

Please read the following Bulletin

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

ALL PRE-LICENSE STUDENTS (Brokers and Salespeople)

If you previously held a license that has expired, you must reinstate that license. You may not become licensed again. If you take the examination and accept a new license, the Board will void the license upon receipt of the record from the examination service. The fees will not be refunded and you will be required to reinstate the expired license. **Please see the instructor if you have been licensed previously.**

You must be prepared to pay for the license upon passing the examination. Personal checks will be accepted for the license fee. The first license fee is prorated in accordance with the license law and the exact amount will be provided upon passing the exam.

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

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

If you have a criminal or disciplinary history in any State, Country, or Jurisdiction, the issuance of your license will be withheld until the Board has reviewed your record. The review will be done after you pass the examination. In no event will the Board review prior to passing the examination. Upon approval your license will be issued. If the license is denied, you will have an opportunity to appear before the Board. The record will not be reviewed in advance of the examination.

If you are currently on parole or serving probation, you may not obtain licensure until after termination of the parole or probation at which point the Board will review your history as previously stated.

FOR BROKER PRE-LICENSE STUDENTS

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

You must also have your current salesperson license or notice of inactive status with you to turn in upon passing the broker examination. If you do not have the license, be prepared to sign an attestation concerning the lost license. Do not bring an expired license to the test site.

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THE RULES, REGULATIONS, PROCEDURES and ENVIRONMENTAL LAWS FOR MASSACHUSETTS

LICENSING PROCEDURES & REGULATIONS

Massachusetts Law indicates that **anyone** who is **involved** in a Real Estate transaction as to which they expect to **earn compensation** or **consideration while acting on behalf of another because of the duties they performed** must be **licensed in the field of Real Estate**.

Activities that require a License

An individual is required to hold a real estate license if they plan **to act on behalf of another for a commission, fee or valuable consideration or in the expectation of receiving** such while performing the following activities:

- 1 **Advertise** a property for sale, rent or lease on behalf of another.
- 2 **Solicits** properties for sale/rent or lease on behalf of another. (prospecting).
- 3 **Negotiates** contracts on behalf of others.
- 4 Assists with the negotiation of an agreement for the sale, lease, exchange or rental of real estate on behalf of another.
- 5 Assists with **procuring** a buyer.
- 6 **Conducts open houses** on behalf of a real estate company.
- 7 **Provides information** about properties to prospective buyers while associated with a real estate office.

Activities that would not require a Real Estate License

The following activities do not require individuals to be licensed as real estate agents or brokers while conducting real estate transactions within the Commonwealth of Massachusetts.

1. Individuals doing business on behalf of themselves are not required to be licensed. **Private sellers and buyers. I.E. FSBO (for sale by owner)**
2. **Employees of the owner of real property** are not required to be licensed. **An example would be an apartment manager.** The act of renting an apartment would be a regular course of employment activity. They may be known as a **salaried employee**.
3. **An auctioneer** is not required to possess a real estate license.
4. An **executor, guardian or an administrator** of an estate who is acting on behalf of a court order.
5. **An attorney acting on behalf of their client.** (must hold a power of attorney instrument) **An individual who holds a power of attorney to act on behalf of another is known as an Attorney in Fact.** The **power of attorney** is valid for a specific time frame and becomes **invalid when the person who provided the power of attorney dies or time expiration occurs.**
6. An individual **selling a business that does not include real property.**

- A trustee of a property.
7. An **employee of a bank or insurance company** selling or leasing property on behalf of the bank or insurance company. **REO is Real Estate owned.**

TYPES OF LICENSES

REAL ESTATE SALESPERSON

A salesperson **is affiliated** with a real estate broker or a real estate office. A salesperson conducts many of the same activities as a broker but does not have the legal authority to consummate a real estate transaction. Only the employing broker has the legal authority to complete all real estate transactions.

Requirements to become a Real Estate Salesperson/Agent

1. You must be **18 years of age** or Older
2. You must **complete a 40 hour class** at an approved real estate school.
3. You must **pass a state approved examination.**
4. You must be a person of **good moral character**. Each applicant will need to furnish evidence of character by submitting three recommendations from reputable citizens, not related to the applicant, who either live or work in Massachusetts.
5. The Real Estate Board has the authority to have applicant for licensure **personally appear for an interview** and may ask them to **submit a report from an independent source** pertaining to the individuals previous occupation and any other material that may be relative **to measure qualification.**

Real Estate Broker

A Broker is any person or organization who for another and for a fee or in the expectation of receiving a fee, commission or valuable consideration holds themselves out as engaged in the business of selling, leasing, negotiating, purchasing or dealing in options. If someone advertises that they sell, rent or lease properties and they charge a fee they must be licensed as a real estate broker. A real estate broker can operate independently and has the ability to operate his or her own brokerage company. Some real estate professionals attain a broker license but continue to operate as sales agents. They are known as Broker-Salespersons. A broker who has the responsibility of overseeing the operations of an office may be deemed the employing broker, designated broker, broker of record, responsible party or office principal.

Requirements to become a Real Estate Broker

1. One must **complete an additional 40 hour course** at an approved real estate school.
2. One must **pass a state approved examination**.
3. One must have **three year's experience/25 hours a week of activity**. The employing Broker must certify the experience. **The experience begins when the board is notified in writing of the affiliation.**
4. One must obtain a **\$ 5,000.00 surety bond payable** to the **Commonwealth of Massachusetts**. This bond is obtained from a surety company for a small fee and is for **unfaithful accounting of funds. The purpose is to indemnify in case of loss or theft of the deposit or down-payment**. Other states have a recovery fund.
5. You must be a **person of good moral character**. Each applicant will need to furnish evidence of character by submitting three recommendations from reputable citizens, not related to the applicant, who either live or work in Massachusetts.
6. The Real Estate Board has the authority to have an applicant for licensure **personally appear for an interview** and may ask them to **submit a report from an independent source** pertaining to the individuals previous occupation and any other material that may be relative to measure qualification for licensure.

License Issuance

Once you complete the 40 hour **course** you are eligible to take a state approved real estate examination. Once you pass this examination you will receive your license upon payment of the prescribed fee. You should be prepared to pay the fee the day you take the examination.

License Renewal/ Biennially

This first license will remain in effect until two years from your next birthday and is **renewable every two years** from that point on your birthday (**biennially**). Your date of birth is your expiration date. You will receive notification from the state that your license needs to be renewed. There are two ways to renew a license. One will be **active status** the other is known as **inactive status**. You do not need to take another examination to renew your license.

Active Status/Continuing Education Requirements/Current

In order to practice real estate you are required to renew your license on **active status**. **To do so you need to complete 12 hours of continuing education during the prior 24 months from the renewal date.** The 12 hours must come from an approved Massachusetts Real Estate provider. If you are associated with an office you need to renew your license on an active status to sell, rent or solicit real estate for sale or lease. To renew your license you **certify** that you have **completed** your **12 hours of education**, indicate that you have **filed and are paid up to date on your state income taxes, are not delinquent on child support and pay the prescribed fee** in a form prescribed by the board. License fees are due by the renewal date. Late fees are charged if not submitted by the renewal date. A licensee is not allowed to practice if the fee and certification are not received by the due date. **There is no grace period. An agent with an active status license may only receive compensation from the broker they are affiliated with. If they are not affiliated with a broker they are not eligible for commissions or referrals fees.**

Inactive Status

A person who has a **real estate license may choose not to** operate in the business. They might move out of state, explore alternative careers, etc. These individuals can **renew their license on an inactive status**. To do so, they **pay the prescribed fee and indicate that they did not complete their continuing education requirements**. They are **not allowed to operate in the real estate profession until they submit proof to the Division of Professional Licensure that they have completed their continuing education requirements**. Once they submit proof they will receive a new license in the mail. Real Estate agents that are on **inactive status can collect a referral fee** for introducing a seller or buyer to an agent that will meet that person's needs. When an individual does not pay the licensing fee to the state their license will **expire and they are not eligible for compensation**.

Corporation or Partnership Licenses

A **corporation or partnership must apply for a license in the name of the business**. In order to **qualify for a license** the business **must obtain a brokerage license and a bond in its name**. At least **one of the officers for the organization must be licensed as a broker and be bonded as an individual to qualify**. This individual is known as the designated broker, principal broker, the broker of record, or the responsible party for the office. If the Broker of record is the only Broker within the company they must still abide by the wishes of the Board of Directors of the company.

If the Broker of Record was to pass away or become **severed from the firm**, the business can **continue to operate providing they remain bonded and proceed with due diligence to qualify another individual** as the designated broker of record. They have **one year from the severance to qualify another individual**. **The Real Estate Board must approve the designation of the new broker.**

Licensed Resident Broker

A licensed resident broker shall maintain a usual place of business within the Commonwealth. The broker will **display a copy of their license in a conspicuous location** within the business premises and must notify the board via written notice of any change of business location. The board will provide the broker with a new license for that location for the remaining period of the license. **A broker's license is subject to revocation for failure to notify the board of the change of business address.**

Non-Resident Licensee

A non-resident can obtain a real estate license in Massachusetts. They are **not required to have a usual place of business within the Commonwealth.** A non-resident agent can apply for an educational waiver and may also seek a waiver of examination. They may need to take the state portion of the examination if Massachusetts is not reciprocal with the state in which they hold their license.

The Non-Resident Agent must file a power of attorney instrument with the Chairperson of the Real Estate Board. This power of attorney allows the chair of the board to **accept all legal summons issued to the non-resident.** **Such service is deemed as being served onto the non-resident.**

The Purpose of Real Estate Licensing Law

The purpose of Real Estate Licensing Law is to **protect the public interest.** Real Estate Licensing Law became **effective January 1, 1960 and is an expression of Police Power.** The **Legislature enacts the law.** The Real Estate **Board** or its **agents promulgates (publishes) and administers.** The real estate board may initiate rules and regulations to enhance the practice of real estate within the Commonwealth of Massachusetts.

Office of Consumer Affairs and Business Regulation
The Division of Professional Licensure (DPL)
Board of Registration of Real Estate Brokers and Salespersons
1000 Washington Street
Boston, MA 02118 617-727-2373

Real Estate Board www.mass.gov/dpl/boards/re/index.htm

The state agency that issues real estate licenses and monitors the activities of the real estate professional is the **Board of Registration of Real Estate Brokers and Salespersons.** This board is one segment of the **Division of Professional Licensure,** which falls under the **Office of Consumer Affairs and Business Regulation within the Commonwealth.** This board is funded through the **state budget** and **distributes the fees they collect to the General Fund of the State Treasury.** Several individuals are employed to ensure the day-to-day operations run smoothly. The Board of Registration of Real Estate Brokers and Salespersons also

has an appointed board to assist with the operation of real estate activities within the Commonwealth of Massachusetts.

The Procedures of the Real Estate Board

- 1) There is a **five member** board **appointed by the governor**.
- 2) All the members must reside within the Commonwealth of MA.
The **governor selects the chairperson** of the board.
- 3) The **term** of office is for **five years** and members may be reappointed.
- 4) The governor fills any vacancy for an un-expired term.
- 5) **Three members** must be **licensed brokers with seven years experience**.
- 6) **Two members are public members** and do not need any real estate experience.
- 7) All of the board members **serve without pay**. Board members are **paid expenses necessarily incurred in the discharge of their official duties**.
- 8) The board must **meet at least 4 times a year** at any place decided by the board and may hold special meetings if required.
- 9) **Three members** must be **present** for a **quorum (Valid Meeting)** to take place.
- 10) The **board will record and maintain records** of the meetings which are **available for public viewing**.
- 11) If the **chairperson does not attend** the meeting the **most senior board member will chair the meeting**.
- 12) The **board shall render to the Governor and the General Court a report** of its proceedings. This report will include an **itemized statement of all receipts and expenses of the board for the year**.
- 13) The **board or its agents** has the authority to **conduct investigations** and hearings upon a **written complaint** or its **own initiative**. They have the right to **inspect records and bank accounts within a real estate office**.
- 14) The board can **summons records and subpoena individuals for testimony**.
- 15) The board must **give an agent/broker who has a complaint issued against them a copy of the complaint**. The agent/broker must respond in writing to the board within **10 days of receiving the complaint**.
- 16) The agent who has the complaint issued against them has a **right to counsel and to cross examine witnesses** but is **not entitled to attorney**. Entitled would mean that the state would be required to pay for the attorney.
- 17) If the board issued an **unfavorable decision** against an agent they can appeal the decision to the **Massachusetts Superior Court within 20 days**.
- 18) If an agent decided to **appeal** the revocation or license suspension they **must forward** their real estate license to the Real Estate Board within **7 days from the notice of suspension or revocation**.
- 19) **A decision by the board must be made majority and signed by the board members**. Copies are distributed to the parties involved.

Activities that Would Cause Loss of a Real Estate License

The **Real Estate Board** has the **authority to revoke, suspend, refuse to renew, or fine** a real estate licensee. Activities that would cause them to do so are as follows:

- If it is determined that the license was **obtained or renewed by false or fraudulent means.**
- If the licensee **knowingly made a substantial misrepresentation (accidental mistake)** regarding a property or if the licensee misrepresentations **caused substantial harm** to others.
- If the licensee **acted for more than one party in a transaction without the knowledge and consent of all of the parties involved. (Undisclosed Dual Agent)**
- If the licensee acted in a **dual capacity of undisclosed principal and real estate broker/agent in the same transaction. If the licensee is selling their own property or buying a property through their affiliated real estate office they must disclose and receive acknowledgement of their license status in writing.**
- If the licensee **failed to disclose and receive acknowledgement in writing that either themselves or their kin possess a financial interest in the property they are selling or buying.**
- If the licensee **failed, within a reasonable time, to account for or remit any monies that belong to others** that have come into their possession as a salesperson or broker.
- If the licensee **paid a commission, fee or consideration** to someone who was **required to be licensed but did not possess a license.**
- If the licensee **accepted, gave or charged an undisclosed commission, rebate or profit on expenditure for a principal.**
- If the licensee **induced a party to a real estate agreement to break the contract for personal gain.**
- If the licensee **commingled** the funds of a principal with funds belonging to the office, broker or agent. **Commingling is mixing of client money with the office or brokers operating account or personal funds.**
- If the licensee **committed an act prohibited by Massachusetts Licensing laws.**
- If the licensee committed acts of **panic peddling or blockbusting.**
These acts are when a licensee solicited for sale, lease, or the listing for sale or lease, of a residential property on the grounds of alleged change of value due to the presence or prospective entry into the neighborhood of a person or persons of another race, economic level, religion or ethnic origin or distributes, or causes to be distributed, materials or makes statements designated to induce a residential property owner to sell or lease their property due to change in the neighborhood.

- If the licensee **accepted a net listing** agreement. This is an agreement to **sell or lease a parcel of real estate for a stated price and authorizes the broker to keep as a commission any amount of money received in excess of the stated price. It is illegal in Massachusetts.**
- If the licensee is found to have **violated Massachusetts Fair Housing Laws (M.G.L. Chapter 151B)** in the course of their occupation by the **Massachusetts Commission Against Discrimination (MCAD)** the board shall forthwith **suspend the licensee for a period of 60 days.** A **second violation within two years** from the first finding results in a **90 day suspension. An agent can be fined up to \$2,000 in damages as well.**
- A licensee could have their license suspended or revoked if they **offered real property for sale** that was **located within another state without** the proper **pre-approval** of the real estate board.
- If the licensee **failed to notify** the Real Estate Board of a change in business address.
- If the licensee **practiced real estate while impaired by drugs or alcohol.**
- If the licensee **failed to report** to the real estate board **within 30 days** any **conviction of a misdemeanor or felony** committed in the United States.
- If the licensee **practiced** real estate **while their license was revoked, expired or suspended.**
- If the licensee **discriminated against an individual** based on their age, marital status, gender, familial status, sexual preference, race, religion, socioeconomic status or disability.
- If the licensee **assumed duties for which they are not adequately prepared** to administer or for which they have not achieved competence.
- The penalty for practicing without a license is a **fine of up to \$ 500.**
- **If the licensee failed to disclose in writing that either themselves or their kin possess a financial interest in the property they are selling or buying.**

Professional Standards of Real Estate Practice in Massachusetts

Address Reporting

Each broker and salesperson is required to provide the Real Estate Board with their current address. They are also required **to notify the board of their affiliation and termination with a broker or office.**

Broker/ Employee or Broker Salesperson

This is a **broker** who is **employed** or **affiliated** with another broker.

This person holds a broker license but **acts as a salesperson** in their real estate capacity. The real estate board must be **notified about the relationship** between the parties. They **do not need to know about the compensation structure.** **The compensation structure is agreed upon between the agent and employing broker.** A broker in this role must follow the guidelines of the office in which they are affiliated with. In this capacity the broker is **known as** a broker-employee or **broker salesperson.**

Business Name

Any broker that desires to operate under a **business or trade name must provide the board with written notice of the name** and must submit a copy of the **DBA (doing business as)** Certificate that is on file with the town in which the business is located.

Business Entities (Corporations, Partnerships, Limited Liability Companies, Limited Liability Partnerships)

No licensee may engage in the business of real estate brokering in a Corporation, Limited Liability Company (LLC), Partnership, Limited Liability Partnership (LLP), association or society unless the entity is licensed by the board.

A license will not be granted to one of these entities **unless an officer** in such entity is a **licensed broker** within the Commonwealth of Massachusetts and **designated as the broker of record** for the entity. Therefore an officer must have a broker's license in order to obtain the company's broker license. Both the officer and company must be bonded separately.

The company license must have the name of each officer or partner designated to act on its behalf. The **licensed broker becomes the broker of record or principal.** The broker can not exceed the authority given by the corporation or partnership. The **broker of record must be licensed at all times** and shall be responsible for the activities and personally responsible for the acts of the entity, its employees and agents.

If the broker of record ceased to be licensed, the license of the entity becomes invalid. The agents affiliated with that broker would need to find a new office to practice.

If the **sole designated officer or partner died**, became disabled or left the company, the organization **can continue to operate for one year from severance providing it continues to be bonded and proceeds with due diligence to qualify another individual.**

Limited Liability Company, Limited Liability Partnership Insurance

These companies are required to maintain professional liability insurance, which meets the following minimum standards.

Insurance to cover negligence, wrongful acts, and errors & omissions by the LLC, LLP and its partners. These entities may be required to provide verification of compliance when it seeks licensure. The insurance shall be in amount for each claim of at least \$ 50,000 multiplied by the number of individual licensees employed by, or officers of, the LLC, and an amount of at least \$150,000 multiplied by the number of licenses employed by the LLC. The state shall be satisfied if the LLC, LLP maintains insurance at a level of \$300,000.00 for each claim with a top limit liability of at least \$1,000,000 during a year time period.

This insurance does not apply to fraud, criminal or malicious acts of the insured. If the insurance lapses the company must cease operation until compliance is met. Failure to do so could result in disciplinary action.

The LLC or LLP must notify the board within 5 business days if the insurance coverage is canceled or interrupted. If coverage is canceled the LLP/LLC shall immediately cease operations.

Sole Proprietor

A sole proprietor is an individual who operates a real estate business and may have agents and brokers affiliated with them. If the sole proprietor of a real estate business passed away the **state could grant a temporary license to a representative pre-designated by the sole proprietor and approved by the board** so that the business entity can continue to operate. **This license would be granted upon the filing of a bond and the payment of the prescribed fee and is valid up to one year from the death of the sole proprietor. A temporary license is not renewable.**

Display of Licenses

Each broker and salesperson **shall display a copy** of his or her license in a **conspicuous location** within the business location that can be observed by the general public.

Single License Requirement

In Massachusetts you only hold one license at a time. When a licensee progresses from a salesperson to a broker, they return their salespersons license to the Commonwealth and now only possess a brokers' license.

Salespersons are not allowed to operate Independently

A licensed salesperson must be affiliated with a licensed broker. A **salesperson does not have the authority to open his or her own real estate company** or the authority to **operate independently**.

Notification of Affiliation

Brokers are required to furnish the board with the **names, addresses and license numbers of all brokers and salespeople engaged** by them at the **commencement** of their affiliation and the **termination** of the relationship.

Real Estate Fees

No fee, commission or valuable consideration shall be paid, shared or divided as a result of the sale or rental of real estate unless the parties involved were licensed agents when the services were rendered. **All commissions of any kind must come from the agents employing broker. An unlicensed person cannot sue a licensed broker for a fee. A licensed salesperson can sue an unlicensed broker** for a commission for services rendered by the agent while affiliated with the unlicensed broker.

A person with a real estate license can collect a referral fee for introducing a seller or buyer to an agent or broker. This fee would be paid if a transaction took place. **An inactive agent does not have to be affiliated with an office to collect a referral fee. An active licensee can only receive compensation from the broker to which they are affiliated with.**

Independent Contractor (1099)

A real estate agent may act as an independent contractor affiliated with a broker. **Despite being an independent contractor the broker is responsible for the actions of the agent but does not have control over their time. A sales agent may only affiliate with one broker at a time in Massachusetts.** As an independent contractor the agent would be responsible for paying their own income taxes and will receive a **1099-MISC from their broker**.

Employee (W-2)

A person could be an employee of a real estate company. They could do so in a support capacity or in a sales capacity. Only licensed employees can discuss properties for sale or lease. **The Broker that hires employees are responsible for tax withholdings, social security, fair labor standards, hours of work and other regulations** as required by state and federal law. They will **receive a W-2**.

Advertising Procedures

Real Estate Brokers are prohibited from advertising in any manner that is false or misleading. Advertisements should always be truthful and properties advertised must be available. Real Estate Professionals are not allowed to use bait and switch advertising. Brokers are required to **keep advertisements** for a period of **three years**.

Puffing

When an agent **exaggerates a property** it is referred to as puffing. This practice is not allowable under Massachusetts Law.

Blind Advertising Prohibited/Broker Identification Required

No broker shall advertise a property for sale or rent unless that broker has disclosed that the ad is from a licensed broker or real estate company.

Advertisements that include only a telephone number, fax number, e-mail address, web address, P.O. Box number or street address are in violation of the law.

All advertisements must include the name and telephone number of the employing broker or company. Websites and signage must also include all the necessary information.

Salespersons Advertisements

A salesperson may not advertise property for sale or lease under his or her name. All advertisements belong to the broker they are affiliated with. Some agents may pay for the advertising costs. Despite the payment arrangement the ad belongs to the broker.

Permission for Signage

The Real Estate **agent needs to obtain written permission from the seller if they desire to place a for sale sign** on the property.

Discriminatory Advertising

It is **illegal to place advertisements** that directly or indirectly **discriminate** against any individual or group. When writing an advertisement the rule of the thumb should be to describe the property, not the people who should be buying the property. An ad of a particular size may need to include the Fair Housing Logo. An ad with pictures of people may need to be rotated so that the ad displays a diverse group of individuals.

Client Funds /Escrow Accounts/Trust Accounts and Record Keeping

Unless otherwise agreed to in writing by the parties involved in the transaction all money paid to or turned over to a real estate broker to be held during a pending transaction shall be immediately deposited into a **bank escrow account/or trust account** for the benefit of client money. The **only person legally entitled to hold a deposit** is the seller of a property. Usually the real estate broker or an attorney holds the funds. The law indicates **only brokers are authorized to have access to funds held within the escrow account.**

The broker's role and responsibilities are as follows:

- **Proper accounting and distribution** of the funds at the consummation or termination of the agreement.
- The **broker** has **no claim to the money**. It is not the commission.
- The account **can be interest or a non-interest bearing account**.
- **If interest bearing** the broker must make **proper accounting of the interest** at the consummation or termination of the transaction.
- A **salesperson does not hold deposits**. The money is turned over to the employing broker.
- Brokers are **required to keep records** of funds deposited into the escrow account. These records must clearly indicate the date and from whom the money was received from. The records must also indicate the **date the funds were deposited, the source of the money, the check number, date of withdrawal** and the **name of the person receiving** the withdrawal and any other pertinent information concerning the withdrawal.
- Brokers must **keep a physical copy** of all **checks deposited into and withdrawn** from the **escrow or trust account** for **three years**.
- The contractual agreement should direct the broker to deposit the funds and should give instructions as to the withdrawal in case of a default.
- The escrow **records** and bank account holding these funds are **subject to inspection by the real estate board**.
- Client money cannot be used to defray expenses.
- Mixing of client money and operational funds is **illegal** and called **commingling**.
- A broker must deposit the money received and may **not bring uncashed checks** to the real estate closing.
- Failure to deposit the money can result in a treble damage claim against the broker.

Conflicts of Interests/Conduct of Real Estate Brokers/Salespersons

A real estate **broker or salesperson** must **act ethically and honestly** and in the **best interest of their client at all times**. They owe their client loyalty and should never do anything that would weaken the position of their client.

A **broker** is **prohibited** from buying, selling, mortgaging, renting or exchanging a property or from representing someone described as "kin" unless the broker/salesperson fully **discloses in writing to all parties the nature of their interest and the parties provide a written acknowledgement of the disclosure**.

A **broker shall not take an option either directly or indirectly in a parcel of real estate where the broker was approached by the owner** to represent the owner **without first disclosing that the broker is now a prospective buyer/lessor**.

All brokers and salespeople are prohibited from accepting or soliciting a net listing. **Net Listings are illegal in Massachusetts**. A net listing is an agreement that allows the real estate professional to keep as a commission all monies netted over a specific

price. An **agent is prohibited from practicing while their ability to do so is impaired by drugs, alcohol** or any other reason that would impair their judgment. An agent should only assume duties for which they are adequately prepared to perform and are competent.

Offer Submissions

All real estate agents are required to **submit all offers to the seller immediately**. An agent does not have the discretion when it comes to the submission of offers. The agent does not have the authority to reject an offer or accept an offer unless that agent holds a power of attorney to act on the owner's behalf.

The Services of an Attorney

No broker or salesperson shall advise against the use of an attorney in any real estate transaction. An attorney can become a broker by applying for license, submitting a bond a letter of good standing as a member of the Massachusetts Bar and paying the prescribed fees. **They are exempt from taking the examination and from completing continuing education requirements.** Massachusetts Law School graduates are exempt from the educational requirements.

Notice of Relationship between Real Estate Agents and Consumers Massachusetts Mandatory Licensee-Consumer Relationship Disclosure

Massachusetts Real Estate Law mandates that every real estate broker or salesperson provide every prospective seller or prospective purchaser a notice that clearly discloses the relationship between the agent and /or broker and consumer. This notice is called the **Massachusetts Mandatory Licensee-Consumer Relationship Disclosure**. It is required to be provided to the consumer at the **first personal meeting to discuss a specific piece of property**. It is designed to inform the consumer about the relationships available to them and to educate the consumer as to whom the agent is representing at the time of discussion. **The form is not a contract.**

Massachusetts Mandatory Licensee-Consumer Relationship Disclosure

This form **details the types of agency relationships** available in Massachusetts. A **buyer or seller** can choose to have the advice, assistance and representation of an agent who works with them.

It is possible to create the following relationships:

Seller's Agent	Designated Seller's Agent	Dual Agent
Buyer's Agent	Designated Buyer's Agent	Non-Agent/Facilitator

The **consumer needs to be aware of any pre-existing relationships** and what type of relationship they will create with the agent they are communicating with. The agent or broker will disclose the relationship in writing via the relationship disclosure form.

Massachusetts Law requires that this form be provided to the consumer at the first personal meeting to discuss specific properties. The salesperson/broker will sign this form, indicate the relationship, indicate their real estate license number and date the notification form.

Request for Consumers Signature

All agents and brokers are required to ask the prospective seller or buyer to sign and date the form acknowledging the relationship disclosure. If the prospective seller or buyer **declines to sign the form the agent or broker must make a notation that the notification was provided to the prospective seller or buyer and that they declined to sign** the notification. The agent must provide the consumer with the copy of the disclosure notice signed by the agent. **The broker must maintain a copy of this notice for a period of not less than three years.**

MASSACHUSETTS MANDATORY LICENSEE-CONSUMER RELATIONSHIP DISCLOSURE

This disclosure is provided to you, the consumer, by the real estate agent listed on this form. Make sure you read both sides of this form. The reverse side contains a more detailed description of the different types of relationships available to you. This is not a contract.

THE TIME WHEN THE LICENSEE MUST PROVIDE THIS NOTICE TO THE CONSUMER:

All real estate licensees must present this form to you at the first personal meeting with you to discuss a specific property. The licensee can represent you as the seller (Seller's Agent) or represent you as the buyer (Buyer's Agent) and also can assist you as a facilitator.

CONSUMER INFORMATION AND RESPONSIBILITY:

Whether you are the buyer or seller you can choose to have the advice, assistance and representation of your own agent who works for you. **Do not assume that a real estate agent works solely for you unless you have an agreement for that relationship.** With your consent, licensees from the same firm may represent a buyer and seller in the same transaction. These agents are referred to as dual agents.

Also a buyer and seller may be represented by agents in the same real estate firm as designated agents. The "designated seller or buyer agent" is your sole representative. However where *both* the seller and buyer provide written consent to have a designated agent represent them then the agent making such designation becomes a "dual agent" for the buyer and seller. All real estate agents must, by law, present properties honestly and accurately. They must also disclose known material defects in the real estate.

The duties of a real estate agent do not relieve the consumers of the responsibility to protect their own interests. If you need advice for legal, tax, insurance or land survey matters it is your responsibility to consult a professional in those areas. Real Estate agents do not have a duty to perform home, lead paint or insect inspections nor do they perform septic system, wetlands or environmental evaluations.

RELATIONSHIP OF REAL ESTATE LICENSEE WITH THE CONSUMER

(check one) ☐ **Seller's agent** ☐ **Buyer's agent** ☐ **Facilitator**

IF A SELLER'S OR BUYER'S AGENT IS CHECKED ABOVE COMPLETE THE SECTION BELOW:

Relationship with others affiliated with _____
(Print name of real estate firm or business and license number)

(Check one) ☐ The real estate agent listed below, the real estate firm or business listed above and all other affiliated agents have the same relationship with the consumer named herein **(seller or buyer agency, not designated agency)**.

☐ Only the real estate agent listed below represents the consumer named in this form **(designated seller or buyer agency)**. In this situation any firm or business listed above and other agents affiliated with the firm or business do not represent you and may represent another party in your real estate transaction.

By signing below I, the real estate licensee, acknowledge that this disclosure has been provided timely to the consumer named herein.

(Signature of real estate agent) (Printed name of real estate agent) (License Number/Type) (Today's Date)

By signing below I, the consumer, acknowledge that I have received and read the information in this disclosure.

(Signature of consumer) (Printed name of consumer) (Today's Date)

(Signature of consumer) (Printed name of consumer) (Today's Date)

☐ Check here if the consumer declines to sign this notice.

TYPES OF AGENCY REPRESENTATION

SELLER'S AGENT

A seller can engage the services of a real estate agent to sell his property (called the listing agent) and the real estate agent is then the agent for the seller who becomes the agent's client. This means that the real estate agent represents the seller. The agent owes the seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the seller's interests first and negotiate for the best price and terms for their client, the seller. (The seller may authorize sub-agents to represent him/her in marketing its property to buyers, however the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions).

BUYER'S AGENT

A buyer can engage the services of a real estate agent to purchase property and the real estate agent is then the agent for the buyer who becomes the agent's client. This means that the real estate agent represents the buyer. The agent owes the buyer undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put the buyer's interests first and negotiate for the best price and terms for their client, the buyer. (The buyer may also authorize sub-agents to represent him/her in purchasing property, however the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions).

(NON-AGENT) FACILITATOR

When a real estate agent works as a facilitator that agent assists the seller and buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated owe the seller and buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. The role of facilitator applies only to the seller and buyer in the particular property transaction involving the seller and buyer. Should the seller and buyer expressly agree a facilitator relationship can be changed to become an exclusive agency relationship with either the seller or the buyer.

DESIGNATED SELLER'S AND BUYER'S AGENT

A real estate agent can be designated by another real estate agent (the appointing or designating agent) to represent either the buyer or seller, provided the buyer or seller expressly agrees to such designation. The real estate agent once so designated is then the agent for either the buyer or seller who becomes their client. The designated agent owes the buyer or seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate. The agent must put their client's interests first and negotiate for the best price and terms for their client. In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer then the appointing agent becomes a dual agent. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. The dual agent does not represent either the buyer or the seller solely only your designated agent represents your interests. The written consent for designated agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample designated agency consent is available at the Board's website at www.mass.gov/dpl/re.

DUAL AGENT

A real estate agent may act as a dual agent representing both the seller and buyer in a transaction but only with the express and informed consent of both the seller and buyer. Written consent to dual agency must be obtained by the real estate agent prior to the execution of an offer to purchase a specific property. A dual agent shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which is required of an exclusive seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds. The written consent for dual agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample dual agency consent is available at the Board's website at www.mass.gov/dpl/re.

Seller's Agent

The Duties of Agency as a Seller's Agent

Obedience/Loyalty/Disclosure/Confidentiality/Accounting/Reasonable Care (OLD CAR)

A **seller can engage the services** of a real estate agent to sell their property (called the **listing agent**) and the real estate agent is then the agent for the seller who **becomes the agent's client**. This means that the **real estate agent represents the seller**. The **agent owes the seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate**. The agent must **put the seller's interests first** and negotiate for the best price and terms for their client, the seller. (The seller may authorize sub-agents to represent him/her in marketing its property to buyers, however, the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions). This liability is referred to as **vicarious liability** and means that the **seller can be responsible for the actions of the agent and subagents**. A Seller is required to give written permission to cooperate with subagents.

Buyer's Agent

The Duties of Agency as a Buyer's Agent:

Obedience/Loyalty/Disclosure/Confidentiality/Accounting/Reasonable Care (OLD CAR)

A **buyer can engage the services** of a real estate agent to purchase property and the real estate agent is then the agent for the buyer who becomes the agent's client. This means that **the real estate agent represents the buyer**. The **agent owes the buyer undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate**. The **agent must put the buyer's interests first and negotiate for the best price and terms for their client, the buyer**. (The buyer may also authorize sub-agents to represent him/her in purchasing property, however the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions).

Designated Seller's Agent and Designated Buyer's Agents

Duties of Agency are as follows:

Obedience/Loyalty/Disclosure/Confidentiality/Accounting/Reasonable Care (OLD CAR)

A real estate agent can be designated by another real estate agent (the **appointing or designating agent**) to represent either the buyer or seller, **provided the buyer or seller expressly agrees to such designation**. The real

estate agent once so designated is then the agent for either the buyer or seller who becomes their client. The **designated agent owes the buyer or seller undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accountability, provided, however, that the agent must disclose known material defects in the real estate.** The agent must **put their client's interests first** and negotiate for the best price and terms for their client. **In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer then the appointing agent becomes a dual agent.** Consequently a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which are required of an exclusive seller or buyer agent. The dual agent does not represent either the buyer or the seller solely only your designated agent represents your interests. The written consent for designated agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate

(Non-Agent) Facilitator/Transaction Broker

The Duties of Agency as a Facilitator: Accounting of Funds (A)

When a real estate agent works as a facilitator that agent **assists the seller and buyer in reaching an agreement but does not represent either the seller or buyer in the transaction.** The facilitator and the broker with whom the facilitator is affiliated **owe the seller and buyer a duty to present each property honestly and accurately by disclosing known material defects about the property and owe a duty to account for funds.** Unless otherwise agreed, the **facilitator has no duty to keep information received from a seller or buyer confidential.** The role of facilitator applies only to the seller and buyer in the particular property transaction involving the seller and buyer. Should the seller and buyer expressly agree a facilitator relationship can be changed to become an exclusive agency relationship with either the seller or the buyer.

Dual Agent

The Duties of Agency as a Dual Agent: Confidentiality/Accounting (CA)

A real estate agent may act as a dual agent representing both the seller and buyer in a transaction but only with the **express and informed consent of both the seller and buyer.** Written consent to dual agency must be **obtained** by the real estate agent **prior to the execution of an offer to purchase** a specific property. **A dual agent shall be neutral** with regard to any conflicting interest of the seller and buyer. Consequently a **dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions which are required of an exclusive seller or buyer agent.** A dual agent does, however, still **owe a duty of confidentiality** of material information and accounting for funds. The written consent for dual agency must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople Board.

A **Dual Agent** does not choose sides they are **neutral** during the transaction. An agent who represents both parties **without receiving permission** prior is known as an Undisclosed Dual Agent. When an office represents both a seller and buyer as designated agents the principal broker/designator is a dual agent. Both the seller and buyer acknowledge that designated agency exists and permits the principal to become a dual agent. It is **presumed conclusively** that this could occur. The **broker must send a notification of designated agency** if it does occur. **Undisclosed Dual Agency is illegal in Massachusetts.**

Open Houses

Prospective purchasers who attend an **open house are not required to sign these notices** nor is the agent conducting the open house required to provide the Consumer Relationship Disclosure Notice to open house browsers.

Open House agents are required to conspicuously disclose any pre-existing relationship they may have via a sign, poster or literature being distributed at the open house. Many agents post table tents disclosing the relationship and they insert information about the relationship into the handout material being distributed to prospective purchasers.

When the listing literature and property description form is distributed at the open houses the written disclosure of the agency relationship shall be more conspicuous than any other written material. The Real Estate Board has the right to inspect all records and notices.

Title X Section 1018 Federal Lead Paint Law

This law requires real estate brokers/salespersons to inform sellers of their obligation to disclose any information they have relative to lead paint within the home they are selling or renting.

M.G.L. Chapter 111 Massachusetts Lead Paint Law

In 1971 Massachusetts enacted one of the first state sponsored lead paint laws. The presence of lead based materials can present a danger to children if they ingest lead paint chips or lead dust. The results can be life altering. Insurance companies will not pay claims to people who sue for lead issues. There are regulations that real estate agents must follow in regards to property sales and rentals. Agents are required to have property owners sign specific forms when selling or leasing properties built before 1978. **An agent is required to keep copies of these forms for three years.** We have enclosed some excerpts from these forms. You should become familiar with the entire package. They can be downloaded at:

Sales: mass.gov/dph/clppp/ptnnew.doc

Rentals: mass.gov/dph/clppp/word_doc/tenant_note.doc

Property Transfer Notification Certification (Property Sales) Childhood Lead Poisoning Prevention Program (CLPPP)

Massachusetts Law states that any **property built before 1978** is subject to lead paint scrutiny. Key points of the law are as follows:

- If a **child under the age of six years** of age resides in any property it must be **deemed lead free or compliant**.
- A Real Estate agent is **required to provide the seller** of a property with the **Property Transfer Notification Certification Package published by the Department of Public Health**. The seller and the agent sign off on the Notification Certification Form as to their understanding regarding lead paint with the property.
- The **Property Transfer Notification Certification** must be **provided to the buyer before signing a Purchase Contract**. The buyer and the agent providing the form sign off on the notification.
- Real Estate agents must tell prospective purchasers that under state law, a new owner of a home built before 1978 in which a **child under six will live or continue to live must have it deleaded or brought under interim control within 90 days from the date of purchase**.
- The **seller must provide the agent with copies** of any **reports** they may have about their property regarding lead paint.
- If the **seller does not know** the information they can indicate **unknown**.
- This form is to be presented to prospective buyer before they make an offer on the property.
- This allows the buyer to obtain the information that the seller has disclosed about the property.
- The agent taking the offer from a prospective buyer must inform the buyer of **their 10 day right to conduct a lead paint inspection**, if they desire. The buyer generally pays for the test. **The buyer can waive the right to the test for lead**, but must be given the opportunity.
- The seller cannot prohibit the buyer from conducting a test.
- The agent writing the offer and the buyer sign the Property Transfer form.
- If a property is **found** to have **lead** the seller is not **mandated to remove** the lead based material in order to sell the property.
- The new buyer can obtain a **Letter of Compliance from the Commonwealth**. The property must be free of lead up to **five feet in height** and be free from chipping or flaking paint.
- **A homeowner may obtain a letter of "Interim Control"**. It is an allowance by the state for the property owner to contain or control the lead paint within a property while a plan of action for removal is being put into place. The **Department of Public Health** issues this letter and **it is good for up to one year from the date it was issued**. It **can be renewed** for an additional year as long as the property remains in good condition.
- A property owner who would like to obtain a letter of Interim Control must have the property **inspected by a licensed risk assessor**.
- The state allows a **\$ 500.00 tax credit** per unit toward **Interim Control**.

- The **state allows a \$1,500.00 tax credit per unit for removing lead.**
- **Encapsulation is a method utilized to control lead.** It is a sealant approved by the Department of Public Health used to contain lead. These products and requirements changed over time and the homeowner needs to be aware of the current standards.
- **Sellers and Agents who fail to provide the Notification and Certification can face a civil penalty up to \$ 1000.00 under state law; a civil penalty of up to \$ 10,000, possible criminal sanctions under federal law and liability for damages under the Massachusetts Consumer Protection Act (M.G.L. 93A).**
- There a number of low or no interest loans available for lead removal. **Massachusetts Housing Finance provides loans. (MHF)**
- The broker must keep **a copy** of the signed form for **three years**.

Below you will find excerpts from the Property Transfer Notification Certification Form. **This form is mandatory for all properties built before 1978.** The parties who signed this disclosure should retain copies of the notification packet. A broker should keep a copy of the form for no less than three years. The full form should be reviewed you can download it at

www.state.ma.us/dph/clppp

CHILDHOOD LEAD POISONING PREVENTION PROGRAM (CLPPP) PROPERTY TRANSFER LEAD PAINT NOTIFICATION

Under Massachusetts and federal law, this notification package must be given to prospective purchasers of homes built before 1978. This package must be given in full to meet state and federal requirements. It may be copied, as long as the type size is not made smaller. Every seller and any real estate agent involved in the sale must give this package before the signing of a purchase and sale agreement, a lease with an option to purchase, or, under state law, a memorandum of agreement used in foreclosure sales. Sellers and agents must also tell the prospective purchaser any information they know about lead in the home. They must also give a copy of any lead inspection report, risk assessment report, Letter of Compliance or Letter of Interim Control. **This package is for compliance with both state and federal lead notification requirements.**

Real estate agents must also tell prospective purchasers that under the state Lead Law, a new owner of a home built before 1978 in which a child under six will live or continue to live must have it either deleaded or brought under interim control within 90 days of taking title. This package includes a check list to certify that the prospective purchaser has been fully notified by the real estate agent. This certification should be filled out and signed by the prospective purchaser before the signing of a purchase and sale agreement, a lease with an option to purchase or a memorandum of agreement used in a foreclosure sale. It should be kept in the real estate agent's files. After getting notice, the prospective purchaser has at least 10 days, or longer if agreed to by the seller and buyer, to have a lead inspection or risk assessment if he or she chooses to have one, except in cases of foreclosure sales. There is no requirement for a lead inspection or risk assessment before a sale. A list of private lead inspectors and risk assessors licensed by the Department of Public Health is attached and can also be found on the Childhood Lead Poisoning Prevention Program's website at

www.state.ma.us/dph/clppp.

Sellers and real estate agents who do not meet these requirements can face a civil penalty of up to \$1,000 under state law; a civil penalty of up to \$10,000 and possible criminal sanctions under federal law, as well as liability for resulting damages. In addition, a real estate agent who fails to meet these requirements may be liable under the Massachusetts Consumer Protection Act.

The property transfer notification program began in 1988 and has been very successful. It provides information you need to protect your child, or your tenants' child, from lead poisoning. Massachusetts has a tax credit of up to \$1,500 for each unit deleaded. There are also a number of grants and no-interest or low-interest loans available for deleading. It's up to you to do your part toward ending lead poisoning.

PLEASE TAKE THE TIME TO READ THIS DOCUMENT. LEAD POISONING IS THE NATION'S LEADING ENVIRONMENTAL HAZARD AFFECTING CHILDREN. DON'T GAMBLE WITH YOUR CHILD'S FUTURE.
CLPPP Form 94-2, 6/30/94, Rev. 2/03

PROPERTY TRANSFER NOTIFICATION CERTIFICATION

This form is to be signed by the prospective purchaser before signing a purchase and sale agreement or a memorandum of agreement, or by the lessee-prospective purchaser before signing a lease with an option to purchase for residential property built before 1978, for compliance with federal and Massachusetts lead-based paint disclosure requirements.

Required Federal Lead Warning Statement:

Every purchaser of any interest in residential property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (circle documents below).

Lead Inspection Report; Risk Assessment Report; Letter of Interim Control; Letter of Compliance

(ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's or Lessee Purchaser's Acknowledgment (initial)

(c) _____ Purchaser or lessee purchaser has received copies of all documents circled above.

(d) _____ Purchaser or lessee purchaser has received no documents.

(e) _____ Purchaser or lessee purchaser has received the Property Transfer Lead Paint Notification.

(f) _____ Purchaser or lessee purchaser has (check (i) or (ii) below):

(i) _____ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(g) _____ Agent has informed the seller of the seller's obligations under federal and state law for lead-based paint disclosure and notification, and is aware of his/her responsibility to ensure compliance.

(h) _____ Agent has verbally informed purchaser or lessee-purchaser of the possible presence of dangerous levels of lead in paint, plaster, putty or other structural materials and his or her obligation to bring a property into compliance with the Massachusetts Lead Law -- either through full deleading or interim control -- if it was built before 1978 and a child under six years old resides or will reside in the property.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Seller	_____ Date	_____ Seller	_____ Date
_____ Purchaser	_____ Date	_____ Purchaser	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

(General lead poisoning information)

1-800-424-LEAD/ <http://www.nsc.org/ehc/lead.htm>

Tenant Lead Law Notification and Certification Form/Package

Before a prospective tenant can rent a property built before 1978 the property owner and the new **tenant must sign two copies of the Tenant Lead Law Notification and Tenant Certification Form/Package**, and the property owner must give one of the copies to the tenant to keep. If there are any prior forms, lead inspection reports, risk assessment reports, letters of compliance or letters of interim control the property owner is required to provide the tenant with copies of the reports.

