PREFACE

INTRODUCTION TO REAL ESTATE AND MORTGAGE BROKERAGE

Learning Objectives

After studying the preface, a student should be able to:

- ☑ Discuss how land is "owned" in Canada
- ☑ Explain how a value is attached to land
- ☑ Describe the key participants in the mortgage brokerage market and their roles
- ☑ Discuss characteristics unique to real property
- ☑ Describe the structure of the real estate and mortgage brokerage industries in British Columbia including statutory organizations and professional groups

INTRODUCTION

The purpose of this course is to provide the basic educational background necessary for an individual to qualify for registration as a mortgage or submortgage broker under the *Mortgage Brokers Act*.

Mortgage brokers and submortgage brokers are defined terms under the *Mortgage Brokers Act* and will be explained in detail in Chapter 2: "The *Mortgage Brokers Act* and Professional Ethics" of this course manual. However, throughout this manual the term mortgage broker will be inclusive of both mortgage and submortgage brokers, unless otherwise indicated.

This course is intended to ensure that those who complete it will have enough knowledge to protect the interests of both themselves and the people they deal with – the public. This course covers a variety of general topics such as public protection, interests in real property, contracts, mortgage finance, valuation, loan management and completion procedures. The number of topics covered gives some idea of the tremendous range of activities in the real estate and mortgage brokerage industry.

The force that shapes the real estate and mortgage brokerage market is the demand by households, businesses, governments and institutions for space and shelter for their activities. Consequently, as this demand fluctuates due to population and economic changes, conditions within the real estate and mortgage brokerage market will also change.

LAND OWNERSHIP

Ownership may be defined in terms of control – the owner of an object controls its use and the decision to transfer ownership to someone else. In the context of land, ownership involves control of the right to use land (in terms of both who and how) and control of the decision to transfer all or a portion of these rights to others. In Canada, the only owner of land in these terms is the Crown (i.e., the federal and provincial governments). The Crown has the right to compel individuals to give up all of their rights in land without compensation if it wishes (although compensation is almost universally provided for by statutes). In other words, the Crown can "evict" anyone from land if it chooses; this power is contained in statutes of expropriation and property taxation. Further, the Crown can determine how land is to be used through building codes and land use zoning. Thus, in a strict legal sense, land ownership is vested in the Crown, with private individuals only holding certain rights granted at the discretion of the Crown.

To enable private use of land, certain bundles of rights have been granted out of the Crown's "regal estate" (the origin of the expression "real estate"). The greatest bundle of rights and responsibilities that an individual can hold in land is a *fee simple* interest.

fee simple
the legal term for the maximum interest in land available to a person, or the maximum of legal ownership. Equivalent in many ways, for practical purposes, to absolute ownership

Fee simple owners are subject only to:

1. the Crown's right of expropriation and tax sale;
2. the Crown's land use and building regulations; and
3. other individuals' common law rights.

Other than these restrictions, the rights of fee simple owners last indefinitely and the owners may pass these rights on to their heirs.

Alternatively, fee simple owners may dispose of their interests in total (by sale), may grant all of their rights away for a defined period of time (e.g., under a ninety-nine year lease), or may grant a portion of their rights away (through the creation of an interest that is less than an estate, such as a licence or easement).

These various “interests” or “estates” are explained in Chapter 3: “What the Purchaser Buys: Estates and Interests in Land”. In summary, absolute ownership of land does not exist in Canada; rather, certain rights with respect to land may be owned by individuals subject to the rights of the Crown.

LAND VALUE

The demand for space, shelter and support for human activities is not for land itself, but for the use of land; that is, for the services provided by land. Land that is useful has a value to the person controlling the right to its use. This value is the motivating force for the operation of the real estate market.

The value of land is represented by the amount a potential user is willing to pay in exchange for the right to use it. From another perspective, the value of land is the amount that the holder of the right to grant permission for the use of land will receive in exchange for granting this right to another party. When there is no exchange, the holder receives value through his own use of the land. For instance, a homeowner does not have to pay rent for living in his house. As the benefits from using land may be received long into the future, the value of an interest in land will be the dollar amount invested today that is justified by the anticipated benefits, given risk and current investment conditions. This is called the capitalized value. In general, any interest in land that has a value through use will also have a capitalized value.

As individuals’ personal circumstances, economic conditions and expectations change, so does the importance of holding different rights in land. Voluntary trading of these rights takes place only when both parties believe they will benefit from the exchange. For example, both parties to the purchase and sale of a residence must be satisfied they will benefit by the exchange of the interest in the property for an agreed sum of money. The buyer prefers to have the fee simple interest in the house rather than cash in the bank; the seller prefers cash to keeping their interest. Their different conclusions are a reflection of their expectations, knowledge, judgment, objectives and personal financial circumstances.

