

### **Fractions, Decimals and Percentages**

- 33       • **Changing percentage numbers to decimal numbers:**
- 34           • **Percentage number  $\div$  100 = decimal number.**
- 35
- 36       • **Changing decimal numbers to percentages numbers:**
- 37           • **Decimal number  $\times$  100 = percentage number (add % sign).**
- 38
- 39       • **Parts of a fraction.**
- 40           • **Number above line is the numerator.**
- 41           • **Number below line is the denominator.**
- 42
- 43       • **Changing fractions to decimal numbers:**
- 44           • **Top number  $\div$  bottom number = decimal number.**
- 45
- 46       • **Changing decimal numbers and percentage numbers to fractions:**
- 47           • **Step 1: If given a decimal number convert to a percentage number.**
- 48           • **Step 2: Write percentage number without the % sign as the numerator write 100 as the**
- 49           **denominator.**

- 1 • **Step 3: Find the highest common denominator (the highest number by which both the**  
2 **numerator and denominator can be divided producing a whole number) and divide both the**  
3 **numerator and denominator by the highest common denominator.**

4  
5 • **Working with decimals:**

- 6 • **To calculate math problems must use decimal numbers. In a problem that are given**  
7 **percentage numbers or fractions must covert to decimal numbers.**  
8 • **Sometimes answer choices will be given as fraction or as percentage numbers. In those cases**  
9 **must convert from decimal numbers to percentage numbers or from decimal number to a**  
10 **fraction. Another option is to change each answer choice to a decimal number to determine**  
11 **which matches the decimal number.**

12  
13 **Sales Commissions**

- 14 • **Identify clearly the commission the problem asks for: total commission, how much broker**  
15 **keeps or how much sales associate makes. Use whatever strange numbers they are giving you.**

16  
17 **Calculating Dollar Amount Profit or Loss, Percentage Profit or Loss and Purchase Price or Sales Price:**

- 18 • **Dollar amount profit or loss:**  
19 • **Sales price – purchase price = dollar profit or dollar loss.**  
20 • **% profit or loss:**  
21 • **Dollar profit ÷ purchase price = % profit (as decimal number).**  
22 • **Made ÷ paid.**  
23 • **Dollar loss ÷ purchase price = % loss (as decimal number).**  
24 • **Determining sales price or purchase price:**  
25 • **Purchase price x (100% + % gain or - % loss converted to a decimal) = sales price.**  
26 • **Sales price ÷ (100% + % gain or - % loss converted to a decimal) = Purchase price**

27  
28 **Mortgage Amortization**

- 29 • **Level-payment amortized mortgage:**  
30 • **Step 1: Draw out chart. (PIP sandwich).**  
31 • **Step 2: Circle what question is asking you to find.**  
32 • **Step 3: Fill in information given in question: Loan Amount and Monthly Payment**  
33 • **Step 4: Annual interest = interest rate (as a decimal #) x value of loan (I = R x V; IRV the**  
34 **Banker).**  
35 • **Step 5: Annual interest ÷ 12 = monthly interest.**  
36 • **Step 6: Payment – interest = principal (payment has two components: principal and**  
37 **interest).**  
38 • **Step 7: Balance at beginning of month – principal = balance at end of month. (Note:**  
39 **principal payment amortizes the loan/reduces the balance).**

40  
41 **Closing Disclosure**

- 42  
43 • **A credit is good.**  
44 • **A debit is bad.**  
45  
46 • **Credit to seller increases amount seller takes from closing.**  
47 • **Debit to seller reduces amount seller will take from closing.**  
48  
49 • **Credit to buyer reduces amount buyer must bring to closing.**  
50 • **Debit to buyer increases amount buyer must bring to closing.**

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## **Prorations**

- To prorate means to divide between seller and buyer.
- An item is prorated because it applies to both the seller and buyer.
- A proration calculation is always the same amount/number on both sides (seller and buyer) of the closing statement and one side is credited and the other side is debited. If answer choice has two different amounts for two sides then wrong answer. If both sides credited then wrong answer. If both sides debited then wrong answer.
- Items are either paid in advance or arrears.
- Credit:
  - To buyer reduces amount must bring to closing.
  - To seller increases amount will get at closing.
- Debit:
  - To buyer increase amount must bring to closing.
  - To seller decrease amount will get at closing.
- 30-day-month method (= 360-day-year method).
  - Only use if stated.
  - Pretend each month has 30 days.
    - If question states closing in February and states use 30 day method then pretend February has 30 days.
- Day of closing belongs to buyer unless question states day of closing belongs to seller.
- Prepaid rent:
  - Paid in advance.
  - Paid on monthly basis.
  - Rent proration is normally a credit to the buyer and a debit to the seller for the buyer's portion of the month.
    - Credit to the buyer because the seller was paid by the tenant the entire month's rent at the beginning of the month and the buyer is entitled to the portion of the month he or she will own the property.
    - Memory aid: Rent looking for Right side of month.
    - Rent proration only if rental property, not if owner-occupied property.
- City, County and School Board property taxes:
  - Paid in arrears.
  - Paid for calendar year.
- Mortgage interest on assumed mortgages:
  - Usually paid in arrears.
  - Paid on a monthly basis.