If an **agent is involved with the transaction** they are **required to sign off** on the Tenant Notification indicating they told the owner/lessor of the property as to their obligations for disclosure regarding lead. **The broker must keep a copy of the signed form for three years.**

- If a **child under the age of six resides** in an apartment, the premises is required to be lead compliant.
- The rules usually break down to “**mouthable**” **surfaces** within the unit and common areas. Examples would be: windows, window sills, doors, railings, stairs, corner **moldings up to five feet in height**.
- A property owner cannot deny someone the opportunity to rent an apartment due to the presence of lead.
- A property owner **cannot evict** someone because they had a child.
- If someone **had a child** and the apartment contained lead, the property owner would be required to **relocate the tenant**, place their belongings in storage, make the unit lead compliant, return their belongings to the apartment and pay for lodging, moving and storage costs.
- Properties are **only required to be lead compliant if a child under six years of age resides in the unit**.
- **Vacation properties/** short- term rentals require a **Massachusetts Short Term Vacation Rental and Rooming House Lead Paint Form** and lead packet but are exempt from lead removal. They are required to address chipping, peeling or flaking paint. **Less than 31 days is considered a short term rental**.
- A property owner may delay a rental agreement if they need to de-lead a unit for a period of 30 days as long as there is not a signed lease that includes the time period being delayed.
- If a lease has been signed that covers the period the property owner must pay for accommodations for the tenant while the deleading is being completed.
- **Agents and property owners who fail to carry** out the tenant notification obligation are subject to a **fine of up to \$ 1,000.00**.
- The broker needs to keep a **copy of the form for three years**.

Tenant Lead Law Notification

What lead paint forms must owners of rental homes give to new tenants?

Before renting a home built before 1978, the property owner and the new tenant must sign two copies of this **Tenant Lead Law Notification** and **Tenant Certification Form**, and the property owner must give the tenant one of the signed copies to keep. If any of the following forms exist for the unit, tenants must also be given a copy of them: lead inspection or risk assessment report, Letter of Compliance, or Letter of Interim Control. **This form is for compliance with both Massachusetts and federal lead notification requirements.**

What is lead poisoning and who is at risk of becoming lead poisoned?

Lead poisoning is a serious environmental hazard. It is most dangerous for children under six years old. It can cause permanent harm to young children's brain, kidneys, nervous system and red blood cells. Even at low levels, lead in children's bodies can slow growth and cause learning and behavior problems. Young children are more easily and more seriously poisoned than others, but older children and adults can become lead poisoned too. Lead in the body of a pregnant woman can hurt her baby before birth and cause problems with the pregnancy. Adults who become lead poisoned can have problems having children, and can have high blood pressure, stomach problems, nerve problems, memory problems and muscle and joint pain.

How do children and adults become lead poisoned?

Lead is often found in paint on the inside and outside of homes built before 1978. The lead paint in these homes causes almost all lead poisoning in young children. The main way children get lead poisoning is from swallowing lead paint dust and chips. Lead is so harmful that even a small amount can poison a child. Lead paint under layers of nonleaded paint can still poison children, especially when it is disturbed, such as through normal wear and tear and home repair work.

Lead paint dust and chips in the home most often come from peeling or chipping lead painted surfaces; lead paint on moving parts of windows or on window parts that are rubbed by moving parts; lead paint on surfaces that get bumped or walked on, such as floors, porches, stairs, and woodwork; and lead paint on surfaces that stick out which a child may be able to mouth such as window sills.

Most lead poisoning is caused by children's normal behavior of putting their hands or other things in their mouths. If their hands or these objects have touched lead dust, this may add lead to their bodies. A child can also get lead from other sources, such as soil and water, but these rarely cause lead poisoning by themselves. Lead can be found in soil near old, lead-painted homes. If children play in bare, leaded soil, or eat vegetables or fruits grown in such soil, or if leaded soil is tracked into the home from outside and gets on children's hands or toys, lead may enter their bodies. Most adult lead poisoning is caused by adults breathing in or swallowing lead dust at work, or, if they live in older homes with lead paint, through home repairs.

How can you find out if someone is lead poisoned?

Most people who are lead poisoned do not have any special symptoms. The only way to find out if a child or adult is lead poisoned is to have his or her blood tested. Children in Massachusetts must be tested at least once a year from the time they are between nine months and one year old until they are four years old. Your doctor, other health care provider or Board of Health can do this. A lead poisoned child will need medical care. A home with lead paint must be deleaded for a lead poisoned child to get well.

What kind of homes are more likely to have lead paint?

In 1978, the United States government banned lead from house paint. Lead paint can be found in all types of homes built before 1978: single-family and multi-family; homes in cities, suburbs or the countryside; private housing or state or federal public housing. The older the home, the more likely it is to have lead paint. The older the paint, the higher its lead content is likely to be.

Tenant Certification Form

Required Federal Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention. The **Massachusetts Tenant Lead Law Notification and Certification Form** is for compliance with state and federal lead notification requirements.

Owner's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Owner/Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the owner/lessor (Check (i) or (ii) below):

(i) _____ Owner/ Lessor has provided the tenant with all available records and reports pertaining to lead -based paint and/or lead-based paint hazards in the housing (circle documents below).

Lead Inspection Report; Risk Assessment Report; Letter of Interim Control; Letter of Compliance

(ii) _____ Owner/Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Tenant's Acknowledgment (initial)

(c) _____ Tenant has received copies of all documents circled above.

(d) _____ Tenant has received no documents listed above.

(e) _____ Tenant has received the Massachusetts Tenant Lead Law Notification.

Agent's Acknowledgment (initial)

(f) _____ Agent has informed the owner/lessor of the owner's/lessor's obligations under federal and state law for lead-based paint disclosure and notification and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Owner/Lessor	Date	Owner/Lessor	Date
Tenant	Date	Tenant	Date
Agent	Date	Agent	Date

Owner/Managing Agent Information for Tenant (Please Print):

Name	Street	Apt.
City/Town	Zip	Telephone

_____ I (owner/managing agent) certify that I provided the Tenant Lead Law Notification/ Tenant Certification Form and any existing Lead Law documents to the tenant, but the tenant refused to sign this certification. The tenant gave the following reason: _____

The Massachusetts Lead Law prohibits rental discrimination, including refusing to rent to families with children or evicting families with children because of lead paint. Contact the Childhood Lead Poisoning Prevention Program for information on the availability of this form in other languages.

Tenant and owner must each keep a completed and signed copy of this form.

Property Owner/ Tenant Relations

Being a property owner can be challenging and being a tenant of a bad property owner can be difficult. Both property owners and tenants have certain rules that they must adhere to. Their failure to abide by these rules can result in **penalties equal up to three times** the amount of the offense plus court costs and attorneys fees.

A tenant is not allowed to make repairs or alterations to the apartment without the permission of the property owner. **If the tenant installed an alarm they are required to provide the alarm code to the property owner.**

Collected Funds from the Tenant

The maximum amount of funds a property owner/management company can collect from a tenant at the commencement of the lease is:

First Months Rent Last Months Rent

A **Security Deposit** (No more than an amount equal to one month's rent)

A **Key Fee** (the cost to replace the lock when the tenant departs)

Security Deposits (Apartment Condition Statement)

There are rules regarding the collection of security deposits. Some of these rules are as follows:

- Security Deposits** must be **placed** in a fiduciary **bank account by the property owner.**
- The **tenant** must be **notified** as to the **whereabouts** of the funds w/i 30 days.
- The bank account need **only pay bank rates.**
- The tenant and landlord must **enter into a written agreement as to the condition of the property** when the tenancy takes place.
(Apartment Condition Statement Form) The form is to be provided to the tenant at the taking of the deposit or 10 days after tenancy begins. If you disagree with statement you must indicate in writing within 15 days. Failure to do so may waive your rights in the future.
- The **interest earned** must be given to the tenant **within 30 days** from the **termination of the rental period** if the rental period equaled one year.
If the period is less than one year the tenant is not entitled to the interest.
- If a rental period continued after the one year anniversary the interest must be **returned to the tenant** within **30 days** or they may be given the option to apply it to future rental payments.

The Property Owner may retain the Security Deposit :

- To apply towards **unpaid rent** due by the tenant upon the termination of the rental agreement.
- To apply to any unpaid real estate taxes the tenant is liable for under the terms of the lease.

- The cost of **repairing damages** caused by the tenant during the rental period. These repairs must be reasonable not include normal wear and tear.
- If the property owner retained any part of the security deposit they are required to furnish the tenant with a **detailed list** of the **repairs** and the **cost to make such repairs within 30 days**. This documentation can include the invoices issued by contractors. The cost of repairs must be reasonable.

The Property Owner will forfeit their right to claim the security deposit if they failed to comply with certain conditions. The property owner can be subject to a penalty of up to three times the amount of the infraction if they failed to do the following:

- **Failed to deposit the funds in a fiduciary bank account.**
- If the property owner **fails to deposit** the funds in an **interest bearing** account the interest will be **calculated at 5%**.
- If they do not have an **apartment condition statement** with the tenant.
- Attempted to enforce an invalid lease provision.
- If they failed to provide the tenant with the **list of damages within 30 days**.
- If they **failed to return any security funds and/or interest due to the tenant within 30 days of the termination of tenancy**.

Please Note: When a property is sold the former property owner must turn the security deposits over to the new property owner. **If the former owner fails to turn over the deposit to the new owner the following will be enforced. The former property owner can be sued for triple damages for failure to turn over the security deposit.**

The tenant has a right to continue to occupy the apartment for the amount of time equal to amount paid for the security if said security was held unjustly.

Rental Payments for Last Month

A property owner **is not required to place rent** paid toward the last month of the rental period **into an interest bearing account**. They can utilize the money as income earned. They are required to pay interest for the funds collected. Banks rates if deposited into an interest bearing account or 5% interest if they elect not to deposit the funds. Interest is due from the date the money was collected and is paid on a yearly basis. There is no one- year requirement on a last months rent.

Requirements to Keep Property in Habitable Condition

The property owner is required to keep apartments that are rented in habitable condition. If repairs need to be made and the owner neglects to make the repairs the tenant may make the repairs and deduct the costs from the rent. The tenant would need to supply the property owner with copies of invoices detailing the work performed and the costs. **The property must meet the state sanitary code and the owner will stand by the warranty of habitability.**

Non-Payment of Rent (14 Day Notice to Quit) Served by Sherriff/Constable

If a **tenant fails to pay** the rent when due the property owner **may initiate eviction proceeding** by providing the tenant with a **14 day notice to quit**. The process can be **initiated** as soon as the tenant is late with the rent. The tenant can **redeem their status by paying the unpaid rent and expenses associated with the notice within 14 days** provided they have not been delinquent within the past 12 months.

Late Fees

A property owner can charge a **late fee** to a tenant only after the rent is **30 days** in arrears. The fee should be a set amount predetermined in the rental agreement.

Storage

If a tenant abandoned an apartment, was evicted or departed and left personal belonging in the apartment the property owner is prohibited from disposing of the property. The property owner must place the material in storage for a period of not less than 3 months. The landlord must inform the tenant as to where the personal items are being stored and how to retrieve the items. The property owner is entitled to reimbursement for the storage costs.

Covenant of Quiet Enjoyment

The tenant has the right to reside at the property without interference and harassment of the property owner. The property owner should give notice and a valid reason if they need to enter the apartment. They cannot harass a tenant who is meeting their obligation.

Rental Tax Deductions

A tenant can claim a **deduction on their state income taxes** for rental payments made for their principal place of residence. The deduction can be up to 50% of the rent payments made to the landlord with a **maximum deduction of \$ 3,000 per year**.

M.G.L 93A Massachusetts Consumer Protection Statute

This law regulates the practices of all those engaged in business practices within the Commonwealth of Massachusetts. It mandates that businesses be fair when dealing with consumers and **prohibits them from engaging in deceptive and unfair practices**. **The State Attorney General investigates complaints**.

Real Estate Professionals fall into this category. This law mandates that real estate professionals disclose anything to the buyer that might affect their decision as whether they should buy the property. An agent is required to disclose all known defects and problems with the property to the prospective buyer. **No more Caveat Emptor or Let the Buyer Beware**. The buyer should not have to ask about material defects.

Please Note: Private homeowner sales are exempt from M.G.L. 93A.

93A Demand Letter

If a consumer feels that were not treated fairly they have the option of court action. Prior to this court action they seek to remedy the situation via a 93A demand letter. The **person receiving the letter has 30 days to respond to the letter and to find a remedy to the complaint.**

The 93A Demand Letter:

- Must be **sent to the party involved** outlining a remedy **30 days prior to seeking a court action.**
- Must **provide specifics** regarding the complaint.
- Must indicate all of the parties involved with the situation.
- Must **Detail the damages** and the remedy to cure the damages.
- Must indicate the **amount of money being requested** to remedy the complaint.

Responding to the 93A Demand Letter

It is a wise idea to have an attorney review this complaint and to either review your response or to draft your response. An improper handling of the situation can be very costly.

- The person receiving the complaint has the right to make an offer to settle the situation.
- If the offer to settle the situation is rejected a court action may take place.
- If the court found against the broker involved, but found their offer to settle to be reasonable they would most likely order them to pay the amount they offered to settle the claim.
- If the **court ruled** that the **broker knowingly** acted in **bad faith** by withholding information or misrepresenting the property they would be **penalized** by a **fine** of at least **twice the amount** of money being sought and **up to three times** the amount of money being sought plus attorneys fees and court costs. This is known as treble damages. If the broker **fails to respond to the 93A Demand Letter** the court award could be **treble damages** as a penalty for failing to comply with the law.

ENVIRONMENTAL PROTECTION WITHIN MASSACHUSETTS

The environment is a precious commodity and the Commonwealth of Massachusetts has enacted several regulations to prevent destroying, decaying and polluting the environment. The **Attorney General** of the Commonwealth is charged with **prosecuting companies and individuals who harm our natural resources.**

Hazardous Issues

In addition to the requirement of disclosing lead paint, the broker/agent is required to disclose other issues that may be hazardous to potential buyers. Some of the other issues that a real estate agent must disclose are as follows:

Underground Oil/Storage Tanks (UST)

The real estate agent **is required to disclose to the buyer** if the property has an underground oil tank. It is **not a requirement of state law to remove this tank unless it is leaking**. Despite the state law it is possible that a **city/town** has a **stricter requirement** when it comes to underground storage tanks.

Some towns require an **abandoned underground tank must be removed**. Leaking UST's contaminate the soil and cause pollution. The Massachusetts Department of Public Safety regulates underground storage tanks. To **remove a tank** you must **contact your local fire department for permits and approvals**. It is **possible for a prior property owner to assume some of the liability for a leaking tank** if it can be determined that the leak was present while they owned the property.

In order to place a tank underground the property owner needs to obtain permission from the fire chief. A property with an underground storage tank might need to install a leak detection system to protect against damaging the environment and may be required to have the property inspected annually.

M.G.L. 21E Site Assessment (Commercial Property)

The **Massachusetts Department of Environmental Protection is charged with overseeing the cleanup of contaminated properties** and investigating who is responsible for performing the cleanup or paying the cost of cleanup back to the Commonwealth of Massachusetts if the cleanup was conducted by the state. A person who purchases a commercial property may want to test the soil and review any existing reports to ensure that the site is clean and that they are not purchasing a contaminated site. If oils, gasoline, paint or chemicals were stored on the property there could be a cause for alarm. A **lender** may **require a 21E report** before issuing a loan. **The law that dictates these terms is nicknamed the Massachusetts Superfund Law**. It is known as **MGL 21E**. If a site is contaminated the process to **clean the site is overseen** by an **environmental expert** called a **Licensed Site Professional**. The 21E is a negotiated point.

Brownfield Legislation

Massachusetts like many other states had **polluted industrial sites** that were abandoned. In 2002 Brownfield Legislation became law and the federal governments provided funds to access and clean abandoned sites. These cleanups enhanced the environment, created added development and placed abandoned properties back on the tax rolls.

Comprehensive Environmental Response Compensation & Liability Act (CERCLA) Superfund Law

A **Federal Law referred to as the Superfund**. It was enacted in 1980 and gave the **federal government the authority to impose penalties** against the parties responsible for **contaminating a site or roadway** and mandated that these sites be cleaned. This act imposed a tax on the oil and chemical industry. The funds collected from this tax have been used to clean up contaminated sites.

Massachusetts Oil & Hazardous Material Release Prevention & Response Act (MGL 21E)

This act is the **Massachusetts version of CERCLA (Mass Superfund)**. The owner of a property must disclose to the buyer the possibility of any toxins that may be present in the soil. The buyer has the right to inspect for contamination. **A lender may mandate that a commercial site have a 21E site assessment before they approve a loan.** The **cost of the inspection** is usually **negotiated between the seller and the buyer**. If a property owner was negligent by not protecting against chemical spills or contamination they could face serious consequences. **The party responsible for the pollution is also the party responsible for the cleanup if they can be identified.** If the pollution occurred before the current property owner took control of the property and there was no way of knowing where the pollution came from the property owner is responsible for the cleanup but might not face additional sanctions. The state will take the appropriate action to restore the site and may conduct the cleanup. They will **file a lien** for the costs of the cleanup at Registry of Deeds. This **lien holds priority status** and will take precedent over other liens.

Asbestos

If a property contains asbestos **the real estate agent must disclose the asbestos** to the buyer. Asbestos is a heat resistant material that is found in insulation, exterior shingles, floor tiles and on the exterior of older furnaces (**Friable boilers or asbestos**) . It is found to be a factor in developing lung cancer and a condition known as asbestosis.

If a property owner is having asbestos removed they are required to:

- Hire a certified professional to do the removal.
- The company performing the removal must submit a plan of action to contain and remove the material. The plan and appropriate permits need local approval.
- The material must be transported and disposed at an approved landfill.**

Radon

This is a natural gas that comes from the ground and enters a **property through cracks in the foundation**. Any buyer who plans to utilize the basement space, has a well or knows of **ledge in the area should conduct a radon test**. The Environmental Protection Agency indicates that the average home has a level of 1.3 picocuries per liter. It is **recommended a mitigation system** be installed in a **home that has a level of 4 or more picocuries per liter**. This remedy is a venting system that transfers the air to outside the home.

Title V Report (Provided by the Seller)

Title V regulates private septic systems (Waste Disposal Systems). If a **property** is being **sold, expanded or the use is being changed** it must be inspected to ensure it is meeting minimum standards approved by the state. **In order to build or expand the town will be concerned about the absorption rate**. A **perk test** (percolation test) is required. A town may require stricter enforcement requirements than the state guidelines. **Refinances do not require inspections.**

Signs of a failing Septic System would be:

Sewage surfacing on the ground on or near drainfield, leach field or septic tanks.
Spongy ground on or near drain field, leach field or sewage backing up into your basement or sewage odor in the air.

Point to know regarding Title V

- The property **must be inspected** within the prior **two years** from the **date of the sale**.
- This requirement is **three years** if the property **is pumped annually**.
- If the property fails the inspection it must be brought into compliance within a designated timeframe. The town will dictate the timeframe.
- If an inspection can not occur due to weather conditions it must be completed within six months from the date of the sale of the property.
- If the property fails inspection the lender holdbacks some of the proceeds from the seller until the system is brought into compliance.
- The **Massachusetts Housing Finance Agency** has a home improvement program for low to moderate income homeowners who are required to upgrade their system.
- The **state** allows a **tax credit** of up to **\$ 1,500 per year** for work performed. The total credit **can not exceed \$ 6,000 over a four year period**.

PROTECTING OUR WATERFRONT/WATERWAYS

Massachusetts Wetlands Protection Act/ Wetlands Restriction Act

This act provides **protection** to areas **designated environmentally sensitive**. **Someone looking to build or alter the landscape within the designated area may have to appear before a local conservation commission** to gain approval of such activity. **If someone is looking to fill in land, dredge a waterway or remove land in a designated area they will be required to file a Notice of Intent**. The Department of Environmental Protection may **establish non-encroachment lines** around any water source in Massachusetts.

This Notice of Intent (NOI) is geared to determine the impact on the following:

- Flood Control
- Prevention of Pollution
- Protection of Wildlife
- Storm Damage
- Protection of the ground water supply
- Protection of Fisheries
- Protection of Shellfish Banks
- Protection of Water Supplies

Designated areas that are covered include:

- Freshwater Wetlands
- Marshes
- Dunes
- Beaches
- Flats
- Coastal Waters
- Swamps

The Conservation Commission may issue an Order of Conditions indicating what will be required to limit any impacts surrounding the proposal. Certain setbacks will need be put in place to safeguard the protected areas.

Clean Waters Act

This act is designed to protect wetlands from the effects of developments. This act protects against land, water and air pollution.

Scenic Rivers Protection Act

This is a 1996 expansion to the Wetlands Protection Act. It added rivers to the protected areas. A river is a naturally flowing body of water that flows into an ocean, connecting river or lake.

Coastal Zone Management Act & the Ocean Sanctuaries Act

This act **places restrictions regarding the development and use of the coastline** within Massachusetts. These **restrictions** carry for **three miles from the shore-line**. The three mile distance from the shore is known as our **territorial limit**.

LAND USE CONTROLS WITHIN MASSACHUSETTS

M.G.L. 40A (Zoning Act)

This act outlines the right of each municipality in Massachusetts to establish zoning guidelines within its boundaries. The City of Boston is exempt from this statute. These guidelines create certain standards for creating zoning regulations. **The law highlights that non-conforming properties may not be utilized in their non-conforming status indefinitely. If a property becomes abandoned for a period of two years it loses its non-conforming status.**

A person who desires to utilize the property inconsistent with current zoning will seek a **variance with the Zoning Board of Appeals**. The property owner must **demonstrate a hardship** and that the variation to the code will not hurt the public interest. **An individual denied a request by a Zoning Board has the right to appeal the outcome to the Massachusetts Superior Court.**

M.G.L. 40B (Regional Planning/Comprehensive Permit Law/Anti-Snob Zoning Law)

The purpose of the law is to **permit a city or town to plan jointly via a planning board or planning commission** to promote with the greatest efficiency, economic justice and orderly development within the areas located within their jurisdiction considering the general welfare and prosperity of their citizens.

Such plans shall make recommendations for the physical, social, government and economic improvement of the district in question and support that any plans will be in the best interest of the inhabitants of the district. **Such plans take into account land use, highways, bridges, airports, parks, utilities, housing and other matters that will benefit the district.**

Some have referred to this law as the anti-snob zoning law. Some cities or towns practiced selective zoning practices and did not balance the communities need for low and moderate income housing with other planning needs.

This law provides an opportunity for aggrieved residents to file an appeal to a zoning requirement. An individual could file an appeal to Superior Court or to the Land Court within 20 days from a local zoning board decision. The court could rescind the zoning ordinance if they find it was not in the best interest of the community.

Due to **the need for low to moderate-income housing** M.G.L. 40B Section 20 addresses the **shortage of affordable housing statewide and implemented a system to reduce unnecessary barriers channeled through the local approval process, zoning boards and appeal commissions.** The goal is to encourage production of **affordable housing in every community** throughout Massachusetts.

The theory is that a **proposal for housing be consistent with local needs.** If **less than 10% of a towns housing is low to moderate income** additional housing for low to moderate income is viewed as being **consistent with local needs.**

This law allows local non-profits, public agencies and local developers an avenue to build housing that does not comply with the local zoning restrictions of the town providing some of units are deemed affordable. **Many times 25% of the units are required to be affordable.** Most towns have a minimum of **10% of the units be affordable if 10 or more units are being built.**

In order to **apply for a Comprehensive Permit** to build affordable housing the entity building the units must obtain a **Project Eligibility Letter** from the state or federal government.

The entity then **files the application** to build accompanied by the Project Eligibility Letter with the local Zoning Board. The Zoning Board is required to hold a **hearing within 30 days** from receiving the application to address the local concerns of the community. These concerns address health, welfare, air and light, traffic and public safety issues. The **zoning board must act** on the request within **40 days** from the conclusion of the public hearing process. They can **grant** a Comprehensive Permit that would encompass several permits usually granted by several agencies, approve the permit with conditions or **deny the permit.** If the permit is denied, the applicant **can appeal the decision to the Housing Appeals Committee with 20 days of being denied.** If the Housing Appeals Committee **denies** the appeal, that decision can be **appealed to Superior Court.**

M.G.L. 40R Smart Growth Zoning and Housing Production

The purpose of this law is to encourage smart growth and increased housing production in the Commonwealth. It is a principle of land development that mixes land uses, increases the availability of affordable housing by taking advantage of compact design, creating distinctive and attractive communities, preserving open space, farmland and the natural beauty of the environment. **The Smart Growth process encourages community and stakeholder collaboration in the development decisions.**

M.G.L. 41 Subdivision Control Law

In order to assist with appropriate population and building growth most towns **have local planning boards that meet to determine the appropriateness of proposed subdivisions** and to ensure that the development takes into account important issues such as utilities, drainage, safety concerns, vehicular traffic and an array of issues important to the town and its residents. **A subdivision is two or more lots that do not have frontage on an existing roadway.** The subdivision law also supports the use of solar energy when applicable.

Environmental Impact Statement

A developer may need to prepare an Environmental Impact Statement prior to undertaking a new project. **This statement will outline the developers plan to complete the project, what effects it might have on the environment and how they plan to protect the environment while completing the project.** The developer is responsible for preparing and paying for the report.

Uniform Building Code (UBC)

The Uniform Building Code is the statewide code used to determine **commercial, residential and industrial building within the Commonwealth of Massachusetts.** (This code is superior to building codes established by local authorities.)

Scenic Roads Act

In 1973 Massachusetts enacted a law that recognized our scenic roadways. This law recognized the value of our historic landscape within old or original roadways. It acknowledged old stone-walls and trees as having added value to the charm of Massachusetts. This law prohibits the destruction of these roads and their beauty. **The local planning board must approve development plans along these roads.**

Massachusetts Fair Housing Law MGL 151B

Real Estate Agents are prohibited from discriminating. They have a duty to act fairly and honestly with everyone they come in contact with. It is illegal to discriminate and an agent could lose their license and be fined if found guilty of discrimination.

The following are a list of protected classes of people. Real Estate Agents are not allowed to discriminate on the basis of:

Age	Blindness	Sex
Race/Color	Veteran Status	Sexual Orientation
Creed	Ancestry	Hearing Impaired
Familial Status	Public Assistance	Marital Status
Disabled/Physical or Mental Disability		

Massachusetts Commission Against Discrimination (MCAD)

This state agency that oversees discrimination claims within the Commonwealth is the **Massachusetts Commission Against Discrimination or MCAD**. A person who feels they were discriminated against can **file a complaint** with this agency **up to one year from the date of the incident**. If a complaint is filed with MCAD against a real estate agent they will investigate the matter. If a hearing takes place and the agent is **found guilty they automatically lose their license to practice for 60 days**. A **second violation within two years results in a 90 day suspension**. **MCAD could mandate that the agent pay up to \$ 2,000 to the person who filed the complaint**. An agent can be liable for additional costs. **MCAD mandates the posting of a state approved Fair Housing Poster**. An agent can appeal a decision by MCAD to Superior Court.

HIV/AIDS

If a prospective buyer inquires about any former or present tenants being **HIV** positive the real estate agent is prohibited from responding to that question. It is a **violation of Fair Housing Laws to respond**.

Massachusetts Property Taxes

Property taxes are **assessed annually by the city or town where the property is located**. The fiscal year assigned to property taxes is from **July 1st from one year to June 30th** of the following year. The revenue collected from property taxes is used to help operate the town where the property is located. When a property is sold any unpaid property taxes are distributed to the town before any other proceeds are distributed. **Property Taxes are a Priority Lien**. They are always paid first when a sale takes place. **The assessed value should be 100% cash value**.

Important Property Tax Dates

Fiscal Year	July 1st thru	June 30th	
Taxes Due	November 1st	May 1st	Semi-annually
Taxes Due	Aug 1st Nov 1st	Feb 1st May 1st	Quarterly

Tax Abatement

A property owner who believes that they have been taxed unfairly can apply to their city or town for a reduction in property taxes. This process is called the property tax **abatement** process. The town will send someone to review the property and make an assessment of the situation. **The property owner must pay the taxes first then file for the abatement**.

Appeal

If the town does not approve the abatement the property owner can **appeal to the State Appellate Tax Board**. If they **do not get satisfaction at the Appellate Board** they can appeal to the appropriate State Court (Massachusetts Appeals Court). **Taxes must be paid before appeals**.

Property Tax Exemptions

Some local communities will give partial exemptions or reductions in property taxes to home-owners who reside in the property. **Veterans, Senior Citizens and Widowed** people may also qualify for tax exemptions. **A person with a hardship can apply for a tax deferral.**

Tax Sales

If a property owner **fails to pay their property** taxes they could lose the property via a **tax auction sale**. A person who purchases a property via tax sale does not take title to the defaulted property until a statutory time period expires. **They begin the process by obtaining a tax title certificate.**

The property owner has two years to redeem the certificate. A person who takes possession of a property via a tax sale must register the property in land court to become the true owner **once the statutory time period expired.**

Massachusetts has a two year statutory timeframe.

The **town may place a lien against a property if the taxes are not paid** when due. **Unpaid taxes** from a prior fiscal year become a lien on July 1st.

Although cities and towns issue property taxes annually they need to revalue the property within the community in order to obtain appropriate values to the building stock within the town. This is done through a revaluation process where an assessor readjusts the value of the property within the town. Some towns will perform this task every three years. State law calls for a revaluation at least once every 12 years.

Escrow Accounts/Clients Funds

When conducting a real estate transaction the buyer or lessee will provide a deposit when signing the contract. The **deposit** is to bind the transaction (**good faith money/earnest money**) when signing an offer to purchase or the down-payment when signing the Purchase and Sales Contract. Unless specified differently the deposit is given to the Real Estate Agent conducting the transaction. The agent should turn this money over to the broker immediately. **All money turned over to the broker is required by law to be placed in an escrow account located within the Commonwealth of Massachusetts. This escrow account will hold client/customer funds.** These funds do not belong to the broker. The broker cannot use this money for advertising or for any other purpose. A broker who fails to deposit the escrow money is not acting responsibly and could be accused of being negligent.

The escrow account must be held separately from the operating account of the broker. **The combining of client/customer money and personal or business funds is illegal in Massachusetts. It is know as commingling and is grounds for revocation of a license.**

This account may be interest or non-interest bearing. **If the account is an interest bearing account proper accounting must be conducted to account for the interest. The parties involved in the transaction must agree to the distribution of the interest at the conclusion of the transaction.**

Only brokers have the authority to make deposits and withdrawals from the escrow account. **A broker is required to keep a copy of all checks deposited into the escrow and withdrawn from the account for three years.**

Promotional Sale of Out of State Properties

No broker shall offer for sale in the Commonwealth of Massachusetts an interest in real property which is located in a land development of another state unless the property has been **registered with the board.**

Prior to promoting the property for sale which is located in another jurisdiction the owner or developer **shall register the property and pay a fee for such registration on a form prescribed by the board.**

A broker acting on behalf of an owner or developer of an out of state property development shall **notify** the Board in writing of such status **within seven days of accepting the client.**

The **board may inspect** any out of state real property **developments seeking registration.** The **cost** of the inspection shall be **borne by the owner or developer.**

The **board shall issue a report** based on its inspection. This **report will be kept** on file by the board **during the time the property is registered and for one year following the termination of the registration.** The developer must also keep the reports for the same time period. **The broker pays for the report.**

Once the board registers an out of state property the owner must note, in a form determined by the board, the **fact of such registration** in all subsequent **advertisements** in the Commonwealth.

Interstate Land Full Disclosure Act

A law overseen by the **Office of Interstate Land Sales Registration (a HUD Office)** that protects against fraudulent promotional programs for **unimproved land** being offered for sale. Many people have fallen prey to site unseen purchases. This law requires the **developer to file a Statement of Record** about the property being offered for sale. The law mandates the developer **provide an approval report** to the customer **two days before signing a contract.**

Forms in Relation to a Real Estate Transaction

There are several forms used in a real estate transaction. The Mandatory Massachusetts Consumer Relationship Disclosure, the mandatory lead paint forms for sales and rentals, a mandatory "Facts for Consumer Sheet" and a "Condition of Property Condition" and a fee disclosure notice is required if a tenant is charged a fee for renting an apartment or services.

Seller Disclosure Statement of Property Condition Form

The seller disclosure statement is a written notification by the seller detailing the condition of the property they are selling. This document is filled out by the seller. It should never be filled out by a real estate agent. While many real estate agents like the form, **it is not a mandatory form in the state of Massachusetts**. The seller can opt not to fill it out.


<p align="center">SELLER'S STATEMENT OF PROPERTY</p> <p align="center">THE SELLER AUTHORIZES THE BROKER OR SALESPERSON TO PROVIDE THE FOLLOWING INFORMATION TO PROSPECTIVE BUYERS. THIS INFORMATION IS BASED UPON THE SELLER'S KNOWLEDGE, BUT IT IS NOT INTENDED AS A GUARENTEE OF THE CONDITION OF THE PROPERTY AFTER SALE OF THE CONTINUED SATISFACTORY OPERATION OF ANY SYSTEM. THE BUYER SHOULD INDEPENDENTLY VERIFY ALL INFORMATION BEFORE PURCHASE.</p>		
PROPERTY ADDRESS _____		
YES	NO	UNKN
		TITLE/ZONING/BUILDING/INFORMATION
		1. Seller/Owner _____ How long owned? _____
		2. How long occupied? _____ Approximate year built? _____
		3. Have you been advised of any title problems or limitations (for example, deed restriction, lot line dispute order of conditions)? If yes, please explain _____
		a) Do you know of any easements, common driveway, or right of way? If yes, explain _____
		4. Zoning classification property (if known) _____
		5. Has your city/town issued a notice of any violation which is still outstanding? If yes, explain _____
		a) Have you been advised that the current use is nonconforming in any way? Explain _____
		6. Do you know of any variances or special permits? Explain _____
		7. During Seller's ownership, has work been done for which a permit was required? If yes, explain _____
		a) Were permits obtained? _____
		b) Was the work approved by an inspector? _____
		c) Is there an outstanding notice of any building code violation? Yes _____ No _____ Explain _____
		8. Have you been informed that any part of the property is in a designated flood zone or wetlands? Explain _____
		(See Flood Zone disclosure Page 3)
		9. Water drainage problems? Explain _____
		II. SYSTEM UTILITIES INFORMATION
		DO YOU KNOW OF ANY CURRENT PROBLEMS WITH ANY SYSTEMS LISTED BELOW?
		10. Has there ever been an UNDERGROUND FUEL TANK?
		If yes, is it still in use? _____
		If not used, was it removed? _____
		(See Hazardous Materials Disclosure Page 3)
		11. HEATING SYSTEM: Problems? Explain _____
		a) Identify any unheated room or area _____
		b) Approximate date of last service _____
		c) Reason _____
		12. DOMESTIC HOT WATER: Type _____ Age _____ Problems? Explain _____
		_____ Burners owned or rented? _____
		13. SEWAGE SYSTEM: Problems? Explain _____
		Type: Municipal Sewer _____ Private _____ If private, describe type of system: _____
		(cesspool, septic tank, etc.) _____
		Name of service company _____
		Date it was last pumped _____
		During your ownership has sewage backed up into house or onto yard? Yes _____ No _____ Explain _____
		Is system shared with other homes? _____
		Date a Title 5 inspection last performed _____ Copy attached. Yes _____ No _____
		14. PLUMBING SYSTEM: Problems/Leaks/Freezing? Explain _____
		Bathroom ventilation problems? Explain _____
		15. DRINKING WATER SOURCE: Public _____ Private _____ If private: _____
		a) Location _____
		b) Date last tested _____
		risk cancer. Although existing data does not conclusively prove that significant health effects have occurred as a direct result of chlordane use, the long term potential health risks are such that it is prudent public health policy, according to the Department of Food and Agriculture, to eliminate the further introduction of chlordane into the environment.
		H. Fair Housing Notice
		It is unlawful to discriminate on the basis of race, color, religious creed, national origin, age, gender, sex, ancestry, marital status, veteran status, sexual orientation, disability, presence of a child, receipt of public assistance or other protected classification in the sale or rental of covered housing.
		SELLER'S INITIALS _____ BUYER'S INITIALS _____

Home Inspections (Facts for Consumers Information Sheet)

In order to become a home inspector in the state of Massachusetts you must be **licensed as a home inspector**.

When a real estate agent is writing an offer to purchase they must provide the buyer with a Facts for Consumers bulletin informing them that they might want to consider having a home inspection and what sources are available to locate licensed home inspectors.

An agent who **represents the seller's interest is not allowed to refer home inspectors** to a buyer. They are allowed to provide the buyer with an **entire list of home inspectors if requested**. This list can be obtained on-line at the Home Inspection Board website. An **agent that represents the buyer can refer a home inspector to a buyer**. Since they are looking out for that buyer it can be assumed that they would be referring them to an inspector that would be looking out for their needs. **Facilitators are not allowed to refer home inspectors**.



Facts for Consumers

Board of Registration of Home Inspectors
Commonwealth of Massachusetts ~ Office of Consumer Affairs ~ Division of Professional Licensure
www.mass.gov/reg/boards/hi

The Board of Registration of Home Inspectors is charged with evaluating the qualifications of applicants and granting licensure to those who qualify. It establishes rules and regulations to ensure the integrity and competence of licensees. The Board protects the public health and welfare through regulation of the profession in accordance with the state statutes and board regulations. The Board is responsible for insuring that licensed home inspectors have proper training and experience through an education program and meet minimum inspection requirements in each inspection performed. Applicants are required to pass a board approved examination prior to licensure and fulfill continuing education requirements for license renewal.

The Board publishes a Standards of Practice and Code of Ethics for home inspectors.

Contents:

- [About Home Inspections](#)
- [Timing of the Home Inspection](#)
- [Selecting a Home Inspector](#)
- [During the Home Inspection](#)
- [Other Inspections and Tests to Consider](#)
- [Filing a Complaint](#)

Rental Requirements and Tenant Fee Disclosure Notice

A person attempting to locate an apartment for someone in expectation of receiving a fee must be licensed as a real estate agent or broker. If a Real Estate Agent/Broker is to **charge any fee to the tenant** for helping them locate an apartment they are required to **provide the tenant with a fee disclosure notice at the first personal meeting to discuss specific apartments**. This notice must clearly state the charge associated with the services (i.e. rental fee, credit reports etc.) The agent will sign and date the form. They will ask the prospective tenant to sign as well and give them a copy of the form. Failure to provide the form is a violation of the law. **The Broker is required to keep a copy of the form for three years.** Brokers are required to **maintain copies of all rental listings and the availability of these listings** at the time advertised and rented for **three years**.

Copies of all **checks** need to be kept **for three years**.

SAMPLE RENTAL BROKERAGE FEE DISCLOSURE

You have requested our assistance in finding housing accommodations for rent. In consideration of these services, you will be expected to pay us a fee as follows: _____

The fee will be payable at such time as you submit through our office an application to rent a particular housing accommodation. However, so long as you comply with the terms and conditions of the rental application and do not make any untrue statement therein, the fee will be refundable unless the application is accepted by the landlord and a tenancy is created. For this purpose, a tenancy will be created when both parties sign a lease or tenancy-at-will agreement or when you are allowed to take possession of the housing accommodation.

This form is being provided in accordance with regulations adopted by the Massachusetts Board of Registration of Real Estate Brokers and Salesmen.

Date: _____
Signature of Broker or Salesperson

License Number _____

Signature of Prospective Tenant _____

Name: _____
(Please Print Full Name)

_____(To be checked by broker of salesperson if applicable). The prospective tenant named above refused to sign this form.

PSYCHOLOGICALLY STIGMATIZED PROPERTIES

These are properties that have been impacted by an occurrence and may have become stigmatized. That means rumors and stories have made these properties difficult to sell.

Ghosts, Homicides and Suicides

If a suicide or homicide occurred in a property the agent is not allowed to disclose any information surrounding the incident unless they are specifically asked about it. If a seller informed you that a property possessed ghosts, you are not allowed to disclose that information unless specifically asked.

HIV/AIDS

A Real Estate agent is prohibited from discussing whether a former or current occupant of a property possessed HIV. Disclosing such information is violation of Fair Housing Laws.

Commissions

To earn a commission an agent/broker must be hired to sell the property or to find a property for a buyer. The agents must be deemed the **efficient and procuring cause for the sale**. To do so the broker must demonstrate or prove that he or she was the reason for the sale. They **managed the sale uninterrupted**. They set into motion actions that were not interrupted and was the reason for the sale of a property. A Broker can claim a commission if they are the efficient and procuring cause or reason for the sale.

Tristram's Landing v Wait (367 Mass 622, 327N.E. 2d 727 (1975) (Tristram's Rule)

1. The broker **produces a ready, willing and able buyer** willing to **purchase on terms identified by the seller**.
2. The buyer **enters into an agreement** with the seller to purchase the property.
3. The buyer **completes the transaction** in accordance with the contract.

Please note:

A listing contract can set additional terms in place and dictates the terms to which a broker is entitled to a commission.

Massachusetts Land Court

In order to **register land** one would **petition the Land Court**. The process is known as an **"Action to Quiet Title"**. **The court holds a hearing to determine the true owner of the property** and they investigate whether any claims being made to the property by others are valid and the history of past ownership. The court will conduct a hearing to review the situation at which time it will issue its opinion as to the true owner of the property. **The court will provide the rightful owner with a numbered certificate declaring them the owner of the property**. **The certificate is known as a land court certificate**. In order to sell registered land the deed and the land court title must be re-submitted to the land court and the title needs to be registered by the new owner for the sale to be valid.

Smoke Detector Certificate (Seller Provides)

In order to transfer a residential property the seller must make sure that the property has smoke detectors located in the appropriate location throughout the building and have the property inspected by the local fire department/chief. **Once the property is inspected the seller receives a certificate signed by the local fire chief certifying to its compliance.** To ensure that the smoke detectors are installed in the appropriate location the seller should contact the local fire department/chief. The Massachusetts State Building Code mandates that as of 1988 **all properties being constructed must have hard wired smoke detector systems with battery backups.** In addition to new properties, if an **existing property** undergoes significant renovations the town **may be require a hardwired system be installed.**

Carbon Monoxide Detectors

As of March 31, 2006 Massachusetts requires all residential dwelling units heated by fossil fuel or those with a woodstove, fireplace or attached garage must have CO detectors installed on every living level within 10 feet of every bedroom. The local Fire Department conducts these inspections and many fire departments issue a combination smoke detector and carbon monoxide detectors to certify compliance.

Declaration of Homestead (Protects Equity) Automatic 125K coverage Married couple only signs homestead/both covered (Owner Occupied)

An **Estate of Homestead is a type of protection for a person's principal place of residence.** The document utilized is called a "Declaration of Estate of Homestead". The form is filed at the Registry of Deeds in the county where the property is located, referencing the title/deed to the property. **It allows homeowners in Massachusetts to protect the first five hundred thousand dollars (\$500,000)* of equity per residence, per family.** The real property or manufactured homes **of persons sixty-two (62) years of age or older**, regardless of marital status, or of a disabled person or persons, regardless of age, **shall be protected** against subsequent attachment, seizure or execution of judgment to the extent of five hundred thousand dollars **(\$500,000) each.** For additional information about the Homestead Act or to find the appropriate form to file a Declaration of Homestead access the following websites.

Homestead Information www.sec.state.ma.us/rod/rodhom/homidx.htm

Registry of Deeds/Forms www.sec.state.ma.us/rod/rodidx.htm

Massachusetts Fair Plan (Fair Access to Insurance Requirements)

The **Massachusetts Property Insurance Underwriting Association (MPIUA)** also known as the Massachusetts FAIR Plan **provides basic property insurance on eligible property for applicants who have been unable to gain insurance through the voluntary market.** MPIUA offers policies under the Homeowners, Dwelling Fire and Commercial Property programs as approved by the Massachusetts Division of Insurance.

For more information about the Massachusetts Fair Plan you can view:
www.mpiua.com/

Massachusetts Mechanic's Liens Statute

The Mechanic's Lien Statute gives contractors, subcontractors, landscapers, utility contractors and material suppliers the protection they need when they are not paid for their services. This law provides protection to these vendors from property owners and leaseholders that neglect to pay for the services rendered. It is a **specific lien** against a property.

A contractor who provides work absent a written contract can file a lien for 30 days work during 90 days prior to recording a claim.

Documentary Tax Stamps (Paid by Grantor)

The **seller (grantor) pays to record a deed** in Massachusetts. In order to record a deed a stamp fee must pay paid at the recording of the deed. The cost to record the deed is **\$ 4.56 per thousand of the sale price**. The fee may also be **\$ 2.28 per \$ 500.00**. **In the event of an eminent domain transfer there are no documentary stamps taxes.**

Environment/Land Use

Cercla

Underground Storage Tanks/Removal Procedures

21E Affidavit

Brownfield Legislation

Mass Superfund

Asbestos

Radon

Title V

Mass Wetlands Protection Act/Wetlands Restitution Act

Clear Waters Act

Scenic Rivers Protection Act

Zoning Act MGL, 40A

Coastal Zone Management Act

Planning Boards/Purpose

MGL/Know the Law

Massachusetts General Laws (MGL):

21E Mass CERCLA

40A Zoning Act

40B Comprehensive Permit Law

93A Consumer Protection

111 Lead Paint Law

151B Fair Housing

183A Condominium Law (See ownership)

Ownership of Property

Ownership Vocabulary

6D CERTIFICATE:	refers to section of M.G.L. 183A which verifies owner's payment status of fees and assessments.
ACCESSION:	additions to a property due to alluvion.
ACCRETION:	addition of real estate gradually by deposit of soil through natural causes such as water flow.
AEOLIN SOIL:	sand dunes that form at the shoreline due to the action of wind.
AIR RIGHTS:	ownership or lease of air space above real estate, i.e Sheraton Hotel over Mass Turnpike, billboards atop a building.
ALLODIAL SYSTEM:	a system of land ownership in which land is held free and clear of any rent or service due to the government; commonly contrasted to the feudal system. Land is held under the allodial system in the United States.
ALLUVIUM/ALLUVION:	soil that is deposited by accretion.
ANNEXATION:	personal property that becomes permanently attached.
APPURTENANCE:	is a right that accompanies a property. An example would be a right of way through a neighbor's property.
AVULSION:	the sudden loss of land that occurs to a sudden act of nature such as wind or water.
BILL OF SALE:	an agreement which transfers personal property from one party to another.
BUNDLE OF RIGHTS:	the rights that the owner receives when they purchase real estate.
BY-LAWS:	rules and regulations put in place by organizations such as a condominium associations to establish guidelines, policies and practices to be adhered to by the association members.
CHATTEL:	personal property.
COMMON ELEMENTS:	the common or shared areas in a condominium building.