REAL PROPERTY LAW

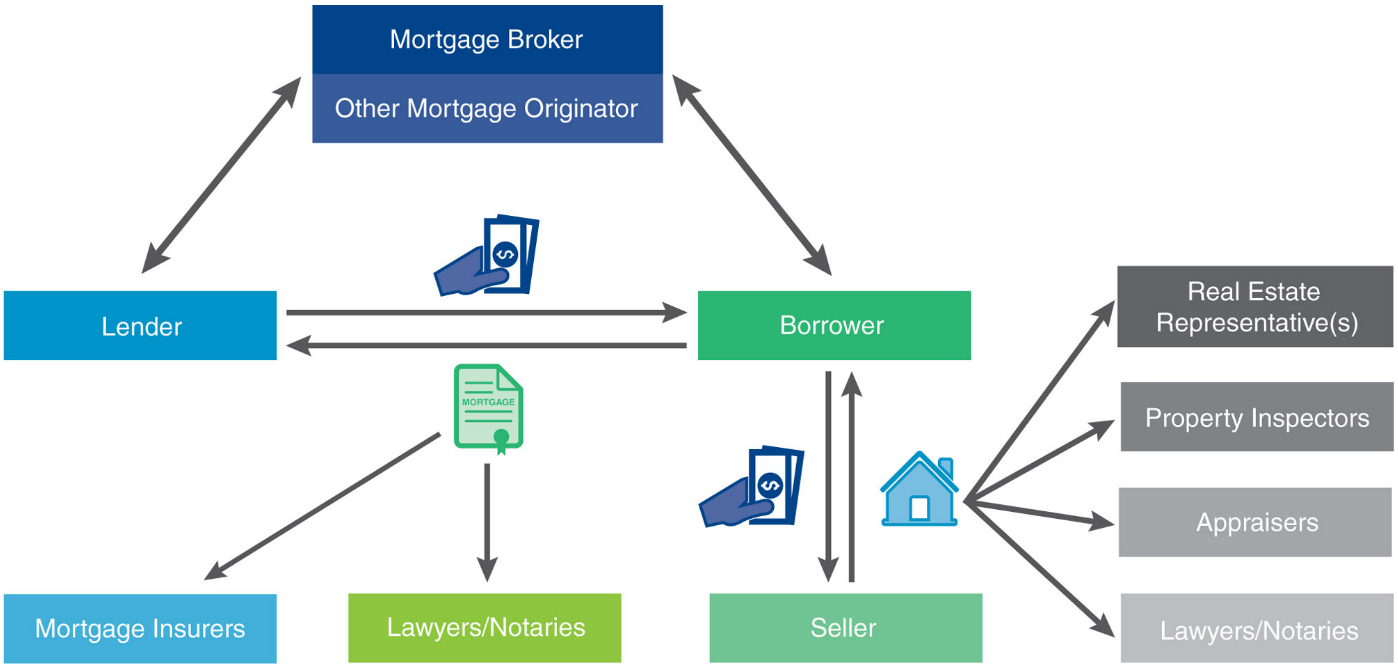
All participants in the real estate market are concerned with the value of specific rights attached to property. The definition of these rights and their protection is of great importance to the operation of the real estate market. As a result, a large portion of this course is devoted to the law relating to the real estate market. The unique characteristics of land have resulted in a specific body of law: the law of real property. The expression “real property” stems from the fact that, historically, courts could restore an interest in land to a dispossessed owner; whereas in the case of personal property, the courts could generally only award damages for being deprived of that personal property. In land disputes, compensation was “real” so the interest in land was referred to as real property.

Under the general heading of property law, topics include estates and interests in land, title registration, and the rights granted and limitations imposed by contract, including the mortgage contract, common law, and statute law. Special attention will also be given to how land use planning controls affect these rights and limitations.

There may be many different individuals owning interests in a parcel of real property at any one time; a single piece of real estate may involve the interests of a fee simple owner, a landlord and one or more tenants, a borrower and one or more lenders, as well as the private and public rights which affect the use and enjoyment of the property. Real property law has developed to provide legal protection and to outline responsibilities for the holders of these different interests and it also governs the process by which these various rights to use land are traded.

KEY PARTICIPANTS IN THE MORTGAGE BROKERAGE MARKET

FIGURE Pref.1: Participants in the Real Estate and Mortgage Brokerage Market



Borrowers. There are two essential parties to a mortgage transaction: the borrower and the lender. The borrower is typically seeking a loan of money, usually to finance a purchase of real estate. People can seldom finance this purchase solely from their current income and accumulated wealth; they must usually take on some debt to help finance their purchase. Therefore, mortgages form an important part of the market for trading interests in land. In fact, financing is very often the critical element in a real estate transaction. However, keep in mind that there are many other reasons why a borrower would want a loan: to renovate their home, to purchase a car or boat, or to send their to university.

To provide security for the loan, the borrower, also called the mortgagor, agrees to grant the lender a mortgage of the property that they own (or will own, if the mortgage proceeds are being used to purchase real estate). A mortgage is generally defined as the conveyance of title to property that is given as security for the payment of a debt or a performance of a duty. If the terms of the mortgage contract are satisfied, namely that the borrower repays the loan as agreed upon, the transfer becomes void or the lender must transfer the interest back to the borrower. Since a mortgage is an interest in land, it is the borrower who “grants” the mortgage.

Lenders. The other essential party to a mortgage transaction is the lender. A lender is someone who is willing to make mortgage funds available to borrowers and can be a single person, a group of people, a financial institution, a mortgage investment company or a government agency. Examples of financial institutions that may lend funds secured by mortgages can include, but are not limited to, chartered banks, credit unions, mortgage loan companies, trust companies, life insurance companies, caisses populaires, and pension funds. A lender may also simply be a private individual, such as the borrower's friend or family member, or a seller of real estate who is providing a vendor take-back mortgage to assist the buyer in purchasing their property.

A lender may also be referred to as the mortgagee in a mortgage transaction, as the lender receives the mortgage in exchange for a loan.

Mortgage Brokers. Given the fact that mortgage financing plays a crucial role in the purchase of real estate (and other large purchases or major cash outlays), people are relying more and more on specialists in this area. While most financing is still arranged directly between borrowers and lenders, mortgage brokers play a very important role in the real estate and mortgage brokerage industry. A mortgage broker acts as an intermediary, bringing borrowers and lenders together; however, the mortgage broker works for the borrower, not the specific lender. Given the complexity of mortgage products in the marketplace, a mortgage broker can assist a client in a number of ways:

- explain the variety of mortgage products and options that are available;
- provide access to a number of different lenders (institutional or private);
- find the right mortgage product for their clients' situation;
- shop for the best interest rate, although finding the right product is of greater importance;
- assist with mortgage-related strategic planning;
- negotiate mortgages in both the residential and commercial markets; and
- collect money secured by mortgages.