Purchase Price is credit to seller and debit to buyer.

Any loan to the buyer reduces the amount the buyer brings to the closing and is a credit to the buyer. Does not matter if loan is first or second in priority.

Prorations are double entry items: credit to one side and debit to the other side and same number for both sides.

Expenses are single entry items: debit to side that pays (not a credit to other side).

- **Good faith deposit (= binder deposit = earnest money deposit) credit to buyer, does not affect seller (not on seller's side). It will only appear on seller's side as debit if the deposit is given directly to the seller.**

**State Transfer Taxes Paid to the State of Florida**

- **Memory Aid is taxes are a SIN**
- **State documentary stamp tax on deeds:**
  - Usually paid by seller.
  - Use sales price to calculate.
  - 70¢ for each \$100 or fractional part of \$100.
- **Intangible tax on mortgage:**
  - Usually paid by buyer.
  - Must pay on **new loans only.**
    - Loan amount x .002.
  - **Seller financing is a new loan.**
  - **This is the only of the three taxes called an intangible tax.**
- **Note stamp tax:**
  - Usually paid by buyer.
  - Must pay on **new loans** and **assumed mortgage loans.**
  - 35¢ for each \$100 or fractional part of \$100.
- **In Miami-Dade State documentary state tax on deeds is 60¢ for each \$100 or fractional part of \$100.**
- **Subject to: No new mortgage, no state intangible tax on mortgage. No new note, no state documentary stamp tax on notes.**
- **Assumption: Assume existing mortgage, no state intangible tax on mortgages. The buyer will sign a new promissory note: Must pay state documentary stamp tax on note.**
- **New loan: Pay state intangible tax on mortgage and state documentary stamp tax on note.**
- **PMM (= seller financing) is a new loan: Pay state intangible tax on mortgage and state documentary stamp tax on notes.**
  - **On a math problem on the state exam PMM means seller financing.**
- **Only the tax on the mortgage is called an intangible tax. If question asks you to calculate only intangible tax then you are only calculating the Intangible tax on the Mortgage.**
- **If have a first and second loan then may have two separate intangible taxes. If question asks you to calculate total intangible tax and there are two separate intangible taxes then add two together to arrive at total.**
- **If there is a sale there is also a deed and a tax on deed.**

	Sale All Cash	Sale New Loan	Sale Seller Financing PMM	Sale Subject To	Sale Assumption	Refinance
<b>S Deed</b>	X	X	X	X	X	
<b>I Mortgage</b>		X	X			X
<b>N Note</b>		X	X		X	X

**Other Charges**

- **Preparation of documents.**



- 1 • Person who will sign usually pays for preparation (seller usually pays for preparation of
- 2 deed).
- 3 • Recording fees.
- 4 • Person who wants document recorded usually pays recording fee (buyer usually pays to
- 5 record deed).
- 6 • Broker's commission.
- 7 • Abstract continuation or title insurance.
- 8 • These charges vary by area.
- 9 • Liens.

10  
11 **All closing costs are negotiable.**

## 12 13 CHAPTER 15 THE REAL ESTATE MARKET

### 14 15 3 Key Questions

- 16 1. What will be produced?
  - 17 • The consumer decides what will be produced.
- 18 2. Who will do the producing?
  - 19 • Most efficient producer of comparable quality product will do the producing.
- 20 3. Who will get what is produced?
  - 21 • People with the money and willingness to spend will get what is produced.

### 22 23 Characteristics of the Real Estate Market

- 24 • The market is local in nature; the product is **immobile. Immobility means real estate is where it**
- 25 **is and you cannot move it.**
- 26 • The market is slow to respond to change in supply and demand.
  - 27 • Development process takes time.
- 28 • There is relative permanence of improvements; land is durable and fixed in location.
- 29 • The market is unorganized and without central control; there is no standard product and no
- 30 central information source:
  - 31 • MLS is run by local boards.
- 32 • Governmental controls influence the market through direct controls (zoning, building codes,
- 33 taxes) and indirect controls (the Fed.).