CONCURRENT/ CO-OWNERSHIP:	Ownership by two or more people. Can take form in a variety of ways.
CONDO SUPER LIEN BILL:	gives condo associations the authority to impose a “priority” lien (taking precedence over the first mortgage on the condo unit) on owners who fail to make required common-area payments. Signed into law in 1992—the most sweeping revision of the Mass. Condo Law since its enactment.
CONDOMINIUM:	multi-unit developments consisting of individually owned units with shared ownership of common areas. The buyer receives a unit deed when they purchase.
CONDOMINIUM BUDGET:	a budget created by a condominium association to conduct the operations of a condominium.
CONDOMINIUM DOCUMENTS:	a Master Deed, known as the enabling declaration and by-laws, rules and regulation that govern the condominium association. These documents are recorded at the local Registry of Deeds.
CONDOMINIUM FEE:	a fee paid by condominium unit owners toward the costs associated with the operations of a condominium development.
CONVERSION:	when a property is changed to a different use or type of ownership; condo conversion from apartments to condominiums
COOPERATIVE:	a cooperative is a corporation that acquires a building for the purpose of providing housing. When you purchase a cooperative you receive stock certificates for the cooperative and a proprietary lease.
CORPORATION:	a legal entity created to allow separate interests between the individuals associated with the corporation and their private personal situations.
CORPOREAL PROPERTY:	tangible property; buildings, garages, trees. Physical in nature.
CURTESY RIGHTS:	upon the death of a wife who owned property in her own name only, the surviving husband is entitled to one-third life interest in the deceased spouse’s property.
DATUM:	a reference or measuring point such as a line, surface or point used to measure land elevation. Also known as the mean sea level from New York Harbor.
DECLARATION OF TRUST:	a section of a condominium document

DOWER RIGHTS:	the rights of the wife to share in the real estate of her husband if he died without a will and owned the property in his own name only. She is entitled to 1/3 interest.
EMBLEMENTS:	annual or semi-annual plantings such as corn crops are considered emblements and personal property.
EROSION:	gradual wearing away of land.
FEE SIMPLE:	highest form of ownership one can have in real estate, there are no limitations. Indefeasible estate. It is also known as the least limited form of ownership.
FIXTURE:	an item that is permanently attached to real estate. Light fixtures, built-in bookcases, sinks etc.
FORECLOSURE:	a formal legal procedure by the lender to sell a property that was utilized as collateral because the borrower did not make the payments on schedule.
FREEHOLD ESTATE:	an estate that runs for an indefinite time period. Known as Fee, Fee Simple or Fee Simple Absolute. It is the highest form of ownership one could hold. Least limited. Ownership
INCORPOREAL PROPERTY:	intangible property. Property that does not have physical being. Easements, a right of way, trademarks, copyrights.
INTANGIBLE PROPERTY:	property that does have any physical being, property rights.
INTERVAL OWNERSHIP:	ownership in a timeshare. Ownership for a particular period of time.
JOINT TENANCY:	ownership of realty by two or more persons, each of whom has an undivided interest with the right of survivorship. Typically used by related persons.
LIFE ESTATE:	an estate or interest that someone has during their lifetime or the lifetime of another person. These are not inheritable estates and are the lowest forms of freehold estates.
LITTORAL RIGHTS:	the rights of a property owner who borders a lake, pond or seashore.
LLC:	Limited Liability Company. A company that's liability is limited to the value of that company. The owners do not have personal liability is used.

MASTER DEED:	a legal document that creates a condominium; it describes the individual units and the common areas. It is reviewed by the lender when providing a loan. This document is recorded at the County Registry of Deeds. Units are conveyed in fee simple.
MASTER INSURANCE POLICY:	a policy obtained by a condominium association that covers replacement or repairs of the buildings and liability. The policy generally covers the four walls outside of an individual condominium.
MINERAL RIGHTS:	the rights one has within the enrichments offered in their soil. Gas, oil etc.
NON-FREEHOLD:	possession of a property via a leasehold.
OWNERSHIP:	means title, conveyed property.
PARTITION:	a court action designed to separate ownership interest by persons who have property as joint tenants.
PARTNERSHIP:	an agreement between two or more parties. All partners are responsible for the taxes derived from the income. All partners are responsible for the liabilities.
PERSONALTY:	personal property, items that are movable
PROJECT BROKER:	a broker designated to offer timeshares for sale. An office offering timeshares must be a separate real estate office. Residential sales and timeshare offerings can't be offered by the same office.
PROPRIETARY LEASE:	a lease utilized in association with a Cooperative. The lease allows one to occupy space in the building and to use common areas.
QUARTER OWNERSHIP:	a form of timeshare ownership. Your ownership rights extend for three months a year.
REAL PROPERTY:	land and anything associated with the land. Buildings, trees and property rights are part of the real property.
REIT:	Real Estate Investment Trust. Ownership in a real estate held in a trust form for the beneficiaries by a trustee. In the event of a bankruptcy, an investor who puts money into a REIT only loses the money they invested. The organizing force is responsible for additional debts.
RELICITION:	land acquired by receding water.

REMAINDERMAN:	person named to receive an interest in a property in the future.
REVERSIONARY INTEREST:	a future interest one has in a property. Could be via a life estate or the right to gain control of a leased property.
RIGHT OF FIRST REFUSAL:	the right one party has to purchase a property being offered for sale by another property owner. There is a timeframe to which this right can be exercised.
RIGHT OF SURVIVORSHIP:	the right one party has to claim the interests of another property owner, if that owner died. Joint tenants have this right.
RIPARIAN RIGHTS:	rights of a property owner who has land that borders a waterway.
ROD:	a unit of measurement. One rod is 16.5 feet. Rods may be when measuring watermarks.
SEVERANCE:	when a piece of real property becomes personal property. A tree is real property. When it is cut down and chopped into firewood, it has been severed from the property.
SPECIAL ASSESSMENT:	an assessment or charge levied by a condominium association or town for improvements or enhancements to a condominium or somebody's particular home.
SYNDICATION:	a group of individuals who join together to accomplish a (REIT) common goal. Real Estate Investment Trusts are establishment to purchase property. Syndicate.
TANGIBLE PROPERTY:	a property that has physical existence, buildings, trees. Another term for corporeal property.
TENANCY BY THE ENTIRETY:	a form of ownership reserved for husbands and wives.
TENANCY IN COMMON:	ownership of one property by different people with each person having equal rights. It is inheritable.
TENANCY IN SEVERALTY:	property owned by one person.
TIDAL WATER:	ocean front property.

TIMESHARE:	a form of ownership known as interval ownership. An individual can own a particular week for their life or a specific period of time. Utilized in vacation properties.
TRADE FIXTURES:	personal property that is used in the ordinary course of business. Although attached, are removable and considered personal property belonging to the business owner.
TRUST:	a legal arrangement to transfer property ownership to a third party to hold for the benefit for another.
UNIFORM PARTNERSHIP ACT:	a law that allows a partner of a company to purchase property utilizing partnership funds while taking title under their own name. The law indicates that the property does not have to be placed in the name of the partnership.
UNIT DEED:	a document provided to a purchaser of a condominium. It outlines the person's interest they hold in the condominium and their proof of ownership.
UNITIES:	a joint tenancy carries four unities: Possession, Interest, Time and Title (PITT).
WATER RIGHTS:	the rights of a property owner who abuts the water. They have a right to use the water for swimming, boating and fishing. They are still bound by local regulations.

REAL PROPERTY and OWNERSHIP INTEREST

Property is divided into two categories: **Real Property and Personal Property.**

Elements of Real Property

Real Property includes the **land and anything that is associated with that land.** These things would include buildings, fences, trees, outbuildings and additional rights that go with the property such as water rights, air rights, mineral rights and easements. **Real property is regarded as property that is not movable.** In the United States property is owned under the **Allodial System. (Individually owned vs. government owned).** **The rights, benefits and improvements that go with the land are known as appurtenances.** **Burdens associated with properties are known as encumbrances.**

Real Property includes a **Bundle of Rights**: These **rights include the right to use, exclude, sell, lease, inherit, mortgage, control.**

What Real Property consists of the following:

- Actual Land: when you purchase real estate you purchase the land and any improvements that are upon it.
- Improvements: considered buildings, trees, garages, personal property permanently attached.
- Air Rights: the interest one has in the space above their property. (Vertical Interest) Example: A billboard on the roof of an apartment building. The billboard company pays rent to the owner of the property for use of the space above the roof.
- Mineral Rights: subterranean rights / Subsurface rights (Vertical Interest) The dirt, gravel and minerals within your land. If these items are removed they become personal property. Example: Jed Clampett was in his yard shooting at some food when up from the ground come some bubblin' crude. Oil that is. Jed retained the land but leased the rights to remove the oil.
- Water Rights: the rights that run with a property that abuts water.
- Littoral Rights: an owner of property who borders a lake, pond or seashore. You have a right to reasonable use of this water. Your rights extend to the high water mark.
- Riparian Rights: land that borders a body of water that flows. Rivers, streams, lakes. You have a right to use that water for swimming, boating and fishing. If the water is a navigable body of water your rights extend to the waters edge. If it is not navigable your rights extend to the middle of the water source. Measurement of water could be by rods. A rod is 16.5 feet.

Avulsion:	the sudden removal of land due to the action of water.
Erosion:	this occurs when gradual loss of land is created by the action of water or wind
Accretion:	the process of gradual deposit of soil through the natural action of water.
Alluvion:	the material acquired through accretion .
Accession:	additions to property due to alluvion or abandonment of personal property.
Aeolian Soil	sand dunes that have been formed at the shoreline due to the natural action of wind.
Reliction:	a withdrawal of water exposing land . The rights to property continue to belong to the owner.
Annexation:	personal property that becomes permanently attached or affixed, it is now part of the real property.
Severance:	when real property is removed it becomes personal property. It has become severed from the property. IE: a tree is part of the real property, however when cut down it becomes personal property.

Characteristics of Real Property

Real Property can be divided into two characteristics. They are known as **Physical and Economic**. These Characteristics affect price and desirability.

Physical Characteristics

Immobility

Although it might be possible to remove parts of the real property(tree/house) the land should always remain affixed.

Indestructibility

Although a building could be destroyed the land will remain.

Uniqueness or Non-homogeneity

No two parcels of land are the same.

Economic Characteristics (SLIP)

Scarcity

The fewer available parcels of real estate increase value.

Location

Location can be an attractive characteristic of real property. Some locations bring in greater value.

Improvements

Added improvements such as buildings, roads and infrastructure will increase the value of a property.

Permanence

Despite economic downturns your investment will always be there. The opposite of the stock market.

Elements of Personal Property

Personalty: items that are movable **Tangible:** tables, building materials

Intangible Property: Trademarks and copyrights.

Corporeal Property: Visible or tangible property.

Incorporeal: Intangible: an easement, right of way.

Bailment: The loaning of personal property with the intension of it being returned .

Conversion: depriving one of the return of their personal property.

Personal property is known as chattel. It is something that is considered movable, not attached. An example of personal property would be: the furniture in your home, a refrigerator, a washer and dryer. These items are not attached and may be removed when an owner sells their home. **Personal property is transferred from one party to another via a bill of sale.**

Fixtures

A Fixture is an item that was once personal property, but is now real property because it is attached to the property. **Example :** Someone just purchased a light at the local hardware store. At this time the light is still in the box and is considered personal property. Once it becomes attached to the ceiling it becomes a real property. This item should only be removed by agreement.

Test Methods to determine if an item is a Fixture:

Intention : the most important test considered by a court. Did the parties intend that the item would become part of the property?

Method of Attachment/Annexation: Can the items be removed without causing major damage? Was the method of the attachment of a permanent nature?

Examples: Was the method of attachment nails, glue, bolts or roots.

Adaptability/Custom: was this item custom made to fit into a particular space?
Examples: built-in bookcases, and an opening in a wall designed to fit an air conditioner.

Agreement: a written agreement between the parties outlining what items would stay and what items would go. Example: Seller wishes to take a chandelier- buyer agrees in writing to the removal of the item.

NOTE: When personal property is attached it become a fixture.
QUESTION: What is an above ground swimming pool?
What is a mobile home?

Trade Fixtures

These are **fixtures** installed by a tenant for **the purpose of conducting a business**. These items are **personal property and can be removed** by the tenant prior to the expiration of the lease. Example: a Beauty Salon owner. Attached to the property are chairs, sinks, mirrors and counters. These items are used in the ordinary course of business and are considered personal property and removable by agreement in a lease.

Emblements

These are annual cultivated crops (planted yearly-**fructus industriales**) and are considered personal property. **Example: A tenant rents farmland and plants a corn crop. The property is sold in the late summer. Because the planting is an annual planting the tenant could return to harvest his/her hard work.** Natural growing plants, trees and perennial crops are known as **fructus naturales**. **Example:** An apple orchard is not an emblement because it not an annual planting.

Estates in Real Property

An Estate describes the degree or nature one has in real property.
There are two forms of Estates:

Freehold (ownership) & Non-Freehold (possession/leasehold)

Freehold Estates

Freehold Estates are for an **indefinite period of time**. You own the property as long as you desire.

Fee, Fee Simple or Fee Simple Absolute (Highest Form of Ownership/Indefeasible)

Fee simple is the highest form of ownership one can have in real estate. It is yours to do what you want with. You can use it, sell it, rent it or leave it to someone as part of your estate. There are no limitations on the property. **Highest form of ownership, least limited.**

Fee Tail

Property remains in the family bloodline. The heirs of the body.

Fee Determinable/Fee Condition Subsequent

Property can be reclaimed and reverts back to original owner for broken conditions.

Life Estates

A life estate in **an interest one has in a property that only lasts for their life- time**. The rights they hold in the property end at a specific point in time and are not inheritable. With an ordinary life estate those rights terminate when they die. The original grantor needs to **provide direction as to future ownership** when the person who held the estate no longer is alive. The property could **return to the original grantor**. In that case the grantor held a **reversionary interest**. The property could also be directed to another person who is known as the **remainderman**. The **life tenant** must make repairs, pay taxes, and **avoid committing waste**. The life tenant is under no obligation to insure the premises; future interest holders should secure their own insurance if they wish to be protected.

Remainderman/Remainderperson

The remainderman is the **third party who takes control of a property after the person who held a life estate no longer controls the property**. The remainderman will own the property in fee simple form. The original grantor could become the remainderman via a reversionary interest (reverts back to the grantor) or the property could be left to another (remainder interest).

Pur Autre Vie

This is an estate that someone would have that is **based on the life other** than his or her own. For Example: John gave his sister a life estate. John's sister can live in this property as long as their mother is alive. When John's mother passes the estate ends as well.

Reversionary Interest

If the **original grantor** took **re-control** of the property upon the death of a life tenant they retained a **reversionary interest**.

Note: Reversionary Interest/Remainderman

Creation of Estate

A life estate may be created by a will, by grant or by reservation.

Dower Rights (Rights of a Surviving Spouse)

These are the **rights a spouse would have to real estate** if their **spouse passed away without leaving a will and owned a property in their name only**. The surviving spouse is entitled to a share of the estate despite not being named in the deed. The rights of the surviving spouse take priority over existing creditors.

At one time these rights were known as dower rights for woman and **curtesy rights for men**. These rights are called **inchoate (unfinished, have not yet begun)**.

A surviving spouse is first in line for any assets. They are entitled to the first \$200,000 of the estate after expenses. If the decedent left children the surviving spouse is entitled to the first \$ 200,000 plus one half of the remaining real and personal property.

FORMS OF OWNERSHIP

Tenancy (Estate) in Severalty

This means **sole ownership**. The property is owned by one person or business entity. Example: John Smith owns a property or Smith Associates own a property.

Co-Ownership or Concurrent Ownership

The ownership of real property by **two or more people** can be held in a variety of forms.

Joint Tenancy (Equal Shares/Rights of Survivorship) (PITT)

Two or more people with **the rights of survivorship** define joint tenancy as undivided ownership. They share an **undivided interest in the whole**. It can be stated that all owners are one owner.

Four conditions are required to create a joint tenancy:

Four Unities (PITT)

1. **Possession:** all tenants have equal right of possession.
2. **Interest:** all joint tenants have equal shares.
3. **Time:** title must be acquired at the same time.
4. **Title:** all names on one deed.

Right of survivorship means that upon the death of one joint tenant, the deceased person's interest immediately ceases and it passes to the surviving joint tenants equally. The final living owner will own the property in severalty.

Example: a gentleman and a lady purchase a single-family home. Both of these individuals have been married before, and have children. They take ownership as joint tenants. If one of them was to pass away the other party takes sole ownership of the property. They cannot leave the property to their children. The other party takes possession.

Terminating a Joint Tenancy

A joint tenant can convey his or her interest in a jointly held property to another. Doing so would destroy the joint tenancy of time and title. The new owner will not become a joint tenant and the rights of the additional joint tenants are unaffected.

Tenancy in Common (Can be Unequal Shares/Inheritable)

This is when two or more people own a property together and they can leave the property to a loved one. It is an **inheritable estate**. Despite unity of possession, an owner has the right to dispose of their interest without the consent of the other owners. **They do not need to have equal shares of ownership.** **Example:** A class purchases a piece of property together. They elect to take ownership as tenants in common. If one of them was to pass away, the person who died can leave their property to their estate. **Unless a deed indicates differently, ownership by married persons is considered Tenancy in Common.**

Tenancy by the Entirety

This is a form of ownership **reserved for spouses**. Neither party can separately convey their interest during the other's lifetime. **Upon the death of one party the surviving spouse becomes the sole owner . He or She now have ownership in severalty.** Divorce would change the ownership to Tenancy in Common because the ownership was based on marriage. There is protection against a creditor making a claim on a property since two parties own the property. The creditor would have to be a creditor of both the husband and wife.

Example: What is entirely mine is entirely yours. The parties own it together.

OWNERSHIP IN CONDOMINIUMS, COOPERATIVES AND TIMESHARES

Condominiums M.G.L. 183A

In 1983 the Commonwealth of Massachusetts created legislation (**Chapter 183A**) to govern the formation and management of condominiums within the confines of the Commonwealth of Massachusetts.

A condominium is multi-unit development that consists of individually owned units with an interest in common area. The development **could be residential or commercial** and consist of two units or hundreds of units.

The following are keys terms relative to Condominium ownership:

Master Deed

This is the **enabling declaration** that creates the condominium. This Master Deed is **recorded at the local Registry of Deeds**. It describes the following:

1. The land and the buildings
2. Outlines the number of units
3. Outlines the Common areas and percent of unit interest held in them.
4. Plans from a Certified Architect
5. Outlines the managing Entity
6. Outlines plans for amending the Master Deed

Condominium By-Laws

Also known as the rules and regulations, possibly the **Declaration of Trust**. They must outline how the condominium association is governed to perform the following activities:

1. The methods utilized by the association for making repairs and renovations.
2. The method used to collect fees from unit owners.
3. The hiring procedures that will be used in connection with the condominium.
4. The method to be used to amend existing operations.
5. Architectural and Use Restrictions affecting the Condominium.

Unit Deed

The owner of a condominium receives a Unit Deed when they purchase a Condominium. It is their **proof of ownership** and **outlines their ownership interest** by percentage interest. Most Condominium ownership is from the four walls in or the studs located in the middle of the wall in towards the unit. A unit owner has a fee simple interest.

Common Areas (Common Elements)

Best described as all areas located from the **four walls out**. Exterior siding, decks, windows, foundations, hallways, **yard, laundry facilities, swimming pools** etc.

Limited Common Area (Limited Common Elements)

May be described as an area that is common area but use is limited to a particular unit owner. Could also be known as exclusive common area or exclusive use.

Master Insurance Policy

The condominium will have a **Master Insurance Policy that will cover liability and replacement coverage for the four walls out**. The lender is named as the payee in case of a fire.

Unit Owners Policy

A condominium unit owner should purchase a unit owners policy to cover liability and replacement for the four walls in. A condominium owner will most likely need coverage to replace their appliances, flooring and personal belongings.

Condominium Budget

The condominium association will need to agree on a budget to assist with the operations of the condominium. The budget will cover the expenses associated with the operations of the condominium.

Trustees

Individual unit owners elected to serve on a board of directors for the condominium association.

Condominium Fee

A condominium fee is a fee paid by the unit owner (usually monthly) to help defray costs such as insurance, maintenance, water and sewer charges and additional costs that help maintain the condominium developments. The revenue raised by the fee will cover the condominium budget. It is recommended that a reserve amount be included with this fee to help offset future expenses. When someone becomes the first owner (purchaser) of a condominium they will need to pay two months of condominium fees at the closing. This money is added to the reserve account and the condominium owner is not entitled to this money back when they sell the unit. It can be a negotiable point.

Special Assessments

There will come a time when repairs need to be made to the common area of the condominium development. If there is not enough money in the reserve to make these repairs the association will need to obtain the money from the unit owners via a special fee called an assessment. **It is required that the assessment be disclosed to a prospective buyer.**

Annual Meeting

Each Condominium Development is required to meet once a year to hold an annual meeting. This meeting is designed to develop a plan of action and to ratify the condominium fee to be paid from a certain point until the next annual meeting.

Conversion

An **existing building** that becomes a condominium development is known as a **conversion**. It has been converted from an existing building to condominiums. Due to the high number of properties being converted to condominiums, Chapter 183A was amended to provide some protection for tenants being displaced by conversions of properties that consist of **more than four units**. Protection for elderly, disabled and low to moderate income people were put in place. Some of the provisions of protections are as follow:

Conversion Requirements:

Opportunity to Purchase

The tenant shall be given an opportunity to purchase, at terms equal to or better than the public offering.

Time to Move

The tenant shall be given time to vacate the premises. The tenant must be given a one year notice to vacate the premises. Elderly, disabled and low to moderate income must be given two years to vacate.

Moving Expenses

The owner must assist by providing the tenant with no more than \$750.00 for relocation expenses. Elderly, disabled or low to moderate-income tenants can be paid up to \$1000.00. These funds are to be paid within 10 days from the move date.

Condo Super Lien Bill

Became effective in 1993. It permits a Condominium Association to place a lien against a condo unit to collect unpaid condo fees. The association can collect up to six months in unpaid condo fees through this mechanism. This bill allows for the association lien to jump forward of the liens placed by lending institutions. Taxes and town betterments charges are still paid before the condo association.

6D Certificate (Seller Provides)

In order to sell a condominium, the **seller must provide the closing attorney with a notarized 6D certificate**, signed by a trustee of the association or management company, indicating if there are any outstanding assessments or charges due by the unit owner.

Foreclosure

If a unit owner fails to make their loan payments the lender can accelerate the loan payments. This does not have any direct impact on the additional unit owners.

Cooperatives

This is when a **corporation holds title** to the property. **The cooperative members receive stock certificates and a proprietary lease as evidence of ownership.** The members pay a monthly fee to cover any loans by the cooperative and monthly maintenance fees, taxes and insurance and a host of additional expenses.

The board of directors of the cooperative will interview potential cooperative members as to their financial ability to make payments to the cooperative and to assess whether the potential member would be a suitable tenant. Private cooperatives could reject an applicant if it was believed the potential member would bring a disruptive situation to the cooperative. For Example: Celebrity status would bring security and paparazzi.

Key Point: If a cooperative member failed to make a payment, the other cooperative members would need to make up the amount not collected.

These are similar to condominiums but have distinctive differences. When you purchase a cooperative you receive stock certificates and a proprietary lease as evidence of ownership. You do not own your unit, you own shares in a corporation that owns the building. The board of directors of a cooperative can be selective as to who can reside in the cooperative as long as they do not discriminate against a protected class. Someone can be denied the opportunity to reside in a cooperative if their presence would interfere with the quality of life of others residing in the cooperative.

Differences/ Similarities

Condominium	Cooperative
Condominium=Unit Deed	Cooperative=Stock Certificates/Proprietary Lease
Condo Fee	Maintenance Fee
Taxed as a unit	Taxed as a Building
Owners may be assessed	Members may be assessed

Timeshares

This is known as **interval ownership** because the owner holds an **ownership interest that involves specific time** frames and has an **interest in common areas such as pools, tennis courts etc..**

Fee Simple or Freehold Ownership

The owner holds title as long as they desire. **It is an inheritable estate.**

Leasehold

The owner only has title for a limited period of time. At the conclusion of the time period the property reverts to the timeshare entity. It is **not inheritable** past the expiration of the leasehold interest.

Massachusetts follows **the Model Real Estate Timeshare Act**. This act established uniform procedures and guidelines for the formation, sale and management of timeshares. A Project Broker is the contact person when it comes to the purchase or leaseholds for timeshares. An entity separate from an active real estate office is required for the offering of timeshares.

Quarter-ownership (Fractional Ownership)

This is a form of interval ownership that consists of three months.

Condex

A side by side duplex converted to a condominium

Corporation

A corporation is an artificial but legal person created by state law. An **advantage** of a corporation could be that the shareholders have **no personal liability for bankruptcy** by the Corporation. A **disadvantage could be double taxation of profits** for income property. Shares of stock are considered personal property.

S Corporation

A small closely held corporation of 100 or fewer shareholders, can become an S Corporation provided all shareholders elect to be taxed as partners. Shareholders avoid the double taxation of a standard corporation but retain the protection of being exempt from personal liability for corporate debts.

Limited Liability Company, (LLC)

This is a business where the owners have Limited Liability if the company is sued. Some people purchase properties and set up the ownership interest as a LLC. This will **limit their liability to the value of the property** named as the LLC owner.

Real Estate Investment Trust (REIT)

A trustee holds ownership in a real estate investment trust in a trust form for the beneficiaries. Under federal law, a REIT must have 100 or more investors. **In the event of a bankruptcy the investor's loss is only the invested money. The organizing force would be responsible for additional debts.**

Syndicate

Two or more people or entities that have joined together to conduct and operate real estate investments.

Partnership

This is an agreement by two or more individuals to enter into a business arrangement. **Each partner is responsible for paying income taxes on their portion of the income and each partner is responsible for the liabilities.**

Joint Venture

This is a form of a partnership that calls for two or more people to work together toward a single goal or purpose.

Trust

One person transfers their ownership to another entity to hold or manage for their benefit.

Ownership

You should have an understanding of the following terms and concepts to master this chapter

Makes notes for yourself for a study review.

Real Property/Personal Property	
Bundle of Rights	
Real Estate	
Appurtenance	
Allodial System	
Erosion	
Reliction	
Acquired Soil	
Personalty	
Air Rights	
Mineral Rights	
Littoral Rights	
Annexation	
Severance	
Physical Characteristics	
Economic Characteristics	
Corporeal Property	
Incorporeal Property	
Chattel	
Bill of Sale	
Fixtures	
Method to Annexation	
Trade Fixture	
Emblements	
Estates in Real Property	
Freehold	
Non-Freehold	
Fee Simple	
Life Estate	
Reversionary Interest	
Remainderman	
Pur Autre Vie	
Dower Rights	
Severalty/Concurrent	
Ownership	
Joint Tenancy(Four Unities)	
Tenancy in Common	
Tenancy by the Entirety	

MGL 183A Master Deed Unit Deed Common Elements What is a condominium? 6D Certificate Annual Meeting Conversion Condo Super Lien Cooperative Interval Ownership Time Share	
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Master Insurance Policy – What does it cover?

Unit Owners Policy-what does it cover ?

Condominium Budget-who determines/how is it calculated ?

Condominium Fee-who determines?

Special Assessment-what is it/is disclosure necessary?

Partnership/Corporation/Syndicate-describe characteristics

OWNERSHIP QUIZ

1. Jane Smith passed away and left her property to her daughter via a will, what type of estate did Jane's daughter receive?

- A. Reversionary
- B. Temporary
- C. Fee Simple
- D. Family Estate

2. When someone abuts a waterway and has a right to use the water for swimming, boating or fishing they possess what type of rights?

- A. Riparian Rights
- B. Aquatic Rights
- C. Mineral Rights
- D. Littoral Rights

3. A beauty salon has installed sinks and countertops. These items would be called:

- A. Real Property
- B. Appliances
- C. Personalty
- D. Encumbrances

4. John installed an air conditioner in an opening cut into the living room wall. When John sells the house, the air conditioner is referred to as:

- A. Personal Property
- B. Ownership
- C. A Fixture
- D. Trade Fixture

5. John, Sarah and Ken purchased a property as Tenants in Common. If Ken passed away his ownership interest would:

- A. Pass on to John and Sarah
- B. Escheat
- C. Demise
- D. Pass to his estate

6. A person who receives an estate in the future is known as the:

- A. Optioner
- B. Freehold
- C. Remainder Man
- D. Pur Autre Vie

7. When referring to real property we refer to all of the following except:

- A. Riparian Rights
- B. Mineral Rights
- C. Emblements
- D. Air Rights

8. When a court is aiming to determine if an item is a fixture they would look for which important factor?

- A. Purchase Price
- B. Intention
- C. Appraised Value
- D. Assessed Value

9. When a married couple takes ownership via an instrument intended for married people only, they possess:

- A. Power Rights
- B. Courtesy Rights
- C. Joint Tenancy
- D. Tenancy by the Entirety

10. When transferring personal property the most appropriate instrument to convey ownership would be:

- A. Will
- B. Attachment
- C. Bill of Sale
- D. Index

11. John is selling his three-bedroom ranch. He has an above ground pool in the rear yard. The pool is considered:

- A. Real Property
- B. Personal Property
- C. A Fixture
- D. An Annexed Item

12. When someone sells shares or participation certificates they need to hold what type of license?

- A. A Certificate License
- B. A Stockholders License
- C. A Securities License
- D. A Registered License

13. Jane, Jim, and Jenny own property together. If one of them passed away the other two would take equal control of their property. The original type of ownership was:

- A. Tenants in Common
- B. Joint Tenants
- C. Shared Tenancy
- D. Tenancy by the Entirety

14. When a property is owned by one person or entity, the ownership is considered in:

- A. Common
- B. Severalty
- C. Entirety
- D. Suffrage

15. When Joint Tenancy occurs there are four unities that must take place. They are:

- A. Title, Time, Money, Date
- B. Title, Time, Equal Interest, Possession
- C. Unequal Interest, Title, Date, Deed
- D. Time, Title, Interest, Inheritable

16. The highest form of ownership one can possess is:

- A. Fee Determination
- B. Fee Simple
- C. Fee Acquisition
- D. Fee Reversionary

17. The rights a property owner possesses in relation to the soil associated with their property are:

- A. Water Rights
- B. Gravel Rights
- C. Mineral Rights
- D. Corporal Rights

18. When ownership of a property passes to the original grantor upon the death of the grantee, the grantor retained a:

- A. Full Ownership
- B. A Leasehold Interest
- C. A Reversionary Interest
- D. A Sustainable Interest

19. When one party grants an estate to another that is based on the life of a third party and loses the estate when the third party dies, it is known as:

- A. Future Interest
- B. Reversionary Estate
- C. Pur Autre Vie
- D. Estate for Years

20. When three people enter into an agreement that calls for each person to pay their own taxes based on the income derived, they have a:

- A. Syndication
- B. Partnership
- C. Cooperative
- D. A Joint Agreement

21. An existing building that is converted to a condominium development is known as:

- A. Amended Building
- B. Non-conforming Use
- C. Conversion
- D. Pur Autre Vie

22. An individual who purchased a particular week in a fee simple form of ownership has purchased:

- A. Oval Ownership
- B. Severalty
- C. Share Ownership
- D. Interval Ownership

23. A disabled tenant resides in a building that is being converted to a condominium. The ownership of the building must:

- A. Give the tenant the opportunity to purchase.
- B. Must give the tenant ample time to move.
- C. Must pay up to \$1000.00 toward moving expenses.
- D. All of the above

24. A document that is known as the enabling declaration for a condominium is:

- A. Unit Deed
- B. Conversion Deed
- C. Master Deed
- D. Quitclaim Deed

25. Joe and Jenna took ownership by Tenancy by the Entirety when they purchased their home. They have elected to get divorced. Their ownership form will be:

- A. Still by Tenants by the Entirety
- B. Ownership in Severalty
- C. Joint Tenants
- D. Tenant in Common

26. A document provided to a closing attorney that indicates the seller of a condominium is paid up to date on their condominium fees is known as:

- A. 93A Certificate
- B. 21E Certificate
- C. Title V Certificate
- D. 6D Certificate

27. A document that displays proof of ownership that one has in a condominium is known as the:

- A. Master Deed
- B. Warranty Deed
- C. Transfer Deed
- D. Unit Deed

28. An amount of money collected monthly from each condo owner to defray the expenses of the condominium is known as a(n):

- A. Assessment
- B. Condominium Fee
- C. Unit Fees
- D. Condo Budget

29. The owner of a condominium would not have which of the following

- A. Stock Certificates
- B. Master Deed
- C. By-Laws
- D. Master Insurance

30. The laws that govern the formation of Massachusetts Condominium laws are:

- A. MGL 6D
- B. MGL 183A
- C. MGL 93A
- D. MGL V

31. Legislation that protects a condominium development by allowing the association to place a lien against a unit owner for failure to pay their condominium fee is known as:

- A. The Super Lien Foreclosure Act
- B. The Condo Super Lien Action
- C. The Super Fund Act
- D. The Condo Super Lien Bill

32. When someone buys stock in a corporation that entitles them to occupy residential space, they purchased:

- A. A Stock Option
- B. A Cooperative
- C. Interval Ownership
- D. Quarter Ownership

<p>33. If a cooperative owner did not pay their monthly payment the other cooperative members would:</p> <ul style="list-style-type: none"> A. Change the lock on the door. B. Are required to pay the fee due from that cooperative member. C. Place a lien against the cooperative. D. Evict them by giving 7 days notice. <p>34. A cooperative member receives:</p> <ul style="list-style-type: none"> A. A Master Deed B. A Unit Deed C. A Proprietary Lease D. A Transfer Deed <p>35. The Board of Directors of a cooperative can:</p> <ul style="list-style-type: none"> A. Review an applicant's educational background. B. Deny access to purchase to a person who has celebrity status. C. Charge different fees to applicants based on race. D. Give preference to nobody. 	<p>36. Under condominium ownership, the following items go together:</p> <ul style="list-style-type: none"> A. Stock Certificates/ Proprietary Lease B. Unit Deed/Common Element C. Corporation/Partnership D. Fee Simple/Leasehold <p>OWNERSHIP ANSWERS</p> <p>1. C 2. A 3. C 4. C 5. D</p> <p>6. C 7. C 8. B 9. D 10. C</p> <p>11. B 12. C 13. B 14. B 15. B</p> <p>16. B 17. C 18. C 19. C 20. B</p> <p>21. C 22. D 23. D 24. C 25. D</p> <p>26. D 27. D 28. B 29. A 30. B</p> <p>31. D 32. B 33. B 34. C 35. B</p> <p>36. B</p>

Real Estate Brokerage

Brokerage Vocabulary

1988 FAIR HOUSING AMENDMENT:	this amendment increased coverage for persons with physical and/or mental disabilities and familial status. Familial status refers to discrimination against families with minor children.
ABANDONMENT:	departure of premises by lessee (tenant) without approval of lessor (property owner/Manager) before expiration of the lease; action does not cancel lease obligations. Chase is on for property owner.
AGENCY:	the relationship between a broker and a client.
AGENT:	a person or corporation that by authority is acting on someone's behalf to represent their interests in a real estate transaction.
ALJ:	an Administrative Law Judge.
ASSOCIATE BROKER/ BROKER/SALESPERSON	a broker who acts as salesperson for a Broker
BLOCKBUSTING:	violation of the Law. Utilizing fear tactics in order to persuade someone to sell their property.
BUYER'S AGENT:	a licensed real estate authorized to act on behalf of a Buyer. The agent has fiduciary duties to the buyer.
CARE:	the agent must proceed with reasonable care when acting on behalf of a client. The agent could be liable for losses if carelessness led to such losses.
CAVEAT EMPTOR:	"let the buyer beware"
CIVIL RIGHTS ACT OF 1866:	this act prohibited discrimination on the basis of race.
CIVIL RIGHTS ACT OF 1968 TITLE VIII:	the Federal Fair Housing Act. Increased coverage for Fair Housing to include race, color, creed, religion, national origin.
CLIENT:	the person who an agent represents. Agents owe clients duties of agency. If you are working with someone but do not represent their interests they are a customer.

CODE OF ETHICS:	an agreement of behavior guidelines that members of an organization agree to follow. Realtors subscribe to a Code of Ethics.
COMMISSION:	compensation earned for services.
COMMISSION SPLIT:	brokers offer compensation to a variety of people who could be involved in a real estate transaction. The listing broker gets a percentage, the selling broker gets a percentage and the broker of record/office would retain a percentage. If the transaction involved another office the listing broker would receive a percentage, the broker of record would retain a percentage and the office involved would receive a percentage. The amount received by the office is published in MLS or other listing services. All compensation must come from the employing broker.
CUSTOMER:	a person who is working with a real estate and is not represented by the real estate agent. The person is a customer of the agent.
DESIGNATED AGENT:	a real estate licensee who has been appointed by a broker or salesperson to represent them as a “designated seller’s agent” or a “designated buyer’s agent”. When buyers and sellers consent to designated agency, they acknowledge and approve that only the agent that has been designated to represents works on the behalf and that all other agents affiliated with the broker may represent another party to the transaction. By consenting to designated agency, they permit other agents to represent other parties.
DESIGNATED BUYERS AGENT:	an agent who has been appointed to represent a buyer’s interest in a transaction. The agent has a fiduciary responsibility to the buyer. The agent’s role is to look out for the buyer. They owe the buyer obedience, loyalty, disclosure, confidentiality, accounting and reasonable care.
DESIGNATED SELLERS AGENT:	an agent who has been appointed to represent a seller’s interest in a transaction. The agent has a fiduciary responsibility to the seller. The agent’s role is to look out for the seller. They owe the seller obedience, loyalty, disclosure, confidentiality, accounting and reasonable care.
DISABLED STATUS:	this refers to individuals who have either physical or mental impairments that effect one or more major life functions. Disabled status includes impairments of mobility, speech, sight, hearing, cancer, alcoholism, AIDS and HIV.
DISCLOSED DUAL	an agent who represents both a buyer and seller in a

AGENT:	transaction with expressed and informed consent of both parties. Written consent must be obtained by the agent prior to the execution of an offer to purchase to a specific property. Dual agents are neutral. Dual agents owe confidentiality and accounting for funds.
DISCLOSURE: STATEMENT:	A statement provided by a lender to a borrower which discloses all finance charges.
DOCTRINE OF RESPONDENT SUPERVISOR:	utilized within the law of agency. Indicates that a principal is responsible for the actions of the agent that they hired as long as the agent is acting within the scope of the authority provided.
EXCLUSIVE AGENCY:	this is an agreement in which the owner hires one real estate company to sell their property, the seller also retains the right to sell the property themselves.
EXCLUSIVE RIGHT TO BUY:	an agreement for an agent to be the sole representative of a prospective buyer. If a buyer purchases a property through another agent or an owner directly during the contractual time period, the buyer would owe the agent a commission.
EXCLUSIVE RIGHT TO SELL:	this agreement states that the real estate company is the only party that can earn a commission if the property is sold during the period the contract is in place.
EXEMPTIONS TO FAIR HOUSING LAWS:	Religious Organizations, Private Clubs, Individuals who own/occupy a two family house and owners of a single-family property who owns three or fewer rental units and do not sell more than one home in a 24 hour period.
FACILITATOR/NON-AGENT:	an agent who assists the seller and buyer in reaching an agreement but does not represent either party in the transaction. The facilitator and the broker with whom the facilitator is affiliated will owe both the buyer and the seller a duty to present properties honestly and accurately by disclosing known material defects and to account for all funds entrusted them. Unless agreed upon, a facilitator does not have a duty to keep information confidential.
FAIR HOUSING PENALTIES:	Offense One up to \$10,000; Offense Two up to \$25,000; Offense Three up to \$50,000
FIDUCIARY:	a person who holds a position of trust (Real Estate Agent/Property Manager).

FRANCHISE:	a license granted by a parent company to operate an individually owned company affiliated with the parent company. The company pays a franchise fee and possibly royalties for the use of the name.
GENERAL AGENT:	a property manager. An agent who has a broad range of duties when acting on behalf of their client.
HUD:	the Department of Housing and Urban Development.
LAW OF AGENCY:	an agreement that calls for a relationship between the principal and the agent authorized to act on behalf of the principal.
LISTING:	a property being offered for sale by a licensed real estate broker.
LISTING AGENT:	the agent who obtained a listing for sale. The agent will service the listing on behalf of the seller.
LISTING AGREEMENTS:	contracts that allow a real estate broker to sell a property. Three main types: Exclusive Right to Sell, Exclusive Agency, Open Listing.
LOYALTY:	a duty an agent has to the person they represent. They should never do anything that would weaken their client's position. Sellers Agents, Buyers Agents and Designated Agents have an obligation of loyalty to their clients.
MCAD:	the Massachusetts Commission Against Discrimination the state agency charged with over seeing discrimination complaints.
MLS:	a system used to advertise properties and store information about properties that have already sold. Multiple Listing Service.
NATIONAL ASSOC. OF REALTORS (NAR):	a national private trade organization that has state and local organizations. Members call themselves Realtors and can utilize the NAR Trademark ® . Realtors subscribe to a Code of Ethics.
NET LISTING:	an illegal commission charged by Real Estate Professionals. It is when the commission equals an amount of funds over a specified sales price.
NON-AGENT:	an agent who does not represent a seller or a buyer. Also known as a Facilitator or transaction broker.

OBEDIENCE:	a duty associated with agency that calls for the agent to follow lawful instructions directed by their client.
OPEN HOUSE AGENT:	a licensed agent conducting an open house. The agent is required to post a notice more conspicuous than other material detailing their relationship with prospective purchasers and the homeowner.
OPEN LISTING:	there can be many brokers attempting to sell the property. Whoever sells the property earns a commission. Owner can sell as well. Does not have to be in writing.
PANIC-PEDLING:	causing a panic situation that causes people to sell. Could be associated with blockbusting.
PRINCIPAL:	an amount due on a loan. Also could be the principal person in a transaction. Could be the seller or buyer. The employing broker would be the principal of the office.
PRINCIPAL BROKER:	the broker responsible for the action of a real estate firm.
PROCURING CAUSE:	in order to earn a commission, one must be deemed the procuring cause for the sale. The agent conducted an uninterrupted series of actions that resulted in the sale of a property.
PUFFING:	an exaggeration while advertising a property.
REALTOR:	a member of the National Association of Realtors (NAR) a trade organization whose members subscribe to a code of ethics.
REDLINING:	a process that targeted certain communities. Lenders refused to loan money in the targeted communities. This process is a Fair Housing violation.
SALESPERSON:	an agent of the broker; must be licensed.
SELLER'S AGENT:	an agent who represents the interest of the seller. The agent has fiduciary duties to the seller.
SELLING AGENT:	the agent who procured the buyer. Could be a seller's agent, buyer's agent or facilitator.

SELLER'S STATEMENT OF PROPERTY CONDITION:	an information sheet that details zoning, utility and structural information about a property being offered for sale. This statement should be completed by the seller of the property. The seller provides the broker or agent with authorization to provide the statement to prospective buyers. Although many agents solicit this information, the seller does not have to provide the statement. The form is not mandatory in Massachusetts.
SERVICE ANIMALS:	refers to animals that assist disabled people by improving the quality of their life.
SHERMAN ANTI-TRUST ACT:	federal and state laws that protect trade and commerce from monopolies.
SINGLE AGENCY:	an agent represents only one party to the transaction.
SOLDIERS AND SAILORS CIVIL RELIEF ACT:	an act that prohibits foreclosing on property owned by active military personnel known as the Service Members Civil Relief Act.
SPECIAL AGENT:	an agent who is authorized to perform a specific task A real estate agent or property manager could be a Special Agent.
STEERING:	this is when an agent corals or maneuvers people looking to rent or buy into a particular neighborhood or component of a neighborhood. It is a fair housing violation.
SUBAGENT:	this is a sales agent who is acting as a cooperating agent for another office. They are showing a property and their fiduciary duties are to the seller of the property, despite never meeting the seller. In order to offer subagency in Massachusetts the seller needs to give written permission and acknowledge that they are responsible for the vicarious liability of the subagents.
TESTER:	an individual who poses as a consumer for the purpose of identifying questionable or illegal practices. A secret shopper.
TITLE TRANSFER:	the transfer of real estate from one party to another. A conveyance of ownership.
TRANSACTION AGENT/BROKER:	an agent known as a Facilitator or Non-Agent. The role of the agent is to assist the buyer or seller to come to an agreement and complete a transaction.

- UNIVERSAL AGENT:** another term for General Agent. A property manager is a general or universal agent.
- WALK-THROUGH:** a tour of a property being purchased before the closing takes place. The purpose is to ensure the property being conveyed is in a condition agreed to between the parties.

Real Estate Brokerage

Real Estate Brokerage can be referred to as an employment agreement. It is when the agent/broker brought together parties in need of realty services. When someone hires a real estate professional to find a buyer, tenant or property for which they are to receive a fee or consideration for their performance they refer to the brokerage process.

The fee they pay for services is an agreement between the client and the real estate professional. In order to collect a fee for finding someone a property for sale or rent, the real estate professional must be licensed as either a real estate salesperson or broker. It is the broker that collects the fee and distributes any fees or commissions due to other real estate professionals. Referral fees can only be paid to licensed real estate professionals. We cannot pay friends for leads if they are not licensed.