Mortgage Broker Compensation

Typically, a mortgage broker is paid a commission for their services by the lender, unless the borrower requires private lending or is involved in a unique situation. For example, residential mortgage brokers typically receive fees from the lender set according to basis points (or “beeps” as they are known in the mortgage industry) – where 100 basis points (bps) equals 1% – on the loan amount arranged. Depending on the mortgage product and the lender, the amount of the fee can vary from 50 to 120 bps (0.5% to 1.2%). It should be noted that the longer the mortgage term, the higher the fee and that fixed rates typically pay more commission than variable rates.

Mortgage broker commissions are usually paid directly to the licensed mortgage brokerage, which then pays the mortgage broker a percentage of the commission. For example, if a mortgage broker secured a $400,000 mortgage for their client and the lending institution was paying 75 bps, $3,000 ($400,000 × 0.0075) would be paid to the mortgage brokerage. The mortgage broker will have a contract that states how much of the commission they will receive and how much the mortgage brokerage will keep. If the commission split is 80-20, the mortgage broker will be paid $2,400 ($3,000 × 0.8) by the mortgage brokerage. Depending on the organizational status of the mortgage broker (e.g., independent contractor), taxes will need to be considered and paid appropriately.

Mortgage brokers can also earn trailer fees and renewal fees. With trailer fees, mortgage brokers may receive a smaller percentage of commission up front and then receive a trailer fee on or near the anniversary date of the mortgage closing for the duration of the contract. If the client signs a new mortgage contract with the same lender at the end of his or her mortgage term, a renewal fee may be paid to the mortgage broker. A renewal fee is paid once a term.

In addition to trailer and renewal fees, lenders may also offer incentives, such as a bonus, a reward points program, travel or other gifts based on volume or efficiency (for example, a small number of borrowers go into arrears or default).

IMPORTANT NOTE: Mortgage brokers need to ensure that their client’s interests remain the top priority and should offer full disclosure with respect to any compensation they receive.

Other Mortgage Originators. Besides mortgage brokers, some financial institutions may wish to arrange mortgages directly with borrowers. In this case, they will employ in-house mortgage representatives or specialists who develop leads from their contacts within the community. Many of these representatives are commissioned or bonus-based. Institutions who employ mortgage representatives, because they do not have to pay broker fees to a mortgage broker, may offer discounts for consolidating banking services with them. Representatives will often visit clients at their residence or place of employment.

Appraisers. A real estate appraiser determines the market value of property based on its condition and the selling price of comparable properties that recently sold in the area. The estimate of market value determined by the appraiser helps the lender decide on a reasonable loan amount for the mortgage. A lender may, as a condition to providing financing, require an appraisal to ensure that the mortgage loan amount is not more than the value of the property.

Real Property Assessors. In British Columbia, a real property assessor works for BC Assessment, an independent, provincial Crown corporation whose mandate is to establish and maintain uniform real property assessments in accordance with the *Assessment Act*. The annual property assessments that BC Assessment creates are used by the various provincial taxing authorities as a basis to determine the amount of property taxes for which each parcel of land is responsible. A real property assessor undertakes two key tasks. First, they determine the actual (or market) value of the assessed properties. Second, they assign each property to a property class. Different property classes may attract different tax rates.

Real Estate Representatives. A real estate representative is a person who is licensed under a provincial statute to provide real estate services, to or on behalf of another, for or in expectation of remuneration. In the context of a purchase of real estate, the real estate representative may be listing the property for sale, conducting open houses, finding properties for their clients, negotiating the price of the property, drafting contracts of purchase and sale, presenting offers, and receiving deposits of money paid in respect of a real estate purchase. A real estate representative may be working for a seller, buyer, or both in a particular transaction.

The real estate industry is governed by provincial regulations and most real estate representatives are members of a local real estate board, a provincial real estate association, and the national association – Canadian Real Estate Association (CREA) – and adhere to the corresponding guidelines and code of ethics of each association.

Home and Property Inspectors. A home and property inspector will conduct a comprehensive visual examination of the property's overall structure, major systems and components, and provide a written report. The inspector will report on the interior as well as the exterior structure including all the property's major systems such as: plumbing, electrical, insulation, heating and cooling, roof, and foundation. A prudent purchaser will require a satisfactory property inspection as a condition to closing the real estate transaction. It is uncommon for a lender to require a home inspection as a condition to providing financing.

Surveyors. A surveyor is a professional whose job is to determine the boundaries and other features of land in order to accurately describe what is owned on paper. Land surveyors in British Columbia are charged with the responsibility of carrying out all cadastral surveys within the province, which include surveys of land, water and airspace, rights of way, strata properties, and mining claims. To do this, surveyors employ principles of mathematics, physics, engineering, and law, in addition to using complex equipment. Surveys are used for a variety of purposes, some of which you will read about in this course.

Lawyers (and Notaries Public). In a typical BC real estate transaction, a lawyer or notary public will be retained to perform a variety of functions. These functions include drafting and reviewing the contract of purchase and sale, reviewing title to the property, preparing the closing documents, explaining all of the relevant documents to their clients, obtaining signatures from the parties for the closing documents, collecting the funds involved in the transaction, registering the transfer of property, and disbursing funds as instructed. If a mortgage is being granted as part of the purchase of real estate, the lawyer or notary public may also prepare and review the mortgage documents, explain the mortgage documents to the borrowers, discharge outstanding mortgages, and register new mortgages. Notaries refer clients to lawyers when the legal issues (for example family or corporate law) are outside of their statutory scope of practice (section 18 of the *Notaries Act*) or when a matter becomes contentious.

Mortgage Insurers. If a federally chartered financial institution's mortgage loan represents more than 80% of the property value (considered a high-ratio loan), borrowers must obtain and pay for mortgage loan insurance which protects the lender against default. The Canada Mortgage and Housing Corporation (CMHC), Sagen™ (formerly known as Genworth Financial), and Canada Guaranty are three mortgage insurers in Canada. In addition to mandatory mortgage loan insurance, financial institutions also offer a variety of mortgage life insurance products to borrowers, which provide that if the borrower dies or becomes terminally ill, the insurance provider will pay the outstanding mortgage principal amount, plus other amounts.