### 34 35 Supply and Demand Factors:

- 36
- 37 • **Supply: The amount and type of real estate available for sale or rent at different price levels in**
- 38 **a given real estate market:**
  - 39 • **Supply is influenced by the availability of and cost of:**
    - 40 • **Skilled labor.**
    - 41 • **Construction loans and financing.**
    - 42 • **Land.**
    - 43 • **Materials.**
- 44
- 45 • **Demand: Desire and ability to purchase or rent different types of real estate.**
- 46 • **The following affect the demand for real estate:**
  - 47 • **Price of real estate.**
  - 48 • **Population numbers and household composition:**
    - 49 • **Size of average household has continued to become smaller.**

- Immigration (people moving to an area from another country or another area within the same country).
- Income of consumers.
- Availability of mortgage credit.
- Consumer tastes or preferences.
- Example: Modern contemporary.

### Interpreting Market Conditions

- Buyer's market: Supply greater than demand.
- Seller's market: Demand greater than supply.

### Market Indicators

- Price levels.
- Vacancy rates.
  - 5% vacancy = 95% occupancy
  - 5% vacancy rate is a healthy vacancy rate.
- Sales volume.
  - Tax on deed  $\div .70$  = sales price in 100's

## CHAPTER 16 ESTIMATING REAL PROPERTY VALUE

### Appraisal

- To appraise means to estimate value.
- Art, not a science.
- Involves calculations, but appraiser must use judgment.
- Appraiser compensation based on time and difficulty of appraisal.
  - Not compensated on a commission basis.
- Licensees may appraise if a non-federally related transaction but licensee normally performs a Comparative Market Analysis (CMA).
  - Typically, a licensee performs a CMA for free in order to acquire a listing.
  - A CMA usually includes active listings, closed sales and expired listings. Note: an appraisal does not include expired listings.
  - May not call a CMA an appraisal.
  - Licensee may perform an appraisal.
    - Must conform to the Uniform Standards of Professional Appraisal Practice (USPAP). Note: know exactly what USPAP stands for.
    - If federally related transaction licensee may not perform an appraisal (instead must be performed by licensed or certified appraiser).
- Licensees also perform broker price opinions (BPOs).
  - BPO is not an appraisal.
  - BPO broker paid and then sales associate receives his or her split.

### Value, Price and Cost

- Value:
  - Market Value: Most probable price a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, assuming the price is not affected by undue stimulus.
- Price:
  - Amount actually paid.
- Cost:

- Amount required to acquire land and bring improvement into existence.

### Consumer Price Index (CPI)

- Measures inflation.
- Real Estate prices increase faster than CPI. Real estate is a good hedge against inflation.

### Over-improvement

- Invest more money than can recapture. Cost is higher than increase in value.

### Characteristics of Value

- **Memory Aid is DUST**
  - **Demand:**
    - Demand and ability to acquire.
  - **Utility:**
    - Useful.
  - **Scarcity.**
  - **Transferability:**
    - Convey legal title.

### Use Determines Value

- **Highest and best use:**
  - Highest and best use as though vacant.
    - Each piece of land has only one use that will result in greatest return (income) to the land and therefore highest value.
  - Highest and best use as improved.
    - Takes into account cost of removing current improvement.

### Approaches to Estimating Real Property Value

- Appraisal (sales comparison, cost-depreciation, income capitalization).
- Reconciliation of 3 approaches. At end of appraisal report to arrive at final estimate of value (called final reconciliation) the appraiser weighs the methods differently based on which method is most relevant to the property. Never Averaging.

### Principal of Substitution

- Prudent buyer will pay no more for a property than an equal substitute.

### Sales Comparison Approach

- This is the best method when there are comparable properties that have sold recently. Usually best method for single family homes or condominiums because usually there are comparable sales in the market.
- Subject Property: The property being appraised.
- Comparable sales (= comps): Properties that have sold recently in the same geographic area as the subject and that are similar to the subject.
- Each comp must be adjusted to make it similar to the subject.
- Comps. must be adjusted up or down to make them similar to subject property:
  - CBS (Comp. Better Subtract).
  - CIA (Comp. Inferior Add).
  - Add or subtract from comps. Never add or subtract from the subject property.
- A Comparative Market Analysis (CMA) is most similar to the sales comparison approach.

- If scenario given in which you are thinking about selling your home and your neighbor sold his home then the neighbor's home would be the comp and your home would be the subject.

### Cost-depreciation Approach = Cost Approach

- Best method for unique properties. For example, a church or a library or a government property like a courthouse.
- Estimate reproduction (or replacement) cost.
  - Reproduction cost is cost to build identical subject improvement new today.
  - Replacement cost is cost to build improvement that can function the same as the subject improvement new today.
- Estimate accrued depreciation.
  - Accrued depreciation is total depreciation in subject improvement.
- Reproduction cost – accrued depreciation = depreciated reproduction cost (also called indicated value of building).
- Estimate value of site (site = land).
- Estimate value of site improvements (examples: fences, paved areas, etc.).
- Depreciated reproduction cost + value of site + value of site improvement = value of subject property.

### 3 Methods to Estimate Reproduction Cost

- Quantity survey method.
- Unit-in-place method.
- Comparative square-foot or cubic-foot method.