Remember: Fees can only be paid by the employing broker.

All commissions and fees are negotiable and are subject to Anti-Trust Laws which prohibit price-fixing, allocation of territories, customer tie-in agreements, boycotting etc..

The Sherman Anti-Trust Act

This act relates to the real estate profession: It prohibits fixing commissions, fees, management fees and disallowing real estate professionals the use of services in particular marketplace. Antitrust laws were established to prohibit a monopolies, pricefixing, restraint in trade and boycotting of services. The Sherman Antitrust Act pertains to the real estate industry. The fine if convicted of violating this law is up to \$1 million dollars and 10 years in prison for an individual and up to \$100 million dollars for a corporation.

Example:

A Real Estate Professional tells a prospective client that the commissions in this town are 6%. The Real Estate Professional can choose only to work for 6% but they cannot tell someone that the commissions are fixed. If two or more real estate professionals have a conversation about what they are charging for services it could be misconstrued that they are attempting to fix commissions in a marketplace and they should be cautioned to avoid such conversations.

Example:

The local board or trade group determines the commissions around here. I would lower it if I could, but I am not allowed to.

AGENCY RELATIONSHIPS/KEY PLAYERS

Client

A client is the person who has hired the real estate agent. **The agent has a responsibility to look out for the client's best interest.** The agent **works for the client.**

Customer

A customer is a person who the **agent is working with.** The agent does not have to put the customer's interest first.

Principal

This is the person who has hired an agent/broker to look out for their best interest. The principal is the **seller or the buyer.**

Salesperson

The **salesperson is an agent of the broker.** The agent has a fiduciary duty to the person they represent. **The salesperson receives compensation from the employing broker only.** If **bonuses** are being offered by another office to the selling agent, the agent **must receive the bonus from their broker.**

Principal Broker/Broker of Record

This is the licensed **broker who is responsible** for the actions of a **company** or firm.

Broker/Salesperson

A person who holds a broker license yet acts in a salesperson capacity. The employing broker is responsible for their actions.

Realtor

A realtor is a **member of the National Association of Realtors (NAR)** and **subscribes to a code of ethics.** This is a trade organization that an agent joins once they become a member of their local board. Realtor is a trademarked term that can only be utilized by members of the organization.

Sellers Agent

The agent/office **represents the interest of the seller.** The agent/office has a fiduciary responsibility to work in the seller's best interest. When someone lists his or her property for sale with a real estate office the office represents the seller.

Listing Agent

The agent who procured the listing for the broker. The agent will share in the commission for procuring the listing when the property sells.

Selling Agent

The agent who procured the buyer for the broker. The agent will share in the commission for procuring the buyer for the property. The agent could represent the buyer, the seller or be a facilitator.

Sub-Agent (Represents a principal despite not being hired by the principal)

A Subagent is an agent not hired by the seller who will represent the interests of the seller when showing their property. They will coordinate their efforts through the listing broker. Although the agent was not hired by the principal they have a fiduciary duty to the principal. When an agent shows a property in this capacity the buyer is a **customer**. **In Massachusetts a seller must give permission for a broker to cooperate with other brokers who act as subagents of the seller. The seller must sign off on specific language accepting the vicarious liability of the actions of the sub-agents involved.**

Buyer Agent

The agent represents the interest of the buyer. The agent has a fiduciary responsibility to work in the best interest of the buyer. The buyer is a **client**.

Disclosed Dual Agency

This involves the consensual arrangement to represent a seller and a buyer in one real estate transaction. Both parties need to give permission for disclosed dual agency. **Undisclosed dual agency is illegal.**

Single Agency (One-Sided)

The **office only represents one party** during the transaction.

Facilitator/Non-Agent/Transaction Broker

The agent **works to complete the transaction. The agent does not have a fiduciary responsibility to the seller or the buyer.** Compensation will come from the employing broker.

Open House Agent

The agent at the open house must post a notice indicating that they represent the seller. They do not provide a disclosure notice because they posted a notice at the open house indicating that they represent the seller.

Designated Seller or Designated Buyer Agent (Appointed to represent a party)

This is an agent who has been designated or appointed **to represent only one party**. While someone may be a designated seller's agent the rest of the agents in the office do not have a relationship with the seller and may represent a buyer in the future.

Real Estate Assistants

Some agents have assistants to help them with their services. **An assistant who has a real estate license is capable of conducting all the activities** that the agent could do for themselves such as conduct an open house, show a property to a prospective buyer etc.. **An unlicensed assistant can conduct ministerial work such as deliver contracts, prepare show sheets, file records etc..** They are not allowed to be involved with sales activities such as open houses and viewings when the licensee is not available.

Franchise

A license granted by a large or parent company to a smaller company to conduct business under the name of the main company within a certain geographic area. **Franchisees pay licensing fees to use the company name and a royalty fee to the parent company from the profits.**

Menu Service (Fee for Service)

A type of service which the principal pays for particular services. They may not opt to seek the entire array of service. A la carte

Fiduciary

A relationship that calls for a **special level of trust between two parties**. Such as a seller or buyer and the real estate agent looking out for their interest.

Compensation

When a principal hires a broker to find them a buyer they agree to pay the broker a fee for furnishing them with a buyer willing to agree to their terms. The hiring contract indicates the broker will be paid a specific amount of money (**commission**) for bringing them a buyer willing to meet their terms. The broker will have earned a commission for his or her success once the closing has taken place. The property could be sold **in house (all the agents work in one office)** or through a **cooperating effort (the selling agent works in another office)**. Brokers use a service entitled the Multiple Listing Service (MLS) to publish the properties they have listed to other agents in an effort to have those agents assist with procuring a buyer.

Multiple-Listing Service (MLS) and /Listing Services

This is a **marketing organization for real estate professionals** that assists the members by providing them with tools to enhance their business practices. **One of these tools is a clearinghouse that displays all available properties that members have to sell and a database of properties that have already sold (comparables)**. These properties are available to all members to show.

In order to view the properties, the member agent contacts the listing agent to view the property. If the agent who called to view the property procures a buyer- the office for that agent will be due a commission from the listing office. We commonly refer to this as a cooperative broker (co-broke). The commission paid by the listing office to the cooperating office is published in the MLS system.

A Multiple Listing Sale

The Broker hired will most likely offer compensation to other brokers that assisted with finding a buyer willing to meet the sellers' terms. Brokers often publish via MLS what a buyer agent, facilitator or subagent will receive for compensation if they assist with procuring a buyer. The broker hired by the principal receives the compensation from the seller and distributes **cooperating compensation to other brokers**.

The **Listing Office (Hired Broker)** will receive a **5 % Commission** if they sell the property. They will share a portion of the commission with **members of their trade organization (another office)** if they assist them by finding a buyer in the following capacity. The office receiving the commission will split the money received between the broker and the agent involved in the transaction:

MLS Compensation for 123 Metropolitan Avenue

Listing Office will Provide the Office that Procures the Buyer the following commission if they find a buyer as:

Subagent	0%
Buyer Agent	2.5%
Facilitator	2.5%

Sales Agents Compensation Arrangements

All sales agents are only allowed to receive compensation from their principal broker. The compensation arrangement between the principal broker and the sales agent is determined by mutual agreement. Arrangements can be a salary, a commission split of 50/50 or perhaps an arrangement where the sales agent pays the expenses and received a higher commission split due to covering the overhead. When an **agent finds a property to sell or produces a buyer they will receive some of the commission paid to their broker for procuring the deal**.

In-House Sale

Example: An office is paid \$ 20,000 as a commission when a property is sold. The office operates a 50/50 split arrangement

Listing Agent (Found Listing)	25% of the commission	\$ 5,000
Selling Agent (Found Buyer)	25% of the commission	\$ 5,000
Broker (House)	50% of the commission	\$10,000

If the listing agent and the selling agent are the same agent then they would receive 50% of the commission.

Please Note: Do not get Sellers Agent and Selling Agent mixed up.

Sellers Agent: Represents the interest of the seller.

Selling Agent: Produced a Buyer. Could be a Buyers Agent, Sellers Agent or Facilitator.

LISTING AGREEMENTS (Employment Contracts)

When someone hires an agent to sell a property they enter into an employment contract that creates an agency relationship. **A salesperson creates a contractual relationship between the seller and the agent's broker when a listing contract is signed.** The **seller determines the listing or asking price** for the property. **The listing contract must be signed by the parties whose names appear on the deed.**

There are **three main types of listing contracts** or agreements when someone hires someone to sell their property:

Open Listing (Uni-Lateral Contract)

This is an agreement in which the owner may hire many agents from different offices to sell their property and the owner also reserves the right to sell the property directly. Only the agent who sells the property would be entitled to a commission. These agreements do not need to be in writing. This type of agreement **gives the real estate agent the least amount of protection.**

Exclusive Agency

This is an agreement in which the **owner hires one real estate company to sell their property.** This company will market the property for sale, collaborate with other offices, conduct open houses, advertise the property on MLS and conduct showings in order to secure a buyer. With this type of agreement the **seller also retains the right to sell the property themselves if they find a buyer.**

Exclusive Right to Sell (Bi-Lateral Contract)

This is the **greatest protection for the real estate agent.** This agreement states that the real estate company is the only party that can earn a commission if the property is sold during the period the contract is in place. They will market the property, conduct viewing, open houses, advertise in MLS, etc. **If the property is sold during the period of the listing agreement by the seller or by a third party-the real estate company that holds the exclusive right to sell is entitled to a commission.**

Example: The seller signs an exclusive right to sell agreement with ABC Realty which gives ABC Realty 120 days to find him a buyer. Two weeks have passed and the seller sells the property to his cousin. ABC Realty is still entitled to a commission.

Elements of a Listing Contract

Property Description	Price	Commission	Duration
Special Terms	Signed by the Parties to be Charged.		

Buyer Agreement Contracts

There are three main type of Buyer Agency agreement that an agent and a buyer could agree to. They are as follows:

Open Buyer Agency Agreement (Uni-Lateral Contract)

This type of agreement is the least protection for the real estate agent. It allows **the buyer to use multiple agents and to purchase from an owner directly without being obligated to pay a commission to the agent.**

Exclusive-Agency Buyer Agency Agreement

This type of agreement calls for the agent to be the **sole real estate representative** for the buyer. If the buyer utilized another agent to purchase a property they would still need to compensate the agent they had the agreement with. The buyer **can purchase a FSBO** property with this type of listing.

Exclusive Buyer Agent Agreement/Exclusive Right to Represent

(Bi-Lateral Contract)

This agreement calls for the agent to be the sole representative for the buyer. It is the greatest protection for the agent. The buyer would have to pay a commission if they purchased a property from anyone including FSBO's during the contract period.

Elements of a Buyer Contract are the same as a listing contract.

Commissions (Fees for Services)

We have already established that **commissions are negotiable between the seller/principal and the broker.** While it is illegal to fix commission schedules between offices, real estate professionals have the right to decide what they want to charge for their services. They can charge 10% if they desire or 2% if they choose. They can provide full service brokerage or **menu service options to satisfy their customers.** Obviously the parties must agree to the commission structure and most times the commission is paid at the closing.

Protection Period

Most contracts have a clause that protects the real estate agent from being cut out of a transaction. The clause protects the agent from a situation in which a buyer or seller attempt to deal with each other directly in an effort to preclude the agent from earning compensation. The contract will prohibit the seller and buyer from creating a deal together (excluding) the agent within a designated time frame. An agent can sue for a commission if the protection period is violated.

Net Listings

This is an agreement to **sell or lease a parcel of real estate for a stated price and authorizes the broker to keep as a commission any amount of money received in excess of the stated price. It is illegal in Massachusetts.**

Example: the owner says he would like to get \$300,000 for the sale of his property. The property sells for \$450,000 resulting with the owner getting what he wanted and the real estate company getting rich.

Agency Relationships (Law of Agency)

Agency is described as the relationship between a principal (seller/buyer) and the agent hired to act on behalf of the principal. The principal is responsible for the actions of their agent within the scope of the authority to act on the principal's behalf. This is known as the **Doctrine of Respondeat Superior**. The principal does not have to approve the actions of the agent. It can be viewed as the agent had the authority to act on the principal's behalf. It is viewed that the agent has the apparent or **ostensible authority**.

Example: an owner of a property knows that a broker is showing his property to prospective buyers without authorization and does nothing to prevent the showing. A buyer could assume that an agency relationship exists. The owner could be liable for the agent's actions. This creates an implied agency (ostensible agency)

Special Agent (Real Estate Agent)

A special agent is an agent who has special or limited authority. A real estate agent who has been hired by a principal to find a ready, willing and able buyer or to find a buyer a property **is a special agent**. The scope of their authority is specific. They do not have the authority to act on behalf of the principal during the transaction.

General Agent (Property Manager)

A general agent is someone who has a wide range of tasks rather a specific task. **A property manager is a general agent. A real estate agent is a general agent for their broker.**

Universal Agent

This is an agent who has the **authority to do anything that the principal would do** for himself or herself. The universal agent will hold a **power of attorney instrument and is known as an attorney-in-fact.**

Errors and Omissions Insurance (E& O Insurance)

Real Estate Agents and Brokers obtain Error and Omissions Insurance (E&O) to protect them in case they made an accidental mistake during a transaction and are being sued for that mistake. This insurance does not protect against fraud or willful misrepresentation.

Duties/Responsibilities of Agency

Real Estate Brokers/Agents have a duty to act honestly and ethically at all times. They are required to look out for their clients best interest at all times. An agent who intentionally violates a duty of agency is subject to license loss or suspension.

Obedience: The agent must obey lawful instructions. An agent cannot exceed the scope of authority given. If they do they could be liable for damages. You cannot be required to break the law.

Loyalty: The agent must act in the client's best interest at all times. They should never do anything that would weaken the position of their client. They cannot act on behalf of more than one party without the knowledge and consent of all parties.

Disclosure: The agent must disclose to the principal anything that might influence their decision during the sale process. If the agent represents the seller and they know that a buyer may pay more they need to tell them. They are not allowed to tell the buyer the lowest price a seller would accept if they represent the seller. The agent must disclose all material defects to the buyer.

Confidentiality: an agent who has a fiduciary duty to a client has a duty to keep their personal information to themselves.

Accounting: The agents must be able to account for all funds entrusted to them on behalf of their clients. All client money is required to be deposited into a client fund account (escrow) account. These records are subject to review by the board. Client money and operating funds should not be in the same account. This is called commingling and is illegal. Copies of all checks deposited into and withdrawn from a client fund account must be kept for three years.

Reasonable Care and Skill: The agent must proceed with reasonable care when acting on behalf of a client. The agent could be liable for losses if carelessness led to such losses.

Agent Duties The agent is required to disclose all material defects within a property. If a seller instructs the agent not to disclose a defect they must inform the seller they are required to disclose. If an agent knows that a buyer intends to utilize the property in a manner that is not feasible they need to advise the buyer of that matter. The buyer has a right to know what they are purchasing.
No more Caveat Emptor (Let the Buyer Beware).

An agent that is selling a home “as-is” must disclose all of the known material defects associated with the property.

TERMINATION OF LISTING AGREEMENTS/CONTRACTS

Agreements can be terminated by a variety of avenues- several of them are:

Expiration: The contract will most likely have an ending date. If the agreement is for 120 days, it **will expire at the conclusion of that time period.**

Death: If the **owner of the property dies it dissolves the relationship.** If the broker dies it dissolves the agreement. If the salesperson that brought in the listing dies it does not terminate the relationship because the listing actually is the property of the employing broker.

Performance: Completion of the sale. The agent performed all duties of the contract.

Agreement: The parties agree to terminate or dissolve the contract.

Abandonment: The listing broker is not servicing the listing or communicating with the owner.

Destruction: If the property gets destroyed by fire or other means.

Title Transfer: If the owner loses title to the property by foreclosure, bankruptcy or condemnation.

Cancellation: Sometimes people enter into contracts with real estate professionals and then change their mind about selling their property. If they sell their property during the term of the contract

the agent may be entitled to a commission. **The agent may be entitled to expenses if a seller cancels the contract and the agent has spent money marketing the property.**

FEDERAL FAIR HOUSING LAWS

Civil Rights Act of 1866

This act prohibited discrimination on the basis of **race**.

Civil Rights Act of 1968, Title VIII (Federal Fair Housing Act)

This is known as the **Federal Fair Housing Act** and covers only issues pertaining to housing. This act increased coverage to include **race, color, national origin, and religion**.

1974 Fair Housing Amendment

Increased protection to make it illegal to discriminate on the basis of gender or **sex**.

1988 Fair Housing Amendment (Effective March 1989)

This amendment increased coverage for persons with **physical/or mental disabilities and familial status**. **Familial status refers to discrimination that occurs to households that have minor children.**

Handicapped/Disabled Status

This refers to individuals who have either physical or mental impairments that effect one or more major life functions. Disabled status includes impairments of mobility, speech, sight, hearing, cancer, alcoholism, AIDS and HIV. Illegal drug addiction is not considered a handicap.

Apartment Modification

A disabled tenant may make reasonable modifications to their apartment and the common areas to allow themselves use of the premises. The tenant must pay for the expenses and return the apartment to its original condition when they depart. The tenant does not have to restore the common areas to the original condition when they depart. Reasonable changes include: grab bars, chair lifts or ramps, convenient parking, if available. If a complex is larger than 10 units the owner is responsible to make the accommodations.

Support Animals/Service Animals

A property owner **cannot prohibit a prospective tenant from having a Seeing Eye dog or service animals**. The property owner cannot charge an increased security deposit because the tenant has a Seeing Eye dog or support animal. **The tenant is liable for any damages caused by the animal.**

New Units

The Acts of 1988 require that new multiunit properties of four or more units be accessible in public and common areas for use by physically disabled persons.

Prohibited Behavior

It is illegal to ask a prospective tenant if they are disabled or the degree of the disability. Property owners must make reasonable accommodations for someone with a disability.

EXEMPTIONS TO FAIR HOUSING LAWS

Housing designated for Older Persons if town/state approved are exempt from fair housing laws. A town may designate a development a **55+or 62+** Development. In this particular case the occupants are limited to age requirements. **These properties are exempt from familial status requirements.**

Religious Organizations that have non-profit housing may limit the sale or lease to members of their group providing the religion is open to others without discrimination. They cannot use an agent or broker to conduct a transaction.

Private Clubs have a right to sell or lease to members of their organization. They cannot use an agent or broker to conduct a transaction.

Owners of a single-unit property who own three or fewer rental units have discretion in the sale or rental of their properties provided they do not sell more than one home in a 24- month period. They must not use a broker to conduct the transaction nor can they discriminate in their advertising.

Individuals who Own and Occupy a two unit property have **discretion** about who may occupy their rental unit. This does not mean they can discriminate, and if they hire a real estate representative that representative must give truthful information about the apartment and they must tell prospective tenants about the availability of the apartment if they can afford it. Massachusetts Law exempts two unit owner occupied properties while the Federal government exempts up to four unit owner occupied properties. **The state trumps the federal government.**

Important Rule: These exemptions are only in play if a broker is not utilized. The minute a broker is hired all Fair Housing Laws and rules apply.

FEDERAL FAIR HOUSING LAWS PROHIBIT:

- Discrimination against anyone in a protected class when it comes to sales or rentals.
 - Use of different terms or policies for various people. Treat everyone the same.
 - **Steering** someone to or away from a unit, house or neighborhood based on the color of their skin, ethnic or racial background, religion, sexual orientation etc.
 - **Blockbusting**-making statements or remarks that may cause people to sell their properties. Blockbusting leads to panic peddling. **Example: people are moving into this area and that may result in values dropping. You should sell now while you can still get top dollar.**
 - Falsifying availability about housing. **Example: Three people call about looking for a two bedroom apartment. One of these people told you they have a four year old son. You know one of the apartments she can afford has lead paint and you do not tell her about that apartment. You just violated her rights and the law.**
 - **Discriminatory Advertising**-any advertising that indicates someone is excluded. Example: Nice two bedroom home near the beach. \$ 1500 per month. No kids.
 - **Redlining**-this is when someone is being offered unusual financing terms for anything other than sound economic reason.
 - **Coercion, intimidation or interfering** with a person's right to buy or lease because of their background.
 - Appraisal Reports that have a negative impact on value because of the entrance or occupancy of people in a protected class.
-

Penalties for Violating Fair Housing Laws

- Offense One- up to **\$10,000**
- Offense Two- up to **\$25,000**
- Offense Three- up to **\$50,000**

A person wishing to file a **complaint has up to one year from the date of the incident** to do so. They could file the charge with **HUD (Department of Housing and Urban Development)**. They assign the case to an **Administrative Law Judge (ALJ)**. This ALJ has the right to levy actual damages and court costs against the defendant. **Complaints in Massachusetts are filed with MCAD. Fines will be paid to the Commonwealth of Massachusetts.**

Tester

A Tester will pose as a consumer to ensure that agents are treating everyone fairly and equally. A modern term could be a secret shopper.

Massachusetts Commission Against Discrimination (MCAD)

This is the state agency that oversees discrimination claims within the Commonwealth of Massachusetts. The agency reports directly to the Governor's Office. An individual who seeks to **file a complaint must do so within one year of the alleged violation.**

If MCAD finds probable cause to move against an agent they may send the agent a conciliation order mandating they comply with the law and possibly an order to make restitution.

If an agent is found to have violated Massachusetts Fair Housing Laws after a hearing by **MCAD** the agent's license may be **suspended for 60 days**. A **second offense** within **two years** results in a **90 day suspension**.

All fines levied by MCAD are payable to the Commonwealth of Massachusetts. MCAD can award up to \$ 2,000 to the victim of a discrimination claim. The victim may sue the agent civilly for costs incurred in obtaining alternative housing, moving and attorneys fees. **An agent can appeal a complaint to Superior Court.**

Blockbusting can create panic selling. When someone is trying to get people to sell for personal profit or personal gain and they are using threats or suggestions that the presence of people in a protected class are driving down the value.

An agent can be fined from \$1000 to \$2500 for each offense and/or receive six months in prison.

Equal Opportunity Housing Poster (HUD Poster)

Each Real Estate Office is mandated **to post an Equal Opportunity Housing** Poster from HUD in its office. This poster should be displayed in a conspicuous place for all to see when they enter the office. Failure to display this poster puts the real estate office in harm's way should any complaints be filed against them. An office can be fined from \$10 to \$100 per day for failing to have a HUD Poster.

Brokerage

You should have an understanding of the following terms and concepts to master this chapter

Makes notes for yourself for a study review.

<p>What is a listing ?</p> <p>Sherman Anti-Trust Act</p> <p>Who determines the listing price?</p> <p>Who determines the commission?</p> <p>Who determines the sale price?</p> <p>What is Brokerage?</p> <p>Client/Who is the client?</p> <p>Who is the customer?</p> <p>Who is the Principal?</p> <p>Who is the Principal Broker?</p> <p>Who is a Broker Salesperson?</p> <p>Who is a Realtor?</p> <p>Who is the Seller Agent?</p> <p>What is a Subagent?</p> <p>What is Vicarious Liability?</p> <p>Who is a Buyer Agent?</p> <p>Disclosed Dual Agency</p> <p>Single Agency</p> <p>Facilitator</p> <p>Non-Agent</p> <p>Open House Agent- Requirements</p> <p>Designated Buyer/Agent Duties</p> <p>Designated Seller/Agent Duties</p> <p>Franchise - Royalty</p> <p>Three Main types of listings:</p> <p>Open</p> <p>Exclusive</p> <p>Exclusive Right to Sell (Explain the differences)</p> <p>Three Buyer Agent Agreements:</p> <p>Exclusive Right to Represent</p> <p>Exclusive Buyer Agency</p> <p>Open Buyer Agency (Explain the differences)</p> <p>Protection Period-what is it?</p> <p>Net Listing</p> <p>MLS</p> <p>Doctrine of Respondeat Superior</p> <p>Special Agent</p> <p>General Agent</p>	
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<p> Universal Agent Errors & Omissions Insurance Duties of Agency –OldCar (Explain the differences for each type of agent) Fiduciary Caveat Emptor What will Terminate a Listing Contracts? Federal Fair Housing Laws (Explain the following): Civil Rights Act 1866 Civil Rights Act 1968 1988 Fair Housing Amendment Familial Status/Disabled Status Apartment Modification – 10 Units What is a Service Animal ? Requirements for units built as of 1988 Elder Housing 55+/62+ Religious Organizations Private Clubs Owners of Single Family Owner Occupy 2 Unit Property/State Steering (Explain) Blockbusting (Explain/Fines) Redlining (Explain) Penalties for Fair Housing Violations How long to file a discrimination complaint/where? MCAD Penalties/Fines HUD Poster/Where Poster/Fines </p>	
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Brokerage Quiz

<p>1. Joe the neighborhood real estate agent is directing buyers of a different racial persuasion than himself to a particular section of his neighborhood. This is an example of:</p> <ul style="list-style-type: none">A. Panic-PeddlingB. RedliningC. BlockbustingD. Steering	<p>5. The Fair Housing Act of 1968 is known as:</p> <ul style="list-style-type: none">A. Title VB. Title XC. Title VIIID. Title VI
<p>2. The 1988 Amendment to the Federal Fair Housing Act increased coverage to include:</p> <ul style="list-style-type: none">A. GenderB. AgeC. Familial StatusD. Race	<p>6. An agent is found guilty of a second Fair Housing Violation. The fine is:</p> <ul style="list-style-type: none">A. \$10,000B. \$50,000C. \$15,000D. \$25,000
<p>3. If a lender refuses to provide a loan to a Hispanic family buying in a predominantly white area, the lender might be guilty of:</p> <ul style="list-style-type: none">A. SteeringB. BlockbustingC. RedliningD. Subrogation	<p>7. Which of the following is not exempt from Fair Housing Laws:</p> <ul style="list-style-type: none">A. Familial StatusB. Owner occupied apartment buildings.C. Property owned by Religious Groups.D. Private Clubs
<p>4. A couple asks an agent to find them a home in a racially mixed area. The agent should:</p> <ul style="list-style-type: none">A. Locate a racially mixed area.B. Tell the buyers the statistics within the area.C. Tell the buyers that they should choose their own neighborhood.D. Tell the buyers about all the properties for sale.	<p>8. A person who lives in a four-unit property has become disabled. Some modifications must be made to the apartment. Who is required to pay for the modifications?</p> <ul style="list-style-type: none">A. Property ownerB. Local Housing DepartmentC. Local Building DepartmentD. Tenant

9. If an agent is soliciting listing based on the racial change in a neighborhood it would be known as:

- A. Redlining
- B. Steering
- C. Blockbusting
- D. Net Listings

10. The owner of an apartment complex exempt from familial status denied a 50 year-old retiree an apartment. In this situation the owner:

- A. Is guilty of discrimination.
- B. Violated Fair Housing Laws.
- C. Did nothing wrong.
- D. Could be sued by the tenant.

11. The Act that made it illegal to discriminate on the basis of race is:

- A. Title X
- B. Acts of 1988
- C. Civil Rights Act of 1968
- D. Civil Rights Act of 1866

12. Each Real Estate office is required to post a:

- A. RESPA Poster
- B. MCAD Poster
- C. Blockbusting Poster
- D. Fair Housing Poster

13. Massachusetts Fair Housing Laws are:

- A. Chapter 183A
- B. Chapter 87AAA
- C. Chapter 40B
- D. Chapter 151B

14. A complaint about Fair Housing should be filed with:

- A. Massachusetts Communities Against Discrimination
- B. Massachusetts Chapter Against Discrimination
- C. The Real Estate Board
- D. Massachusetts Commission Against Discrimination

15. Which of the following is not a member of a protected class?

- A. A 25 year old who is divorced.
- B. A person on public assistance.
- C. A 62 year-old retiree.
- D. A person with a disability.

16. An agent places a newspaper advertisement for an apartment located in an owner-occupied two-unit property. The ad indicates that the apartment is ideal for retirees. In this situation the agent:

- A. Did nothing wrong because it is an owner-occupied property.
- B. Violated Chapter 40B.
- C. Utilized discriminatory advertising.
- D. Blockbusting.

<p>17. An act that prohibits price-fixing amongst real estate agents would be:</p> <ul style="list-style-type: none"> A. The Land Disclosure Act B. The Starker Trust Reform C. The Sherman Anti-Trust Act D. The Facilitation Trust Act <p>18. In Massachusetts an agent can only offer compensation to a sub-agent with sellers consent and the sellers acknowledgement that they may be held liable for the actions of the subagent via:</p> <ul style="list-style-type: none"> A. Cooperating Brokerage B. Disclosed Dual Agency C. Vicarious Liability D. Anti-Trust Laws <p>19. When an agent represents two parties in a transaction without permission of the two parties, it is known as:</p> <ul style="list-style-type: none"> A. Undisclosed Dual Agency B. Dual Agency C. Facilitation D. Bi-Agency <p>20. When describing the term realtor we refer to:</p> <ul style="list-style-type: none"> A. A member of a real estate office. B. A person who has passed the licensing exam. C. A member of the National Association of Realtors. D. A member of the Division of Professional Licensure. 	<p>21. A listing agreement that will pay any agent who produces a buyer is:</p> <ul style="list-style-type: none"> A. Buyer-Agent Agreement B. Exclusive Agency C. Net Listing D. Open Listing <p>22. A listing contract that allows the listing agent to keep as their commission any money received in excess of a stated price is known as:</p> <ul style="list-style-type: none"> A. Multiple Listing Contract B. Triple Net Listing C. A Net Listing D. A Commission Agreement <p>23. A contract that allows the seller to sell their property and enlists one real estate company as well would be an:</p> <ul style="list-style-type: none"> A. Exclusive Listing B. Open Listing C. Multiple Listing D. Exclusive Agency <p>24. When a salesperson prepares a listing contract they are creating a relationship between:</p> <ul style="list-style-type: none"> A. The agent and the seller. B. The agent and the office. C. The agent's broker and the seller. D. The agent's broker and the office.
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25. A listing agreement that creates the greatest amount of protection for the broker is an:

- A. Exclusive Agency
- B. Exclusive Agreement
- C. Exclusive Brokerage
- D. Exclusive Right to Sell

26. A contract can be terminated by all of the following except:

- A. Destruction
- B. Death of the Agent
- C. Performance
- D. Expiration

27. A couple with a three-year old child has been denied access to look at an apartment. The agent who denied them access is guilty of discrimination via:

- A. Lead Paint Law
- B. Apartment Rental Law
- C. Familial Status
- D. Steering

28. A tenant who resides in a 25-unit apartment building had a stroke and needs some modifications made to the apartment to assist them with the quality of their living status. Who must pay for the modifications?

- A. Tenant
- B. Split 50/50
- C. The property owner.
- D. The property manager.

29. Which of the following is not a duty of agency?

- A. Loyalty
- B. Confidentiality
- C. Accounting
- D. Facilitation

30. Caveat Emptor means:

- A. Empty Premise
- B. Let the Buyer Beware
- C. Respondent Superior
- D. Accounting Disclosure

31. A Real Estate Agent acting on behalf of a client is a:

- A. Special Agent
- B. Secret Agent
- C. General Agent
- D. Universal Agent

Brokerage Quiz Answers

1. D 2. C 3. C 4. D 5. C
 6. D 7. A 8. D 9. C 10. C
 11. D 12. D 13. D 14. D 15. A
 16. C 17. C 18. C 19. A 20. C
 21. D 22. C 23. D 24. C 25. D
 26. B 27. C 28. C 29. D 30. B
 31. A

Contracts in Real Estate

Contracts Vocabulary

ABANDONMENT:	departure of premises by lessee (tenant) without approval of lessor (property owner/Manager) before expiration of the lease; action does not cancel lease obligations. Chase is on for property owner.
ADA:	the Americans with Disability Act.
ADDENDUM:	changes or additions to a contract.
AGREEMENT OF SALE:	a bilateral contract (two-way agreement) between a buyer and seller to conduct a real estate transaction. Also known as a Purchase and Sale Agreement or Sales Contract.
ASSIGNMENT OF A CONTRACT:	when a buyer has an assignment clause it allows them to assign their right to purchase a property to someone else, They are not relieved of their obligation to purchase.
ASSIGNMENT OF LEASE:	when a tenant transfers their rights to use leased property, unless the landlord releases them, the tenant remains liable.
BILATERAL CONTRACT:	an agreement between two parties. i.e. Purchase and Sale Contract/Listing Contract.
BINDER:	this could be good faith money paid by the buyer when making an offer on a property. This consideration binds the offer to purchase. Insurance Companies issue binders when payment is made to insure a property.
BONA FIDE:	means in good faith.
BREACH:	a default in an agreement.
BUYER AGREEMENT:	when a buyer hires a real estate agent to represent their interest when purchasing property.
CAPITAL EXPENDITURES:	improvements that were added to a property, such as an addition to the property, new roof, new kitchen. Expenditures contain a useful life and are depreciated over a period of time.
CAPITAL IMPROVEMENT:	improvements that contribute to the economic life of the property. See capital expenditures.

CASH FLOW:	the final amount after deducting all expenses and the debt service (Principal & Interest) from the amount of income collected (Net Operating Income)
CONSIDERATION:	something of value exchanged between a buyer and seller. It could be money, goods or services.
CONSTRUCTIVE EVICTION:	this is an action that a tenant can take to vacate an apartment that is not fit for occupancy. If the owner does not comply with certain terms of the tenancy such as supplying a heating system or water, the tenant can vacate by Constructive Eviction.
CONTRACT:	a legal document between parties calling on them to perform an obligation. To be enforceable it must be legal and be in writing.
CONTRACT ESSENTIALS:	in order for a contract to be valid and enforceable it must contain certain essentials—Offer and Acceptance, Consideration, Legal Capacity, Legality of Agreement and Realty of Consent.
COUNTER OFFER:	a rebuttal to an offer made on a property. The counter voids out the original offer.
COVENANT OF QUIET ENJOYMENT:	a right that allows a tenant to enjoy the rented premises in peace.
DAMAGES:	money paid in the event of a breach of contract.
DEBT SERVICE:	periodic payments made on a loan, usually principal and interest
DEFAULT:	a failure to comply with the terms of a contract.
DISCLOSURE:	agents must disclose all defects associated with a property they are showcasing.
DUE DILIGENCE:	actions conducted by those bound by contractual agreements calling for them to perform specific actions within designated time periods.
DURESS:	forcing someone to do something or not to do something against their will.
EARNEST MONEY:	the binder money paid by the buyer when making an offer on a piece of property. It is consideration to bind the offer.
EFFECTIVE GROSS INCOME:	the amount of money actually collected from the operations of a property.

EQUITABLE TITLE:	the interest acquired by the buyer when the buyer and seller enter into a Purchase and Sale Contract.
ESCALATOR CLAUSE:	a clause that calls for increases in the rent.
ESCROW ACCOUNT:	an account administered by a broker or property owner designed to hold money that belongs to another.
ESSENTIALS OF A CONTRACT	in order for a contract to be valid, it must contain the following essentials: Offer & Acceptance, Consideration, Legal Capacity and Reality of Consent.
ESTATE FOR YEARS:	the grantee holds the estate for a specified and limited time.
EXECUTED CONTRACT:	when the actions of the two parties who entered into an executory contract have been fully completed.
EXECUTORY CONTRACT:	when two parties agree to enter into an action that calls for them each to perform.
EXPRESS CONTRACT:	an agreement that is in writing and the particulars are outlined in the contract.
FORFEITURE:	loss of money due to failure to execute an agreement.
FRAUD:	intentionally deceiving someone, hiding a fact that may have an impact on their decision making process. Your actions could cause harm.
GENERAL AGENT:	a property manager. An agent who has a broad range of duties when acting on behalf of their client.
GOOD CONSIDERATION:	means love and affection. Something of value given as consideration to secure a property transfer. Someone Purchases a property for \$1.00.
GRADUATED LEASE:	a lease arrangement that calls for periodic increases in rent over time.
GROSS LEASE:	owner receives rent and pays expenses such as taxes, maintenance. Most residential leases are gross leases.
GROUND LEASE:	also known as a land lease. A property owner leases land to someone who desires the location or wants to build to specifications. The building becomes part of the security for the lease.
HOLDOVER TENANT:	a tenant who remains in possession of an apartment after the expiration of the rental agreement without the

owners consent. They hold the premises from being rented to someone new.

IMPLIED CONTRACTS: an agreement that may be determined by the actions and conduct of the parties involved. It is not in writing.

INDEX LEASE: a lease that call for adjustments to the rent in relation to identified indexes such as the (cpi) consumer price index.

LEASE: a contractual agreement between a landlord and a tenant for possession and use of a designated apartment for a particular period of time and price. Owner retains a reversionary interest-reclaim at the end of the lease.

LEASEBACK: someone sells a property then leases it back from the new owner. Seller receives capital and gets to deduct the cost of rental expenses.

LEGAL CAPACITY: an essential element for a valid contract. Calls for the parties to be competent when entering into contracts. Signing while intoxicated, insane or a minor will lack capacity.

LEGAL TITLE: a buyer receives legal title to a property when they receive and accept the deed conveying the property to them.

LIQUIDATED DAMAGES: a predetermined amount one party would pay to another party if they defaulted on the terms of a contract.

LISTING AGREEMENTS: contracts that allow a real estate broker to sell a property. Three main types: Exclusive Right to Sell, Exclusive Agency, Open Listing.

MEETING OF MINDS: an offer was made and accepted. The parties have agreed.

MISREPRESENTATION: a misstatement about the condition of a property or the rights that run with a property. In order for a contract to be valid it must be free from misrepresentation.

NET LEASE (NNN): owner charges base rent plus a portion of expenses such as taxes, utilities, insurance. Seen in commercial leases.

NET OPERATING INCOME (NOI): the amount of money on hand after you subtract the operating expenses from the effective gross income. Effective Gross Income – Operating Expenses= NOI

NOVATION:	substitution
OFFER:	a bid by the buyer to purchase a parcel of property.
OFFER AND ACCEPTANCE:	a meeting of the minds. Mutual Assent.
OFFER TO PURCHASE:	the buyer's proposal to purchase a property. If agreed to by the seller within a stated timeframe the Offer becomes a legal binding document.
OPERATING EXPENSES:	the costs of operating a property such as property, taxes, maintenance, repairs, property management fees, etc.
OPTION:	a contract between two parties to either sell or buy a property at a future date. The owner is the optionor and gives a right to a buyer (optionee) to purchase a property by a future specified date and price. The buyer does not have to purchase if they decide not to. Unilateral Contract.
OPTION CONTRACT:	a contract that allows a buyer to purchase a property at a future date, at an already determined price. The buyer pays consideration for the option. The seller retains the consideration if the buyer does not purchase and the Buyer is prohibited from selling the property to anyone else.
PERCENTAGE LEASE:	a lease arrangement which has a fixed rent plus a percentage of gross sales from the business. Used with Shopping Centers.
PROJECTED GROSS INCOME:	the most money a property will return if there are no vacancies.
PROPERTY MANAGER:	a fiduciary of the property owner. Their role is to secure the highest possible net income for the property A general agent; does not need to be licensed in Massachusetts.
PROTECTION PERIOD:	a clause that provides a level of protection for a broker once a contract has expired. Limits the seller's ability to sell the property to a buyer who was introduced to the property by the broker within a certain time frame.
QUIET ENJOYMENT:	the rights of the occupant or owner to enjoy the premises without interference.
REALITY OF CONSENT:	a contract must be free from fraud, misrepresentation duress, undue influence and error.
RESCISSION:	the parties who signed a contract are returned to their original position before they entered into the agreement.

RESCISSION OF CONTRACT:	cancellation of a contract. Everyone is returned to the position they held before signing the agreement. Can be voluntary or court ordered.
REVERSIONARY INTEREST:	the right to recover an interest in a property, a property owner taking re-control of an apartment after the termination of a rental agreement or an individual who granted a life estate and took re-control of the property as the remainderman of a property.
REVOCATION:	cancellation.
RIGHT OF FIRST REFUSAL:	the right one party has to purchase a property being offered for sale by another property owner. There is a timeframe to which this right can be exercised.
SALE/LEASEBACK:	this is when a property owner sells their property to another and then leases the property back. They go from being the owner of the property to being a tenant.
SALES CONTRACTS:	known as Purchase & Sale Agreement. It is a final contract between a seller and a buyer.
SANDWICH LEASE:	this is a lease between a tenant and a sub-let tenant.
SECURITY DEPOSIT:	a deposit made by a tenant aimed at preventing damage to the apartment. Landlords may keep deposits if damages are severe.
SPECIFIC PERFORMANCE:	a court decision that orders one party to comply with terms and fulfill the obligations of the contract.
STATUTE OF FRAUDS:	a law that requires real estate contracts to be in writing in order to be valid and enforceable in court of law.
STATUTE OF LIMITATIONS:	a time period to which one can attempt to void, alter or cancel a contract through legal action. The statute of limitations in MA regarding contracts is 6 years.
STEP-UP-LEASE:	with this type of lease, a property owner would increase the rent over a period of time.
SUBROGATION:	an attempt by one party to collect losses from the party responsible for the losses.
SUB-LET:	this is when a tenant sub-leases an apartment to another. The original tenant is still responsible for the rent if the sub-let tenant defaults.
TENANCY AT WILL (TAW):	an agreement to rent an apartment on a month-to-month-to-month basis. Either the tenant or the property owner can terminate tenancy with specific written notice.

TENANCY AT SUFFERANCE:	the tenant is a holdover tenant. They were supposed to leave but remain in the premises without the owner's consent.
TENANCY FOR PERIOD TO PERIOD:	a rental agreement that runs for a specific duration and is automatically extended if neither party cancels the agreement with a specified time frame.
TIME IS OF ESSENCE:	an agreement to abide by the dates in the contract. asap.
UNENFORCEABLE CONTRACT:	a contract that contains essential elements but cannot be enforced, i.e. an unsigned contract.
UNILATERAL CONTRACT:	it is an agreement that calls for one party to act if another party completed a task. An option contract or a listing agreement are examples of unilateral contracts.
UNIVERSAL AGENT:	another term for General Agent. A property manager is a general or universal agent.
UNLAWFUL DETAINER:	illegal possession of property that belongs to another.
VACANCY RATE:	the amount of vacant apartments divided by the total number of apartments.
VALID: CONTRACT:	an agreement that legally binds the parties who have entered into an agreement. The agreement contains all the essential elements of a contract. The essential elements are offer and acceptance, consideration, legal capacity and reality of consent.
VALUABLE CONSIDERATION:	this is money exchanged for the purchase of a property or other item
VOID CONTRACT:	an agreement that has the appearance of being binding but is not binding because the actions were not legal. There is no binding authority.
VOIDABLE CONTRACT:	a contract that is binding upon the parties; however, it can be voided if an action is taken to cancel it out. The contract is valid on face value and is binding until court action is taken.

CONTRACTS, RENTAL AGREEMENTS & PROPERTY MANAGEMENT

What is a Contract? (Promise the law will enforce)

A contract is a **voluntary agreement between two or more parties** calling for them to perform certain acts or not to perform certain acts. Examples of contracts: **Listing Agreements, Buyer Representation Agreements, an Offer to Purchase, Purchase and Sale Contracts, Rental Agreements and Property Management Agreements.**

Statute of Frauds (Contracts that require a writing)

In order for certain contracts to be valid and enforceable in a Court of Law they are required to be in writing. They are as follows:

1. Contracts for the sale of land (Real Property ownership transfer)
2. Contracts for Surety
3. Contracts for the sale of goods \$ 500 or more.
4. Contracts signed by an executor
5. Contracts in contemplation of marriage
6. Contracts with the impossibility of being completed within 1 years time.

Please Note Electronic Signatures are acceptable form of Signature.

MUETA Massachusetts Uniform Electronic Transaction Act is a statute that applies to electronic records and signatures. The act calls for all parties to agree to complete the contract by electronic means.

Exemptions: wills, trusts, adoptions, divorces, court documents, termination of rental agreements, foreclosures and evictions.

Feldberg v Coxall, 2012 Superior Court judge ruled a series of email exchanges constituted an agreement and that the From block constituted a signature.

Listing Agreements

When a seller hires a real estate company to market their property they enter into a listing contract or agreement. Covered in Brokerage.

Buyer Agent Agreements

When a buyer hires a real estate agent to represent their interest when purchasing property they enter into a Buyer Agent Agreement. Covered in Brokerage.

Offer to Purchase (McCarthy v Tobin)

An **Offer to Purchase is a legal binding contract (McCarthy V. Tobin)** once the parties involved have agreed to it. It is the **buyer's proposal to the seller** and contains several important items such as purchase price, the down-payment, any conditions for purchase, inspection and financing contingencies and closing dates. The offer will possess an expiration date. **When the parties sign the contract it will bind them to the terms of the agreement. An unsigned agreement is not a contract.**

Voiding an Offer Contract

The Offer will become VOID if:

The **seller does not respond** to the offer **before the expiration date**.
If the **seller counters** the buyer's offer with his or her own.

The **buyer can withdraw the offer before the expiration** of the timeframe **if the seller has not responded**. Once the **seller accepts they cannot withdraw** from acceptance.

Earnest Money

The buyer will make a deposit with his or her offer. This **good faith money** is referred to as deposit money, **binder money** or **earnest money**. They will make a down-payment once the Purchase and Sale is signed. The **amount of this money is agreed upon between the buyer and seller**.

Time is of the Essence

This is a clause in a contract that **requires exact and punctual performance**. It is **agreed that the parties will abide by the dates in the contract. (ASAP)**

Contingencies/Amendments/Addendums

Contingencies are additional conditions that must be completed before a contract is enforceable. The contract outlines what steps must be taken to satisfy the parties involved in the agreement. The following are three types of contingencies:

1. Mortgage/Financing Contingency

This clause calls for the buyer to have an opportunity to secure financing by a **particular deadline**. The clause protects the buyer's deposit.

2. Inspection Contingency

This clause provides the buyer an opportunity to inspect the property for insects, lead paint, radon and overall condition of the property.