As a Mortgage Broker...

A mortgage broker should always work on building, maintaining and improving relationships within the mortgage brokerage market and beyond. Establishing a rapport with those that you may deal with will go a long way in helping you and your clients.

The Sale of a Business

In many business activities, a large portion of a business' trade is directly related to its location and the space it occupies. This is particularly true of small businesses such as corner stores, restaurants, hardware stores, bakeries, and motels. Many of the factors which affect the value of businesses are similar to those which affect the value of interests in land. Owners of existing businesses with attendant property rights who wish to sell their businesses are generally in the same position as people who want to sell their interests in land; that is, they are lacking market information, experience, expertise, methods of marketing, and time. Vendors of businesses need help in selling their interests just as vendors of interests in land do. In British Columbia, real estate brokerages (and their representatives), licensed under the *Real Estate Services Act* (RESA), help negotiate the sale of these businesses. Certain aspects of law, valuation, finances, and management are important in these transactions.

Summary

People who are paid for acting as agents of brokers in the sale or purchase of interests in land (including fee simple interests, leases, and mortgages), and the management and leasing of real property are required to follow the laws specifically relating to their activities. This manual will focus on the basic elements of mortgage brokerage and the *Mortgage Brokers Act*, along with other relevant statutes, mortgage law, and the law of contracts. This manual will also explore the basics of valuation and mortgage finance calculations.

RESIDENTIAL AND INDUSTRIAL, COMMERCIAL AND INVESTMENT (IC&I) REAL ESTATE MARKETS

There are two main markets in which real estate professionals tend to specialize: the residential market, consisting of properties such as single-family homes and condominiums; and the industrial, commercial and investment (IC&I) market, covering a wide spectrum of real estate, such as shopping centres, apartments and hotels. While there are some similarities in these two markets, there are many more differences.

Size and Frequency of Transactions

Residential sales may range in price from a $10,000 mobile home to a multi-million dollar mansion. For those professionals involved in residential sales, there is usually a higher volume of sales than in the IC&I market. IC&I properties may range from $5 million for a small development site up to $100 million or more. IC&I property professionals are generally involved in only a few sales per year (and may have to wait over a year between major sales), and may also be involved in leasing activities.

Earning Potential

Given the sheer size of IC&I transactions and the added complexity of such sales, the earning capacity is likely greater for professionals in the IC&I market.

Market Segmentation

The segmentation of residential markets is far more limited than IC&I markets. For example, the classification of homes could be broken down into condominiums and single family residences. In contrast, the IC&I market consists of an extremely large number of potential market segments, including diverse classifications such as office buildings, apartment properties, mobile home parks, retail stores, hotels, etc.

Buyers and Sellers

There are few buyers and sellers in the IC&I market compared to the large number of potential buyers and sellers in the residential market. The decision makers in residential sales are typically the individuals who are living, or will live, in the property. Emotions can play a major role in their decision making. In contrast, in IC&I sales, decisions may need to be approved by multiple individuals or a group individuals, such as a board of directors. As such, decisions in the IC&I market are often not as influenced by emotions.

Finding Buyers and Sellers

Listing and selling IC&I properties is much more difficult than listing residential properties because it is typically harder to find buyers and sellers. The seller of an IC&I property often does not want it to be widely marketed. Also, sellers may severely restrict the marketing activities: typically, the seller will not use the MLS® (as is common in residential properties) and will not allow a sign to be placed on the property.

Financing

Financing a residential property is usually a straightforward and quick process, whereas financing IC&I properties can be very lengthy, complicated and creative, depending on the type of property. Often, the financing is structured specifically for the particular project and client, and is influenced by the form of ownership, which can include joint ventures, partnerships or corporations.

Purchase and Sale Agreements

Residential agreements for purchase and sale tend to be fairly straightforward, contain one or two basic condition precedent clauses, and are written on a standard form. In contrast, IC&I agreements can be extremely lengthy and complex, as they are often developed by a lawyer to meet the clients' unique needs.

CHARACTERISTICS OF REAL PROPERTY

The general principles of economics apply to the real estate market; however, the unique characteristics of improved land must be taken into consideration to understand how the market operates. The significant characteristics of improved land are its immobility, the durability of its improvements, the indivisibility of the services it provides, and the divisibility of ownership it allows.

Immobility

Land, as space on the surface of the earth, is *immobile*; for example, the supply of serviced lots in Kamloops cannot be increased by additional lots from the Slocan Valley. The immobility of real estate as a commodity prevents moving it to a better market. One city may have a large number of vacant rental apartments at a time when there is a very low vacancy rate in another city. Landlords can only sell their product (i.e., shelter) in the market within which the property is physically located.

immobile
incapable of being moved

Immobility is responsible for the local nature of real property markets. The forces of demand and supply in real estate markets are determined by the conditions which exist in each local region; transactions in one market area have little impact on transactions in another area. However, these unique and independent regional markets are not isolated from the overall economic environment of the country. Changes in national and provincial economic conditions, or legislative changes, may affect property markets by altering the economic or legal environment in which the participants of each local market operate.

Since users of land must travel between separate parcels of land in order to take advantage of the services which each immobile parcel of land can provide, location is very important in determining values of improved land. The better the location in terms of ease of travel within the entire community, the higher the value of the land, all other things being equal. The savings in travel cost (both dollars and time), are reflected in the higher value of the land to its users.

Externalities. Property and its value are immediately affected by changes that take place beyond its borders. For instance, if a meat packing plant moves in next to a single-family residence, it is not possible to relocate the house and the lot to a site without the obnoxious odours. The existence of the meat packing plant will affect the value of the residence. A change may also be for the better, and much real estate speculation consists of placing bets that expected beneficial changes (the opening of a freeway or the establishment of a new industry) will increase land values in a selected area.