### Depreciation

- Anything that causes a loss of value.
- If depreciation is curable the value added is equal to or greater than cost to fix.
- If depreciation is incurable the cost to fix is more than value added.

### 3 Types of Depreciation

#### 1. Physical deterioration.

- Wear and tear from the elements and use by people.
- Examples of physical deterioration:
  - Termites.
  - Old air conditioner outside house.
- May be curable or incurable.

#### 2. Functional obsolescence.

- Poor design.
- Examples of functional obsolescence:
  - Bathroom near kitchen.
  - Stove in middle of room.
- May be curable or incurable.

#### 3. External obsolescence = Economic obsolescence.

- Negative influence outside boundaries of the property.
- Examples of external or economic obsolescence:
  - Store on the same block as the property causing traffic
  - Nearby chemical plant.
- Incurable because usually cannot do anything about it.

1 **Straight-line Depreciation**

- 2 • **Economic life (= useful life):** Expected life of improvement.  
3 • **Step 1:** Reproduction cost ÷ economic life = depreciation per year.  
4 • **Step 2:** Depreciation per year x effective age = accrued depreciation.  
5 • **Effective age** is a judgment call made by the appraiser and means how many years worth of  
6 depreciation. **Effective age** is not actual age.  
7  
8

9 **Income Capitalization Approach**

10 **Best method for appraising income producing properties.**

- 11  
12  
13 • **The memory aid is: Please Visit Every Other Night Dressed Casually.**  
14

15 **PGI**

16 **- V/C**

17 **EGI**

18 **- OE**

19 **NOI**

20 **- DS**

21 **CTO (BTCF)**  
22

23 **All numbers/amounts are yearly numbers.**  
24

25 **Potential Gross Income**

26 **- Vacancy/collection losses**

27 **Effective Gross Income**

28 **- Operating Expenses (fixed, variable, reserves for replacements)**

29 **Net Operating Income**

30 **- Debt Service**

31 **Cash Throw Off (= Before Tax Cash Flow)**  
32

33 **IRV the appraiser:**

- 34 • **I = NOI**  
35 • **R = Capitalization Rate (as a decimal #)**  
36 • **V = Value of Property**  
37  
38 • **I = R x V**  
39 • **I ÷ V = R**  
40 • **I ÷ R = V (NOI ÷ cap rate (as a decimal #) = value)**  
41  
42 • **Capitalization rate** is either an overall market capitalization rate (OAR) or an investor  
43 specified capitalization rate.  
44 • **OAR** used for appraisal to estimate market value.  
45 • **Investor specified rate** used to estimate investment value to an investor.  
46 • **When appraising property cap rate** used is OAR, when performing investment analysis cap  
47 rate is investor specified.  
48 • **Income and value move in same direction.**  
49 • **NOI ↑ then Value ↑**  
50 • **NOI ↓ then Value ↓**  
51 • **Rate and value move in opposite direction.**

- Rate ↑ then Value ↓
- Rate ↓ then Value ↑

### **Gross Rent Multiplier (GRM) and Gross Income Multiplier (GIM)**

- GRM: use rental income.
- GIM: use rental income and income from other sources (example: vending machines).
- $GRM \times rent = value.$
- $GIM \times income = value.$
- The GRM or GIM is derived from similar properties that have sold in the market:
  - $Value (sales price) \div rent = GRM$
  - $Value (sales price) \div income = GIM$
  - Once you have the GRM's (or GIM's) for at least three properties find the average GRM (or GIM) and that is the GRM (or GIM) for the market.
- Income capitalization is more accurate than GRM or GIM because income capitalization uses net income and operating expenses are taken into account while GRM and GIM uses gross rent or income and operating expenses are not taken into account.
- GRM or GIM not as accurate as income capitalization because GRM or GIM uses gross rent or income and operating expenses not taken into account while income capitalization uses net income and operating expenses are taken into account.
- A GRM or GIM like 8, 9 or 10 is yearly multiplier. A GRM or GIM like 80, 90 or 100 is a monthly multiplier. Must multiply annual multiplier by annual rent or monthly multiplier by monthly rent.

Note: since appraisals are estimates of value on state exam sometimes answers are rounded to hundreds or thousands.

### **Additional Appraisal Terms**

- **Assemblage:**
  - Joining together of two or more separate but adjacent properties.
- **Plottage:**
  - Added value as a result from assemblage.
- **Progression:**
  - Added value of inferior property due to association with superior property.
- **Regression:**
  - Lessening of value of superior property due to association with inferior property.
- **Situs** is the place where a property is located:
  - Location, location, location.

## **CHAPTER 17 REAL ESTATE INVESTMENT ANALYSIS AND BUSINESS BROKERAGE**

### **Real Estate as an Investment**

- Real Estate Investment Trust (REIT):
  - Allows for diversification and liquidity.