3. Property Sale Contingency

This type of clause calls for the contract to be subject to the purchaser being able to sell their existing property.

4. Escape Clause

This clause allows the seller an opportunity to continue to market the property until the buyer's conditions have been completed.

5. Amendments

An amendment is a change to an existing content of a contract. When items are added or deleted from a contract the contract has been amended. Changes should always be initialed and dated by the parties who signed the contract.

6. Addendum

An addendum changes the agreement between the parties and creates a new agreement. It is an item added to a contract without changing the original content. Also needs to be signed by the parties who have agreed to the new terms.

Purchase and Sale Agreements (Sales Contracts)

It is the legal contract that finalizes the agreement. Lawyers work out all of the mechanics and legal requirements in order for the sale to take place. A real estate agent is allowed to fill in the blanks on preprinted legal forms and contracts when directed to do so by their client or customer. **Unless the agent is a lawyer they are prohibited from constructing legal contracts.** Doing so can be deemed an **unauthorized practice of law** and can place the agent in harms way. **If a seller or buyer signs a contract without reading it they are bound to the terms of the agreement.**

When the parties enter into a **Purchase and Sale Agreement** the buyer obtains **Equitable Title** to the Property. Once the **deed is delivered** the buyer has **legal title** to the property.

CONTRACT TYPES, CHARACTERISTICS and ESSENTIALS

Valid Contract - An agreement that legally binds the parties who signed the agreement. **This agreement must contain the following essential elements to be valid and enforceable. Absent one of the elements the contract becomes a void or voidable document.**

Essentials Elements of Contract

(Offer/Acceptance, Consideration, Legality of Agreement and Reality of Consent)

In order for a Contract to be valid and enforceable it must **contain certain essentials**.

Offer and Acceptance

We call this a **meeting of the minds** or **mutual assent** between the parties. The buyer agrees to purchase with certain conditions and the seller agrees to those conditions.

Consideration (Bargain for Legal Detriment)

A contract must contain consideration. **Consideration is something provided to one party in return for something given by the other party.** A back and forth or “to and fro” It can be services, goods or a promise.

The original **earnest money** is consideration.

Reminder : There are two types of Consideration.

Valuable Consideration =Money, Product or Services

Good Consideration=Love & Affection.

Legal Capacity

The parties involved in the transaction must be legally competent to conduct the transaction. An individual who signs a contract while insane, intoxicated or as a minor has the ability to have the contract canceled.

Legality of Agreement

The agreement cannot call for the parties to perform an illegal activity. If someone had an agreement to perform an act that was not legal and backed out of the contract there would not be a remedy that would force them to act on the contract. Contracts to commit illegal activities are not binding.

Reality of Consent

The objective is that the contract is free from duress, fraud and error and that the parties entered into the agreement of their own free will.

Misrepresentation

A misrepresentation of a property can be described as an innocent misstatement about a material fact regarding the condition of a subject property. The mistake was not intentional but could have consequences.

Fraud

This is when an agent deliberately misleads a buyer or seller. An example would be a buyer asking if the basement ever leaked and the agent indicating

that it never did even though he/she is aware of past water problems in the basement.

Duress

Duress occurs when someone conducts an action because they feel pressure, intimidation or fear of retaliation if they do not comply with certain actions.

Void Contract - This is an agreement that has the appearance of being a binding agreement, but is **not binding because the actions have no legal effect**. An example would be an agreement between a property owner and tenant with a child that allows the tenant to reside in a property without the property owner being obligated to the lead law.

Voidable Contract - This is a contract that is binding upon the parties that signed the agreement. However, the contract can be voided if action is taken to cancel it. **An example would be an agreement with a minor. The contract is valid on face value and is binding unless the minor takes action to cancel it. Fraud or misrepresentation will make a contract voidable.**

Force Majeure- an agreement can be terminated by force of law if the actions called for under the agreement become illegal to conduct. IE. Property owner John signs a 10 lease with a customer who is operating a gambling casino. Three years into the agreement the town made it illegal to conduct gambling therefore the tenant is relieved to the obligation under the terms of the agreement.

Unilateral - This is an agreement that calls for one party to act if another completed a task. It is a one-sided agreement. The second party is not legally required to complete the transaction. An example would be an **option contract**. The seller agrees to sell a property to a specific buyer within a specific time frame only if the buyer completes the deal within the time frame. The buyer can opt not to purchase the property.

Bilateral and Executory Contract - This is when two parties agree to enter into an action that calls for them each to perform. An example is a **Purchase and Sales Contract** or an **Exclusive Right to Sell Agreement**. A seller agrees to sell his property to a specific person and that person agrees to purchase the property. An executory contract calls for a future action to occur. A Purchase and Sale Contract is bilateral (between two parties) and an executory contract. (It calls for a closing to take place, money to change hands and a deed to be conveyed).

Executed Contract - This is when the actions of the two parties who entered into an executory contract have been **fully completed**. The new action supercedes the executory contract. An example is the completed act of transferring property. Once the **closing** (passing of papers) has been **completed the contract has been executed**.

Assignment of a Contract - When a buyer has an assignment clause it allows them to assign their right to purchase a property to someone else. Although **they assign the right to purchase they are not relieved from their obligation to purchase** and are subject to penalties if the assignee does not purchase. Many purchase contracts contain the right to assign an agreement. Unless specifically noted the seller cannot object to the assignment.

Expressed Contracts

This is an agreement that the particulars are known or understood. A listing contract would be an expressed agreement. Could be in writing or spoken.

Implied Contracts

This is when an agreement is created by the **conduct and the actions of the parties involved**.

Breach of Contracts

If a party to a contract does not perform their obligation there can be a penalty for their breach of duty. The following are some ways to breach a contract.

Rescission (Reversal) - The parties agree to rescind the agreement and all parties return to the positions they held before signing the agreement. A court could also rescind a contract.

Specific Performance - This is an order that requires the breaching party to fulfill the conditions of the contract they entered into. An example would be a seller who decided a week before a closing that they did not want to sell their property. The buyer could sue the seller for specific performance to force the sale of the property.

Damages (Recovery of Losses) - This is when the party who has been defaulted against **seeks a recovery for the losses they incurred due to the breach**.

Liquidated Damages (Known penalty) - This is an **identified and specific** amount that is to be paid if one of the parties defaults on the contract.

Forfeiture - The breaching party (buyer) will forfeit either all or a portion of the deposit because they did not honor the terms of the contract.

The Option Contract - An Option Contract would be when one party agrees to sell their property to another party if they receive something of value and certain time obligations are met. Usually the person who is seeking the option will pay something (consideration) in exchange for being given time to complete the sale. The person who receives the option is not obligated to complete the transaction. They could decide not to lease or purchase the property. In this case they would lose the consideration paid for the option. Many commercial transactions began as options.

Advantage Buyer: It gives the buyer time to obtain financing, time to put together partners, and time to decide if the purchase would be worth their investment.

Advantage Lessor: It would give a lessor time to either complete an existing lease or time to break a lease and find a suitable tenant as a replacement tenant.

Advantage Seller: It gives the seller an open offer to sell their property. If the buyer opts not to purchase the property the seller retains the consideration paid for the option.

Advantage Buyer: If the market declines the buyer will escape a declining market if they decide not to purchase. If the market increases they will look forward to purchasing a property at below market prices.

An option is **known as a unilateral contract**. It is a **voluntary encumbrance** upon the owner's bundle of rights because it eliminates their right to sell their property to someone else as long as the option remains in effect.

Options are required to be in writing to be valid and enforceable in a Court of Law. An option can be assigned without the consent of the optionor (Seller/Owner) **and is binding upon the estate of the person who provided the option**.

LEASES and RENTAL AGREEMENTS (Non-Freehold)

Tenant at Will (TAW)

This is a rental agreement that runs month to month. Either party can **terminate** the agreement by giving the other party **30 days written notice** (a full rental period) that they intend to terminate the tenancy. A reason for termination does not have to be provided by either party. **The property owner can raise the rent by providing the tenant with a full rental period's notice**. TAW's do not need to be in writing, but are recommended. **Rooming houses require 7 days notice since they are usually weekly rentals**.

The Lease (A Tenancy or Estate for Years)

This is a written rental agreement between two or more parties to transfer possession of real estate to a tenant (lessee) from the owner of the premises. **The tenant(lessee) now has a leasehold interest while the owner has a leased fee with reversionary interest**. Another term for a lease is an **Estate for Years**. The rent is fixed during the lease period. The lease must contain the essential elements of a contract. **Another term for a lease could be demised premises. A rental agreement for more than one year must be in writing to be valid under the**

Statute of Frauds. A property owner could **record a lease** in excess of a year or notice of a lease.

If a **rental agreement is for seven years** or greater is it required to be **acknowledged/notarized and recorded**.

Leases can be terminated by expiration of time, bankruptcy, mutual agreement and condemnation.

Note: A tenant who breaks a lease is still responsible for the rent during the lease period.

Tenancy for Period to Period (Periodic Tenancy)

This is an agreement that runs for month- to- month, year-to- year, period to period. The agreement will automatically extend for the same period if neither party cancels it by giving proper notice. It could be known as a self-extending contract.

Transfers of Leases - A lease may prohibit the tenant from transferring their interest to another party. If the lease does not, the following avenues may be followed:

Sublet-the tenant if allowed **transfers a portion of the lease** to another, such as a student sub-letting an apartment for a semester. The **original tenant is still responsible for rent payments**.

Sandwich Lease-This is a rental agreement that exists between the tenant and a sublet tenant.

Assignment- unless prohibited a tenant **transfers the remaining portion** of a lease to another, such as a student transferring schools. The **original tenant is still responsible for rent payments**.

Novation- the new tenant writes a new rental agreement with the property owner. The original tenant is relieved from their obligation.

Covenant of Quiet Enjoyment - This is an agreement that the tenant will be able to reside at the premises without undue pressure from the property owner. The owner agrees to keep the property in habitable condition, to adhere to the terms of the rental agreement, not to enter the apartment without notice/ valid reason and not to threaten to throw them out when they abide by the lease arrangements.

Holdover Tenant - This is when a **lessee remains in possession of a leasehold beyond the expiration of the rental agreement**, thus holding over the premises from future rental opportunities. They remain in possession of the leasehold beyond the expiration of the lease. **The owner will sue to recover the property via unlawful detainer of the property.**

Tenancy at Sufferance - This is the situation that is created when a holdover tenancy occurs.

Constructive Eviction - This is an **action that a tenant can take to vacate an apartment that is not fit for occupancy**. If the owner does not comply with certain terms of the tenancy such as supplying a heating system or water the tenant can vacate by Constructive Eviction. **The tenant is released from the obligation to pay if they vacate via this method.**

99 Year Lease - The purpose of a ninety- nine year lease is straight forward. A lease of 100 years or longer has the effect of a fee simple estate.

Escalator Clause - A clause in a lease that calls for periodic increases in rent payment.

Lease Option - A clause in a lease that provides the **tenant the contractual right to purchase** the property they have leased at a predetermined price or formula.

Right of First Refusal - This is a **right to purchase a property in the future**. Must be specified in a contract to be valid. It would **allow an individual to match or beat any offers** to purchase that are submitted by a particular time frame.

Features of a Lease

The property owner retains a reversionary interest, the right to recover at the termination of the lease period.

If a property owner sells their property the **new owner must honor the remaining time period of the lease**.

The lease expires when the indicated time arrives. There does not need to be any notice given to the lessee to vacate the premises.

The property owner can conduct **actual eviction proceeding** to sue for possession if a tenant breached the lease.

LEASE PAYMENT ARRANGEMENTS (Commercial)

Gross Lease

The tenant will pay a **fixed rent monthly**. The owner pays the expenses associated with the ownership of the property.

Net Lease (NNN Lease) (Commercial Property) \$17 p.s.f. NNN

The tenant pays a stipulated **rent plus some of the expenses associated with the property**. Examples would be the tenant paying a portion of **utilities, taxes and insurance** in addition to their monthly rent. Sometimes referred to as a **net lease, net-net lease or triple net lease depending upon lease arrangements**. The tenant **never pays for debt service**.

Common Area Maintenance (CAM)

A charge that will cover common expenses such as landscaping, snow removal, exterior maintenance, etc..

Step-up/Step Down Lease (Graduated Lease)

This is a lease that **can go up over time. In a market with many commercial vacancies the property owner may exercise step up leases as a way to get the properties rented** and see the rental revenue increase over time.

Percentage Lease

This type of rental agreement calls for the tenant to **pay a base amount for rent and additional rent payments based on percentage of gross sales** generated over a specific amount. Shopping centers and restaurants may operate with this type of lease agreements.

Index Lease

This type of an agreement allows for a **cost of living to be used to determine future lease payments** after the first year of the lease. These leases contain escalator clauses. **In an inflationary period of time a property owner may use this type of lease versus a fixed lease. It provides the owner an opportunity for increased rent in the near future without renegotiating lease.**

Ground Lease

These are known as **land leases**. The owner leases the property to a business or entity that desires the location and wants to build to specifications suitable for their operation. **The newly constructed building(s) are security for the lease. The tenant has a leasehold interest in the property.**

Sale/Leaseback (Raise Capital)

This type of an agreement is when someone **conveys their property to another party and then signs a tenant rental agreement**. The former owner has received cash and the convenience of remaining in the location. They retain possession of the property and their rent payments are business expenses that can be deducted on their taxes.

PROPERTY MANAGEMENT (General Agent/Fiduciary)

A **property manager is a general agent and fiduciary of the principal or property owner. They provide tenant selection or rental services, negotiate leases, and conduct routine maintenance such as bookkeeping services and repair services for the property owner. A property manager does not need to have a license to conduct their duties in the Commonwealth of Massachusetts. A property management agreement will outline a full description of a property manager's fiscal duties.**

The **Property Manager will provide a monthly report** containing the operating expenses and income for the property. Their primary role is to **secure the highest possible net income** for the property owner while maintaining and enhancing their investment. They will provide preventive and corrective maintenance, evaluate problems and conduct risk reduction surveys.

The Property Manager is **generally paid a percentage of the Effective Gross Income** for their services. They may also receive additional compensation for securing contractors on behalf of the property owner. The property owner must know all compensation paid to the manager, **no kickbacks for referrals** are allowed.

A property manager must **monitor the vacancy rates** of the units to which they are responsible for. The **vacancy rate is calculated by dividing the number of vacant apartments by the total number of apartments**. Example: We have 100 apartments and 5 of them are vacant. The vacancy rate is 5%. $5/100=5\%$

The property manager must look at the bottom line and attain the Net Operating Income. To do so they **subtract the operating expenses from the Effective Gross Income**.

A property manager must also keep in mind the **Americans with Disabilities Act (ADA)**. This **law prohibits discrimination against disabled people** and requires residential and commercial builders to make accommodations in new construction.

If a lessee **abandoned** a lease the property manager is responsible for notifying them that they are **still responsible for the rental payments**. A property manager will see **increased rental activity when mortgage rates rise** and must keep in mind that during times of **inflation they should be reluctant to negotiate fixed rent leases**.

KEY Property Management Terms

Projected Gross Income

The **most money that could be collected** if the property did not have any vacancies. It is the potential income that a property can generate.

Effective Gross Income (Property Manager Income Based)

This is the amount of **income actually collected**. **Property managers are generally paid a percentage of these funds**.

Operating Expenses

The **expenses incurred to operate the property**. Expenses are items such as property taxes, insurance, property management fees, maintenance, repairs, water and sewer charges etc. **Repairs are expenses, while replacements are considered capital improvements**.

Net Operating Income (NOI)

The Net Operating Income is derived from subtracting the operating expenses from

the effective gross income. **Please Note: (Effective Gross Income-Operating Expenses = NOI).**

Debt Service

Debt Service is known as the **Principal and Interest due on a loan.**
The tenant never pays for the Debt Service.

Cash Flow

The Cash Flow is final figure after deducting the Debt Service from Net Operating Income. $\text{Net Operating Income} - \text{Principal \& Interest} = \text{Cash Flow}$

PROPERTY MANAGEMENT COMPENSATION

Generally Property Managers are paid a percentage of effective gross income (income collected). The following items are things to keep in mind while conducting property management activities.

EXPENSES

- Property management fees are operating expenses.**
- Property taxes are operating expenses.**
- Roof repair is an operating expense.**
- Mortgage payments are not operating expenses.**
- Roof replacement is not an operating expense.**
- Loan interest is tax deductible.**
- Principal is not tax deductible.**

Property tax write offs are known as a tax shelter which has been called the American Dream.

Contracts

You should have an understanding of the following terms and concepts to master this chapter

Makes notes for yourself for a study review.

<p>Statute of Frauds Offer to Purchase = Legal Binding Document What voids a contract? Can an offer be withdrawn? Who must sign a contract? Who determines the asking/listing price? Who determines the sale price? Earnest Money Who decides the earnest money amount? Time is of the Essence/what does it mean ? Purchase & Sale Contract Equitable Title/When? Legal Title/When? Three types of Contracts: Valid/Void/Voidable Essentials of a Contract/know the following: Offer & Acceptance = meeting of the minds Consideration = valuable/good consideration Legal Capacity = legally competent Legality of Agreement = legal actions Reality of Consent = free from fraud, error, duress Misrepresentation = innocent mis-statement Fraud = intentional misleading Duress = pressure Bi-lateral/Executory = P & S What is an Executed Contract? What is an Assignment of Contract Assign right, not obligation Expressed Contracts = known</p>	
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<p>Implied Contracts = actions & conduct of the parties</p> <p>Breach of Contracts/Must be able to explain the different damages</p> <ul style="list-style-type: none"> Rescission Specific Performance Liquidated Damages Damages Forfeiture <p>Option Contracts</p> <ul style="list-style-type: none"> Unilateral Contract Voluntary Encumbrance Must Be In Writing Purpose for Seller = Keep Open an Offer to Sell Purpose for Buyer – Time to Complete Assignable/Inheritable <p><u>Leases (Non-Freehold) describe types of leases</u></p> <p>TAW Terms/Cancellation/Rent increases</p> <p>Lease (Estate for Years)</p> <ul style="list-style-type: none"> Demised Premises When Does It Expire? Rent Increases? What happens when sale of property occurs? <p>What happens to last month rent/security deposit when property is sold?</p> <p>Leases terminated By:</p> <ul style="list-style-type: none"> Expiration/Bankruptcy/Condemnation Tenancy for Period to Period (Periodic Tenancy) <p>Assignment of Lease/Who is responsible for rent?</p> <ul style="list-style-type: none"> Sublet Lease Sandwich Lease Covenant of Quiet Enjoyment Holdover Tenant <p>How does one regain possession of a property when the tenant does not leave?</p> <p>Explain the following:</p> <ul style="list-style-type: none"> Tenancy at Sufferance Constructive Eviction 	
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Escalator Clause Reversionary Interest Actual Eviction = Notice to Quit Gross Lease Ground Lease Net Lease (NNN) Sale/Leaseback Graduated Lease Percentage Lease Property Manager = General Agent How Paid = % Effective Gross Income Be Familiar with the Following: Projected Gross Income Effective Gross Income Net Operating Income (NOI) Debt Service Cash Flow	
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Contracts Quiz

<p>1. In the case of a sale/leaseback, who becomes the tenant?</p> <ul style="list-style-type: none"> A. Mortgagee B. Optionor C. Seller D. Lienor 	<p>6. A tenant that has a Net Lease would pay for all of the following except:</p> <ul style="list-style-type: none"> A. Utilities B. Taxes C. Debt Service D. Insurance
<p>2. Which agreement includes a termination date?</p> <ul style="list-style-type: none"> A. Tenancy at Will B. Tenancy by the Entirety C. An Estate for Years D. A Terminal Estate 	<p>7. The legal action taken to vacate a tenant is:</p> <ul style="list-style-type: none"> A. Vacate Option B. Constructive Eviction C. Alienation D. Eviction
<p>3. The lessor of a property passed away. In this situation, the lease is:</p> <ul style="list-style-type: none"> A. Terminated B. Extended C. Extinguished D. In Effect 	<p>8. When an owner of a property leases an apartment, they hold:</p> <ul style="list-style-type: none"> A. An Estate for Years B. Reversionary Interest C. Fee Simple Rental D. Remainder Status
<p>4. A rental agreement that can be terminated by either the property owner or the tenant by providing notice is a(n):</p> <ul style="list-style-type: none"> A. Estate for Years B. Graduated Lease C. Constant Lease D. TAW Agreement 	<p>9. A lease that calls for predetermined increases in rent is a:</p> <ul style="list-style-type: none"> A. Periodic Lease B. Graduated Lease C. TAW D. Estimated Lease
<p>5. A rental contract that calls for the tenant to pay a fixed monthly rent and for the property owner to pay the expenses associated with the building is:</p> <ul style="list-style-type: none"> A. Net Lease B. Graduated Lease C. Fixed Lease D. Gross Lease 	<p>10. A contract that has been signed by a minor is:</p> <ul style="list-style-type: none"> A. A Valid Contract B. A Void Contract C. An Installment Contract D. An Illegal Agreement

<p>11. A lease that is based on revenues generated by a business is known as:</p> <ul style="list-style-type: none"> A. A Business Lease B. A Graduated Lease C. A Net Lease D. A Percentage Lease <p>12. In Massachusetts an offer to purchase agreement that is signed by the buyer and seller is:</p> <ul style="list-style-type: none"> A. An instrument that is void. B. A legal binding contract. C. Not binding, because the purchase and sale binds the parties. D. Not a legal instrument. <p>13. The law that calls for Real Estate Contracts to be in writing is the:</p> <ul style="list-style-type: none"> A. Statute of Laws B. Statute of Contracts C. Statute of Frauds D. Statute of Real Estate Laws <p>14. A valid contract contains essentials. Which of the following is not an essential in a contract?</p> <ul style="list-style-type: none"> A. Legal Capacity B. Consideration C. Offer and Acceptance D. Documentation <p>15. If a seller backed out of a sales contract the day before the closing, the remedy for the buyer would be:</p> <ul style="list-style-type: none"> A. Rescission B. Specific Performance C. Damages D. Find another house 	<p>16. A contract signed by two parties is known as a(n):</p> <ul style="list-style-type: none"> A. Executive Agreement B. Bi-lateral Contract C. Expressed Agreement D. Lateral Agreement <p>17. Another term for a Purchase and Sale Contract would be:</p> <ul style="list-style-type: none"> A. Unilateral Agreement B. Option Contract C. Executory Contract D. Executed Contract <p>18. Another term for a land lease would be:</p> <ul style="list-style-type: none"> A. Sale/Lease B. Ground Lease C. Land-Land Lease D. Sandwich Lease <p>19. A lease that calls for a fixed monthly rental payment only is:</p> <ul style="list-style-type: none"> A. Index Lease B. Sublet C. An Assigned Lease D. A Gross Lease <p>20. If a rental property is not fit for habitation, the tenant may vacate by:</p> <ul style="list-style-type: none"> A. Eviction B. Constructive Notice C. Constructive Eviction D. Abandonment
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21. A property owner signed a one-year lease with a tenant on June 1st. The property owner then sold the house on August 1st. The new owner can raise the tenant's rent:

- A. Immediately because they are the new owners.
- B. They must wait 30 days before raising the rent.
- C. They must give the tenants 60 days notice.
- D. They must wait until the rental agreement expires.

22. A tenant who remains in possession of an apartment after the expiration of the lease without permission from the owner becomes:

- A. A Tenant at Will
- B. A Tenant in Common
- C. A Holdover Tenant
- D. A Common Law Tenant

23. If a tenant with a lease abandoned an apartment when are they no longer responsible for paying rent?

- A. The day they move out.
- B. 30 days after giving notice to vacate.
- C. When the lease expires.
- D. Immediately upon giving notice.

24. The right of a tenant to enjoy their apartment without interference from the landlord is:

- A. Covenant of Seisen
- B. Covenant of Tenancy
- C. Covenant of Quiet Enjoyment
- D. Covenant of Conviction

25. A rental agreement based on cost of living adjustments would be:

- A. Step Up Lease
- B. Graduated Lease
- C. Percentage Lease
- D. Index Lease

26. John Smith signed a rental Contract without reading it. In this case the agreement is:

- A. Void, because John did not read it.
- B. Valid, until such time as John reads it.
- C. Valid, John should have read it before signing it.
- D. Unenforceable, because John did not read it.

27. When thinking of a Unilateral Contract, we think of a(n):

- A. Option Contract
- B. Purchase Contract
- C. Novation
- D. Assignment

28. In order for a contract to be valid, it must contain which of the following?

- A. Legal Documentation
- B. Acknowledgment
- C. Consideration
- D. Willingness

29. Another term for offer and acceptance is:

- A. Contractual Agreement
- B. Time is of the Essence
- C. Meeting of the Minds
- D. Consideration

30. Which of the following terms are not associated with contract essentials?

- A. Consideration
- B. Consent
- C. Acknowledgment
- D. Legal Capacity

31. An clause in an agreement that calls for the parties to a contract to meet certain deadlines would be:

- A. Duly Executed
- B. Duly Sworn
- C. Time is on the essence
- D. Time is duly noted

32. When does a contract become executed:

- A. At the signing of the Purchase and Sale
- B. At the recording of the deed
- C. When the deed has been signed
- D. When the deed is delivered

33. When a buyer and seller sign a purchase contract the buyer has received:

- A. Legal Title
- B. Installment Title
- C. Equitable Title
- D. Due Delivery

Contracts Quiz

1. C 2. C 3. D 4. D

5. D 6. C 7. D 8. B

9. B 10. A 11. D 12. B

13. C 14. D 15. B 16. B

17. C 18. B 19. D 20. C

21. D 22. C 23. C 24. C

25. D 26. C 27. A 28. C

29. C 30. C 31. C 32. D

33. C

Encumbrances

Encumbrances Vocabulary

AD VALOREM:	property tax assessment system utilized by cities and towns to determine assessed value for property tax purposes.
APPURTENANCE:	is a right that accompanies a property. An example would be a right of way through a neighbor's property.
ASSESSED VALUATION:	it is the value given to real estate by the town assessor's office. Ad Valorem -Assessment for property tax purposes. Not known as the actual value.
ATTACHMENT:	when a property is legally seized to enforce the payment of a debt.
BETTERMENT ASSESSMENTS:	improvements conducted by the town such as sewer lines. Sometimes private owners must pay for these betterments in addition to their property taxes. Payments can be spread over time with the owners paying interest as well as betterment charge.
BUILDING CODES:	regulations established by cities and towns that enforce structural requirements and procedures. This is referred to as police power.
CC&R:	conditions, covenants and restrictions
CONDEMNATION:	the process of taking property by law of eminent domain.
CONDITIONAL USE:	when the town allows you to use a property inconsistent with the zoning.
COVENANT:	a condition that exists in a deed. May be a restriction in a deed.
DEFEASIBLE ESTATE:	if a seller placed a restriction on the buyer's ownership and the buyer violated this restriction the grantor or their heirs could reclaim the property. This restriction runs with the land.
DEED OF TRUST (TRUST DEED):	utilized in California, it replaces a mortgage used instead of a mortgage deed.
DOMINANT TENEMENT:	this is the owner of a property who has the right to cross the lot of the other owner when there is an easement.
EASEMENT:	the right that someone has in the land of another. Runs with the land.

EASEMENT APPURTENANT:	two adjoining lots that give one owner the right to cross over the adjoining lot.
EASEMENT BY PRESCRIPTION:	an easement that can be created when one party uses property that belongs to another. The property must be used openly, continuously and notoriously for 20 years.
EASEMENT IN GROSS:	the owner of a parcel of property gives someone else the right to use their property for a specified period of time. This right is not transferable, it is exclusive permission.
EGRESS:	access out.
EMINENT DOMAIN:	this is the right that the government has to take private property for public good. This is the law, condemnation is the process. Government must pay fair price for the property.
ENCROACHMENT:	this is when a neighboring property is intruding on the subject property. Could be trees, driveways, fences or a building that protrudes over the property line.
ENCUMBRANCE:	a lien against the title (outstanding loan balance).
ENVIRONMENTAL REQUIREMENT	ordinances enacted to protect land, lakes, rivers, oceans, marshland and wetlands. Purpose is to prevent illegal dumping of hazardous waste on natural resources.
EQUITABLE TITLE:	the interest acquired by the buyer when the buyer and seller enter into a Purchase and Sale Contract.
ESCHEAT:	the right that the state has to take property if or when someone died without a will and did not have any heirs.
INSTALLMENT SALES CONTRACT:	known also as a Land Contract, Contract for Deed or Conditional Sales Contract. This when a seller conveys a property to another but holds the title until buyer satisfies the payment schedule.
INVOLUNTARY LIEN:	a lien issued against a property not of the property owners undertaking, i.e. property taxes.
INGRESS:	an entrance inward.
LEGAL TITLE:	a buyer receives legal title to a property when they receive and accept the deed conveying the property to them.
LICENSE:	permission to use the property of another. It can be revoked at any time. It does not involve a lease.

LIS PENDENS:	a notice recorded at the Registry of Deeds indicating that there is impending action regarding the title to the property.
MECHANIC'S LIEN:	a lien placed against a property by a contractor, subcontractor or materials person due to failure to pay for services.
MONEY ENCUMBRANCE:	a lien against a property; mortgages, installment contracts.
MORTGAGE:	the borrower gives a mortgage to the lender when they pledge their property as collateral to secure a loan.
MUNICIPAL TAXES:	first and paramount to the priority of liens. Property taxes issued by a city or town.
NON-CONFORMING USE:	a property that does not comply with current zoning requirements but did comply before a zoning change. The property is considered grandfathered.
NON-MONEY ENCUMBRANCE:	physical restrictions against a property such as an encroachment or easement.
PARTY WALL:	a wall/boundary located between two properties that is intended to be used by both properties. Example: connected townhouses.
POLICE POWER:	building codes, zoning and licensing laws enacted to protect the public interest. Enforced by local government.
PRIORITY OF LIENS:	the order which liens are recorded at the Registry of Deeds. Taxes are always first. Liens are paid in the order they are recorded. A first loan will usually have a clause that indicates other liens are subordinate to them.
PRIVATE RESTRICTIONS:	covenants recorded in a subdivision. Restrictions that run with the land. Recorded by developer.
PUBLIC RESTRICTIONS:	restrictions placed by the government to promote health, welfare and public safety of a community. Known as a police power.
RECORDING:	constructive notice. A filing of a document such as a mortgage or a deed at the local Registry of Deeds.
SERVIENT TENEMENT:	this is the owner of a property whose land has a burden. The burden is known as an encumbrance.

SETBACK:	a distance that must be maintained from neighboring properties in order to build.
SPECIAL ASSESSMENT:	an assessment or charge levied by a condominium association or town for improvements or enhancements to a condominium or somebody's particular home.
SPECIFIC LIEN:	a lien placed against a specific parcel of real estate.
STATUTORY LIEN:	a lien that is created by law or statute; i.e. unpaid taxes.
TAX RATE:	the tax rate charged by a city or town.
VARIANCE:	permission from the town or city to utilize a property in exception to the current zoning regulations. Usually there is a hearing process to grant exception.
VOLUNTARY : LIEN:	a lien against a property created by the voluntary actions of the borrower such as a loan to purchase property.
ZONING ORDINANCES:	an ordinance or guideline implemented by a city or town to regulate the use of specific properties regarding land use, building size, lot size, height requirements and distance from property lines.

PROPERTY ENCUMBRANCES

An Encumbrance (Burden)

An **encumbrance** is a **physical restriction or financial lien** placed against a specific property; it places a **burden on the title to that property**. These restrictions are referred to as **money encumbrances and non-money encumbrances**. **Encumbrances are liens against the title (outstanding loan balance), encroachments, restrictions and easements.**

Money Encumbrances

Voluntary Liens - utilize the property as collateral for repayment of a debt. Mortgages and Installment Sales Contracts are voluntary liens.

Mortgage (also known as Deed of Trust)

The mortgage is given by the borrower. It is the borrower utilizing the property as collateral for the loan. The lender records this loan at the Registry of Deeds. This notice is an outstanding money claim and an encumbrance against the property.

Please Note: Mortgagor is the borrower Mortgagee is the Lender

The documents utilized in these transactions are the **mortgage and the note**.

Mortgage: A document given by the buyer to secure the property as collateral for the loan which is recorded at the Registry of Deeds. This document encumbers the title to the new owner of the property. (It limits their ability to sell without repaying the loan)

Note: This is a document given to the lender by the borrower. It is a promise to repay the loan, an IOU.
This is the primary instrument in a mortgage transaction.

Equitable Title to a property is acquired by the buyer when the buyer and seller enter into a **Purchase and Sale (Sales Contract)**. The document (P&S) encumbers the seller's bundle of rights to their property (places limitations on the seller/ can't sell to someone else).

Legal Title to the property is acquired by the buyer when the **deed is delivered** to the buyer. (Passing of papers)

Installment Sales Contract

Also known as: **Land Contract/Contract for Deed/Conditional Sales Contract.**

This is when the seller conveys their interest in a property to a new buyer. **They encumbered their bundle of rights by conveying their possession to the property.**

Legal Title (Seller known as Vendor)

The **seller is known as the vendor** and maintains legal title to the property until the financial obligation of the buyer is met. (Repayment of the loan)

Equitable Title (Buyer known as Vendee)

The **buyer is known as the vendee and has equitable title to the property.** The right of possession and use. They acquire **legal title to the property when they complete a predetermined payment.**

Default of Financial Obligation

The buyer assumed possession by an agreement to complete a predetermined payment schedule. If the **buyer defaults on the payment schedule they lose their equitable title to property and the equity that they paid to date.** The former seller regains possession of the property and keeps payments made. Think of the Repo-man.

Involuntary Liens

Property Taxes (Municipal Taxes)

First and paramount in the priority of liens. Unpaid taxes are paid before any other encumbrances. Taxes are paid before the outstanding loan on the property.

Priority/Hierarchy of Liens

1. Property Taxes/Municipal Betterment Charges
2. Mortgage (First loan on the property)
3. Junior Mortgages (Second Mtg/Equity Line paid by order of recording)
4. Mechanic Liens

Assessed Value (Ad Valorem)

Property is assessed annually by the city or town according to value. The assessed value is not the actual value of the property. Many times buyers confuse assessed value (Tax Value) and appraised value (Actual Value). An assessor determines the assessed value.

Determining the Tax Rate

Real Property is **assessed annually**. The **tax rate** is determined by:
Dividing the annual budget of the town/city by the total assessed value of the taxable property within that town/city. The total value of the property within the town is referred to as the tax base.

$$\frac{\text{Town Budget}}{\text{Value of the taxable Property in the town}} = \text{Tax Rate} \quad \frac{\$ 1,000,000}{\$ 50,000,000} = \$.02$$

The tax rate could be expressed **per thousand**, per hundred or per dollar of value.

Massachusetts Expresses Taxes per Thousand Dollars

Taxes could be expressed in Mills.(Dollars per thousand/ a mill is one tenth of a cent.)

In the equation above the tax rate is **\$ 20.00 per thousand dollars.**

Individual Property Taxes

Property taxes for individual properties are determined by :
Multiplying the individual assessment of the property (assessed value) by the tax rate of the city/town.

Assessed Value of Property X Tax Rate =Property Taxes Due

Assessed Value \$ 300,000.00 divided by \$ 1,000.00=300

300(Value divided by dollars per 1K) X \$ 20.00 (Tax Rate) = \$ 6,000 (Tax Due)

Taxes are due annually but may be semi-annually or paid quarterly.

Semi-annually: November 1st and May 1st

Quarterly : August 1st November 1st February 1st May 1st

Betterment Assessments (Water and Sewer Connection)

These are **charges due to a city or town by the owner of property** who is selling their property. They are an encumbrance and are due when the property is conveyed to a new owner. This charge is due to enhancements performed by the city and town that benefited the property owner. The city or town paid for the enhancements and expects repayment for the services provided. Payments can be made immediately or over a number of years. The town will charge interest.

The charge will be found on the Municipal Lien Certificate (MLC) ordered by the Closing Agent.

Mechanics Liens

This is a lien placed on a property by a contractor, sub-contractor or materials person who did not receive payment from a property owner for work performed or materials supplied on a specific property. See Massachusetts Law for specific lien requirements. This type of **lien is called a specific lien** because it is specific to one property.

General Lien

This is a lien that includes more than one parcel of property. A court could grant this lien to a creditor. The **state or federal government** could issue a general lien. **An IRS lien is a general lien.** This lien is based on its filing date. It does not supercede prior recordings.

Lis Pendens (A notice of impending action regarding a specific property) i.e. a petition to foreclose)

This is not a lien against a property. It is a notice filed at the Registry of Deeds indicating that there is litigation pending in the courts affecting the title to a specific parcel of property. A court needs to grant a Lis Pendens prior to recording. A lender would not grant a loan on a property that had a notice recorded against it.

Attachments

This is a Freezing of assets ordered by a court action. The purpose is to secure the property as security for a possible judgment against the owner. The owner retains ownership and possession until the matter is satisfied. This prevents owner from selling the property.

Court Judgments

This is the final determination by a judge regarding the right of the parties. A writ of execution is issued to enforce the judgment of court decree.

Non-Money Encumbrances (Physical Claims)

Easements

An easement is the **right someone has to use land that belongs to another owner. This right runs with the land and is automatically transferred to a new owner when the property is sold.** The right continues with the land. It is a burden on the person who owns the land. This is non-possessors right someone has - it is not ownership of the land. Easements are recorded at the Registry of Deeds. An easement that was not recorded at the Registry of Deeds will expire after 50 years . Examples could be easements for walking, riding, and **landlocked land.**

Ingress- Access in. Egress - Access out .

Easements Appurtenant

These are two adjoining lots that provide one owner the right to cross the other.

Dominant Tenement

This is the owner of a property who has the right to cross the other land. They receive the **benefit which is called an appurtenance**.

Servient Tenement

This is the owner of the property whose land is crossed. They have the burden on their land. **This burden is called an encumbrance**.

The Creation of Easements Appurtenant

These easements are created by deed, necessity or prescription.

Deed

An owner gave the right voluntarily to allow the neighboring owner to cross the land. Example: A developer may have created this in order to gain an additional building lot.

Necessity

The court created the easement to assist the owner of land-locked land. They felt it in the best interest to grant the easement for ingress/egress and public safety concerns.

Easement by Prescription (Oceans)

These easements can be created by the court when someone used the land of another for parking or a short cut. The Court needs to see that the land was **used openly, continuously, notoriously and without permission for 20 years**. This time period can be used by more than one owner. One owner could use it for 12 years and the next owner can use it for 8 years. **The process of combining the two time periods is referred to as tacking**.

An Easement in Gross

The owner of a parcel of property gives someone else the right to use their property for a specific period of time. This right is not transferable. **It is exclusive permission**. An example would be the right to allow someone to utilize a boat slip located on your property. **Utility companies** can claim an easement in gross.

Licenses

This is when someone obtains permission to utilize someone else's property for a particular purpose. This right is not transferable and can be revoked at any time by the person who provided the license. Example: Each time you enter Fenway Park or a movie theater you obtained a license to enter the premises.

Encroachments

An encroachment is unauthorized intrusion and must be addressed when identified. This is when a neighbor's building, garage, shed, patio, fence or trees extends over your property line. When a property owner finds this encroachment they must take action to cease the encroachment. If they fail to address this issue they could lose their right to complain. **Doctrine of Laches.**

Private Restrictions (Covenants, Conditions & Restrictions) (C,C&R's)

These are **private restrictions or limitations that are placed on land. They are a contractual limitation on ownership.** They must be reasonable and in the best interest of the community. They are a form of private zoning. **If a private restriction and a zoning law collide the stronger restriction survives.** Example: The zoning allows for a two unit building but the sub-division restricts it. Despite the town allowance the subdivision restriction survives.

Home Owners Association (HOA)

A Homeowner's Association may enforce the C,C & R's of a subdivision or Planned Unit Development (PUD). They will establish protocol guidelines to set up policies for all within the subdivision to follow.

Covenants - These are recorded restrictions placed on lots of land or on houses that were built within a sub-division. These restrictions could be maximum or minimum living area, fence heights, and restrictions on sheds or colors used for painting. These restrictions run with the land.

Conditions - These are created by the deed conveyed by seller. The seller placed a restriction on the buyer's ownership. **If the buyer violated this restriction the grantor or their heirs could reclaim the property. This is known as a defeasible estate.** This restriction runs with land. An example would be if an owner of a gas station sold the neighboring property with the restriction that they never can use the land for a gas station.

Public Restrictions (Police Power) - These are restrictions placed by the government (city/town) **to promote the health, welfare and the public safety of the community.** These restrictions are known as Police Power and possess a variety of restrictions on building and land use. They are supposed to be for the public good and cannot be used against the public. Example: Snob Zoning

Zoning Ordinances - These are ordinances implemented by cities and towns to regulate the use of specific properties regarding land use, building size, minimum lot size, height requirements and distance from property lines. **Four categories for zoning are: Residential, Commercial, Industrial and Agricultural.**

Variance This is when the owner of a property seeks to **use the property in a manner inconsistent with the current zoning.** The owner claims a hardship via

current zoning regulations. **The person/entity seeking to vary from the zoning regulations must appear before the Zoning Board of Appeals.**

Setbacks - This is the linear **distance required from the street, rear and side lot lines before the footing of a building can be poured.** There are requirements in every town.

Non-Conforming Use - This is when the zoning requirements have changed and the property does not meet the new regulation. The Your building now is designated a non-conforming use property. It is **grandfathered**. You can sell it and the new owner can use it the same way you did. You do not need to do anything to continue to use your building the way you have been utilizing it.

Conditional Use (Special Permission) - This is when the town allows you to **use a property inconsistent with the zoning.** It is a special exception and must be deemed in the best interest of the public.

Example: The zoning on a street does not allow for commercial vehicles but an ambulance company would like to locate on that street. The town could grant them a conditional use permit because they felt it is in the best interest of the public.

Environmental Laws - Ordinances enacted to protect land, lakes, rivers, oceans, marshland and wetlands. These laws prevent illegal dumping of hazardous waste on our natural resources.

Building Codes (A Police Power) - Cities and Towns enact building codes to establish requirements for building and renovating. Codes may include **licensing requirements for contractors as well as building/electrical/plumbing permits for certain work performed.** The intention is to control building standards and to ensure safety.

LIMITATIONS ON PRIVATE PROPERTY

A property owner possesses a bundle of rights with their ownership. The following are some limitations to their bundle of rights.

Police Power - When government makes rules and regulations for the public good such as zoning and building codes, town ordinances.

Municipal Taxes - Property taxes issued against the value of the property.

Eminent Domain - This is the law that allows the government to take a property for the public good. They government is required to **pay fair compensation** for the property. **If a property owner does not believe they are receiving fair compensation for the value of the property and current leases that provide income they can take the city or town to court.**

Escheat - If someone **died** without a will (**intestate**) and did not have any heirs to leave the property to, their property escheats to the state. Abandoned property that

has no heirs also escheats to the state. An estate must be unclaimed for 20 years before it escheats to the state.

Encumbrances

You should have an understanding of the following terms and concepts to master this chapter

Makes notes for yourself for a study review.

<p>Encumbrance = Burden/What types if encumbrances exist?</p> <p>Tax Rate = Town Budget/Value of Taxable Property</p> <p>Individual =</p> <p>Assessed Value x Tax Rate</p> <p>Property Assessed Annually</p> <p>Taxes Due Annually/Semi-Annually (know the dates)</p> <p>Betterment Assessment/</p> <p>Who Pays/How paid?</p> <p>Installment Sales Contract</p> <p>Vendor = Seller = Legal Title</p> <p>Vendee = Buyer = Equitable Title</p> <p>Default of Financial Obligation/What happens?</p> <p>Involuntary Liens</p> <p>Taxes</p> <p>Assessed Value = Ad Valorem</p> <p>Mechanics Liens = Specific</p> <p>Lien/When paid?</p> <p>General Liens = IRS Lien/When paid?</p> <p>Lis Pendens/What is it?/What happens when discovered?</p> <p>Attachment/Court Judgement</p> <p>Priority of Liens</p> <p>Taxes</p> <p>Mortgage</p> <p>Junior</p> <p>Mechanics Liens</p> <p><u>Know the following:</u></p> <p>Non-Money Encumbrances</p> <p>Easement – Ingress/Egress</p> <p>Easement Appurtenant</p> <p>Dominant Tenement</p>	
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<p>Servient Tenement</p> <p>Easement by Prescription</p> <p> Tacking/What is it?</p> <p>Easement in Gross</p> <p>Licenses</p> <p>Encroachments</p> <p>Doctrine of Laches</p> <p>Private Restrictions</p> <p> Covenants, Conditions &</p> <p>Restrictions (C, C, R's)</p> <p> Covenants</p> <p> Conditions</p> <p> Restrictions (Police Power)</p> <p>Limitations of Ownership(four)</p> <p> Police Power</p> <p> Taxes</p> <p> Eminent Domain</p> <p> Escheat</p> <p>Zoning Ordinances</p> <p>Variance – Hardship</p> <p>Setbacks</p> <p>Non-Conforming Use</p> <p>Conditional Use</p> <p>Building Codes</p>	
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Encumbrances Quiz

<p>1. Another term for an encumbrance would be:</p> <ul style="list-style-type: none">A. EnhancementsB. BurdenC. AssessmentsD. Contracts <p>2. When a seller and buyer enter into a sales contract, the buyer holds:</p> <ul style="list-style-type: none">A. A Reversionary InterestB. A Futuristic InterestC. Equitable TitleD. A Deed of Trust <p>3. Another term used to describe a mortgage could be:</p> <ul style="list-style-type: none">A. A LoanB. A Deed of TrustC. A HomesteadD. An Installment Program <p>4. All of the following are words used to describe an installment sales contract except:</p> <ul style="list-style-type: none">A. Land ContractB. Contract for DeedC. Contract for PurchaseD. Conditional Sales Contract	<p>5. The following might be an assessment issued by a town to a property owner:</p> <ul style="list-style-type: none">A. Electrical work performed inside the property.B. A Mechanic's LienC. A water and sewer hook-up.D. An increase in property taxes. <p>6. When do property taxes become a lien against a property?</p> <ul style="list-style-type: none">A. January 1stB. December 31stC. May 1stD. July 1st <p>7. Of the priority of lien hierarchy, which lien is paid last?</p> <ul style="list-style-type: none">A. General LienB. An IRS LienC. A MortgageD. A Mechanic's Lien <p>8. The difference between the value of a property and the total amount of liens against that property is:</p> <ul style="list-style-type: none">A. EquityB. UsuryC. StockD. Market Value
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9. A contractor must file a mechanics lien within how many days from the completion of the work performed?