The immobility of real property means that land is subject to external effects, or *externalities*, which are enjoyed or suffered by people other than those who produce them. While these external effects are not unique to real estate, it is affected by a wider and more serious range of externalities than any other commodity. Potentially, real estate can be affected by the offences of noise, sight, and smell, to name only the more obvious. Externalities are not only personal, they are also economic and give rise to particularly difficult choices in the use of land.

externalities
costs or benefits that are enjoyed or suffered by people other than those who have provided them

Development. The relationship between location, land use, and land value is reflected in the history of the development of our communities. People are typically first attracted to a particular location because of the natural qualities and resources of a site. Climate, water supply, water frontage, soil fertility, and mineral deposits are examples of such locational attractions. Harbour facilities, railways, and highways are examples of man-made amenities which follow, providing transportation to link locations and assist in their development. The growth of cities and towns begins in this manner.

Within the city, certain districts become preferred for certain uses depending on their distinctive qualities. Industrial areas grow around a waterfront or railway; residential areas become valuable as a result of a view, protection from adverse weather, or because they are located on the windward side of the smoke and odours produced in the industrial areas; retail and business districts are established in areas which are convenient to serve the needs of the inhabitants.

However, as growth continues, the development which was the result of certain features becomes the cause of subsequent development and value; that is, a location becomes identified with a land use and real property values are determined according to suitability for that use. Residential property, whether vacant lots, houses, or apartments, is valued by market participants after considering the quality of surrounding developments and proximity to shops and bus routes, while commercial properties are valued according to surrounding developments, transportation, and parking facilities.

Supply of Urban Land. The immobility of land means that the amount of land, in terms of the surface of the earth, is fixed within any community. It is often argued that real property markets are unique for that reason. While the total physical supply of land on the surface of the earth is limited, this is not of any great importance to the operation of real estate markets. In most urban areas, the opposite is the case; there is almost no limit to the supply of land for urban use. The supply of urban land can be increased by bidding land away from adjacent non-urban activities such as farming.

Urban growth is generally the result of the conversion of land from rural to urban uses through the actions of real estate developers. The primary motivation for such expansion is economic: farmers will sell to subdividers when they can get more for the land than it is worth in its agricultural use. In this way, agricultural land values set a floor to urban land values; the urban use must create a land value just higher than the farm value to induce a shift from one use to the other. Over time, urban land values can rise to be much higher than the original farm value. As long as farmers sell to subdividers, there is no effective limit to the physical supply of land available for urban expansion. Zoning restrictions impose a legal, rather than a physical or economic limit; if more land is required for a particular purpose in an area, it can only be made available by converting land from some other use. The value of land is directly related to its use.

Instead of occupying more physical space, it is possible to intensify the use of sites. This occurs when zoning regulations are modified to permit a greater degree of multi-storey development. The first development of a vacant city lot might be a house. Many years will pass before this single-family residential area will change in character, but it is quite possible that expansion of the city may make this district suitable for apartments. The increasing demand for apartment sites will probably cause the lot value to rise to a point where it exceeds the value of the property in its use as a single-family dwelling. If zoning constraints allow, the site may then be purchased by a developer who plans to demolish the house and redevelop the property to an apartment use.

Similarly, the supply of building sites can be increased by using previously unsuitable sites; for example, filling in lakes, swamps and bays provides more building sites. Finally, greater speed and efficiency of transportation makes sites that were previously too distant now suitable for urban development. Hope, Nanaimo, the Sunshine Coast, the Gulf Islands, Squamish, Whistler, and Pemberton may someday supply land for the urban development of metropolitan Vancouver. In conclusion, the fact that the land area in a region is fixed does not imply that the supply of space for urban activities is equally fixed. Thus the old expression, “Buy land – they’re not making any more!” does not fare well under closer examination.

Durability of Improved Land

A second important characteristic of real estate is the indestructibility of space and the durability of structures. While it is true that the owner of the fee simple holds eternal title to the property (subject to the Crown’s rights), the space may become useless and lose its economic value. Farms which have lost their fertility, and “ghost towns” in abandoned mining areas provide examples of space that is currently worthless but once sold at premium prices. In other words, although land lasts forever, its value does not.

Manufactured improvements to urban land are not indestructible. Eventually, streets erode, pipes rust, sidewalks deteriorate, and office buildings and houses decay; nonetheless, these improvements are extremely durable. New housing units are only a small portion (seldom more than 1%) of the real property in use in any year. The existing stock of real property makes up almost all of the market at any one time. Any new units must, therefore, be developed in an urban area which is made up of several decades of individual real estate development decisions. The profitability of development of new property depends on current costs and market conditions which are determined by current demand and the existing stock of real property.

When considering the durability of structures, it is important to distinguish between the physical life and the economic life of the structure. Buildings may be demolished long before they have physically worn out to make way for a different class of development. This indicates that the value of the land and buildings for the old use is less than the value of the land and building, or of the land alone, for the proposed new use.

Real estate is a source of shelter. The shelter afforded by real estate, like other services, cannot be stored and must be in continuous production. An unoccupied building or a site which is seriously under-used is a waste of a scarce resource. The physical durability of real property, however, means that it has value as an investment and also as a source of shelter, freeing the owner from the need to pay rent. An owner-occupier of a house can value both the stream of consumer services the house provides and the potential for an increase in the value of the property in the form of a capital gain.

Indivisibility of Services

The value of a parcel of real property ultimately depends on its usefulness. This usefulness is based on the land and improvements such as buildings, sidewalks, landscaping, and underground and aboveground utilities. The offsite improvements, including transportation amenities, utility systems, adjacent land uses, and views also help to determine the usefulness of land. Elements of value cannot be separated into those derived from the land, the buildings, or the landscaping, since users regard the site as a single unit. This is reflected in the law of real property, where "land" includes the surface of the earth and all permanent improvements attached to it.