### **Types of Real Estate Investments**

- **Residential:**
  - Must consider amount of deferred maintenance. Deferred maintenance is maintenance that should have been done but has not been done.
- **Commercial:**
  - Must examine leases carefully.

- 1 • **Industrial.**
- 2 • **Agricultural.**
- 3 • **Business opportunities.**

#### 4

#### 5 Advantages of Real Estate as an Investment

- 6 • **Good rate of return.**
- 7 • **Tax advantages.**
- 8 • **Hedge against inflation: real estate has increased in value at a faster rate than inflation.**
- 9 • **Leverage:**
  - 10 • **May use borrowed funds to acquire properties.**
  - 11 • **Leverage means are using other people's money.**
- 12 • **Equity buildup:**
  - 13 • **In addition to income, equity also builds up during course of ownership as a result of**
  - 14 **increase in values and paying off of loan.**

#### 15

#### 16 Disadvantages of Investing in Real Estate

- 17 • **Illiquidity:**
  - 18 • **Liquidity: Ability to sell investment quickly without loss of capital.**
  - 19 • **Real estate is illiquid: It takes time to sell a property.**
- 20 • **Market is local in nature.**
- 21 • **Need for expert help.**
- 22 • **Management intensive.**
- 23 • **Risks involved.**
- 24 • **Heterogeneous = each property is different.**

#### 25

#### 26 Analyzing Investment Properties

- 27 • **Relationship to the economy.**
  - 28 • **Local economy.**
  - 29 • **National economy.**

#### 30

#### 31 Location

- 32 • **Situs: Location, location, location.**
- 33 • **Destination properties.**
  - 34 • **Service industries.**
- 35 • **Origin properties.**
  - 36 • **Export activities.**

#### 37

#### 38 Physical Characteristics

- 39 • **Site:**
  - 40 • **Curb appeal, lot shape, surface, subsurface.**
- 41 • **Exterior considerations:**
  - 42 • **Exterior walls, roof.**
- 43 • **Interior considerations.**
  - 44 • **Structural, plumbing, electrical, mechanical.**

#### 45

#### 46 Legal Characteristics

- 47 • **Rights.**
- 48 • **Limitations.**
- 49 • **Investors should seek professional advice (for example, attorneys and CPA's) to figure out how**
- 50 **to structure ownership to receive greatest net advantage.**

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## Assessment of Risks

- **Risk: Chance of losing all or part of an investment.**

## Types of Income and Cash Flows

- **Note: when analyzing income producing properties always use yearly numbers.**
- **Potential Gross Income (PGI): Potential income if all units are rented.**
- **Vacancy and Collection Losses (V/C): Losses from vacancies and from tenants that owner is not able to collect rent from.**
  - **A 5% vacancy rate (= 95% occupancy rate) is good rate.**
- **Effective Gross Income (EGI):**
  - **$PGI - V/C = EGI$ .**
  - **If have other income (for example, laundry machines or vending machines) add to EGI to calculate total EGI.**
- **Operating Expenses (OE):**
  - **Fixed expenses do not change with level of operation.**
  - **Variable expenses change with level of operation.**
  - **Reserves for replacements: reserves set aside to replace item in future.**
- **Net Operating Income (NOI):**
  - **$EGI - OE = NOI$ .**
- **Debt Service: Yearly mortgage loan payment.**
- **Cash Throw Off (= Before-tax Cash Flow = Gross Spendable Income):**
  - **$NOI - DS = CTO$  (BTCF).**
- **Cash Flow (After-tax Cash Flow): Cash flow after taking taxes into consideration.**

## Role of Financing

- **Leverage: Use of borrowed funds.**
- **Positive Leverage: Percentage return on invested funds higher than percentage return if purchase cash.**
- **Negative Leverage: Percentage return on invested funds lower than percentage return if purchase cash.**

## Role of Federal Income Taxes

- **Operating expenses.**
  - **All except reserves for replacement reduce income.**
- **Financing expenses (take over life of loan).**
- **Tax Depreciation:**
  - **Depreciation deduction:**
    - **Non-residential: 39 years.**
    - **Residential: 27.5 years.**
  - **Depreciable Basis: Depreciate improvement, do not depreciate land.**
    - **Property – land = depreciable basis.**
  - **Depreciation is not an operating expense. Depreciation is not deducted from EGI. Depreciation not used to calculate NOI.**
- **Tax on gain at time of sale:**
  - **Installment sale. Seller is financing.**
  - **Like-kind Exchange: Exchange real property for other real property does not have to be the same type of real property.**



- **OK to exchange an office building for a retail center or an industrial building for an apartment complex.**

- **Tax shelter.**

- **Depreciation deduction is a tax shelter because this is not money you spend but reduce taxable income.**