- A. 60 days
- B. 2 days
- C. 1 year
- D. 30 days

10. John owns a single-family property. When it comes to priority of liens, which lien is paid first?

- A. Mortgage Loan
- B. Mortgage Note
- C. Property Taxes
- D. Condominium Fee

11. When referring to Mill Rate, we are referring to:

- A. Per \$1,000
- B. Per Million
- C. Per \$1.00
- D. Per \$500

12. Public restrictions placed on real estate are known as:

- A. Police Power
- B. Zoning Ordinances
- C. Conditions
- D. Covenants

13. When a property owner seeks to utilize a property inconsistent with current zoning regulations, they seek a:

- A. Conditional Use
- B. Non-conforming Use
- C. Setback
- D. Variance

14. Laws enacted by cities and towns to regulate land use are:

- A. Variances
- B. Zoning Ordinances
- C. Building Codes
- D. Conditional Use

15. Real Property is assessed by a town:

- A. Bi-ennually
- B. Bi-annually
- C. Annually
- D. Semi-annually

16. With an installment sales contract, the buyer is known as the:

- A. Buyer
- B. Purchaser
- C. Mortgagee
- D. Vendee

17. Taxes that are due quarterly are due:

- A. Jan 1st/Apr 1st/July 1st/Oct 1st
- B. Jan 15th/Apr 15th/July 15th/Oct 15th
- C. Aug 1st/Nov 1st/Feb 1st/May 1st
- D. May 1st/June 1st/Nov 1st/Feb 1st

18. A mechanic's lien is known as a:

- A. General Lien
- B. Contractor Lien
- C. Specific Lien
- D. Betterment Lien

<p>19. The total amount of the town budget divided by the value of the taxable property in the town provides the:</p> <ul style="list-style-type: none"> A. Property Taxes B. Tax Rate C. Assessed Valorem D. Tax Quota <p>20. The value given to real property by a city or town is:</p> <ul style="list-style-type: none"> A. Municipal Law Certificate B. Ad Valorem C. Tax Rate D. Mill Rate <p>21. There are two adjoining lots that provide one owner the right to cross over the lot of another. The one who has the right to cross is known as the:</p> <ul style="list-style-type: none"> A. The Dominant Tenement B. An Appurtenance C. An Encumbrance D. The Servient Tenement <p>22.. A notice filed at the Registry of Deeds that places on record constructive notice of a lawsuit is known as:</p> <ul style="list-style-type: none"> A. Easement by Prescription B. Lis Pendens C. A Court Decree D. A Judgment 	<p>23. A legal seizure of a property via a court action is a:</p> <ul style="list-style-type: none"> A. Court Judgment B. An Attachment C. A Foreclosure D. A Lis Pendens <p>24. The right that a property owner has to use land that belongs to another property</p> <p>24. The right that a property owner has to use land that belongs to another owner is:</p> <ul style="list-style-type: none"> A. An Appurtenance B. An Easement C. A Lien D. A License <p>25. When the foot of a building is over a neighbor's property line, it is known as a(n):</p> <ul style="list-style-type: none"> A. Appurtenance B. Easement C. Encroachment D. A Lis Pendens <p style="text-align: center;">Encumbrances Answers</p> <p>1. B 2. C 3. B 4. C 5. C</p> <p>6. D 7. D 8. A 9. D 10. C</p> <p>11. C 12. A 13. D 14. B 15. C</p> <p>16. D 17. C 18. C 19. B 20. B</p> <p>21. A 22. B 23. B 24. B 25. C</p>

REAL ESTATE DEEDS

Deeds Vocabulary

ABSTRACT OF TITLE:	each purchase and refinance must have a title search. This search provides a report that contains a condensed history of legal title, that summarizes all instruments in the chain of ownership; (Mortgages, Liens) conducted by the closing attorney, paid for by buyer-part of closing cost.
ACKNOWLEDGMENT:	act of signing a legal instrument. Could be a deed, mortgage or other documents. You must appear before a lawyer or other officer of state such as a notary public; this act declares signing to be free and voluntary; this is necessary before recording certain documents at the Registry of Deeds.
ACTION TO QUIET TITLE:	court action to settle a dispute about title.
ACTUAL NOTICE:	actual knowledge of a legal matter-served papers.
ADVERSE POSSESSION:	occupant's right to make claim to a property owned by another if the person making the claim can prove they used the land openly, notoriously, continuously and adversely and without permission for 20 years; squatter's rights.
BARGAIN AND SALE DEED:	a deed that conveys title but does not carry any warranties.
BASELINE:	an indicator line located on a Government Rectangular Survey Plan. Baselines run east and west on the plan.
BENCHMARK:	a permanent mark on a cement stone that is used as a measuring point by surveyors.
BEQUEATH:	the giving of personal property by means of a will. Also known as a bequest or legacy.
BOOK/PAGE:	the reference for recorded documents at the Registry of Deeds.
CERTIFICATE OF TITLE:	this is a written declaration by the attorney or title company that researched the title certifying that the title is clean. There is clear and marketable title.
CHAIN OF TITLE:	the history of sales and liens that have been placed on a particular property. Found during title search.
CLEAR RECORD:	according to the records at the Registry of Deeds the property stands in the name of the owner and there are no claims made against the property.

CLOUD ON TITLE:	this is an outstanding claim being made against a property, if correct it has an impact on the marketability of the property because the seller would not be able to deliver clear title.
CODICIL:	this is an amendment or addition to a will.
COLOR OF TITLE:	the seller appears to have good title but does not.
CONDEMNATION:	the process of taking property by law of eminent domain.
CONFORMITY DEED:	a deed enacted without consideration for the purpose of confirming a prior recording. Its purpose is to confirm ownership of property that might be unclear in a past conveyance due to a spelling error or mistake in the prior deed.
CONSTRUCTIVE NOTICE:	a recording at the Registry of Deeds. A notice filed that records a lien, mortgage, or conveyance. Public record of an act.
COVENANT of SEIZIN:	a guarantee from the grantor that they are the true owner of a property and possess the right to sell it.
DEDICATION:	to give private property to a public entity for a designated purpose.
DEED:	a written instrument that transfers ownership of a parcel of property. It serves as evidence of ownership. Names the new owner, is signed by the grantor only and most likely recorded at the Registry of Deeds.
DEED OF TRUST (TRUST DEED):	utilized in California, it replaces a mortgage used instead of a mortgage deed.
DEED RESTRICTION:	restrictions recorded within a deed that will place limitations on the use of the property. Defeasible estate.
DEFECTIVE TITLE:	a title that is void due to an improper transfer such as error, fraud, signature flaw or failure of delivery of consideration.
DEVISE:	this is to give real property by means of a will. The deceased party is known as the devisor.
EMINENT DOMAIN:	this is the right that the government has to take private property for public use. This is the law, condemnation is the process. Government must pay fair price for the property.
ESCHEAT:	the right that the state has to take property if or when someone died without a will and did not have any heirs.

ET AI:	and others.
ET CON: ET UX:	and husband. <i>and wife.</i>
EXECUTOR (Male): EXECUTRIX (Female):	the person designated to probate a will.
FULL LEGAL DESCRIPTION:	a method utilized to describe land in Massachusetts. There is a three-step process. They are: 1) property address; 2) metes and bounds; and, 3) reference description.
GENERAL WARRANTY DEED:	a deed in which the grantor is responsible for any claims made to the title. The deed is the greatest risk to the grantor.
GOOD CONSIDERATION:	means love and affection. Something of value given as consideration to secure a property transfer. Someone Purchases a property for \$1.00.
GOVERNMENT RECTANGULAR SURVEY:	a method of describing land that utilizes a grid map. That map includes base lines that run east and west. These lines are crossed by meridians that run north and south. Townships run six square miles broken into 36 sections one square mile.
GRANTEE:	the person(s), entity receiving an interest in a property.
GRANTING CLAUSE:	a clause in a deed that conveys interest from one party to another.
GRANTOR:	the seller is known as the grantor, the person who conveys their interest in real estate. Grantor is only one who signs the deed.
HABENDUM CLAUSE:	it is a clause in a deed that defines the type of estate conveyed. (To have and to hold).
HEIRS:	the individuals who are scheduled to inherit property.
HOLOGRAPHIC:	a will that is in the handwriting of the testator.
HOMESTEAD	a law that protects the homeowner from forced sale of their owner occupied home due to lawsuits against them outside of the property loan. Massachusetts residents can file for \$ 500,000 of protection. If over 62 a couple can apply for \$ 500,000 each.
INTESTATE:	If someone died without a will or the will was defective; they are deemed intestate.

INQUIRY NOTICE:	the notice that the law presumes a person would obtain when inquiring into a property.
INVOLUNTARY ALIENATION:	the involuntary loss of a property due to a failure to comply with certain terms and conditions. The owner lost the property through defaulting on payments, violating a covenant, bankruptcy, court judgment or failure to pay taxes.
JUDGMENT:	a court action detailing a debt one must pay to another.
LAND COURT:	a court that a landowner would use to register their ownership in a property. A person who holds registered land has an indefeasible title to the property because the land court certified the title. One would go to land court to establish the true owner of a property.
LEGAL DESCRIPTION:	method of describing property so that a survey can determine boundaries.
LIEN:	a money claim against a property. Liens are recorded at the Registry of Deeds. Outstanding loans, unpaid taxes are liens. They are paid off from the proceeds of the sale.
LIS PENDENS:	a notice recorded at the Registry of Deeds indicating that there is impending action regarding the title to the property.
LOT/BLOCK SYSTEM:	a method of describing a particular lot of land in relation to other lots of land within a plan or plat map. System used to record a subdivision.
MARKETABLE TITLE:	a title which stands in the name of the owner conveying interest. There are not any unknown charges against the property that would affect the title to the property.
MERIDIAN:	land descriptions that call for north and south description lines called meridians used in a government rectangular survey.
METES AND BOUNDS:	Metes is the distance from one point to another. Bounds is compass direction.
MONUMENT:	a marker that's purposes is to display land boundaries.
PLAT BOOK/MAP:	a public record that has recorded plans or maps at the Registry of Deeds.
PLOT PLAN:	a plan that details existing boundaries to a specific property and the buildings, trees garages, etc within the boundaries.

POINT OF BEGINNING (POB):	a plan that details existing boundaries to a specific property and the buildings, trees garages, etc within the boundaries.
PRINCIPAL MERIDIAN:	the intersecting point between a meridian and a base line on a plan of land in a government rectangular survey. A reference point.
PROBATE:	the legal process determined by a court that validates the assets of an estate and determines who will inherit the assets.
QUITCLAIM DEED:	a deed that conveys the interest of the grantor. No warranties are made by the grantor.
RECONVEYANCE DEED:	a deed used in connection with a deed of trust to return the title a property to the trustor.
REGISTRY OF DEEDS:	county offices that record transfers of title to real estate liens, encumbrances, mortgages, notes, discharges of liens, and a host of additional records.
RESTRICTIVE COVENANT:	a clause in deed that puts limits on the use of real estate.
SATISFACTION PIECE:	a mortgage discharge. It is a written notification, recorded at the Registry of Deeds, that indicates a loan was paid off thus releasing the obligation to repay.
SECTION:	a land section used in a government rectangular survey. A section is one mile square. A township is 36 sections, six miles by six miles.
SIR ROBERT TORRENS:	developed the method of registering land in Australia in 1857.
SPECIAL WARRANTY	with this type of deed the grantor is liable for claims made by third parties only during their term of ownership.
SUBJECT TO:	a takeover mortgage. The original mortgagor remains responsible for any deficiency if a foreclosure occurs on the property.
SURVEYOR:	the individual who determines land boundaries, reference points.
TESTATE:	this is when somebody dies and left a will.

TESTATOR:	the person who left behind a will.
TITLE:	another word for deed or ownership.
TITLE INSURANCE:	insurance required by the lender against loss resulting from title defects that were not discovered during the title search. Lender requires coverage. Owner has option to purchase insurance to protect equity. Part of the buyer's closing costs.
TITLE SEARCH:	a thorough search of the records recorded at the Registry of Deeds to verify the owner of property, any liens recorded on the property and to find any defects in the title. Required by the lender. Paid for as part of the Buyer's closing costs.
TITLE TRANSFER:	the transfer of real estate from one party to another. A conveyance.
TOWNSHIP:	utilized with the government rectangular survey. It's a method of describing land. Townships are six square miles consisting of 36 sections one square mile.
VALUABLE CONSIDERATION:	this is money exchanged for the purchase of a property or other item.
VOLUNTARY ALIENATION:	voluntary transfer of a property such as by means of a sale or gift. The opposite of a foreclosure or bankruptcy which is involuntary alienation.
WARRANTY DEED:	a deed which mandates the grantor pay any loss if a claim is made against the title by third parties. This type of deed is the greatest risk to the grantor. This type of deed includes a claim that is made before the grantor took ownership to the property.
WILL:	an instrument or instructions about disposing of property accumulated by a person upon their death.

DEEDS, LAND DESCRIPTION and WILLS

Voluntary Alienation

Voluntary Alienation is the legal process for the voluntary transfer of title to a property. This is when a property owner either sells or gifts their property to another. To perform this task the seller or grantor will execute a deed to transfer ownership.

Deeds

A deed is used to display a proof of ownership someone has in real property. It describes in detail the land and the intent of one owner to convey or transfer their ownership of the property to another person or entity. The **deed may indicate limitations** as to the use of the property. These **limitations are known as restrictive covenants**. The **Seller (Grantor) of the property is responsible for preparing the deed**. Usually the seller's attorney prepares the deed. Sometimes the closing attorney will prepare the deed and charge the seller for the cost of preparation.

The Seller is known as the Grantor.

The Buyer is known as the Grantee.

Requirements for a Valid Deed:

- A. Deeds are required to be in writing.
- B. The Grantor (one conveying interest) must be legally competent/sane.
- C. The person receiving the property (Grantee) must be named in the deed.
- D. Consideration is required. Something of value to convey interest.
- E. There must be an accurate legal description of the property (measurements).
- F. There is a granting clause. (Grants to) (Conveys to).
- G. The Deed must be signed by the party conveying interest (Grantor).
- H. The Deed must be signed, delivered and accepted for interest to convey.

Consideration:

The two types of consideration used are **valuable consideration** and **good consideration**.

Valuable Consideration: Price paid for the unit.

(Sometimes named in the deed/otherwise states for consideration paid)

Good Consideration: Love and Affection.

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Clauses in a Deed

The Habendum Clause: (“to have and to hold”):

This clause defines the estate being granted. It would identify if the estate was only a life estate. It is not a mandatory clause. If there is not a Habendum Clause it is portrayed that the transfer of real estate had a fee simple interest.

Deeds do not need to be signed by the grantee, dated, possess an official seal, be acknowledged or Recorded.

Signatures on the Deed

The only party who signs the deed is the Grantor. The grantor (current owner) conveys their interest in the property to the new owner (Grantee) by deeding the property to them.

TYPES OF DEEDS

Quitclaim Deed

The Grantor conveys the interest they have in the property at the time of transfer. The **Grantor does not make any warranties** to the property whether express or implied. **This type of deed is the least risk to the grantor.**

Special Warranty Deed

The Grantor is **liable for claims made by third parties** if the claim originated **during grantor’s term of ownership.** (Special to Grantor’s term of ownership)

General Warranty Deed or Warranty Deed

The **Grantor must pay for any loss if a claim is made** against the title by third parties. This includes a claim that is being made before the Grantor took title to the property. **This is the greatest risk to the grantor.**

This deed provides the following covenants to the buyer.

Covenant of Seisin- a warranty they **hold title and convey** their interest.

Covenant of Conveyance- they have the **right to convey title.**

Covenant of Quiet Enjoyment- guarantees that third parties are not making a claim regarding the ownership of the property.

Covenant against Encumbrance- a guarantee that there are **not any unknown easements or liens** against the property.

Covenant of Warranty-a guarantee by the grantor that they will **defend against any future claims made to the title** to the property if such claim is made against the time period before the grantor’s ownership.

Covenant of Further Assurance- a guarantee by the grantor that they will **correct a title defect** if one is found in the future.

Sheriff's Deed

A deed that is used by the county sheriff when they sell a property taken through failure to pay taxes or legal seizure proceedings.

Bargain and Sale Deed

A deed used to convey interest but does not warranty the title. It implies transfers but does not guarantee.

Legal Descriptions of Real Estate

When conveying interest in real estate the grantor should detail the actual address of the property, the land description (measurements) and the title reference (Book, Page, Date). This Book, Page and Date are recorded with the **Registry of Deeds** within the county where the property is located.

Registry of Deeds (Directed by the Registrar of Deeds)

These are County Offices that record Title Transfers to Real Estate, Liens, Encumbrances, Mortgages, Discharges of liens and a host of additional records.

LAND DESCRIPTION

Metes and Bounds Description

Metes and Bounds can be best described as a legal description of a property that identifies its **boundaries in a series of directions and distances from a specific point**.

Metes: Referred to as the number of feet from one point to another.

Bounds: Refers to the compass direction (North, South, East and West).

Point of Beginning (P.O.B.)

The measurement needs to start at a particular point. That beginning can be a monument such as an **iron pipe, stone wall or designated point** on the street. The description always returns to the point of beginning.

Government Rectangular Survey/Plan

These are base lines that run east and west on a plan and are crossed by meridians that run north and south. Townships run 6 miles square (36 square miles) and are divided into sections that are one mile square. (640 acres)

Government Rectangular Survey

*THEORETICAL
TOWNSHIP DIAGRAM
SHOWING
METHOD OF NUMBERING SECTIONS
WITH ADJOINING SECTIONS*

36 <i>80 Ch.</i>	31	32	33	34	35	36 <i>80 Ch.</i>	31 <i>80 Ch.</i>
<i>6 Miles — 480 Chains</i>							
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

N. Y. S.

2

Please note Township = 6miles x 6 miles=36 sections of one mile.

Baselines run East and West

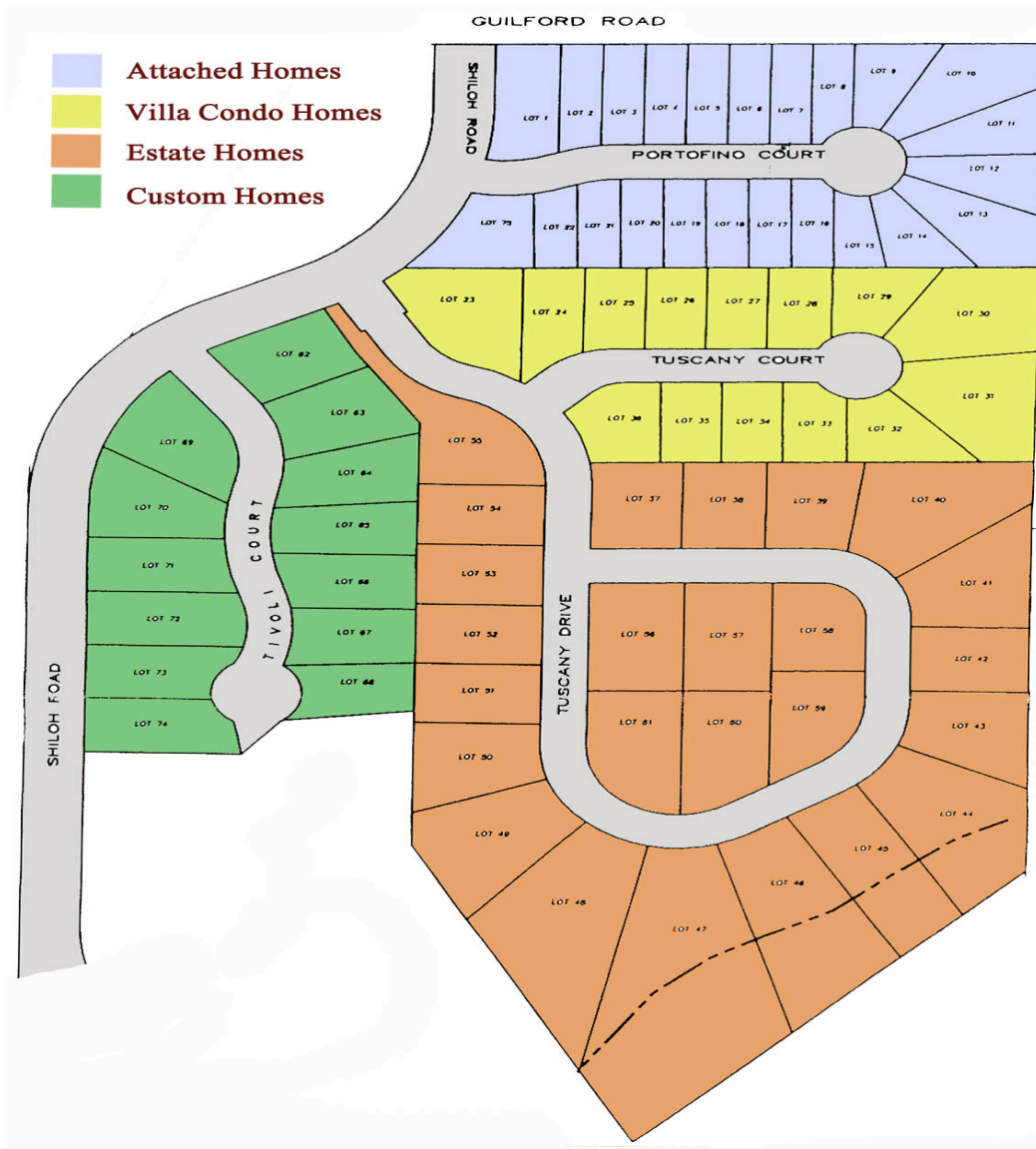
Meridians Run North and South

Intersecting points between a base line and a meridian
is known as the Principal Meridian

Plat Map or Plat Plan

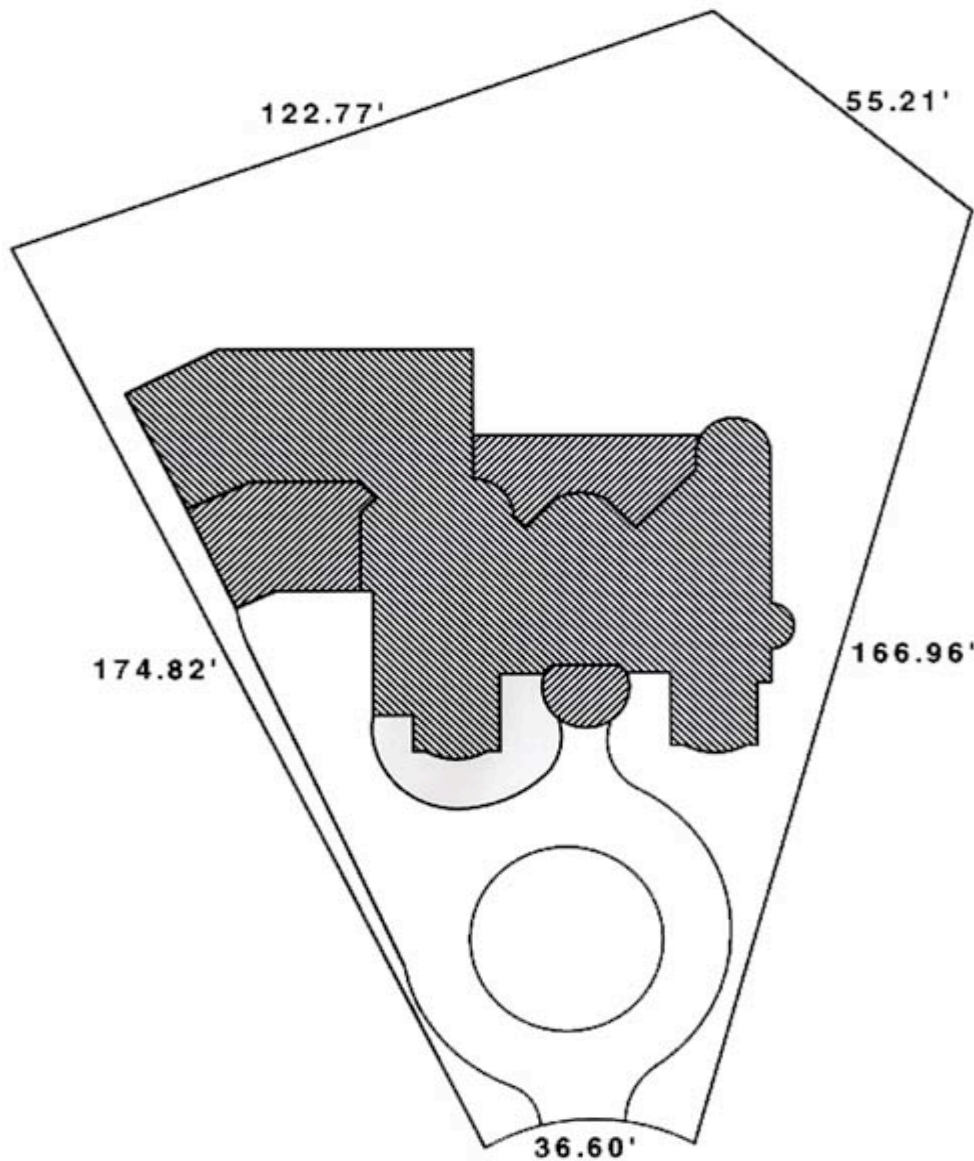
Lot and Block System

A Plat Plan or Plat Map is a recorded plan of land that displays the lots and blocks then are divided into house lots. Such as a map of a subdivision/town.



Plot Plan

A **Plot Plan** is a plan of a **specific parcel of property** and displays the **improvements** included with a property. The plan displays the metes and bounds measurements.



Conveying Interest in Real Estate

In order to convey interest in real estate the buyer needs actual proof that the property they are receiving is owned by the parties conveying interest and that the property does not have any outstanding unknown liens, title defects or issues affecting the title to the property. To satisfy this need the closing attorney conducts a title search to ensure that the property being conveyed stands in the name of the owner and that clear and marketable title can be delivered. If there are issues affecting the title the new buyer does not take ownership until those issues are resolved and eliminated. A lender will not loan money on a property with title issues. They will require the issue to be cleared up prior to completing the loan.

Constructive Notice/Recording

When a deed, lien or **public notice is recorded at the Registry of Deeds it is known as Constructive Notice** that an event has taken place. It places on the public record that a real estate transaction has taken place and makes public the new owner of a property transfer. **The grantor pays a Documentary tax before the deed is recorded at the Registry of Deeds.** The buyer pays to record the deed.

Actual Notice

When the parties involved in an event actually **become aware** of the event. Actual knowledge.

Title Search

An Attorney or Title Company **researches the title to a property to ensure it stands in the owner and that all past liens against the property have been discharged or satisfied.** They also **verify that there are not any claims such as forged deeds, challenges in ownership or possible impending actions against the property.** It is usually the lenders attorney or title company that conducts the title search and is paid for by the buyer as part of the closing costs. **The attorney must research the title for at least a period of 50 years.**

Chain of Title

This is a report conducted by the attorney or the title company that **traces the history of the property and the owners** of that property back toward the original land grant.

GOOD AND CLEAR MARKETABLE TITLE

(Clear Record/Marketable for Transfer)

Clear Record

According to the **records at the Registry of Deeds** the property **stands in the name of the owner and there are not any claims made against the property.**

Marketable Title

This is a requirement to receive a loan. **Marketable Title refers to a title that is beyond question and is acceptable to a lender to be used as collateral for a loan.** It is a requirement in the purchase and sale agreement that the seller deliver good (clear) and marketable title. If a defect is found there is usually an extension provision in the sales agreement that allows the seller an opportunity to clear up the defect within a designated time frame.

Lis Pendens

This a **notice of impending action recorded at the Registry of Deeds indicating that there is pending litigation affecting the title to this property.** It can only be recorded after a court has granted the lis pendens action. This property cannot be used as collateral. **A Lis Pendens is not a lien.**

Lien

This is a **money claim against the property** for an outstanding debt owed. When you borrow money to purchase a property a lien is placed against the property until you satisfy the debt. Liens are **paid off at the conveying** of the property. If prior liens are still on record at the Registry of Deeds that have not been satisfied it affects the marketability of the property. **Liens are paid off in the order they are recorded.**

Mortgage Discharge/Satisfaction Piece

This is a **document recorded** at the Registry of Deeds that indicates the **outstanding loan** against a property has been **satisfied or paid off.** It releases the owner from the obligation to pay any additional money. When loans are paid, discharges must be recorded to show acknowledgement of satisfaction.

Cloud on the Title

After conducting the title search the person researching the title found that someone was **making a claim to the property** or had an interest in the property. This revelation means the property does not have clear title and that the property cannot be used as collateral for a loan.

Color of Title

This is a property that appears to possess good title, but after a **title** search is **found to be defective.**

Certificate of Title

This is a written declaration by the attorney or title company that researched the title certifying that the title is clean. There is clear and marketable title.

Action to Quiet Title

This is a legal action commenced in Land Court that is designed to determine the true owner of the property or to remove a cloud on a title (interest made against the property)

Abstract of Title

This is a summary in a short form that describes the legal history of the title to a parcel of real estate.

Title Insurance

This is an insurance policy **that protects against encumbrances/burdens that were not discovered** by the person conducting the title search. These occurrences could be undisclosed heirs, forged deeds or parties that lacked capacity when they conveyed their property. Issues that were found the policy would take exception to paying claims for title defects. **Lenders coverage will protect the lender against undiscovered title defects.** The lender will require the borrower to obtain title insurance to protect the lender's interest in the property upon a challenge. This cost is part of the buyer's closing costs. The closing attorney will most likely add an additional amount of insurance to protect the owner's equity in the property. This additional insurance is optional though recommended.

Lender's Coverage: Mandatory cost of buyer to protect lender

Owner's Coverage: Optional cost to protect owner's equity
(recommended)

Transferring Interest in Real Estate

We just outlined when someone conveys their interest in real estate by means of a sale. There are additional ways to have interest in real estate change hands. Real Estate can be transferred by a will, adverse possession, eminent domain or involuntary alienation.

Leaving a Will

An instrument (testament) used to dispose of property accumulated by a person upon death. Instructions about how your property and belonging are to be divided. **A person must be 18 to leave a will or witness the signing of a will. Two people must witness the signing of a will.**

Testate - This is when you die and you leave a will.

Testator - Is the person who died and left the will to be probated.

Intestate - Means you died without a will.

Executor(trix) - The person who is named in will to represent the estate.

Administrator/(trix) - The person appointed by the court to represent the estate.

Et al - A pronouncing in a deed that indicates “and others”

Et ux - *A pronouncing in a deed that indicates “and wife”.*

Et con - *A pronouncing in a deed that indicates “and husband.”*

Devise - This is when the deceased gave real property by will to devisee (heir).

Bequeath - This is when the deceased party (legator) leaves personal property (personalty) by will to an heir (legatee). This is known as a bequest or legacy.

Codicil - This is an amendment or an addition to a will.

Holographic - This is a will that is in the handwriting of testator.

Descent and Distribution - These are the laws that govern distribution of property to heirs when someone died intestate.

Descent - **The acquisition of an estate by inheritance to which an heir becomes the owner of a property by operation of law.**

Probate - The judicial process that validates a will, determines assets and identifies the individuals who obtain the assets.

License to Sell - *Court permission to sell a property that is in probate court. A judge grants the right to sell the property.*

Escheat - This is when the title of property goes to the state because the person who died did not leave a will nor did they have any heirs. Property that is abandoned is treated similarly. Unclaimed estates escheat to the state after 20 years.

Adverse Possession – (OCEANS) someone acquires title to a property against the owner’s wishes. They are making a claim because they used the property for a statutory period of time **open, continuously and notoriously without the permission of the owner**. The owner neglected to stop the use. **Massachusetts has a 20-year requirement. This is commonly referred to as squatter’s rights.** This could be when someone used a strip of land for 20 years for a garden, parking, etc. **A person cannot claim land owned by the state via adverse possession.**

Eminent Domain - This is the right of government to take private property for public good with fair and just compensation. This taking must be for the public good. A person can challenge the taking if they feel they are not receiving fair compensation. Eminent Domain is the Law allowing for the taking of property.

Condemnation - This is the process of taking property by Eminent Domain.

Dedication - This is when someone dedicates land with the intention for it to be used for the public good. Such as land for a park or statue; can be fee simple or easement.

Judgment - A judgment is a court order to pay to another. The creditor who has won the judgment must enforce it within 20 years or it becomes null and void.

Involuntary Alienation - This is an operation of the law to sell property **because the owner failed to live up to their end of the bargain. Property can be involuntarily taken for the following reasons:**

- Failed to Pay Property Taxes
- Defaulted on Loan Payments
- Court Judgment
- Bankruptcy
- Partition lawsuit for property held in co-ownership
- Forfeiture of title because the owner failed to live by conditions agreed to in the deed (known as a defeasible estate)

Land Court - In order to **establish ownership** of property one may have to **petition the Land Court**. Upon petition, the Land Court conducts a thorough title search called an Action to Quiet Title. The objective is to **establish true ownership**. The court **issues a certificate of title and future examinations need only to go back to that date**. See Massachusetts section for more detailed information. **Sir Robert Torrens developed this method in Australia in 1857.**

Homestead Act (Protect the Equity) - **Allows an owner(s) of an owner occupied property to receive \$500,000 of protection against creditors levying your property. The purpose is to protect the equity in your home. A notice needs to be filed at the Registry of Deeds to afford you this protection.** Banks that have loans on your property still have the right to foreclose for non-payment. **A couple 62 years of age or older can receive \$ 500,000 of coverage each. A creditor can still place a lien against your property. Despite the lien they cannot force the sale of the property your equity is protected up to the homestead figure. See Massachusetts section for more detailed information.**

Plot Plan - A diagram that shows the existing use of a parcel of property. It will display the buildings on the property.

Plat Map - A plan or map that shows the numerous lots and blocks within a subdivision.

Monument - A visible marker designed to display land boundaries.

Hereditaments - Property that is inheritable whether personal or real property.

BenchMark - Symbols that are on a permanent marker in the ground used to measure land elevation.

Deeds

You should have an understanding of the following terms and concepts to master this chapter

Makes notes for yourself for a study review.

<p>Voluntary Alienation Grantor/Grantee Habendum Clause /what is it? Consideration/What are the two types? When does someone take ownership of a property? Who signs a deed? Types of Deeds Quitclaim = least risk to grantor Special Warranty = special to grantors ownership period General Warranty = greatest risk to grantor Covenants Seisin = hold title Conveyance = right to convey Quiet Enjoyment = no claims Against Encumbrance = no unknown easements. Warranty = defend against future claims. Further Assurance = correct a title defect Sheriffs Deed Bargain Sale Deed Metes = number of feet Bounds = compass direction Point of Beginning – Beginning/Conclusion Government Rectangular Survey Base Lines/How do they run? Meridians/How do they run? Township = [6 miles square [36 sections/mile square Plat Map/Plot Plan/ What is the difference? Constructive Notice Actual Notice</p>	
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<p> Title Search Chain of Title = Land Grant Clear Record = Marketable Title = Lien = Equity = Satisfaction Piece= Cloud on Title= Color of Title= Action to Quiet Title is... Abstract of Title Title Insurance – two types/difference/purpose ???? Will Testate/Testator Intestate Executor/Executrix Administrator/Administratrix Et Al/Et Ux/Et Con Codicil Holographic License to Sell Descent and Distribution Probate Escheat Adverse Possession Eminent Domain Condemnation Dedication Involuntary Alienation Court Judgement Taxes Bankruptcy Defeasible Estate Land Court – purpose/procedure Homestead - purpose Robert Torrens/What did he do? Benchmark = </p>	
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DEEDS QUIZ

<p>1. The party that conveys property to another is called the:</p> <ul style="list-style-type: none"> A. Settlement Agent B. Conveyer C. Grantee D. Grantor 	<p>5. A subdivision that divides a tract of land into blocks that are separated into streets and house lots is known as the:</p> <ul style="list-style-type: none"> A. Government Rectangular Survey B. Lot and Block System C. Metes and Bounds Description D. Point of Beginning System
<p>2. A deed that presents the least risk to the seller is a:</p> <ul style="list-style-type: none"> A. Warranty Deed B. Confirmatory Deed C. Express Deed D. Quit-Claim Deed 	<p>6. A notice filed at the Registry of Deeds that places constructive notice about pending litigation that is calling into question the ownership of a property is known as:</p> <ul style="list-style-type: none"> A. Cloud of the Title B. Lis Pendens C. Satisfaction Piece D. Color of Title
<p>3. Deeds, Title Transfers, Liens and Encumbrances are recorded at the:</p> <ul style="list-style-type: none"> A. Secretary of States Office B. Clerk of Courts Office C. Registry of Deeds D. Registry of Records 	<p>7. Which document would a grantor want filed at the Registry of Deeds after they convey their interest to another?</p> <ul style="list-style-type: none"> A. Certificate of Title B. Lis Pendens C. Satisfaction Piece D. Lien
<p>4. A legal description that identifies a property by outlining its boundaries in a series of directions and distances from a particular point is known as:</p> <ul style="list-style-type: none"> A. Plot Plan B. Plat Plan C. Government Rectangular Survey D. Metes and Bounds 	<p>8. When referring to the Habendum Clause the following phrase would apply:</p> <ul style="list-style-type: none"> A. Et el B. Et ux C. Love and Affection D. To have and to hold

9. The only party required to sign a deed of conveyance is the:

- A. Grantee
- B. Grantor
- C. Mortgagee
- D. Lienee

10. Another term for Good Consideration would be:

- A. To have and to hold
- B. Love and Affection
- C. Valuable Retainer
- D. Granting Clause

11. A deed that presents the greatest risk to the grantor is:

- A. Confirmatory Deed
- B. Quit-Claim Deed
- C. Warranty Deed
- D. Special Warranty Deed

12. Base lines on a Government Rectangular Survey run:

- A. North/South
- B. East/West
- C. North/West
- D. South/West

13. A closing attorney conducts several tasks when preparing for the conveyance of a property. One of the tasks they complete is a:

- A. Color of Title
- B. Title Search
- C. Clear Record
- D. Plan Recording

14. The legal action to determine the true owner of a property is a(n):

- A. Court Determination
- B. Constructive Action
- C. Action to Determine Title
- D. Action to Quiet Title

15. A deed that requires a grantor to defend ownership challenges specific to their ownership duration is a:

- A. Warranty Deed
- B. Confirmatory Deed
- C. Special Warranty Deed
- D. Quit Claim Deed

16. A plan that describes the existing use of a property by displaying the buildings currently affixed to that property is a:

- A. Survey
- B. Plat Plan
- C. Plot Plan
- D. Monument

17. Another term to describe adverse possession is:

- A. Unlawful Detainer
- B. Herediments
- C. Condemnation
- D. Squatters Rights

18. When someone died without a will and did not have any heirs, their real property is:

- A. Foreclosed Upon
- B. Taken by Eminent Domain
- C. Seized
- D. Escheated to the State

<p>19. A deed requires the following:</p> <ul style="list-style-type: none"> A. Recording at the Registry of Deeds. B. Constructive Notice C. The signature of the Grantee. D. The signature of the Grantor. <p>20. Real Estate transfers recorded at the Registry of Deeds can be found by title references recorded via:</p> <ul style="list-style-type: none"> A. Deed/Note B. Note/Book C. Metes/Bounds D. Book/Page <p>21. When measuring a property the surveyor would conclude the survey at the:</p> <ul style="list-style-type: none"> A. Street Level B. Front Door C. Point of Beginning D. Point of Entry <p>22. When a will is in the handwriting of the testator it is known as a :</p> <ul style="list-style-type: none"> A. Codicil B. Holographic C. Devised D. Intestate <p>23. Robert Torrens developed a system that Massachusetts uses to:</p> <ul style="list-style-type: none"> A. Conduct Title Searches B. Register Land C. Record Deeds D. Record Metes and Bounds 	<p>24. A marker utilized to display land boundaries would be:</p> <ul style="list-style-type: none"> A. A Herediment B. A Benchmark C. Monument D. Plot Plan <p>25. The legal action taken to determine the true owner of a property is a(n):</p> <ul style="list-style-type: none"> A. Abstract of Title B. Action to Quiet Title C. Title Search D. Title Inquiry <p>26. An insurance policy that protects a lender from occurrences that have already happened and were not discovered during the title search is:</p> <ul style="list-style-type: none"> A. Private Mortgage Insurance B. Action to Quiet Title C. Compulsory Insurance D. Title Insurance <p>27. An amendment to a will is known as a(n):</p> <ul style="list-style-type: none"> A. Extension B. Deferral C. Codicil D. Bequest <p>28. When someone died and did not have a will they died:</p> <ul style="list-style-type: none"> A. Holographic B. Testate C. Decent D. Intestate
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29. An instrument filed at the Registry of Deeds that would protect the equity in an owner-occupied property would be:

- A. Dedication
- B. Declaration of Homestead
- C. Declaration of Trust
- D. Deed

30. Which of the following is not a reason a property owner could lose their property via Involuntary Alienation?

- A. Escheat
- B. Loan Default
- C. Court Judgment
- D. Failure to pay Property Taxes

31. The process utilized to acquire private property by a city or town against the wishes of a property owner is:

- A. Involuntary Alienation
- B. Eminent Domain
- C. Condemnation
- D. Escheat

32. The law that allows the government to take private property for the public good is:

- A. Involuntary Rescission
- B. Condemnation
- C. Dedication
- D. Eminent Domain

Deeds Quiz Answers

1. D 2. D 3. C 4. D 5. B

6. B 7. C 8. D 9. B 10. B

11. C 12. B 13. B 14. D 15. C

16. C 17. D 18. D 19. D 20. D

21. C 22. B 23. B 24. C 25. B

26. D 27. C 28. D 29. B 30. A

31. C 32. D

Real Estate Financing and the Law

Financing Vocabulary

1031 TAX DEFERRED EXCHANGE:

a seller has 45 days from the sale of their investment property to identify their intentions to replace the property with another investment property and 180 days to close on the property. Called like kind exchanges.

1997 TAXPAYER RELIEF ACT:

provides an exemption on Capital Gains Taxes if an owner of a property sells the property in which they have resided for two years of the prior five years. The time period does not have to be consecutive.

ACCELERATION CLAUSE:

a clause in Note that protects the lender if the buyer defaults on the terms of loan agreement, balance becomes due immediately instead of Maturity date; first step toward foreclosure.

ADJUSTABLE RATE MORTGAGE (ARM):

a mortgage loan where the interest rate is changed (adjusted) at specific intervals over the life of the loan. The adjusted interest rate is tied to an established index.

ADJUSTMENTS:

pro-rations that occur at the closing between the buyer and the seller. Includes taxes, leftover oil, rents etc. These adjustments are made at the closing table.

AMORTIZATION:

the process of paying a debt by making equal and periodic payments monthly; this method means the payment is same each month but the ratio of principal and interest changes each month with more of the payment being credited to the principal and less toward the interest. Home loans.

ANNUAL MORTGAGE:

the annual debt service compared to the principal. Dividing the annual debt service by the mortgage principal gives the annual mortgage amount.

APR:

annual percentage rate, includes the interest rate, points paid by the borrower, loan fees and finders fees.

ASSUMPTION/ALIENATION CLAUSE:

when a buyer purchases a mortgaged property and takes over (assumes) the mortgage payments for the remainder of the mortgage term, the seller remains liable for the Mortgage.

ASSUMPTION OF MORTGAGE:

an individual purchases a property and takes over an existing loan on that property. The original mortgagor (seller) is not released from their obligation to repay the loan.

BALLOON MORTGAGE:	a type of loan payment which allows the borrower to pay off the principal in one large payment at the end of the repayment period.
BI-WEEKLY MORTGAGE:	principal and interest payments are made every two weeks which totals 26 payments a year (equal to 13 monthly payments). Loan is repaid in a shorter period of time.
BLANKET MORTGAGE:	a mortgage that includes more than one piece of property as security for the loan.
BOARD OF GOVERNORS:	the body of individuals who oversee the Federal Reserve Board. Appointed by the President.
BOOT:	any consideration a property owner receives in addition to the replacement property when conducting a 1031 exchange. Example: sell property for \$500,000 exchange for a property for \$450,000. The property receives \$50,000 which is taxable or subject to boot.
BRIDGE LOAN:	this is a short-term loan between other loans. An example would be a loan between a construction loan and permanent financing. Interest rates are usually higher.
BUY DOWN:	upfront fees such as points or discount points paid by the buyer to reduce the interest rate. The seller could contribute to the costs on behalf of the buyer.
CASH ON CASH:	the rate of return compared to the cash layout.
CERTIFICATE OF NO DEFENSE:	when a borrower certifies that the mortgage debt is a lien for the amount stated.
CERTIFICATE OF REASONABLE VALUE (CRV):	a document issued in a V.A. Loan transaction that outlines the value of the property being purchased by the veteran.
CHATTEL MORTGAGE:	a mortgage that is secured by personal property.
CLO:	computerized loan originations. This is a regulation that allows real estate companies to provide additional services to customers/clients such as financing assistance. A disclosure notice must be given to the consumer.
CLOSING COSTS:	the costs associated with the sale of the property. Both the buyer and seller have costs that need to be paid to complete the transaction.
CLOSING STATEMENT:	known as a settlement statement (HUD 1). It outlines the numbers associated with the transaction.