In some cases however, land and improvements are considered separately. North American real estate taxes usually assess land and improvements (buildings) separately. In the case of the commercial investor, splitting the value of the land from the value of buildings is done for income tax purposes. Other circumstances in which land and improvement values are considered separately include determining the cost of replacing a structure if it is destroyed, or when considering redevelopment of existing improvements.

Divisibility of Ownership

The ownership of a single parcel of real estate may be divided both physically and legally. For example, ownership of real property can be physically divided by creating separate interests in land; that is, establishing either horizontal or vertical boundaries. A standard subdivision into several serviced lots zoned for single-detached residential is one example of horizontal division of ownership; a subdivision into individually-owned apartments in a high-rise condominium project is a vertical division of ownership. A property owner may even sell the rights to the use of airspace above their property, another example of ownership which is divided vertically.

Legal ownership of property may also be divided. For example, in strata developments, owners have exclusive rights to their own condominium suite but share the ownership of common areas (i.e., garden, hallways, pool) with all others in the development. A second example arises where a real estate owner rents property to a tenant who may then rent or sublet it to someone else, creating three different interests in the same property. Finally, legal ownership can be divided through different types of ownership of one interest in land. For example, several investors may form a partnership to invest in real estate, or a company may be formed to buy real estate and shares in the company issued to individual investors. In these cases, the investor has an indirect interest in real property; they do not directly own a particular piece of property but instead own units in a partnership or shares in a company which, in turn, directly owns the property.

Divisibility of ownership is a very important characteristic of real property as it allows a large dollar value asset (real property) to be broken down into smaller units of ownership; hence, small investors are able to participate, and the opportunities to diversify (to buy a little share in many investments rather than tie up all of an investor's capital in one investment) are increased.

ORGANIZATION OF THE REAL ESTATE AND MORTGAGE BROKERAGE INDUSTRY IN BRITISH COLUMBIA

There are two aspects to the organization of the real estate and mortgage brokerage industry in British Columbia:

1. the organizational structure created by the statutory regulation of the industry; and
2. the voluntary structure created by the variety of professional organizations that exist to fulfil objectives not addressed by government regulation.

In Canada, the Constitution divides the power to make laws between the federal and the provincial governments. The provinces have sole jurisdiction to make laws concerning property and civil rights, education, municipal organization, professions and licensing, and all matters of a purely local nature. Consequently, all statutory laws relating directly to land and the licensing or registration of real estate personnel are provincial, with each province passing legislation to effect its own regulatory purposes. However, it should be noted that the federal government can regulate certain aspects of land if the regulation is done in accordance with a valid exercise of its authority (for example, fisheries). A general overview of the framework which exists in British Columbia is presented in this section.

Participation in professional organizations, while not mandatory, is an important part of the operation of the mortgage brokerage and real estate industry. A brief discussion of these voluntary organizations is also presented.

Statutory Regulation

The bulk of provincial government regulation of the operation of the British Columbia real estate and mortgage brokerage industries is embodied in four statutes: the *Mortgage Brokers Act,* RESA, the *Real Estate Development Marketing Act* (REDMA), and the *Strata Property Act*.

Mortgage Brokers Act. The *Mortgage Brokers Act* requires that persons involved in mortgage brokerage activities be registered under the *Mortgage Brokers Act*. The Registrar of Mortgage Brokers administers the Act, which is intended to serve the interests of the public by regulating the actions of individuals involved in mortgage brokerage transactions.

Most provinces have legislation to regulate persons who deal in mortgages within the province. The British Columbia *Mortgage Brokers Act* defines a mortgage broker as a person who does any of the following:

- carries on the business of lending money which is completely or partially secured by mortgages (it does not matter whether the money is the broker's own or someone else's);
- represents themselves as a mortgage broker, for example, by an advertisement or sign;
- carries on the business of buying and selling mortgages or agreements for sale;
- receives at least one thousand dollars per year in fees for arranging mortgages for other people;

- makes at least ten mortgage loans in a year; or
- carries on a business of collecting money secured by mortgages.

A submortgage broker is employed by a mortgage broker or is a director or a partner of a mortgage broker and conducts mortgage brokerage activities on behalf of a mortgage broker. Mortgage brokers and submortgage brokers must be registered in the mortgage broker register, maintained by the provincial Registrar of Mortgage Brokers.

RESA and REDMA. In May 2004, the legislature introduced two new statutes that govern the sale of real estate in British Columbia: RESA and REDMA. These statutes came into force on January 1, 2005, and replaced the *Real Estate Act*.

RESA imposes licensing requirements on persons who provide trading services related to real estate, rental management services, and strata management services.

The purpose of RESA is to protect the public by:

- ensuring that those offering real estate services meet certain minimum reasonable competency requirements in order to obtain a licence;
- setting out certain standards to ensure that licensees conduct themselves appropriately while licensed; and
- appointing a regulator, the BC Financial Services Authority (BCFSA), and empowering the Superintendent of Real Estate (from within BCFSA), to perform key regulatory functions under RESA.

REDMA imposes disclosure requirements on developers marketing various forms of real estate developments in British Columbia, such as strata lots, cooperatives, time shares, and shared interests. REDMA is directed at developers who develop and market various types of real estate developments, called the “development property”. Development properties include subdivisions, strata properties, cooperatives, time shares and other shared interests in land or residential leasehold complexes. REDMA aims at protecting purchasers by requiring developers who market or intend to market units in development properties to:

- meet any preliminary requirements or approvals applicable to the type of property to be marketed;

- ensure appropriate steps are taken to pay the cost of utilities or other related services and to assure the purchaser's title (or other interest) upon purchase; and
- prepare and file a disclosure statement in the form required by the Superintendent of Real Estate.