### Business Brokerage

- **Business Enterprise Brokerage vs. Business Opportunity Brokerage:**

- **Business Enterprise Brokerage larger business, usually corporate transactions.**
- **Sale of stock usually involved.**
- **Business Opportunity Brokerages: Smaller businesses.**

- **Similarities between real estate brokerage and business brokerage:**

- **Sale of business usually involves transfer of interest in real property:**
  - **Either real property sold or lease assigned.**

- **Differences between real estate brokerage and business brokerage:**

- **Involves assets other than real estate (personal property and intangible assets).**
  - **Goodwill: An intangible asset.**
  - **Going concern value: Value of established business.**
    - **Value of business may be allocated among shares.**
  - **Liabilities:**
    - **Short-term liabilities (example: accounts payable).**
    - **Long-term liabilities (example: mortgage).**
  - **Business market wider (less local) than real estate market.**

### Expertise Required in Business Brokerage

- **Corporate finance:**

- **Classes of corporate stock (common and preferred):**
  - **Common stock must be issued by a corporation.**
- **Securities analysis and valuation.**
- **Management of working capital:**
  - **Total current assets – total current liabilities = working capital.**
- **Budgeting.**

- **Business accounting:**

- **Income statement analysis: Shows business over a period of time.**
- **Balance sheet analysis: Shows business at a given point in time (the end of business on a certain date).**
- **Cash flow analysis.**
- **Asset depreciation:**
  - **Personal property is also depreciated, but different schedule than real property.**
- **Taxation.**
  - **Business broker clients need expert tax advice.**
- **Assets: Total resources of a business.**
- **Liabilities: Total debts of a business.**
- **Capital: Net worth of a business.**
- **Assets – liabilities = capital.**

### Valuation of Businesses

- **Reasons businesses are appraised:**

- **Sale, purchase, exchange.**

- Allocation of assets for tax depreciation.
- To obtain loan.
- To obtain insurance.

### Methods of Appraising Businesses

- Sales comparison approach.
- Reproduction cost or replacement cost approach:
  - Reproduction cost: Duplicate exact business.
  - Replacement cost: Business having same use and capabilities.
- Income capitalization approach.
- Liquidation analysis:
  - Value of business if must liquidate all assets.

### Steps in the Sale of a Business

- List the business for sale.
- Identify all assets belonging to the business.
- Establish a value for the business, using the various methods of appraisal previously mentioned.
- Subtract the value of all short-term and long-term liabilities (including the value of preferred stock) from the value of the business.
- If organized as a corporation, divide the net value of the business by the number of common shares of stock outstanding. The value per share resulting then can be multiplied by the number of shares to be transferred.
- Check and recheck to ensure that all pertinent laws are complied with.
- Market (advertise) the business.
- Find a buyer and execute a purchase agreement.
- Coordinate with all parties involved to schedule a date for closing the transaction.

## CHAPTER 18 TAXES AFFECTING REAL ESTATE

### City, County and School Board Property Taxes

- Revenue from taxes is needed for law enforcement, fire protection and other services.
- County property appraiser estimates the assessed values.

### The Real Property Taxation Process

- Real property is taxed ad valorem = according to value.
- Taxes are paid in arrears (at end of tax year for calendar year Jan. 1 – Dec. 31).
- Taxes become delinquent on April 1 of the following year.
- Discount if pay early.

### Calculating Yearly Property Tax

- assessed value – exemptions = taxable value
- taxable value x tax rate (as a decimal #) = tax for year

### Determining “Just Value”

- Just value: Fair and reasonable value based on objective valuation methods.
- Assessed value: Value of property established for tax purposes.
- On state exam assessed value = just value.

### 3-step Protest Procedure

- 1 • If a property owner feels that assessed value is too high the property owner has a 3-step protest  
2 procedure:  
3 1. County property appraiser:  
4 • 25 days after assessment notice is mailed.  
5 2. Value adjustment board.  
6 3. Courts.