COLLATERAL:	something of value pledged to secure a loan.
COMMITMENT LETTER:	a notification from a lender indicating a loan has been approved. The commitment letter will have an expiration date.
COMMUNITY REINVESTMENT ACT (CRA):	a Federal Law that requires lenders to aggressively loan funds in urban areas.
CONDITIONAL TITLE:	a lender can hold conditional title to a property when the property is pledged for collateral.
CONFORMING LOAN:	a loan that conforms to the standards set by the secondary mortgage market (Fannie Mae/Freddie Mac).
CONSTRUCTION LOAN:	loan to someone for building a home. Payments are released in stages as the work is completed.
CONTINGENCIES:	provision(s) in a contract that call for certain actions to occur to complete a contract, i.e. a contingency that if the buyer does not obtain financing they will be able to reclaim their deposit.
CONTROLLED BUSINESS ARRANGEMENT:	Real Estate companies can offer a variety of services to their customers. These services encourage one-stop shopping and can include financing, insurance and brokerage services..
CONVENTIONAL LOAN:	these loans are made without any government guarantee or insurance. The lender assumes all of the risk if the loan goes into default. There is a lower Loan-to-Value ratio since the lender usually requires a larger down payment from the borrower.
COVENANT:	a condition that exists in a deed. A deed restriction.
CREDIT:	an amount of money a lender extends to a borrower with the expectation of receiving the money back; an amount of money forwarded to someone as a return for a prepaid charge.
CREDIT BUREAUS:	agencies that rate the credit worthiness of potential borrowers.
DEBIT:	an accounting term that makes an adjustment of an asset or liability. If a seller did not pay their outstanding property tax by the date of the sale of their property, the liability is paid from the proceeds thus creating a debit or reduction from the seller's proceeds.

DEBT SERVICE:	periodic payments made on a loan, principal and interest
DEED IN LIEU OF FORECLOSURE:	a deed that conveys a property to a lender/investor in an effort to avoid foreclosure.
DEED OF TRUST (TRUST DEED):	utilized in California, it replaces a mortgage used instead of a mortgage deed.
DEFAULT:	a failure to comply with the terms of a contract.
DEFEASANCE CLAUSE:	this is a clause in a mortgage which defeats the interest of the lender if the loan is paid according to terms of the agreement. Important to borrower.
DIRECT REDUCTION MORTGAGE:	repaid by making installment payments; each payment is credited to the interest first then to principal; the payment remains the same throughout the life of the loan.
DISCOUNT POINTS:	sometimes loans that are sold to investors might be lower than the investor mandates. Thus the lender charges a discount point to the borrower to make the loan more attractive and profitable to the investor. Tax Deductible.
DISCOUNT RATE:	interest rate charged to banks by the Federal Reserve Board to borrow money.
DUE ON SALE:	this clause prevents take over financing without the lender's consent. It forces the owner of a property to pay off the loan during the conveyancing to someone new.
EFFECTIVE GROSS INCOME:	the actual income that a property returned.
EQUAL CREDIT OPPORTUNITY ACT (ECOA):	prohibits discrimination against a loan applicant on the basis of race, religion, material status, sex, public assistance.
EQUITY:	the difference between the value of a property and the total amount of money owed on that property.
EQUITY PARTICIPATION:	the lender wishes to become part owner of the property plus receive interest on the loan and repayment of principal.
EQUITY OF REDEMPTION:	the right of the mortgagor to redeem the property between the default and foreclosure period.
FANNIE MAE:	Former private corporation (taken over by the government September 2008, sells corporate shares and participation

	certificates to raise money. Participation certificates are securities backed by a pool of mortgages.
FARMER MAC:	a secondary mortgage market organization geared toward purchasing agricultural and rural loans.
FDIC:	Federal Deposit Insurance Corporation
FEDERAL DISCOUNT RATE:	the rate of interest member banks pay to borrow money.
FEDERAL HOUSING ADMINISTRATION (FHA):	U.S. Dept. of Housing and Urban Development (HUD) Insures loans written by qualified lenders. Protects the lender if the buyer defaults. Buyer pays a premium for the right to obtain FHA loan.
FEDERAL OPEN MARKET COMMITTEE (F.O.M.C.):	the policy making body of the Federal Reserve Board that meets to discuss the outlook of the economy.
FEDERAL RESERVE SYSTEM:	the central bank of the United States.
FORECLOSURE:	a formal legal procedure by the lender to sell a property that was utilized as collateral because the borrower did not make the payments on schedule.
FREDDIE MAC:	was a stockholder-owned corporation chartered by Congress to keep money flowing to mortgage lenders in support of homeownership and rental housing; provides secondary mortgage market for federal savings associations. Taken over by Gov't.
FULL RECOURSE LOAN:	a loan which indicates the borrower is fully responsible for the repayment of the debt.
FREDDIE MAC FEDERAL HOME LOAN MORTGAGE CORP (FHLMC):	Secondary Mortgage Market force that buys conventional mortgages from lenders to keep mortgage money available. Major force in affecting homeownership.
GINNIE MAE GOVERNMENT NATIONAL MORTGAGE ASSOC. (GNMA):	secondary mortgage market corporation that buys mortgages. Main focus is FHA low income housing.
GOOD FAITH ESTIMATE:	Part of RESPA that calls for an estimate of the costs of the loan be provided to the borrower within three business days of applying for the loan.

GOVERNMENT BACKED LOAN:	FHA and VA loans. Loans that protect the lender if the borrower defaults.
GRADUATED PAYMENT MORTGAGE:	a loan that allows for lower payment in the early years. The payments increase at different time periods. The mortgagor agreed to the graduated payment schedule.
GROWING EQUITY MORTGAGE:	additional payments made to a loan are credited directly to the principal thus reducing the interest paid over time and results in the loan being satisfied before the maturity date.
HOLDBACK:	an amount of money held back by a lender until an identified item is replaced or repaired.
HOME EQUITY LOAN:	a loan in which the property owner utilizes the equity in their home as collateral for borrowing funds.
HUD 1 HUD STATEMENT:	the settlement sheet or closing document that details the particular credits and debits to the seller and buyer. It is Signed by the seller, buyer & settlement agent.
HYPOTHECATE:	to mortgage a property. To pledge as security and retain possession.
IMMEDIATE THEORY:	a theory of ownership that calls for the title to a property to transfer to a lender when a mortgagor goes into default.
IMPOUNDS:	another term a lender may use for an escrow account to collect property taxes and insurance.
INTEREST:	an amount of money charged in relation to a loan calculated by a rate, period of repayment and loan balance.
JUMBO LOAN:	a loan that exceeds certain loan ceilings.
JUNIOR MORTGAGE:	mortgages that take place after an original mortgage. Mortgages are recorded and paid off after a sale in the order they are recorded.
KICKBACKS:	a rebate to serve as an incentive to refer customers. RESPA prohibits mortgage lenders from giving kickbacks to real estate agents for referrals.
LAND CONTRACT:	The buyer makes a downpayment and monthly payments until the property is paid for. The buyer does not receive the deed until the payment schedule has been fulfilled.
LEVERAGE:	using someone else's money and not your own.

LIEN:	a money claim against a property. Liens are recorded at the Registry of Deeds. Outstanding loans, unpaid taxes are liens. They are paid off from the proceeds of the sale.
LIEN THEORY:	a real estate theory which the lender places a lien against a property when they loan money and the property is secured as collateral for the loan.
LIENEE:	the person who has received a lien.
LIENOR:	the person who has given a lien.
LOAN CAPS:	a measurement to determine how high or low an adjustable rate mortgage will go over a one year period or the life of the loan. Loans can not increase or decrease before their adjustment period, can not increase or decrease more than two points in a particular year or six points over the life of the loan.
LTV:	Loan-to-value ratio
MARGIN:	an amount added to an index to determine an interest rate.
MGIC:	a private company that provides private mortgage insurance. Known as the Mortgage Guarantee Insurance Company.
MORTGAGE COMMITMENT:	a written document from the lender indicating their intention to provide money to purchase a property providing you continue to meet certain requirements.
MORTGAGEE:	the company providing the loan funds.
MORTGAGOR:	the person(s) borrowing the money.
MUNICIPAL LIEN CERTIFICATE (MLC):	a document obtained by the closing attorney from the city or town in which the property is located that details outstanding taxes, betterments and outstanding water & sewer charges. (Water & Sewer sometimes separate)
NEGATIVE AMORTIZATION:	a loan which the payment does not cover the principal and interest due, thus increasing the amount of the loan vs. decreasing it.
NEGOTIABLE INSTRUMENT:	a promissory agreement that details the amount of money owed. The document can be transferred to to additional parties to collect the debt.

NET OPERATING INCOME:	the amount of money on hand after you subtract the operating expenses from the effective gross income. Effective Gross Income – Operating Expenses= NOI
NONCONFORMING LOAN:	a loan that does not conform to standards set by the secondary mortgage money.
NONRECOURSE LOAN:	the borrower is not personally responsible for a deficiency on the loan payment. The property is the only security for the loan.
NOTE:	the IOU given to the bank by the borrower.
NOVATION:	substitution
OFFICE OF THRIFT SUPERVISION (OTS):	an agency of the government that monitors the operations of fiduciary lenders. Was created via the Financial Institution Reform, Recovery and Enforcement Act (FIRREA).
OPEN-END MORTGAGE:	a loan that allows the borrower to borrow up to the original loan amount.
ORIGINATION FEES:	fees charged by a lender in connection with applying for a loan.
PACKAGE MORTGAGE:	a loan that is secured by real property and personal property.
PARTIAL RELEASE:	a loan that will allow for a portion of the lenders interest to be released. Might be associated with a blanket mortgage or a loan for a condo conversion.
PIGGYBACK LOAN:	a loan utilized for a purchase. It is a second loan secured to be combined with a first loan. The purpose is to eliminate Private Mortgage Insurance.
PITI:	this is the Principal, Interest, Taxes and Insurance owed on a particular loan.
POINTS:	a charge by the lending institution to borrow money. Based on the loan amount, paid along with closing costs. Buyer is charged (can be negotiated) one point (1%) of loan amount.
POWER OF SALE CLAUSE:	a clause in a mortgage that gives the lender the right to sell the property if the borrower does not comply with the terms of the agreement.
PREAPPROVAL LETTER:	notification from a lender that a buyer has been approved for a loan if certain conditions are met.

PREPAID INTEREST:	part of the buyers closing costs. A buyer may pay interest to cover an amount of time between the date of the closing and the first payment due.
PREPAIDS:	money paid in advance of a due date. Money prepaid is credited to the person who made the payments. Prepaid taxes are returned to the seller upon the sale.
PREPAYMENT PENALTY:	a penalty that comes into play if you pay off a loan before a specified date. The lender can charge several months interest for early payoff. Not allowed in VA or FHA loans.
PREQUALIFICATION NOTICE/LETTER:	a notice from a lender that a buyer has been pre-qualified but not approved for a loan. The lender might be verifying information such as employment verification, credit, etc..
PRIMARY MORTGAGE MARKET:	the market where borrowers go directly to borrower money such as a bank or mortgage company.
PRIME RATE:	the interest rate charged by lenders to their favorite or creditworthy customers.
PRINCIPAL:	an amount due on a loan. Also could be the principal person in a transaction. Could be the seller or buyer. The employing broker would be the principal of the office.
PRIVATE MORTGAGE INSURANCE (PMI):	known as PMI. It is a premium charged to the buyer, included in the monthly payment to cover a deficiency in the downpayment. Usually charged if the buyer put less than 20% as a downpayment.
PROJECTED GROSS INCOME:	the most money a property will return if there are no vacancies.
PRORATE:	term used to describe adjustment of funds between seller and buyer at closing. Could be rents, taxes, oil, etc.
PURCHASE MONEY MORTGAGE (PMM):	this refers to Seller Financing. The buyer gives a downpayment, a note and mortgage deed to seller at the closing.
REGULATION Z:	law that mandates the lender provide to the borrower a disclosure statement indicating the total cost of credit and percentage as well as total finance dollars. The law is in force by the federal trade commission.
RELEASE CLAUSE:	clause utilized in blanket mortgages possibly for condo conversion properties. Clause for individual properties to be released from a blanket mortgage.

RESPA:	Real Estate Settlement Procedures Act. This law requires the lender to disclose the cost of the loan separate from financing costs. The law covers one to four unit residential dwellings. RESPA requires a good faith estimate be provided to the borrower within three business days of applying for a loan and a special information booklet from HUD entitled "Settlement Costs".
REVERSE ANNUITY MORTGAGE (RAM):	this type of loan utilizes the equity in a property to make payments directly to the owner of the property. The loan does not need to be repaid until the property is sold or the owner of the property passes away.
SATISFACTION PIECE:	a mortgage discharge. It is a written notification, recorded at the Registry of Deeds, that indicates a loan was paid off thus releasing the obligation to repay.
SECOND MORTGAGE:	a mortgage that is recorded after a first mortgage. It is paid after the first mortgage has been satisfied.
SECONDARY MORTGAGE MARKET:	this refers to the selling and buying of existing mortgages. Loans are sold to other investors. Organizations involved are Fannie Mae, Freddie Mac and Ginnie Mae.
SETTLEMENT AGENT:	the party who is responsible for conducting the closing of a real estate transaction.
STRAIGHT LOAN:	with this type of loan, the borrower pays interest payments only. The principal amount is due on the final payment. May be known as an Interest Only Loan.
SUBJECT TO:	a takeover mortgage. The original mortgagor remains responsible for any deficiency if a foreclosure occurs on the property.
SUBORDINATION CLAUSE:	a clause that allows a mortgage recorded at a later date to take priority over a current mortgage.
TAKE OUT LOAN:	the relinquishing of a construction loan and replacing it with permanent financing.
TAKE-OVER MORTGAGE:	a new buyer takes over the original loan of a seller. The new buyer would pay a downpayment to the seller and take over their existing loan payments.
TAX CREDIT:	a dollar for dollar reduction in tax liability.
THREE DAY RIGHT OF	a three day right a consumer has to reverse an

RECISSION:	agreement. Home purchases do not possess this right. An owner-occupied refinance has this right.
TITLE INSURANCE:	insurance required by the lender against loss resulting from title defects that were not discovered during the title search. Lender Requires coverage. Owner has option to purchase insurance to protect equity. Part of the buyer's closing costs.
TITLE THEORY:	a property ownership theory that provides for the lender to takes conditional title to a property when a purchase occurs. The owner has possession and use.
TRIGGER TERMS:	words that set into motion the need to disclose all of the items pertaining to the annual percentage rate.
TRUTH-IN-LENDING (ACT):	a federal law known as Regulation Z. It mandates the lender provide the borrower with a disclosure statement indicating the total cost of credit. Truth-in-lending laws apply where credit is extended with a finance charge. Covers consumer loans.
UNIFORM SETTLEMENT STATEMENT:	known as a HUD 1. It's the closing document utilized by the settlement agent outlining the cost to the seller and the buyer during a real estate closing.
USURY:	using an interest rate higher than the law allows.
VARIABLE LOAN:	another term for an adjustable rate loan. The loan allows the interest rate to fluctuate.
VETERAN'S LOAN (VA):	a mortgage product available to particular veterans that is guaranteed by the VA Administration. 100% financing is allowed under this product. Loans are provided by banks, although guaranteed by the VA Administration.
WRAPAROUND LOAN:	a loan provided by a lender that includes a new loan amount and a prior loan from a different lender. The two loans are wrapped together. The borrower makes one payment to the new lender. The new lender makes the payment on the prior loan and makes money off the difference.
YIELD:	a return on an investment.

THE FINANCING AND MORTGAGE PROCESS

Financing can be the most nerve-wracking component of the home-buying process. The prospective buyer applies for a loan with a local lender, mortgage company, credit union or other type of lending institution. There are many types of loan programs available for prospective buyers. Each potential home-buyer should become familiar with the products being offered to make sure they are obtaining a loan that will service their needs.

In order to obtain a loan the lender verifies the buyer's employment history, reviews their credit background, calculates their debt-to-income ratio, confirms the down-payment has been seasoned for three months and obtain a signed copy of the sales contract.

In order to be approved for a loan the lender usually asks the buyer to submit the following documents:

- Last two years W-2's (tax returns if self employed)
- Last three months bank statements on all financial accounts
- Last four weeks pay stubs
- A list of all debts
- A list of all income sources

The Three C's

When providing a loan the lender looks for three things. They are **collateral, capacity and character**. These three items help determine the lenders ability to provide money for the loan.

Collateral

When a buyer purchases a property they pledge the property as security for the loan. Despite the pledge the lender wants a margin of security as to the value of the home compared to the amount of money being borrowed. This is referred to as a **loan-to-value ratio (LTV)**.

$$\frac{\text{Loan Amount}}{\text{Sale Price}} = \text{LTV} \qquad \frac{\$ 80,000}{\$ 100,000} = 80 \%$$

When a minimal downpayment is made by the buyer (less than 20%) the lender looks to place the loan in a government insured or backed program.

Capacity

This refers to the ability to pay the loan back to the lender. The Lender uses guidelines to qualify a buyer for a loan. This process is called Debt-to-Income Ratio. The lender calculates the amount of all of your income sources and compares it to the total amount of current debt plus the new mortgage payment, which includes **Principal, Interest, Taxes and Insurance (PITI)**. As a general rule the front end ratio (housing expense) should not exceed 28% of total monthly income and the back end ratio (housing cost plus all other long term debts) should not exceed 36% of total monthly income. There are a variety of programs for different ratios available to the homebuyer.

Character

The Lender pulls credit reports (tri-merged) to review payment history, types of credit and outstanding balances. They also obtain the borrower's credit scores to determine the rate of interest for which the borrower qualifies. Everyone is eligible to obtain a copy of their credit report for free once a calendar year or if they were denied credit. A copy can be obtained at **annualcreditreport.com**.

A credit score can be known as a FICO Score (Fair Isaac Corporation), Beacon Score or Emperica Score.

There are three major credit bureaus that compile credit records.

Credit Bureaus

Equifax 1-800-685-1111 Experian 1-888-397-3742 TransUnion 1-800-916-8800

OPT-OUT

A credit bureau may sell your information in a bulk file to creditors that solicit offers via mail or telephone. You have the right to prohibit the use of information contained in your credit file with any consumer credit reporting agency in connection with credit transactions that you do not initiate. To do so call the opt-out line at 1-888-567-8688.

Employment History

The borrower needs to show a stable employment history. If they change jobs every six months, a lender would be concerned about the ability to repay a loan. Two years of consistency with the same employer or field of employment is preferred.

Verification of Deposits (VOD)

The lender needs to verify the borrower's downpayment and reserves (usually an amount equal to three months mortgage payments). The lender is looking for **seasoned money** and reviews the last three month's bank statements to ensure these funds have been in the borrower's account. A borrower might be able to receive a gift from a family member. The Lender needs to verify that this amount was in the family member's bank. All funds need to be verified. (no mattress money)

Financing Instruments

When someone borrows money to purchase a property there are three basic instruments used to finance the real estate. They are the **Mortgage, Deed of Trust and Land Contract**.

Contrary to public belief, banks do not give mortgages. They provide money. **It is the borrower (mortgagor) who gives a mortgage when they pledge their property as security for a loan.** The **buyer pays to record the mortgage at the Registry of Deeds.**

The borrower gives a promissory note as evidence for the debt and a real estate interest (mortgage) as security for the debt.

Reminder: Mortgagee =lender Mortgagor=borrower

When the borrower finances a home they retain possession of the home while the lender has a security interest. **This is called hypothecate.**

Trust Deed (also known as Deed of Trust in CA or Trust Indenture)

This is a three party instrument where the borrower (trustor) gives a note to the lender and as security for the note conveys title to a third person called a trustee. Many lenders prefer trust deeds to mortgages because they provide for a quick and inexpensive sale and avoid lengthy mortgage redemption periods. Trust Deeds are used in half of the states.

Land Contract (also known as a Contract for Deed or Conditional Sales Contract)

The seller retains legal title while the borrower has equitable title. The seller is known as the vendor and the buyer is known as the vendee. The buyer receives legal title when the loan is paid off.

The Promissory Note

The note is **the primary instrument** in a home purchase transaction. It is an **IOU by the borrower/maker/payor**. It is a negotiable document that details the amount of the debt, interest rate and repayment terms. The document can be sold to a third party to collect the debt.

Mortgage Theories

There are three main types of mortgage theories utilized in the United States.

Title Theory (Massachusetts)

The borrower transfers title to the lender, usually by a mortgage deed. When all of the conditions are met (paying off the loan) title reverts to the borrower. **Massachusetts is a title theory state because the lender has conditional title to the property.**

Lien Theory

The borrower retains title to the real estate and gives the lender a lien on the property which is recorded at the Registry of Deeds.

Immediate Theory

Title remains with the mortgagor (Borrower), however, it transfers to the lender if the borrower defaults on the loan.

Monetary Guidelines

Although someone may go to their local bank to borrow funds, the process of obtaining these funds has limitations. If a bank gave all their money out for loans they would not be able to stay in business. Therefore banks and mortgage companies sell their loans to investors to recycle mortgage financing. The Federal Reserve board mandates certain guidelines to member banks.

The Federal Reserve System

The Federal Reserve is the central bank of the United States. It was founded in 1913 by Congress to provide the nation with a safer, more flexible and more stable monetary and financial system. Their duties fall into four general areas:

1. Conducting the nation's monetary policy.
2. Supervising and regulating banking institutions and protecting the credit rights of the consumers.
3. Maintaining the stability of the Financial System.
4. Providing financial services to the U.S. Government, the public, financial institutions and official foreign institutions.

Federal Reserve Banks

A network of 12 Federal Reserve Banks and 25 branches make up the Federal Reserve System under the general oversight of the Board of Governors in Washington, D.C.

Reserve Banks are the operating arms of the central bank. They serve banks and the U.S. Treasury. **The Federal Reserve is known as the “banker’s bank”.** It stores currency, sells government securities, and assists with the Treasury’s cash management and investment activities.

Through its monetary policy, the **Fed influences the level of interest rates, which in turn affects employment, economic growth and the general levels of prices.** The **link between monetary policy and the economy is bank reserves.** Banks are required to meet certain reserve requirements set by the Fed to settle payments on behalf of their customers. By altering the supply of reserves available the Fed can influence short-term interest rates.

Board of Governors

The Federal Reserve Board consists of seven governors, appointed by the president of the United States and confirmed by the U.S Senate. They serve 14 year staggered terms to ensure stability and continuity over time. The Chairperson and the Vice-Chairperson are appointed to 4 years terms.

Question:

How does the Fed alter the supply of available reserves?

By going into the financial markets and buying and selling Treasury Securities.

When the **Fed buys** Treasury Securities in the open market, it adds reserves to the banking system. **Money is available and interests rates drop.**

When the **Fed sells** securities in the open market, it reduces reserves or available funds. **Money is then tight and interest rates go up.**

Federal Open Market Committee (FOMC)

The FOMC is the Fed's policy-making body. They meet 8 times a year to discuss the outlook for the U.S. economy and monetary policy options. To stimulate the economy they may lower rates to member banks.

The Federal Discount Rate

The **FOMC determines the rate of interest member banks pay to borrow money.** The higher the rate reduces the amount borrowed. The lower the rate increases the amount borrowed. **Note: This is not the rate charged to the consumer by the banks.**

Prime Rate

The prime rate is the **interest rate a bank may charge their most creditworthy or favorite customer.**

Subprime

An interest provided to a borrower with subprime credit.

Loan sources:

The buyer will apply for a loan from one of the various sources: Cooperative banks, credit unions, mortgage companies, mutual savings banks, commercial banks, savings and loan associations, mortgage brokers and sometimes from the seller.

Mortgage Markets

There are two mortgage markets in the United States. There is the Primary Mortgage Market and the Secondary Mortgage Market.

Primary Mortgage Market

Refers to the loans that are made directly to borrowers from a variety of lending sources such as banks, mortgage companies etc.. The direct source.

Secondary Mortgage Market

Refers to the purchasing of existing loans by organizations such as Fannie Mae, Freddie Mac or Ginnie Mae. Banks sell their loans to these organizations.

Lenders generally provide three types of loans. They are **conventional loans, private loans and government backed loans.**

Conventional Loans

These are loans made **without any government guarantee or insurance.** The **lender assumes all of the risk if the loan goes into default.** They have a **lower loan to value ratio (LTV).** That means the lender usually requires a larger downpayment (20%) from the **borrower.**

A **Conforming loan** meets the standards established by Fannie Mae and Freddie Mac. Therefore, these loans can be purchased by the secondary mortgage market.

A **nonconforming loan does not meet the secondary mortgage market requirements set by Fannie Mae and Freddie Mac,** therefore lenders hold many of these loans in house. They are often referred to **as portfolio loans.**

Private Loans (Private Mortgage Insurance) P.M.I.

Private Mortgage Insurance is a premium paid by the borrower until there is 20% equity in the property. If a buyer's downpayment is less than 20% of the purchase price the lender mandates the buyer purchase PMI insurance. **The insurance enables the lender to provide loans with lower down-payments without assuming all of the risk.** The cost is about 0.4% of the principal (\$ 85.00 per \$ 200K). **This insurance protects the lender-not the borrower.** The **Mortgage Guarantee Insurance Company (MGIC)** is one of the leading companies that **provide PMI coverage.**

Reminder: The insurance protects the lender against a loan deficiency.

Government Backed Loans

These are loan programs that protect the lender in case of default. The two main types of loans are **FHA Loans and VA Loans.**

Federal Housing Administration (FHA)

In 1934, the national housing act established the Federal Housing Administration. The **FHA comes under the Department of Housing and Urban Development (also known as HUD)**. Its purpose is to create housing opportunities. The FHA provides Title II Loans that are used for the purchase of a 1-4 unit residential property. They also provide Title I loans that are home improvement loans.

FHA Loan Program

These loans **insure the lender if the buyer defaults** and money is owed.

Loans are from approved banks. The **FHA does not loan money. The lender utilizes a Direct Endorsement Program to provide the loan.**

Owner occupied 1 to 4 unit properties qualify. (Includes mobile homes)

FHA does not determine interest rates, **market conditions determine rates.**

Taxes and Insurance are required in the payment.

FHA will approve the buyer's credit, the property (MPR/Minimum Property Requirements) and the lender. **Prepayment penalties are not allowed.**

The borrower can put as little as 3.0 % for the downpayment. Can be a gift.

Mortgage Insurance Premium (MIP) is collected at closing or added to a loan.

Secondary Financing is not allowed at the time of purchase.

100% of the closing costs can be financed. Loan points can be paid by the seller/buyer or negotiated between the parties. Loans made before 1989 are assumable without qualifying the purchaser. Loans after 1989 are assumable by owner occupants who qualify for the loan, seller may still be held liable for the loan.

Veterans Administration (VA Loan)

A non-active duty veteran must obtain a **Certificate of Eligibility** to apply for a VA loan.

VA guarantees the lender if the buyer defaults on the loan.

Loans are made by institutional lenders not the VA.

Interest rates are set by market conditions, not the VA.

A Certificate of Reasonable Value (CRV) is issued by the appraiser.

If CRV is less than the sale price the buyer may withdraw, pay the difference to the seller or negotiate with the seller to reduce the sales price.

Loans are for owner occupied homes from condos to four families. Taxes and Insurance are required in the payment. Veterans are not required to pay downpayment- **100% financing**. Highest LTV. **VA loans do not allow prepayment penalties.** The **veteran will pay a funding fee to the DVA** at the time they obtain the loan. **Points charged by the lender can be paid by the seller or the veteran.**

Points cannot be wrapped in with the loan.

A Veteran can use this benefit multiple times as long as they owner occupy the property and are released from prior loan obligations. Once they pay off a VA loan their benefits are restored. (They can only have one VA mortgage at a time) **A spouse of a veteran killed in the line of duty can qualify for this loan. A non veteran can take over a VA loan.**

Secondary Mortgage Market

This refers to the buying and selling of existing mortgages. Sometimes loans are sold to investors before a closing takes place. Many people today have their loans sold to other banks.

There are a few major organizations in this area of expertise. They are **Fannie Mae, Freddie Mac, Ginnie Mae and Farmer Mac.**

Fannie Mae (Federal National Mortgage Association) FNMA

A former private corporation that sells corporate shares and **participation certificates** to raise money. **Participation certificates are securities backed by a pool of mortgages.** Its purpose is to create an avenue to **sell and buy Conventional, FHA and VA loans** in the secondary mortgage marketplace. These loans possess limits as to how high the loan can be. They are **Government regulated.** **Individuals who sell securities need a securities license.** **Taken over by Gov't Sept 2008.**

Freddie Mac (Federal Home Loan Mortgage Corporation) FHLMC

Former stockholder-owned corporation chartered by Congress to keep money flowing to mortgage lenders in support of homeownership and rental housing. Freddie Mac provides a secondary mortgage market for federal savings associations. It **specializes in purchasing Conventional, FHA and VA loans** and uses them as security to **sell bonds and participation certificates.** These loans mirror the loan limits of Fannie Mae. **Taken over by the Gov't in Sept 2008.**

Ginnie Mae (Government National Mortgage Association) GNMA

Ginnie Mae is a division of HUD and guarantees government assisted loans where other financing sources may be unavailable. **Specializes in Low Income Housing.** They utilize **Mortgage Backed Securities (MBS)** to increase the liquidity in the mortgage marketplace.

Farmer Mac (Federal Agricultural Mortgage Corporation)

A federally chartered organization that provides a secondary mortgage market for **agricultural and rural loans.** They purchase loans from lenders and issue government backed securities.

Jumbo Loans

These loans exceed the limits of Fannie Mae and Freddie Mac. These special loans are available when the mortgaged amount is higher than the Fannie Mae or Freddie Mac limits.

Foreclosure

When a borrower fails to comply with the terms of the agreement the lender will call the loan due or accelerate the payments via an acceleration clause. This gives the lender the right to secure the property and sell it through a power of sale clause.

The lender will initiate foreclosure proceedings by **advertising that the property is being sold**. The lender must **advertise** the date of the auction of the property for three consecutive weeks in a major newspaper **within the county** in which the property is located.

If the **foreclosure sale brings in money in excess** of the money **owed** (including legal and advertising fees) the **excess funds are given** to the former property owner. **(Former Mortgagor)**

If the foreclosure sale **did not bring in enough money** to recoup the debt owed to the lender (including legal and advertising costs) **a deficiency judgment may be issued to the former owner**. They would **still be responsible for the balance** of the money due.

Many times foreclosure notices are published and the auction sales never take place. If the property owner paid the back money due the auction is canceled. By making their payments they redeemed the equity in the property. **It is known as Equity of Redemption. The right to redeem one's equity**. A property owner may proceed with a **Deed in Lieu of Foreclosure** as way to **avoid foreclosure** if they cannot redeem their equity.

Soldiers & Sailor Relief Act of 1940/Service Members Civil Relief Act

This act **prohibits foreclosing** on a property owned by **active military service people**. The active military person can delay foreclosure for up to six months from the conclusion of their military service.

Deficiency

If a loan is foreclosed upon and the auction brought in less than amount needed to cover the loan amount and expenses incurred the **former mortgagor** is responsible for the **deficiency**.

Real Estate Financing Laws and Acts

There are four major laws that fall into this area. They are the Truth in Lending Law, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act and the Community Reinvestment Act.

1. Truth in Lending Act (Known as Regulation Z) (TILA)

This law is part of the Consumer Protection Act of 1968. **It mandates that the lender provide the borrower with a disclosure statement indicating the true costs of obtaining credit. Under TILA a consumer must be fully informed of all finance charges and the true interest rate before a transaction is completed.**

Truth-in-Lending Laws apply to loans where credit is extended with a finance charge. **This law covers consumer loans.**

Exemptions from the Law

Commercial loans, business loans, seller financing, construction loans, interest free loans, assumption loans and non-owner occupied loans.

Annual Percentage Rate (APR)

Includes the interest rate, points paid by the borrower, loan fees.
It excludes appraisal costs, closing costs, taxes, escrows, impounds, credit reports or surveys costs.

Advertising the APR

Sometimes an advertisement may include the particulars surrounding the financing. Examples of this are: percentage of the down-payment (5% down-payment), the down-payment total (\$12,000 down-payment), monthly payment amount (only \$1275 monthly) or 360 payments at \$1275.00. These are known as **trigger terms**.

If any particular **trigger terms** are used: **Down-payment, Monthly Payment, Percentage down, the advertisement must include all of the following:**

1. Amount or Percentage of Down-payment
2. Terms of the repayment (number of payments, amount due & dates due)
3. Annual Percentage Rate-the true interest rate paid taking into account points & additional loan costs.

Things that do not trigger APR Requirements:

Low down-payment, VA/FHA financing available, liberal financing terms, low interest rates. Since there are not any specific numbers used, APR requirements do not kick in.

Bait-and- Switch Advertising

This is when an agent advertises the property for sale without the intention of selling it in order to attract buyers for other properties. This guideline falls under the Truth-in-Lending Guidelines and is a federal offense.

Three Day Right of Rescission

The buyer of a property does not have a three day right of rescission in Massachusetts when purchasing a property. They do have a three day right of rescission when they **refinance an owner occupied residential property**. They have until midnight on the third day from the signing to rescind an agreement.

Massachusetts also allows for a three day right of rescission for the purchase of a timeshare.

Predatory Lending

An amendment to the Truth in Lending Law helps safeguard against predatory lenders. These are lending entities that take advantage of individuals by charging excessive fees, points or the loans contain unreasonable fees and costs.

2. Equal Credit Opportunity Act (ECOA)

Prohibits discrimination against any loan applicant on the basis of race, religion, age, marital status, sex or public assistance. Lenders can not ask questions about pregnant status, marital status or divorce. If someone is denied a loan the reason for denial must be provided to the applicant.

3. Real Estate Settlement Procedures Act (RESPA)

Federal Consumer Law that requires lenders to issues disclosures to a borrower regarding the borrowing and settlement process. (Closing). Prohibits kickbacks and referral fees.

RESPA does not apply to properties in excess of 25 acres. Business, agricultural loans, construction, vacant land, seller financing.

4. Consumer Financial Protection Bureau (CFPB)

This bureau has been established as a watchdog agency to ensure that lending institutions, credit card companies, finance institutions are not taking advantage of the consumer. The big new rule is TRID.

What is TRID?

Until recently lenders had to provide four documents to the purchaser when they applied for the loan.

There was the Truth-in-Lending Act and the Real Estate Settlement Procedures Act. These procedures have been combined to form the TRID Rule.

TILA-RESPA-Integrated Disclosure

Requires the lender provide a “Loan Estimate” to the borrower within three business days from filing a loan application. (Saturday is a business day)

This estimate includes all the costs associated with purchasing the property. It can be referred to as a worst-case estimate because it includes all possible charges associated with the loan. Sometimes the costs are not as high as the estimate.

Lender must provide a documents entitled **Special Information Booklet entitled Shopping for Home Loan.**

Closing Disclosure (Replaced HUD 1) In Hand to Buyer 3 Business Days before closing takes place. Sent by Lender/Saturday is a Business Day

This is the central document used to disclose all of the costs associated with the loan. It **outlines the closings costs (credits and debits) to both the buyer and the seller.** The closing transaction is **reported to the Internal Revenue Service on Form 1099S.**

In **Massachusetts a closing attorney is known as the settlement** agent and is responsible for conducting the title search, ordering a municipal lien certificate, closing the transaction and recording the deed.

Closing Disclosure Key Points:

Buyer must receive the **closing disclosure 3 business days** before closing.

Limits are placed on the amount of **reserves collected.**

The lender must justify all of the costs charged.

If there is a change to the cost of borrowing funds (ie. Prepayment penalty

Rate Change within the final 3 days the closing needs to be rescheduled.

Servicing Disclosure

The lender is required to disclose to the borrower if the loan is or could be assigned or sold to another institution or investor.

4. Community Reinvestment Act (CRA)

An act that requires lenders to loan aggressively in urban communities utilizing attractive interest rates. Some lenders once practiced **redlining** and the CRA is the remedy

Controlled Business Arrangement (CBA)

Real Estate Companies can offer a variety of services to their customers. These services encourage one-stop shopping. It can include financing, insurance and brokerage services. This package of services is allowable under RESPA as long as the borrower understands the relationship of the service providers and that other providers are available to provide the services. Fees for referrals are not allowed within the controlled business environment.

Computerized Loan Origination (CLO)

A fee charged to a borrower for the access of computerized loan origination services. The guidelines for disclosure of information fall under RESPA.

Consumer Handbook on Adjustable Rate Mortgages (Variable Loan)

If a consumer opts for an adjustable rate loan the lender is required to provide this booklet. It outlines the loan terms and explains loan caps and terms associated with the loan.

Type of Loan Programs

Amortized Loan (Direct Reduction Loan)

A loan that is due back to the lender in installments over an extended period of time. While the payment amount remains consistent, **each payment increases the amount credited to the principal and reduces the amount paid toward the interest.**

Example : A homeowner borrows \$ 400,000. Their monthly payment for 30 years will be \$ 2150.00

	Payment Amount	Principal	Interest	Balance
Payment # 1	\$ 2150.00	\$ 125.00	\$ 2025.00	\$399,875.00
Payment # 2	\$ 2150.00	\$ 127.00	\$ 2023.00	\$399,748.00
Payment # 3	\$ 2150.00	\$ 129.00	\$ 2021.00	\$399,619.00
Payment# 359	\$ 2150.00	\$2025.00	\$ 125.00	\$ 2,025.00

Seller Financing/Purchase Money Mortgage (PMM)

This is when the seller provides a loan to the buyer at a specified interest rate and the buyer makes payments directly to the seller. The buyer usually makes a down payment directly to the seller as well.

Second Mortgage (Junior)

A second mortgage is subordinate to a first loan. These loans are referred to as junior to the first loan. In the event of sale or foreclosure these loans are paid off after the first loan has been satisfied. Some people are paying second mortgages in order to avoid PMI.

USDA Loan

Purchasers who live in rural communities may qualify for these no down-payment loans. The population of the community will determine if the area qualifies.

Growing Equity Mortgage

This type of loan provides for payment increases that are applied directly to the loan principal. This allows the principal to be paid off in a shorter period of time, reducing the life of the loan and saving thousands of dollars to the borrower.

Convertible Mortgage

This is an adjustable loan that allows the borrower to convert the loan to a fixed loan in the future.

Participation Mortgage

A lender may want a share of ownership in return for the loan money. It is possible the interest rate may be lower than otherwise required.

Shared Appreciation Mortgage

This is when the investor makes the down payment for the buyer, for a share of the property.

Construction Mortgage

Usually set at a higher interest rate. The borrower receives the money from the lender in installments as the work progresses on the construction project.

Take Out Loan

This loan will establish **permanent financing** that eliminates or takes out a prior construction loan.

Blanket Mortgage

This type of loan is secured by more than one piece of property, it could be several lots of land or it could be a few buildings. The downside to this type of loan is that it requires a release clause to sell one piece of the property.

Release Clause (Partial Release)

Used in blanket mortgages or condo conversion properties. It calls for an individual property to be released from a blanket mortgage.

HELOC (Home Equity Line of Credit)

A line of credit secured by the equity in a property.

Piggy Back Loan (Soft Second) (Avoid PMI)

This is when there is a combination loan that is comprised by more than one lender. One lender has a primary role while the second lender will subordinate their interest until the first loan is satisfied. One loan piggybacks on the other. These loans are often used as a way to avoid paying Private Mortgage Insurance.

Jumbo Loan

Fannie Mae and Freddie Mac have limits on their loan ceilings. A loan that exceeds these ceiling is known as a Jumbo loan.

Package Mortgage

This type of loan is **secured by real property and personal property**. An example would be somebody buying a place furnished. The advantage is that you only pay one loan while the disadvantage is that you may be paying for personal property long after the life expectancy of the personal property.

Reverse Annuity Mortgage (RAM) (Senior Citizen)

This is when the owner borrows against the equity in their home and **receives monthly payments from the lender**. The loan does not need to be paid back until the property is sold or the person dies. This program is available for seniors who would like to stay in their own home and are on small fixed incomes.

Open End Mortgage

The lender provides a loan for a specific amount. The borrower can continue to borrow **up to that amount, similar to a credit line.**

Bi-weekly Mortgage

This type of loan requires **half of the monthly payment to be made every two weeks.** The end result is 26 payments being made by the end of the year. The one extra payment made each year will shorten the lifespan of the loan.

Balloon Mortgage

This is a loan where the payments do not liquidate the loan and requires a final payment that pays off the principal due on the loan. This type of loan **includes interest payments and some principal.** The final payment is very large.

Straight Loan/Term Loan or Interest Only Loan

With this type of loan the borrower only pays interest payments. The principal amount is due in full on the last payment and can also be called an interest **only loan.**

Bridge Loan or Swing Loan

This is a short-term loan between other loans. An example would be a loan between a construction loan and permanent financing. Interest rates are usually higher.

Non-Recourse Loan

With this type of loan the borrower is not personally liable for any deficiency judgment if the loan is not paid. The property is the only security for the loan.

Chattel Mortgage

This is a mortgage secured by personal property.

Seasoned Mortgage

A loan that portrays a history of payments .

Wraparound Mortgage

This type of loan allows a borrower with an existing mortgage to obtain additional financing from a different lender without first paying off the existing loan. The existing loan would have to be an assumable loan for this to occur. The new loan payment will cover the amount due on both loans. The new lender will make the original loan payment for the borrower from the new payment that is made to them each month. The new lender will make money from the interest differential.

Buyer Owes lender A \$ 1200per month @ 6.6% interest.

Buyer Pays lender B \$ 1500 per month @ 7.55 interest

Lender B pays the loan payment to Lender A/makes money on the interest.

Adjustable Rate Mortgage (ARM) also known as Variable Loan

With this type of loan, **the interest rate could adjust up or down (vary)**, depending on the economy. Interest rates are usually lower at inception. It is possible to obtain a one, three or five year adjustable note loan. These types of loans sometimes allow lower qualifying incomes for borrowers and lower initial payments. This may allow the borrower to afford a house that they may not be able to purchase using a fixed rate loan.

Key Loan Terms for an ARM

Index-this is the indicator that the loan interest rate is based on, many times it is the federal cost of funds.

Margin-this is an amount added to the index to determine the rate of interest for the loan.

Adjustment period -it must be known when the interest rate will increase or decrease. Usually the anniversary date is when the loan rate adjusts. The borrowers receive about 45 days notice of any change.

Loan caps- this is the maximum increase a loan may possess.

Loan Provisions

A provision is a condition included in the note or loan agreement. These provisions must be adhered to by the borrower.

Written Obligation/Note (Promise to Pay)

A note is a written personal obligation, an IOU or promissory agreement.

Acceleration Clause

Very important for the lender because it gives the lender the right to call the note due because of failure to meet the terms. It accelerates the payment schedule.

Prepayment Penalty

A penalty due to the lender if the borrower repays the loan before a specific maturity date. Government backed loans (VA, FHA, FNMA, FHLMC) do not allow prepayment penalties. **Massachusetts limits the penalty to three months.**

Defeasance Clause

Important to borrower. Eliminates the lender's interest when the loan is paid in full and the debt is discharged.

Subordination Clause

A clause that places the priority of an existing mortgage below a mortgage that will be recorded in the future.

Power of Sale Clause

This is a clause found in a mortgage that allows the lender (mortgagee) to **sell the property via foreclosure** if the borrower failed to comply with the terms of the agreement.

Due on Sale Clause (Also known as an Assumption or Alienation Clause)

This clause **prevents take over financing** without the lender's consent. It forces the owner of the property to pay off the loan during the conveyancing to someone new. The lender can accelerate the loan if property was sold to another with takeover financing. **Simply put the money borrowed is due back upon the sale of the property.**

Late Charge

A fee due to the lender if the payment is paid after a specific date. The loan allows for a **grace periods**. Many lenders charge late fees once the payment is 15 days late.

Lock in Rate

A lock in rate allows the borrower to secure an interest rate by paying a fee to ensure that they will receive the rate they are quoted as long as they close by a specific date.

Non-disturbance Clause

This provision calls for the lender to recognize current leases if they foreclosed on the property.

Assignment of Rents

This allows the lender the right to collect any rents due and it to the debt if the borrower is in default of the terms.

Take over Mortgages

This is when a **new buyer takes over the original loan of the seller**. The buyer would pay the equity in the property and take over the existing loan payments. The **buyer receives a new deed declaring them the owner of a property and the authority to redeem the note and mortgage upon completion of the agreement**. If a property owner allowed someone to take over their existing loan that possessed a due on sale clause, the lender could exercise the acceleration clause to call for the balance immediately.

Three methods of taking over a seller's loan agreement:

1. **Subject to:** With this type of takeover the **original mortgagor remains responsible for the debt** if the new buyer defaults. They are responsible for any deficiency in the event of a foreclosure sale.
2. **Assumption of:** **Both** the new owner and former owner are **responsible**.
3. **Novation:** Means **substitution**. The lender requires a new note and agreement between the lender and new owner. Releases the former owner from obligation

Additional Loan Terms

Interest

Additional money paid to the lender as a condition of borrowing the purchase money. **Interest paid on a mortgage is tax deductible. The principal is not deductible.**

Compound Interest

This type of loan interest computes the interest on the principle due, plus the interest accrued.

Simple Interest

Interest charge is based on original principal. The interest is compounded when payments are in default. An amortized loan is calculated by simple interest.

Usury

This is when the lender charges an interest rate higher than the law would allow. This is a misdemeanor crime. If usury is utilized the interest rate is invalid. **The loan still needs to be repaid but the interest rate is invalid.**

Preapproval Letter (Due Diligence)

A letter from a lender that indicates the buyer has an approval for a loan if certain conditions are met. Many times an agent wants to see a preapproval before taking a prospective buyer to view a property. They want to qualify the buyer before investing the seller's time and their own efforts.

Commitment Letter

This is a letter that indicates the buyer's loan has been approved and that the loan must be closed by a specific date. The investor has approved all of the conditions and the buyer is good to go. If a buyer does not obtain the commitment letter by a specific date they could lose their deposit if the deal enters a default stage.