Strata Property Act. British Columbia has had strata legislation since 1966. In 2000, the provincial government significantly modified our strata legislation. Effective July 1, 2000 the *Strata Property Act*, as amended, replaced the former *Condominium Act*. The *Strata Property Act* retains most of the legal fundamentals contained in previous strata legislation yet adds many refinements.

Statutory Organizations of the Real Estate and Mortgage Brokerage Industry

BCFSA. BCFSA is an independent Crown agency that regulates credit unions, insurance and trust companies, pensions, and mortgage brokers in British Columbia. In 2021, BCFSA was also appointed as the sole regulator of real estate services in British Columbia, adding the regulation of licensed and unlicensed real estate activity within the scope of BCFSA's regulatory functions. BCFSA is responsible for administering various statutes, including the *Mortgage Brokers Act,* the *Financial Institutions Act*, the *Insurance Act,* RESA, and REDMA. The Registrar of Mortgage Brokers (who is also the Superintendent of Real Estate) works under the umbrella of BCFSA. For up-to-date information on BCFSA, visit their website at: *www.bcfsa.ca*.

Registrar of Mortgage Brokers (the "Registrar"). The Registrar is responsible for registering mortgage brokers under the *Mortgage Brokers Act* and administering the *Mortgage Brokers Act* in general. The Registrar ensures that mortgage brokers meet the requirements of the *Mortgage Brokers Act,* and have educational standards set out in the Policy Statements. The Registrar also has the power to investigate a complaint about a breach of the *Mortgage Brokers Act* or the regulations. The Registrar does not assess the risks of an investment, vet investment documentation, or check the qualifications of principals. The Registrar cannot disclose if a mortgage broker is under investigation. The office of the Registrar plays no role in insuring investments or the recovery of investors' funds. For up-to-date information on the Registrar, visit: *www.bcfsa.ca/index.aspx?p=mortgage_brokers/industry*.

Real Estate Foundation of British Columbia. The Real Estate Foundation is a non-profit, philanthropic organization originally created in 1985 by an amendment to the *Real Estate Act* and now continued in RESA. In 1988, the Foundation launched its grants program, whereby the Foundation receives applications for funding, which are evaluated based on certain criteria. The program gives grants to support sustainable practices in one or more of the Foundation's five interest areas: Land Use, Built Environments, Fresh Sustainability, Food Lands, and the Real Estate Profession. The Foundation's current mission statement, which expresses the Foundation's goal, is to "fund projects, connect people, and share knowledge to advance sustainable land use and real estate practices in BC". For up-to-date information on the Real Estate Foundation, visit their website at: *www.refbc.com*.

Real Estate Errors and Omissions Insurance Corporation. In 1988, by amendment to the *Real Estate Act*, the Real Estate Errors and Omissions Insurance Corporation was created. RESA continues the Real Estate Errors and Omissions Insurance Corporation (the "E&O Insurance Corporation").

The E&O Insurance Corporation was created as an affordable method of protecting real estate licensees from financial loss due to errors and omissions. The compulsory program provides protection to the public as it reduces the chance that someone would be left with an empty judgment after having successfully sued a licensee.

The premiums, which are actually collected by BCFSA on behalf of the E&O Insurance Corporation, constitute a fund known as the Real Estate Errors & Omissions Insurance Fund. This fund is the property of the E&O Insurance Corporation and is not subject to any process of seizure or attachment by a creditor of the E&O Insurance Corporation.

The E&O Insurance Corporation indemnity plan came into effect on March 1, 1988. It is now a condition of licensing under RESA that each real estate licensee in the province be insured against errors and omissions under the indemnity plan, which provides a limit per licence of $1 million.

For up-to-date information on the E&O Insurance Corporation, visit their website at: www.reeoic.com.

Real Estate Compensation Fund Corporation. RESA establishes the Real Estate Compensation Fund Corporation ("the Compensation Fund Corporation") as a corporation. RESA requires the Compensation Fund Corporation to establish a fund to be known as the Real Estate Special Compensation Fund (the "Special Compensation Fund"). The Special Compensation Fund is intended to provide compensation to persons in relation to a real estate transaction for funds that were misappropriated, or intentionally not paid or accounted for by a licensee, officers or directors of a brokerage, or employees or independent contractors of the brokerage.

The Special Compensation Fund replaces the requirements under the *Real Estate Act* that licensees be bonded. Now, instead of a brokerage paying funds to a company that provided security in the event that trust funds were misappropriated, each licensee will pay an assessment to the Compensation Fund Corporation.

Voluntary Organizations of the Real Estate and Mortgage Brokerage Industry

A number of organizations serve the interests of members involved in mortgage brokerage and real estate.

Canadian Mortgage Brokers Association – British Columbia (CMBA-BC). CMBA-BC is a non-profit association dedicated to maintaining a high standard of ethics and business practices for mortgage brokers. CMBA-BC is responsible for the education of its membership and the investigation of customer complaints regarding a member. CMBA-BC has developed a Code of Ethics for its members which covers issues such as compensation, fee disclosure, conflict of interest, responsibility to others, withdrawal, advertising, and continuing education. All members are expected to be in compliance with the Code of Ethics. For up-to-date information on CMBA-BC, visit their website at: *www.mbabc.ca*.

Mortgage Brokers Institute of British Columbia (MBIBC). MBIBC provides professional education to mortgage brokers that comply with educational standards set by the province for the purpose of meeting mandatory re-licensing requirements. MBIBC works with British Columbia's provincial mortgage broker association (CMBA-BC) and the provincial regulator (BCFSA) to raise mortgage broker standards. For more information visit their website at: *www.mbibc.ca*.