### 7 Exemptions from Property Taxes

- 8 • **Immune properties: Government properties.**  
9 • Not assessed.  
10 • Not subject to taxation.
- 11 • **Exempt or partially exempt properties; churches, nonprofit organizations, homesteads:**  
12 • Subject to taxation but owner released from obligation.  
13 • Government properties are not exempt. They are immune.
- 14 • **Homestead tax exemption.**  
15 • **For permanent residence.**  
16 • **Base Homestead exemption: Assessed value is reduced by \$25,000.**  
17 • **Additional \$25,000 Homestead Exemption starting at \$50,001 of assessed value but only**  
18 **against county and city taxes not against school taxes.**  
19 • **Because additional \$25,000 Homestead Exemption starts at \$50,001 a property with an**  
20 **assessed value of \$50,000 or less will only benefit from the first \$25,000 exemption.**  
21 • **Surviving spouse (unremarried widow or widower): \$500 exemption.**  
22 • **Disability: \$500 exemption.**  
23 • **Legally blind persons: \$500 exemption.**  
24 • **Additional tax exemption for some persons age 65 and older below threshold income.**  
25 • **Up to additional \$50,000.**  
26 • **10% or more disabled veterans: \$5,000 exemption.**  
27 • **Military service-connected total and permanent disability: May receive total exemption (no**  
28 **taxes).**  
29 • **Totally and permanently disabled persons (quadriplegics and paraplegics): Total exemption**  
30 **in some cases (no taxes).**  
31 • **May receive more than one exemption. For example, if assessed value \$50,000 and**  
32 **homestead and widow and legally blind then \$26,000 in exemptions (\$25,000 + \$500 + \$500**  
33 **= \$26,000).**  
34 • **If no exemptions then assessed value = taxable value.**

### 36 **Establishing homestead tax exemption:**

- 37 • **First year must own and live in property as of January 1<sup>st</sup> apply for Homestead before March**  
38 **1<sup>st</sup>.**

### 39 **Save Our Homes Amendment**

- 40 • **Limits increase in assessed value from one year to the next as long as own your homestead**  
41 **property to 3% or the previous year's CPI, whichever is less.**

### 42 Tax Rates

- 43 • **Mill: One one-thousandth of a dollar (= one-tenth of a cent = 1000 mills in 1 dollar).**
- 44 • **To convert a mills # to a decimal number divide by 1000: mills # ÷ 1000 = decimal number.**
- 45 • **To convert a decimal # to a mills # multiply by 1000: decimal # x 1000 = mills number.**
- 46 • **In Florida there is a cap or maximum millage rate:**  
47 • **10 mill cap for cities.**

- 10 mill cap for counties.
- 10 mill cap for school boards.

#### **Florida's Green Belt Law**

- County property appraiser must base assessed value on use as an agricultural property (ignore highest and best use). Therefore, farmers receive a lower assessed value and pay less taxes.
- Exists to protect farmers.

#### **Special Assessments**

- One-time tax levied to help pay for a public improvement that benefits the property. For example, paving a road or installing sewers.
- Usually levied on front-foot basis for road paving or a per hookup basis for sewers.
- Calculating road paving special assessment:
  - Step 1: Multiply front footage by cost per front foot.
  - Step 2: Subtract amount government will pay.
  - Step 3: Divide by 2 to determine amount one property owner must pay.
  - Divide by 2 because split between property owner and property across the street.
  - If given front footage of lot and depth footage of lot and road along front is being paved then depth of lot is irrelevant because front is being paved.
  - If sewers are being installed then do not divide by 2 because sewers are charged per hookup for each property.

#### **Nonpayment of Real Property Taxes**

- Tax certificates auctioned
  - Beginning bid rate is 18%.
  - This is the maximum allowable rate.
  - Above 18% it is illegal and called usury.
  - Bidder accepting lowest rate receives tax certificate.
- After 2 years (but no more than 7 years) holder of tax certificate may request auction of property.
- Property is auctioned.
- Bidder paying highest price acquires property.

#### **State Taxes Related to Real Property Transfers**

- Memory aid is SIN
- S State documentary stamp tax on deeds:
  - 70¢ for each \$100 (or fractional part of \$100) of the sales price.
  - Seller usually pays.
- I State Intangible tax on mortgages:
  - .002 x amount of mortgage loan (2 mills).
  - Buyer usually pays.
  - Only this tax is called an intangible tax.
- N State documentary stamp tax on notes:
  - 35¢ for each \$100 (or fractional part of \$100) of the loan amount.
  - Buyer usually pays.

#### **Federal Income Taxes**

- Sale of Real Property.
- Capital gains:
  - Sales price – expenses = amount realized – adjusted basis = capital gain (or loss).

1  
2 **Principal Residence**

- 3 • **If you own and reside in a principal residence for 2 years during the 5 years prior to the sale**  
4 **then:**
- 5 • **If single \$250,000 of the capital gain is not taxed.**
  - 6 • **If married and filing jointly \$500,000 of the capital gain is not taxed.**
  - 7 • **For example, if buy for \$100,000 and sell for \$190,000 then capital gain is approximately**  
8 **\$90,000 but if primary residence for at least 2 years during 5 years prior to sale then \$0**  
9 **(zero) capital gains tax.**
  - 10 • **Mortgage interest:**
    - 11 • **Deduction for principal residence and second home.**
    - 12 • **Up to \$750,000 loan.**
  - 13 • **Property taxes:**
    - 14 • **Deduction for principal residence and second home.**
    - 15 • **Up to \$10,000.**
  - 16 • **While both interest paid and property taxes are deductible against income for a first and**  
17 **second home insurance paid is not deductible.**
  - 18 • **Capital losses of residence may not be used to offset capital gains.**
  - 19
  - 20 • **Tax laws are complex. Should advise clients to seek professional advice from tax lawyer or**  
21 **CPA.**
  - 22

23 **CHAPTER 19 PLANNING AND ZONING**

24  
25 **History of Planning and Zoning**

- 26 • **Laissez – faire (let it alone) led to on and off planning for many years.**

27  
28 **4 Basic Planning Goals**

- 29 **1. To plan future land uses that allow for the highest and best use of the maximum number of**  
30 **properties.**
- 31 **2. To reduce the possibility that a particular type of land use may cause loss of value to**  
32 **neighboring properties.**
- 33 **3. To reduce present and future growth costs that must be paid by taxpayers.**
- 34 **4. To create an optimal social and economic environment as a result of community growth.**

35  
36 **Local Planning Agency**

- 37 • **A comprehensive plan (=master plan) is plan that addresses future growth of the municipality.**
- 38 • **Concurrency: Infrastructure must be in place (roads, utilities).**
- 39 • **Composition of planning agency:**
- 40 • **Good to have cross-section of community on planning board.**
  - 41 • **Usually appointed, voluntary and unpaid.**
  - 42 • **Authority (commonly delegated final authority in 3 areas):**
    - 43 • **Subdivision plat approval.**
    - 44 • **Site plan approval.**
    - 45 • **Sign control.**
  - 46 • **Support staff:**
    - 47 • **College/university–trained planners.**
    - 48 • **Planning agency is advisory in nature; elected officials make final decisions.**

49  
50 **The Planning Process**

51 **6 Basic background studies:**

1 **1. Population background studies.**

2 **2. Economic base studies.**

- 3 • Base industries: Attract outside money to an area.
- 4 • Service industries: Circulate money within an area.

5 **3. Existing land-use studies:** 5 basic land-use categories (sub-categories vary throughout the

- 6 state):
- 7 1. Residential.
  - 8 2. Commercial.
  - 9 3. Industrial.
  - 10 4. Agricultural.
  - 11 5. Special Use.

12 **4. Physiographic studies:**

- 13 • Soil load-bearing capacity; drainage.

14 **5. Recreation and community facilities studies.**

15 **6. Thoroughfare studies.**

16

17 **Goals Formulation:**

- 18 • Wise to involve communities at this point.

19

20 **Zoning Laws and Building Codes**

- 21 • **The government can create and enforce zoning codes and building codes due to police power.**
- 22 • Zoning ordinances: Divide community into zones according to land use.
- 23 • Building codes:
  - 24 • Building permits.
  - 25 • Building inspections.
  - 26 • Certificates of occupancy.

27

28 **Residential Zoning**

- 29 • Regulates density.

30

31 **Commercial Zoning**

- 32 • Regulates intensity of use.
  - 33 • Pedestrian and vehicular traffic.

34

35 **Industrial Zoning**

- 36 • Regulates intensity of use. Also regulates noise and pollution.

37

38 **Agricultural**

- 39 • All-inclusive category (no sub-categories).

40

41 **Special Use**

- 42 • Property owned by government. Also churches and non-profits.

43

44 **Buffer Zone is a Strip of Land Separating One Use from Another**

- 45 • May be natural buffer zone (example: river) or man-made (example: rail road tracks) or other
- 46 zone (example: a commercial zone separating a residential and industrial zone).

47

48 **Appeals and Exceptions**

- 49 • **Zoning board of adjustment hears requests for variances and special exceptions:**
  - 50 • **Variances:**
    - 51 • **If granted a variance then owner is being allowed to vary from zoning code.**

- 1       • **Must show hardship exists which was not created by owner.**
- 2       • **All property owners treated the same.**
- 3       • **If want to build closer to the road than setback requirements in the zoning code then**
- 4       **would request a variance.**
- 5       • **If want to build on a lot smaller than lot size required to build in the zoning code then**
- 6       **would request a variance.**
- 7       • **Special exceptions:**
  - 8       • **Must show benefit to surrounding area (community).**
- 9       • **Legally non-conforming uses (= non-conforming uses):**
  - 10      • **Previously acceptable use now not allowed under current zoning is allowed to continue.**
  - 11      • **For example, if gas station or store allowed under zoning and then zoning changed and no**
  - 12      **longer allowed but gas station or store remains then these are legally non-conforming uses.**
  - 13      • **Restrictions on legally non-conforming use designed to eventually have a conforming use.**

14  
15 **Development of Regional Impact (DRI).**

- 16      • **Development big enough to affect more than 1 county.**

17  
18 **Planned Unit Development (PUD).**

- 19      • **Clustered homes, mixed land use and planned open spaces.**

20  
21 **Environmental Impact Statement (EIS).**

- 22      • **Study to figure out effect on environment.**