MORTGAGE PROFESSIONALS CANADA

Mortgage Professionals Canada. Mortgage Professionals Canada was originally established in 1994 as the Canadian Institute of Mortgage Brokers and Lenders (CIMBL). Before being rebranded as Mortgage Professionals Canada in 2015, it was known as the Canadian Association of Accredited Mortgage Professionals (CAAMP). Mortgage Professionals Canada is a national association representing members in the Canadian mortgage industry. It is dedicated to the advancement of Canada's mortgage industry through advocacy, education, information and professionalism and strives to represent the interests of its members to government, media and consumers. As a way to increase professionalism in the industry by way of enhanced education and ethical standards, Mortgage Professionals Canada launched the Accredited

Mortgage Professional (AMP) designation in 2004. Currently, in order to earn the AMP designation, one must have at least two years of experience in the industry, provide letters of recommendation, and successfully complete the National Competency Exam. For up to date information on Mortgage Professionals Canada, visit their website at: *www.mortgageproscan.ca*.

CREA THE CANADIAN REAL ESTATE ASSOCIATION

Canadian Real Estate Association (CREA). CREA is a national organization comprised of licensees and real estate boards across the country, as well as all the provincial real estate associations.

CREA's primary mission is to represent its members at the federal level of government and to act as a watchdog on national legislation pertaining to the real estate industry. In an effort to cultivate and enforce fair dealings, CREA developed its Code of Ethics and Standards of Business Practice to which every member in Canada must adhere. This code has been adopted by the organized real estate industry in Canada as the acceptable measure of professionalism for members. However, it does not describe the minimum standard of permissible performance; rather, it describes the performance "the public may reasonably expect" and makes that performance the "norm" for its members. CREA amends the code from time to time in accordance with the needs of the changing real estate marketplace. For up-to-date information on CREA, visit their website at: *www.crea.ca*.

British Columbia Real Estate Association (BCREA). BCREA is incorporated as a society and is the provincial voice of the real estate profession.

As a provincial association, BCREA has three primary obligations: public relations, government consultation and the ongoing education of licensed REALTORS®. BCREA operates under a philosophy called Quality of Life, which supports growth that encourages economic vitality, provides housing opportunities and builds communities with good schools and safe neighbourhoods. From this broad perspective, BCREA reviews new legislation and informs its members of the effect this legislation will have on communities and the real estate profession. In addition, BCREA has continued contact with government departments as a lobbyist.

The objectives of BCREA are similar to those of the real estate boards, except that BCREA attempts to address concerns that affect all members within the province and not just those of a particular geographic region. It is important to note that BCREA is a member of CREA.

For up-to-date information on BCREA, visit their website at: [*www.bcrea.bc.ca*](http://www.bcrea.bc.ca).

Real Estate Boards. Several agencies within a geographic area will form a real estate board (sometimes called an association). There are eight real estate boards in British Columbia and their general geographic location can be identified by name, as follows:

- Association of Interior REALTORS® ([*www.interiorrealtors.ca*](http://www.interiorrealtors.ca))

- BC Northern Real Estate Board (*www.bcnreb.bc.ca*)
- Chilliwack & District Real Estate Board (*www.cadreb.com*)
- Fraser Valley Real Estate Board (*www.fvreb.bc.ca*)
- Powell River-Sunshine Coast Real Estate Board (*prscreb@shaw.ca*– email only)
- Real Estate Board of Greater Vancouver (*www.rebgv.org*)
- Vancouver Island Real Estate Board (*www.vireb.com*)
- Victoria Real Estate Board (*www.vreb.org*)

Each of the real estate boards is incorporated as a society under the *Societies Act* of British Columbia. Although the constitution and by-laws of each board may differ somewhat, it is fair to suggest that there are many similarities in their objects and procedures. Generally, the objects of the real estate boards include:

- promotion and development of continuing professional education;
- enhancement of the reputation of the members of the real estate industry as professionals in the mind of the public;
- adoption and maintenance of the Code of Ethics and Standards of Business Practice; and
- active participation in legislative changes affecting the real estate industry.

In addition to these general objectives, the real estate boards also carry out the important function of maintaining the Multiple Listing Service® (MLS®) for members. Just as the by-laws may differ from one board to another, the rules and regulations which govern the operation of the MLS® for each board may vary. At present, however, it is a condition that any user of the MLS® be a member of that particular real estate board. The funds collected by the real estate boards through the fees charged by each MLS® represent a significant portion of the total revenues obtained by the boards for the operation and maintenance of the programs and administration of the boards. Furthermore, membership with a board allows an individual to use the REALTOR® designation.

In addition, real estate boards oversee the conduct of their members and arbitrate disputes between members. The principal areas of dispute between members relate to the allocation of, and entitlement to, real estate commissions and may also involve complaints by members regarding the professional practices of other members.

Real Estate Institute of Canada (REIC). REIC is the major national professional body for the real estate brokerage industry. It separated from CREA in January 1975 to become an autonomous, incorporated organization. It is a member of CREA on the same basis as the provincial association of CREA, the British Columbia Real Estate Association. REIC's mission is to advance opportunities for persons involved in real estate. REIC pursues its mission through: providing lifelong learning; maintaining a relevant resource centre; awarding professional designations; creating networking opportunities; and representing and promoting the real estate industry and profession.

For up-to-date information on REIC, visit their website at: *www.reic.ca*.

Real Estate Institute of British Columbia (REIBC). REIBC is an organization of diversified professionals whose mission is to advance and recognize excellence in education, knowledge, professional development and business practices in all sectors of the real estate industry. The REIBC has nine chapters in the province, which offer professional development and networking opportunities that are relevant to real estate professionals in that region. Professional members of the REIBC are recognized by the RI designation. The REIBC has become a province-wide network of real estate professionals committed to advancing education and professionalism within the real estate industry.

For up-to-date information on REIBC, visit their website at: *www.reibc.org*.

Related Organizations Serving the Real Estate Industry. There are a number of other associations whose membership is primarily real estate related. Examples are the Appraisal Institute of Canada (AIC), the Building Owners and Managers Association (BOMA), the Professional Association of Managing Agents (PAMA), the Canadian Home Builders Association (CHBA) and the Urban Development Institute (UDI).