Financing Extension

A contract indicates that time is of the essence. If a purchaser fails to meet the deadlines stated within a contract they should seek an extension to those deadlines. Failure to do so places their deposit at risk.

Negative Amortization

If the payments do not cover the interest the unpaid **interest is added to the loan balance**. Instead of decreasing the principal, this increases **the principal**. **Some call this type of loan an Option ARM when adjustable.**

Private Mortgage Insurance (PMI)

The lender requires the borrower to pay PMI as part of the loan payment if they **put less than 20% down on the loan**. Private companies offer protection to the lender if the borrower defaults on the loan. The lender is insured, not the borrower. A buyer can attempt to eliminate PMI once they have 22 % equity in the property.

Discounting a Mortgage

This is when the lender sells an existing mortgage for less than its face value.

Yield

An amount of money returned for an investment.

Points (Prepaid Interest)

These are **fees charged by lenders to the borrower** to cover lender expenses or **to increase the yield** on the loan. A point is based on a percentage of the loan amount. **One point equals 1% of the loan amount**. If a buyer is charged 1 point on a \$200,000 loan they would be paying \$2000. The reason **to pay points would be to lower the interest rate**. It is part of the buyer's closing costs or prepaids. **Points are known as prepaid interest and are tax deductible. Points assigned to the buyer can be negotiated within a contract to be paid by the buyer or seller.** The market will determine the willingness of a seller to do so.

Discount Points

Sometimes **loans** that are being **sold** to an investor might be **lower than the investor mandates**. When this occurs the lender **charges discount points to the borrower to increase the yield** and make the loan more attractive and profitable to

the investor. A discount point is one percent of the loan amount. **Discount Points can be negotiated between the parties. Tax Deductible.**

Origination Fees

A fee the lender charges to cover some initial costs such as application review and credit verification. Sometimes the lender charges this fee upfront to begin processing. If not paid upfront it becomes part of the closing costs. These fees **are not tax deductible**.

Buydown Loan

This type of loan product allows for the buyer to pay upfront points to buydown the interest rate they will be charged on the loan.

Mortgage Warehousing

This occurs when a lender borrows on the inventory of loans rather than sell their loans. The purpose is to hold their inventory because they believe the value will increase.

Subordination

This loan is paid off after more senior loans have been satisfied. There is greater risk if borrower defaults and the liquidation process does not bring in enough funds to cover the primary loan and the loan which is subordinate to other loans.

Conditional Title

The lender holds conditional title to a property when the property is pledged as collateral for a loan. The mortgagor redeems title by paying off the loan according to the terms of the note.

Covenants

Covenants are included in every mortgage. They are: **An agreement to pay principal & interest, keep the property insured, pay all municipal taxes and not commit waste or remove improvements.**

Lien

A **money claim against a property** is recorded at the Registry of Deeds. The claim is referred to as a lien. Liens must be discharged or released when satisfied. Liens are paid in the order they are recorded.

Equity

When you take the value of a property and subtract the liens placed against the property you arrive at the equity in the property.

Property Value \$ 300,000 minus \$ 150,000 lien = \$ 150,000 equity.

Closing the Real Estate Transaction

The closing is the final step in the purchase of real estate. It is often referred to as the **passing of papers**. Before the closing the **buyer should conduct a walk through of the property to ensure the property is being delivered in the agreed to condition**.

The Closing Disclosure is prepared by the lender and is forwarded to the IRS on 1099S. The attorney has already conducted a title search to ensure the property stood in the name of the seller. The settlement agent/attorney will **order a Municipal Lien Certificate (MLC)** to ensure the city or town is not owed any funds.

The attorney will ensure the seller brought a deed to the property, a final water reading, if appropriate, a smoke detector certificate, prepares the mortgage, note, a 6D certificate if appropriate, will payoff any existing loans held by the seller and ensure the sellers loan had an assumption clause if the property is being sold with take-over financing. The buyer will provide the settlement agent with a certificate of insurance naming the lender as the payee.

The 1997 Tax-Payer Relief Act (Owner-Occupied Properties)

This is one of the greatest things that have happened in this country. It provides an exemption on Capital Gain Taxes if an owner of a property sells the property in which they have resided for **two years in the prior five years**. The time period does not have to be consecutive.

A Single Taxpayer receives a \$ 250,000 exemption on the profit of the sale
Married Taxpayers receive a \$ 500,000 exemption on the profit of the sale

Tax Deferred Exchanges (1031 Exchange or Starker Exchange)

This is when a property owner transfers property held for productive use in trade, business or investment and receives a property to replace that property. These exchanges are called like kind exchanges. The property sold is called the relinquished property. The property received is called the replacement property. Its main purpose is to defer capital gains taxes and to reinvest all the equity into a new property. **A seller has 45 days from the sale of their property to identify their intentions to replace** the property with another investment property. They have **180 days to close** the transaction. A seller does not receive any of the proceeds from an exchange. The funds are held by a disinterested third party called a **Qualified Intermediary**. Each party to an exchange carries over the cost basis of the prior property to the new property.

If the seller received any funds from the proceeds or they purchased a property for less than the sale price, that means they did not reinvest all of the equity and are responsible to pay taxes on that amount. **These gains are referred to as BOOT.**

Important Talking Points for Financing

Federal Deposit Insurance Corporation (FDIC): an insurance that protect deposits up to a certain amount.

Leverage: using the banks money to finance the purchase.

Loan-to-value ratio (LTV): the amount of money borrowed as a percentage of the actual sale price

Primary Mortgage Market: the marketplace that makes loans directly to buyers

Impounds: reserve accounts collected by the lender for monthly taxes and insurance payments.

Satisfaction Piece (mortgage release or discharge): this instrument details the satisfaction of the loan. The original loan was recorded at the Registry of Deeds. This notice of satisfaction is recorded to cancel out the original loan.

Mortgagor: this is the borrower

Mortgagee: this is the lender

Mortgage Note: documented evidence that the buyer borrowed money

Secondary Mortgage Market: a marketplace where the lender sells loans to an investor and continues to service the loan in return for a fee

Projected Gross Income: the potential income, the most money a property will return.

Effective Gross Income: the actual income that the property returned

Net Operating Income: the difference between the actual income and the expenses incurred.

Debt Service: the principal and interest on the loan

Cash Flow: the final figure after subtracting the debt service from the net operating income.

Equity: the difference between the value of the property and the outstanding liens against that property.

Capitalization Rate Formula: Investor wants to know the market value of a particular piece of property.

$$\frac{\text{NOI}}{\text{Value X Capitalization Rate}}$$

Cash on Cash: The investor would like to determine the rate of return regarding their downpayment.

$$\frac{\text{Cash Flow}}{\text{Equity x Rate of Return}}$$

Federal Housing Administration (FHA): Insures loans
MASSACHUSETTS ACADEMY of REAL ESTATE

Veterans Administration (VA): Guarantees loans

Conventional Loans: do not have any backing-higher risk to the lender.

Lenders assign and sell loans without the permission of the borrower.

Direct Reduction Mortgage is also known as an amortized loan. Payments remain constant with the greater share being credited to the interest in the early years and more toward the principal in later years.

Blanket Mortgage more than one piece of property is used as collateral for the loan.

Release Clauses will release a portion of the real estate under a Blanket Mortgage.

What is a Mortgage? It is a financing instrument provided by the borrower to the lender pledging the property as collateral for the loan. The borrower gives a mortgage.

Does the lender (mortgagee) have particular rights? Right to Principal & Interest, right to prevent destruction of the property and the right to possession if the borrower defaults.

Does the borrower (mortgagor) have particular rights? Right to possess, lease, sell, right to money in excess of total debt and costs in the case of foreclosure, right to redeem when the loan is paid in full.

Equity of Redemption-the right of the mortgagor to redeem the property between the default and foreclosure period.

Certificate of No Defense (Estoppel Certificate) a document initiated by the borrower indicating the unpaid balance of their loan and the date to which it is paid through.

Regulation Z-Truth in Lending requirements that mandate the lender provide the borrower with the total costs of credit. Enforced by the Federal Trade Commission.

Real Estate Settlement Procedures Act-(RESPA) calls for a good faith estimate and a special information booklet entitled **Settlement Costs and Helpful Hints** to be provided to the borrower.

Points-is a fee charged to borrow money. Points are based on loan amounts not purchase prices.

Termite Inspections-are paid for by the seller on a FHA loan and are required on all government backed loans.

APR –all costs of credit must be disclosed if the ad mentions specific issues such as downpayment, interest rate or monthly payment.

Prepays-the amount of money paid in advance of the due date. Taxes, insurance, prepaid interest.

Financing

You should have an understanding of the following terms and concepts to master this chapter

Makes notes for yourself for a study review.

LTV Mortgagor/Mortgagee Trust Deed Land Contract Note Mortgage Theories (know the differences) Title Theory Lien Theory Immediate Theory Federal Reserve System Federal Reserve Bank Federal Open Market Committee Federal Discount Rate Prime Rate Primary Mortgage Market Secondary Mortgage Market Conventional Loan Conforming Loan Non-conforming Loan Fannie Mae Freddie Mac Ginnie Mae/Farmer Mac Private Loans (PMI)-aspects FHA – Aspects VA – Aspects Participation Certificate Jumbo Loan Foreclosure Procedures Soldiers & Sailors Act of 1940 Deficiency= Truth-in-Lending/Regulation Z (Know guidelines) APR = Advertising (know guidelines) Trigger Term-describe Bait & Switch Advertising Predatory Lending Equal Credit Opportunity RESPA (know guidelines) Good Faith Estimate HUD – How many days/What law mandates? Settlement Costs & Helpful Hints Uniform Settlement Statement (HUD 1)	
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Community Reinvestment Act Adjustable Rate Loan/Handbook Purchase Money Mortgage Amortized Loan/Direct Reduction Loan Second Mortgage Graduated Payment Mortgage Growing Equity Mortgage Participation Mortgage Shared Appreciation Mortgage Construction Mortgage Take out Loan Blanket Mortgage/Release Clause Piggy Back Loan Jumbo Loan Reverse Annuity Mortgage Open End Mortgage Bi-weekly Mortgage Balloon Mortgage Straight Loan Sub-prime Loan Bridge Loan Non-recourse Loan Wrap Around Loan Chattel Mortgage Adjustable Rate Mortgage Index Margin Acceleration Clause Defeasance Clause Prepayment Penalty Power of Sale/When? Due on Sale/When? Non-disturbance Clause Take Over Mortgage Usury Preapproval Commitment Letter Discount Points/Purpose Points/Purpose/Based On Yield Conditional Title Mortgage Covenants Subordination Leverage Certificate of No Defense Prepays Buydown Walk Through MLC 1997 Taxpayer Relief Act/	
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<p>What are the figures?</p> <p>1031 Tax Deferred Exchange/ Starker Exchange</p> <p>Boot</p> <p>Does vacant land fall under RESPA?</p> <p>Does refinancing fall under RESPA?</p> <p>Loan that consists of equal payments</p> <p>What is a subordinate loan?</p>	
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Financing

<p>1. Another term for a credit score could be:</p> <ul style="list-style-type: none"> A. Credit Rating Score B. Fico Score C. AAA Rating D. Loan to Value Score 	<p>6. The Consumer Protection Act of 1968 is also known as:</p> <ul style="list-style-type: none"> A. Title VIII B. 93A C. Truth-in-Lending D. Truth-in-Disclosure
<p>2. Another term to best describe points could be:</p> <ul style="list-style-type: none"> A. Prepaid Interest B. Closing Costs C. Rebate Costs D. Prepaid Settlement Change 	<p>7. The purpose of charging discount points to the borrower is to:</p> <ul style="list-style-type: none"> A. Make their payment lower. B. Increase the yield to the lender. C. Reduce PMI. D. Eliminate Title Insurance.
<p>3. A point charged to the borrower from a lender is based on:</p> <ul style="list-style-type: none"> A. The Purchase Price B. The Down Payment C. The Prepaid Interest D. The Loan Amount 	<p>8. If a right of rescission applies to the transaction, how many days does the buyer have to rescind the transaction?</p> <ul style="list-style-type: none"> A. 7 days B. 10 days C. 30 days D. 3 days
<p>4. Another term to describe seller financing could be:</p> <ul style="list-style-type: none"> A. Seller Concession B. Purchase Money Loan C. Purchase Money Mortgage D. Seller Money Mortgage 	<p>9. A word displayed in an ad that identifies the monthly payment due on a loan is known as:</p> <ul style="list-style-type: none"> A. Loan Identification Disclosure B. Regulation Z C. Truth-in-Lending D. Trigger Term
<p>5. A loan program that insures the lender if the buyer defaults on the loan is:</p> <ul style="list-style-type: none"> A. VA Loan B. Conventional Loan C. FHA Loan D. RMI Loan 	<p>10. Which government agency oversees Regulation Z?</p> <ul style="list-style-type: none"> A. Fannie Mae B. Freddie Mae C. Federal Trade Commission D. Federal Reserve

11. The document prepared by the lender that discloses all of the costs associated with the real estate transaction to both the buyer and seller is known as the:

- A. Uniform Standards Settlement Form
- B. Uniform Procedure Settlement
- C. Uniform Settlement Statement
- D. Truth-in-Lending Statement

12. A lender provided a borrower with an estimate of charges associated with a loan. By law this statement needs to be provided within how many business days?

- A. 7 days
- B. 3 days
- C. 30 days
- D. 1 day

13. A borrower accepts an adjustable rate loan at 4% interest for one year. The following year the loan rate rose to its maximum potential. The rate would be:

- A. 4%
- B. 5%
- C. 10%
- D. 6%

14. A loan that guarantees the lender if the buyer defaults on the loan is:

- A. FHA Loan
- B. VM Loan
- C. VA Loan
- D. Guaranteed Loan

15. Which of the following organizations does not participate in the secondary mortgage market?

- A. FNMA
- B. GMIC
- C. GNMA
- D. FHLMC

16. When a lender charges an interest rate higher than allowed by state law it is known as:

- A. Illegal
- B. 93A Violation
- C. Usury
- D. Accelerated

17. John received a loan at 4% interest for 5 years. He sold the property one year later and was charged a fee by the lender that amounted to several months' interest. This fee is known as a:

- A. Due on Sale Clause
- B. Alienation Clause
- C. Conveyancing Penalty
- D. Prepayment Penalty

18. Which of the following clauses is important to a lender?

- A. Defeasance Clause
- B. Acceleration Clause
- C. Novation Clause
- D. Lien Clause

19. A loan agreement that allows the borrower to not pay any principal on the loan until the final payment is known as:

- A. Balloon Loan
- B. Reverse Annuity Loan
- C. Straight Loan
- D. Construction Loan

20. When a borrower finances a home they provide the lender with a security interest in the property, yet they retain possession of the property. A word to best describe this situation would be:

- A. Hypothecate
- B. Mortgage
- C. Contract for Deed
- D. Holographic

21. The Federal Reserve System oversees the nation's monetary system and influences interest rates. The link between monetary policy and the economy is:

- A. APR
- B. Reserves
- C. TIL
- D. Regulation Z

22. A loan to a consumer that calls for the lender to assume all of the risk if the buyer defaulted on the loan is:

- A. VA Loan
- B. FHA Loan
- C. PMI Loan
- D. Conventional Loan

23. The Federal Open Market Committee meets several times a year and determines an interest rate. This rate is known as the:

- A. Prime Rate
- B. Annual Percentage Rate
- C. Federal Discount Rate
- D. Consumer Rate

24. John applied for an FHA Loan. The rate of interest is determined by the:

- A. FHA
- B. Market Conditions
- C. Federal Reserve Board
- D. Consumer Interest Board

25. Which of the following is not included in the annual percentage rate?

- A. Interest Rate
- B. Points
- C. Appraisal
- D. Finder's Fee

26. Which of the following is a division of HUD?

- A. Ginnie Mae
- B. Sallie Mae
- C. Fannie Mae
- D. Freddie Mae

<p>27. Which of the following is covered under Truth-in-Lending guidelines?</p> <ul style="list-style-type: none"> A. Construction Loan B. An Investment Property C. Purchase Money Mortgage D. An Owner Occupied Loan <p>28. An organization that specializes in purchasing conventional loans in the secondary mortgage market is:</p> <ul style="list-style-type: none"> A. Fannie Mae B. Ginnie Mae C. Sallie Mae D. Freddie Mae <p>29. Which of the following purchases fall under RESPA?</p> <ul style="list-style-type: none"> A. The purchase of a single family home intended for an owner occupant. B. The purchase of a lot of land. C. Refinancing of an investment property. D. Refinancing of an owner occupied property. <p>30. Another term used to describe an amortized loan is a:</p> <ul style="list-style-type: none"> A. Reduced Loan B. Straight Loan C. Balloon Loan D. Direct Reduction Loan 	<p>31. A loan secured by Real and Personal Property is:</p> <ul style="list-style-type: none"> A. Blanket Mortgage B. Chattel Mortgage C. Combination Mortgage D. Package Mortgage <p>32. A document signed by a borrower that indicates the loan amount due as of a certain date might be known as:</p> <ul style="list-style-type: none"> A. Equity of Redemption B. Certificate of No Defense C. Regulation Z D. Mortgage Reduction <p>33. If a loan sold to an investor brings in a yield lower than desired by that investor, the lender may charge the consumer:</p> <ul style="list-style-type: none"> A. APR B. PMI C. Discount Points D. Origination Fees <p>34. A clause in a mortgage that prevents take-over financing would be:</p> <ul style="list-style-type: none"> A. An Acceleration Clause B. Power of Sale Clause C. Alienation Clause D. Due on Sale Clause
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<p>35. When a buyer purchases a property subject to an existing mortgage the seller's obligations to pay the loan:</p> <ul style="list-style-type: none"> A. Are eliminated. B. Are assumed C. Remains unchanged. D. Are released <p>36. Which clause is most important to the borrower?</p> <ul style="list-style-type: none"> A. Power of Sale Clause B. Defeasance Clause C. Subordination Clause D. Acceleration Clause <p>37. A legal requirement that bars lenders from discriminating on the basis of race, age or religion is known as:</p> <ul style="list-style-type: none"> A. Regulation Z B. Equal Credit Opportunity Act C. Truth-in-Lending D. RESPA <p>38. John is a veteran who obtained a VA loan to purchase his home in 1984. In 1998 he sold his house to his daughter. The daughter assumed his loan. In 2004, John reapplied for another VA loan and was rejected. The VA rejected John because:</p> <ul style="list-style-type: none"> A. He missed some past payments. B. He was still obligated to a prior loan. C. He is only entitled to one VA loan. D. The VA does not provide VA loans after 1989. 	<p>39. The mortgage note is provided by the:</p> <ul style="list-style-type: none"> A. Bank B. Mortgagee C. Buyer D. Seller <p>40. Another term to describe a land contract is:</p> <ul style="list-style-type: none"> A. Alienation Contract B. Contract for Deed C. Ground Lease D. Deed of Trust <p>41. The primary instrument used in a mortgage transaction is the:</p> <ul style="list-style-type: none"> A. Loan B. Mortgage C. Note D. Equity <p>1. B 2. A 3. D 4. C 5. C</p> <p>6. C 7. B 8. D 9. D 10. C</p> <p>11. C 12. B 13. D 14. C 15. B</p> <p>16. C 17. D 18. B 19. C 20. A</p> <p>21. B 22. D 23. C 24. B 25. C</p> <p>26. A 27. D 28. A 29. A 30. D</p> <p>31. D 32. B 33. C 34. D 35. C</p> <p>36. B 37. B 38. B 39. C 40. B</p> <p>41. C</p>
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Property Valuation and the Appraisal Process

Appraisal Process Vocabulary

ACCRUED DEPRECIATION:	difference between the cost of replacing a property new and present value of that property; used in appraising.
AGE LIFE TABLE:	table charts utilized by an appraiser to assist with determining the value of a property. The effective age of the property divided by the economic life.
ANTICIPATION:	when someone buys a property they expect certain benefits from that property and they expect the property will increase in value. Therefore they anticipate increased benefits and value.
APPRAISAL:	an independent opinion of value. Lender requires for a loan. Paid for by the buyer.
APPRECIATION:	an increase in value that results from market forces such as demand stronger than supply.
APPROACHES TO VALUE:	appraisers use different methods to arrive at their opinions of value. These approaches vary depending on the type of sale. The approaches are cost, market and income approaches.
ASSEMBLAGE:	when two adjoining lots are combined to form one larger parcel.
ASSESSED VALUATION:	it is the value given to real estate by the town assessor's office. Ad Valorem -Assessment for property tax purposes. Not known as the actual value.
BOARD OF REGISTRATION OF REAL ESTATE APPRAISERS:	a board under the general oversight of the Division of Professional Licensure. The board is associated with the practice of Real Estate Appraising.
BOOK VALUE:	the purchase price of a property plus improvements made to the property minus depreciation.
CAPITALIZATION RATE:	the rate expected in return for investing in a particular property. Obviously investors seek a profit or return on the money they invest.
CERTIFICATE OF REASONABLE VALUE (CRV):	a document issued in a V.A. Loan transaction that outlines the value of the property being purchased by the veteran.
COMPARABLE PROPERTY:	a prior property sale utilized by an appraiser to estimate the value of a property. Known as "comps".

COMPARATIVE/ COMPETITIVE MARKET ANALYSIS:	in the absence of a formal appraisal, a real estate agent conducts a Comparative Market Analysis or Broker Price opinion to guesstimate the value of a property being offered for sale. The agent will compare the size, condition, location and the purchase price of properties that have sold within the past six months to one year. Most common method used by a residential appraiser.
COMPARATIVE UNIT METHOD:	this is when the appraiser takes the total value of recent new construction properties and divides the value by the square footage of the property to arrive at a dollar figure per square foot for building costs.
COMPETITION:	a principal utilized by an appraiser that indicates that increased competition decreases profits.
CONFORMITY:	Continuity can have an impact on the value of property. When the homes in a neighborhood are similar in nature that particular area usually maintains value equally. Many of these neighborhood values remain constant due to stability that is present within the community.
CONTRIBUTION:	this principle of valuation states that each feature of a property adds to the value of the property based on what it “contributes” to the usefulness of the property. The money invested on improvements may not increase the property value by the same amount as the investment.
CORRELATION:	also known as reconciliation. The process used by an appraiser to determine the value of a property by utilizing more than one approach to value. They utilize a combination of approaches to estimate the value.
COST APPROACH:	one of the three approaches to value used by appraisers. When conducting an appraisal using the cost approach the appraiser will determine the cost of reproduction or replacement; subtract the depreciation and add the value of the land to arrive at the property value.
COST OF REPRODUCTION:	the cost to duplicate a property today using similar materials.
CRV:	see Certificate of Reasonable Value
DEFERRED MAINTENANCE:	needed repairs that have not been conducted or have been delayed.
DEMAND:	the desires of the buyers. Does the marketplace possess the demand for housing. An element of value when appraising a property.

DEPRECIATION:	a decrease in the value of a property (or improvement) due to age or wear and tear. Building values depreciate, never land.
DETERIORATION:	the accumulated effect of wear and tear on a building.
DIMINISHING RETURNS:	an investment to a property that does not bring a positive return based on the investment. The investment brings a decreasing return.
ECONOMIC LIFE:	a time period which a property is considered to be profitably used. Each loan begins a new economic life.
EFFECTIVE AGE:	the age that a property appears to be. Not actual age.
ELEMENTS OF VALUE:	elements utilized to determine the value of a property. Demand, Utility, Scarcity, Transferability. (DUST)
EXTERNAL OBSOLESCENCE:	a property can be affected by its surroundings; if these surroundings have a severe negative impact on the property the effect can reduce the value of the property.
FINAL ESTIMATE OF VALUE:	the final estimate determined by an appraiser when conducting an appraisal.
FIRREA:	Federal Institution Reform Recovery & Enforcement Act.
FRONT FOOT:	when measuring a property, the appraiser will indicate a point of beginning. The front foot will be the street, waterfront or sidewalk.
FUNCTIONAL OBSOLESCENCE:	A property that contains obsolete features. The property is functional but contains old fixtures, baths, Kitchen, inadequate closets. The situation is curable.
GROSS DOMESTIC PRODUCT (GDP):	the market value of goods produced in the country during a particular period of time. Formerly known as Gross National Product.
GROSS INCOME MULTIPLIER (GIM):	a figure utilized by an appraiser to determine the value of an investment property. The figure is a multiplier of the annual gross rent of the property.
GROSS RENT MULTIPLIER (GRM):	when determining the value of a property, an appraiser may estimate value by measuring a multiplier of gross monthly rents. Formula: sale price divided by monthly rent = gross rent multiplier.

HIGHEST & BEST USE:	a principle in appraising that calls for a property to be utilized in a manner that brings in its greatest potential while recognizing current zoning. Maximum potential.
INCOME APPROACH:	an approach an appraiser would use to determine the value of an income producing property such as an office building or apartment complex. The value of the property is determined by the future stream of income it will produce. The value of a property is based on its return.
INCREASING/ DECREASING RETURNS:	a principle variable to value. It is principle that measures the amount of money invested into a property vs. the return received for the investment. If every dollar invested register an increase you have in increasing return vs. a decreasing return in the investment does not bring in more money than the investment.
INFLATION:	the purchasing power of money. An increase in inflation decreases the value of the dollar. The consumer price index is used to gauge inflation.
MARKET DATA APPROACH:	an approach to value utilized by an appraiser that utilizes comparable property sales as a benchmark when determining the value of a property.
MARKET PRICE:	the price the buyer paid for the property.
MARKET VALUE:	the highest price an informed buyer is willing to spend and the lowest price a willing informed seller would except with neither party being under any pressure to act.
NET OPERATING INCOME:	the amount of money on hand after you subtract the operating expenses from the effective gross income. $\text{Effective Gross Income} - \text{Operating Expenses} = \text{NOI}$
OBSERVED CONDIITON METHOD:	a method utilized by an appraiser that takes into account natural observations. What you see.
OFFICE OF THRIFT	an agency of the government that monitors.
SUPERVISION (OTS):	the operations of fiduciary lenders. Was created via the Financial Institution Reform, Recovery and Enforcement Act (FIRREA).
PHYSICAL DETERIORATION:	a decrease in property value due to the condition of the property. Wear and tear.
PLOTTAGE:	see plottage value/assemblage.

PROGRESSION:	a component of the Principle of Conformity. It can be understood that the least desirable property in a community will increase in value if the properties around it are increasing in value.
QUANTITY SURVEY SURVEY METHOD:	a method used to determine the cost to produce a property. The method includes cost of material/labor
RECONCILIATION:	an appraiser adjusts the difference between properties being used as comparables for an appraisal and weighs the difference.
REGRESSION:	a component of a principle of conformity that indicates that a house of one extreme might be worth less when compared to neighboring properties of a lesser extreme. An example is a three bedroom property within a neighborhood of two bedrooms. The house might hold lower value because the neighboring properties are smaller. The value may regress.
REPLACEMENT : COST	term utilized in appraising. Replacement creates a property with the same utility, the same usefulness.
REPRODUCTION COST:	reproduction creates a replica of a property.
SALES COMPARISON APPROACH:	one of three approaches used to appraise a property. It is the most widely used method in residential and land sales. It compares other properties that have sold with similar characteristics with the property which is being appraised.
SCARCITY:	a principal and appraising that measures the availability or supply of available properties in a given area. The fewer properties available, the higher value those properties will receive.
SOCIAL FORCES:	an influence that could affect the value of a property in a particular city, town or neighborhood. Attitudes toward social issues could have an impact on the value of a property.
SQUARE FOOTAGE METHOD:	when an appraiser takes value of recent construction and divides it by the number of square feet of the property.
STRAIGHT LINE METHOD OF	utilized for tax purposes. You take the adjusted cost basis of a property and divide it by the estimated

DEPRECIATION:	numbers of remaining years of useful life of the property.
SUBJECT PROPERTY:	the property that is being appraised.
SUBSTITUTION:	a principal utilized in appraising. A buyer would substitute a lower priced property for a higher priced property.
SUPPLY AND DEMAND:	a principle variable to measure the value of a property in a given area. Too many properties in a neighborhood may have an effect on a value of a property.
TRANSFERABILITY:	the ability a property owner has to convey their interests to another without any restrictions.
UNIT-IN-PLACE METHOD:	a method utilized by an appraiser that recognizes the total value of new construction properties in relation to the square footage of those properties. Its purpose is to determine the dollar figure per square foot to build.
URAR:	Uniform Residential Appraisal Report. This report is the most common format utilized when conducting residential appraisals.
USPAP:	Uniform Standards of Professional Appraisal Practice. A code of conduct utilized by appraisers that has brought consistency and conformity to the appraisal practice.
UTILITY:	the usefulness of a property
VALUE:	the financial worth of a property

Property Valuation and the Appraisal Process

When someone is purchasing a home and obtaining a loan from a lending institution, the lender needs to ensure that the actual property value is not below the purchase price. In order to do this the lender orders an appraisal to determine the value of the property. Appraisals are also used when a person is refinancing property, attempting to reduce Private Mortgage Insurance, settling an estate, a corporate acquisition and eminent domain proceedings.

What is an Appraisal ?

An appraisal is an objective and supportable estimate or opinion of value given to a property at a specific point in time. An appraisal is an independent opinion of value supported by market research and data within a certain geographic area and time frame. Although the appraiser is usually compensated by the buyer, the appraiser does not work for the buyer. **An appraiser must be certified and licensed within the state in which they conduct business.** Requirements may vary state to state. Many times a seller asks a real estate agent to conduct an appraisal on their property so that they can obtain an opinion of value before the house is offered for sale. Real Estate Agents do not conduct appraisals. They perform a Comparative Market Analysis or Broker Price Opinion.

An appraisal can be good for up to one year. However recent data might be more suitable.

Comparative Market Analysis (CMA) or Broker Price Opinion (BPO) or Competitive Market Analysis.

In the absence of a formal appraisal a real estate agent/broker conducts a Comparative Market Analysis or Broker Price Opinion to guesstimate the value of a property being offered for sale. The agent will compare the size, condition, location and the purchase price of properties that have sold within the past six months to a year. This method of comparing recently sold properties is the most common method used by a residential appraiser.

Appraisers in Massachusetts

The Board of Registration of Real Estate Appraisers licenses qualified appraisers in compliance with Title XI, the Federal Financial Institution Reform, Recovery and Enforcement Act (FIRREA) of 1989.

Title XI of the Real Estate Appraisal Reform Amendment of FIRREA requires the use of state certified or state licensed appraisers when appraising federal transactions. A loan that is regulated by a federal agency such as HUD or loans that will be routed through Fannie Mae or Freddie Mac fall into this category. **Criteria for licensing must be consistent with Title XI.**

There are **four separate classes of Appraisers** within **Massachusetts**.

Real Estate Appraisal Trainee

They must pass a school sponsored examination and must log in time for the required experience with a licensed appraiser in order to obtain a license. Their primary role is to assist an appraiser. **The licensed can be renewed one time.**

State-Licensed Real Estate Appraiser

To hold this license the appraiser is required to **meet the requirements of the Federal Financial Institutions Examination Council or Federal Appraisal Subcommittee and pass a state sponsored examination.** There are **limitations** to the types of properties that they are allowed to appraise. The license is renewable every three years.

State Certified Residential Real Estate Appraiser

To hold this license the appraiser must **meet the requirements of the Appraisal Foundation's Appraisal Qualifications Board** and pass a state sponsored examination. There are **limitations** to the properties they are allowed to appraise. This license is renewable every three years.

State Certified General Real Estate Appraiser

To hold this license the appraiser **must meet the requirements of the Appraisal Foundation's Appraisal Qualifications Board** and pass a state sponsored examination. There are **no limitations** to the properties they are allowed to appraise. This license is renewable every three years

**Note: Certified Appraiser must meet the standards set by the Appraisal Foundation
Licensed Appraiser must meet the standards required by Title XI.**

Standards of Practice, Procedures and Measurements

Uniform Standards of Professional Appraisal Practice (USPAP) (Ethics)

Appraisers adhere to a specific code of conduct called **Uniform Standards of Professional Appraisal Practice**. This code of conduct has brought consistency and conformity to the practice of appraising. The **Appraisal Standard Board of the Appraisal Foundation is responsible for the development of USPAP.**

Uniform Residential Appraisal Report (URAR)

This method of reporting is the most common format used when conducting residential appraisals. Properties that are to be routed through the secondary mortgage market require this method. (VA , FHA, FNMA,FHLMC and HUD).

Certificate of Reasonable Value (CRV) (VA Loan)

When a veteran is purchasing a property and utilizing their VA entitlement, the appraiser issues a Certificate of Reasonable Value after determining the property value. If the Certificate of Reasonable Value concludes that the property is worth less than the purchase price there are three options.

- 1) Seller reduces the selling price
- 2) Veteran pays the difference in cash
- 3) Veteran decides not to purchase the property.

Measuring Properties (Gross Living Area –GLA)

When conducting an appraisal the certified appraiser measures the property. These measurements are taken from outside the property, above the foundation. **In order for space to be credited as living area it needs to be above grade, heated and in livable condition. An appraiser could give credit for finished basements, etc.**

Front Foot/Frontage

When an appraiser measures a property they indicate a point of beginning where they begin measuring from. The front foot is referring to the frontage that is abutting the street/sidewalk or waterfront.

The Concepts of Value

Market Value

Market value amounts to **the most probable price an informed buyer is willing to spend and the lowest price an informed seller is willing to accept.** Neither party is under any duress or pressure to buy or sell. Sometimes referred to as an Arm's Length Transaction. It is the opinion that a **property should sell for a particular price.**

Market Price

Market price amounts to the **price the property sold for.** Note the difference between market value and market price.

Value

Value is defined as the **present worth of the future benefits of ownership.** What is it worth to me today to own this property in the future ?

Book Value

Book Value amounts to the price of a property when purchased plus any improvements during the ownership period minus depreciation.

Assessed Value

Is the value given to real estate by the city or town for tax purposes. It is also known as Ad-Valorem. (according to value). **The property should be assessed at 100% cash value.**

Liquidation Value

This is value of a property if the property is required to be sold to obtain cash. This would be the case with a foreclosure.

Insurable Value

The value that is given to real property for insurance purposes. The value for insurance purposes may not equal the purchase price. Insurance pays for replacement cost. The cost to rebuild a property minus depreciation.

The Four Elements of Value

In order for a property to have worth there should be four elements of value. These elements are: **Demand, Utility, Scarcity and Transferability. (DUST)**

Demand

When referring to demand we think about the ability of the public to purchase. Do the buyers have the means to purchase the available properties? Is the demand for housing present in the marketplace?

Utility

When referring to utility we think about the usefulness of a given property. Does the property satisfy the needs of the purchasing public? Is it something buyers are looking for?

Scarcity

How many properties are for sale in a given area? An overabundance of properties may decrease prices, while a reduction in the number of properties available may increase prices.

Transferability

This refers to the ability of the seller to transfer their rights/interest to a new buyer. The seller holds clear and marketable title to the property and can sell their interest freely.

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The Forces that Influence Value

The value of real estate can be unpredictable and can be driven up or down by forces that may be out of our control. Four forces that have an impact on value are: Social, Economic, Governmental and Physical/Environmental.

Social Forces

Social Trends can have an impact on real estate values in a particular city, town or neighborhood. The changes in population, needs for increased education solutions and attitudes toward social services have an impact on value.

Economic

The cost of living, availability of employment opportunities, real estate taxes, sales prices and availability of credit and money to purchase have an impact on economic forces. There are two factors that could affect value. There is the national economy and the local economy. The **national economy is measured by the Gross Domestic Product (GDP)**. A local economy may be measured by the regions unemployment figures. Sometimes inflation becomes a factor. The **principle tool to measure inflation is the consumer price index (CPI)**.

Governmental

The impact the government can have over a city, town or neighborhood may influence the value of real property within that community, city or town. Moratoriums, zoning regulations, building codes and rent control regulations are factors that may influence buyers and sellers.

Physical/Environmental

This can be the physical makeup of the land, topography, water sources, weather conditions, town resources etc.

Principle Variables to Value

The Real Estate industry is affected by a number of factors, variables and conditions that play an important role when determining the value of real property. These principles of value are as follows:

Principle of Supply and Demand

An overabundance of properties for sale in a given area may reduce the value of the properties in that area while the scarcity of properties in a given area may increase the value of the available properties being offered for sale. Too many houses available for sale in an area may have a negative effect of prices.

Principle of Anticipation

When someone purchases property they expect certain benefits from the purchase in the future. Obviously it is expected that the property will increase in value. Therefore the buyer anticipates increased benefits and value from the property purchase.

Principle of Conformity

Continuity has an impact on the value of property. When homes in a neighborhood are similar in nature and stability is present within that neighborhood, home values generally remain constant within that particular area.

Principle of Change

Real Estate like everything else goes through cycles. Individuals purchasing properties must be aware of these cycles. Stability, population growth/decline, urban/suburban renewal have an impact when it comes to the Principle of Change.

Principle of Contribution

An improvement to a property only amounts to what the contribution added to the value of the entire property. Many people believe an improvement made to a property will increase the value of the property. While that may be true, it is also true that money invested may not increase the value of the property by the same amount. A \$30,000 improvement may only yield a \$ 10,000.00 increase in value.

Principle of Increasing and Decreasing or Diminishing Returns/Contribution

If every dollar you invest in a property brings you a return **greater than the amount invested you have an increasing return**. If the dollars invested bring in a return **lower** than the invested improvement you have a **diminishing return**. At some point additional money invested in a property may not bring an increase in value. This is known as **over-improving the property**.

Principle of Highest and Best Use

Real Estate is constantly evolving and owners seek to utilize a property to its maximum potential. This principle calls for a **property to be utilized to bring in its greatest value**. The appraiser asks herself/himself this question. Is a property being used in a manner that will bring in the greatest return allowed for that property recognizing current zoning regulations? **Every appraisal utilizes this principle.**

An example would be a single family home located on a lot that allows for a four-unit apartment building. The property would bring in greater value if used consistent with the current zoning allowance.

Principle of Substitution

This is a natural course of action taken by prospective homebuyers. When two or more properties are for sale and possess similar characteristics and utility, the buyer usually gravitates to the property being offered for sale that has the lowest price. They **substitute the lowest price home when compared to higher priced properties.**

Principle of Progression

This is when the **value** of a property is **enhanced** due to being **surrounded** by more **expensive homes**. IE: The least expensive home in an expensive area.

Principle of Regression

This is when the value of a **property is being stagnated or reduced** because it is **surrounded** by properties that have a **lower value**. Progression and regression are known as the twin principles.

Principle of Assemblage or Plottage Value

This is when two adjoining lots are combined to form one larger parcel. The two lots may be small and hold lower value due to their size. The new larger lot has increased value due to its new potential and expanded size.

Principle of Competition

When the profits from an investment are high it brings in competition thus increasing competition and reducing profits.

The Three Approaches to Value Used by Appraisers

An appraiser can look at the value of a property from a variety of avenues. There are three main concepts or approaches to value used to determine the value of a property. The appraiser will use the approach that best fits the circumstance surrounding the property they are appraising. These approaches to value are:

1. Sales Comparison or Market Approach
2. Income Approach
3. Cost Approach.

Approaches to Value

1) Sales Comparison or Market Approach (Residential & Land Sales)

This approach to value is the most widely used method when it comes to residential sales and land sales. The appraiser compares the property being appraised with other properties that have sold within a particular time frame that consist of similar characteristics within a certain geographic area. The properties being compared are known as “comps”. **Multiple listing sales records are a good source when obtaining data.**

Basically the appraiser is looking for similar types of properties that have sold within the past six months to a year within the same city/town or neighborhood as the subject property. The purchase price, number of bedrooms and bathrooms, gross living area, lot size, availability of parking and other features are important factors when comparing properties. The properties being compared do not have to be exact replicas of each other. An appraiser can compare a three-bedroom home with a two bedroom home. The appraiser will make adjustments to value when the property being appraised has an additional bedroom, bathroom or enhanced amenities when compared to the property that has already been sold. Adjustments upward and downward are a common practice when conducting an appraisal with the sales comparison approach. It is referred to as reconciling the difference.

2)Income Approach (Investment, Business or Income Properties)

This approach to value is utilized when appraising a business, income property or investment property. This approach would be used to appraise an **office building or apartment complex. The value of an investment is determined by the future stream of income or return the investment will produce.** When investing in a property or business, the entity making the purchase **anticipates a particular rate of return** in exchange for making that investment. This **rate of return is known as the Capitalization Rate.** An appraiser should have access to information that would give him/her the expected rate of return expected for that investment. The appraiser then needs to acquire the net income produced by the property being appraised. The appraiser then applies the following formula to determine the value of the property.

$$\frac{\text{Net Income}}{\text{Capitalization Rate}} = \text{Value}$$

Capitalization Rate

The **rate expected in return for investing in a particular property**. Obviously investors seek a profit or return on the money they invest.

When **determining a capitalization rate** we research comparable properties. The appraiser would take the net operating income and divide it by the sale price. **For the value to be greater, the capitalization rate should be lower.**

$$\frac{\text{NOI}}{\text{Sale Price}} = \text{Capitalization Rate Used}$$

Gross Rent Multiplier (GRM)

A **value is generated by the monthly gross rent**. An appraiser will identify similar properties that have sold and compare the rents and characteristics of the properties. The **Gross Rent Multiplier best represents the Gross Rents of similar properties within a given area.**

To determine the Gross Rent Multiplier the appraiser multiplies the gross rent by the gross rent multiplier to give an indication of value

Example:
$$\frac{\text{Sales Price } \$ 310,000}{\text{Monthly Rent } \$ 3,000} = \text{GRM}$$

Gross Income Multiplier (GIM)

The Gross Income Multiplier would be used when appraising a commercial or industrial property. It takes into account the **annual rent collected**.

Deferred Maintenance

When using a Gross Rent Multiplier or Capitalization Rate the appraiser must take into account **repairs that have been put off** by the property owner. They need to estimate the costs of these repairs and deduct them from the value.

3) Cost Approach

This approach could be suitable when the other two approaches are not suitable. Public Service Buildings, Churches and Hospitals are some examples of properties that would use the Cost Approach to determine value. Since these buildings do not produce rental income and usually cannot be compared to other sales an appraiser needs to use another method to determine value. **If using the cost approach on a residential building the appraiser would determine the replacement value then subtract the depreciation.**

When conducting an appraisal using the cost approach the appraiser uses a three step method. An appraiser would do the following:

1. Determine the **cost of producing an exact duplicate** of the property or the cost to **replace the property at today's prices**.
2. Subtract the **accrued depreciation** occurred on the original building.
3. **Add the value of the land** to the figure obtained after determining the depreciation.

Formula

Cost of Reproduction/ Replacement---Accrued Depreciation +Land Value=Value

Please note the following guidelines:

Reproduction creates **Replica** of a Property

Replacement creates a property with the **same utility** (usefulness)

When using the replacement cost an appraiser takes into account a property with similar utility and current material design.

Determining Reproduction/Replacement Cost

Appraisers generally use four methods to determine or estimate the costs of replacement or reproduction of a property. **The four methods are as follows:**

Comparative Unit Method/Square Footage Approach,

Unit-in-Place Method

Quantity Survey Method.

Index Method

Comparative Unit Method/Square Footage Approach

This is when the appraiser takes the total value of recent new construction properties and divides the value by the square footage of the property to arrive at a dollar figure per square foot for building costs. Example \$ 165.00 per square foot for total construction costs x 1,000 square feet = \$ 165,000 to produce.

Unit-in-Place Method (Segregated Costs)

This is when the value of a property is arrived at by adding together the component costs to build the property.

Example : \$ 35.00 per square foot for a roof + \$60.00 per square foot for construction + \$60.00 per square foot for electrical, etc. + etc. + etc = Cost

Quantity Survey Method

This is when the cost to reproduce the property is determined by separating the cost of the material plus labor costs.

Index Method

This method takes into account the present cost to build by applying increases and decreases in the construction cost index. This is done because the structure was built to its original cost to build.

Depreciation

This is a **reduction in value** due to a variety of reasons. An appraiser will determine the depreciation of an improvement and subtract that figure from the cost to replace the property. The appraiser does not depreciate the value of the land. The three main types of depreciation are: Physical Deterioration, Functional Obsolescence and Economic Obsolescence. The appraiser will **analyze the condition of the property taking into account the physical deterioration, functional obsolescence, and external obsolescence. This method is known as the observed condition method.**

Deterioration/Physical Depreciation

A building, like anything, will wear over time. Deterioration is the accumulated effect of wear and tear. A building will depreciate over time. The appraiser will **never depreciate the land.** In order to determine depreciation the appraiser must establish the economic life of the property. The **economic life is the period of time to which the property or improvements contribute to the net income of the property.** The appraiser will use **age-life tables** to assist with this process. The appraiser must establish the **effective age of a structure. The effective age is not the actual age.** Consideration is given to the condition of the property. When the appraiser analyzes a property taking into account the overall condition of the property it is known as the **observed condition method.**

Functional Obsolescence (Curable)

A property that has **not been modernized or updated could have obsolete features.** Examples are: well kept properties with old kitchens and baths, two story properties that have the bedrooms on the second floor and one bath on the first floor. These are features that are curable.

Economic Obsolescence or External Obsolescence (Not Curable)

A property can be affected by its surroundings. If these surrounding have a severe negative impact on the property the effect can reduce the value of the property. Example: A town just lost the fire protection services it receives from a neighboring town. This loss can have an effect on the value of the property within that town.

Straight Line Method of Depreciation

When it comes to an **appraisal the straight-line method of depreciation is used**. Equal sums are depreciated over the life of the property. **Age life tables** are used to **determine the depreciation** when using this method. These tables are often more generous than the system associated with income taxes.

Economic Life is the period of time to which improvements can be profitable and generate net income. Age life tables are utilized to determine economic life. Effective age is the age of the structure for appraisal purposes. The **effective age may differ from the actual age depending on the condition of the property**.

The Procedure of Conducting an Appraisal

In order to conduct a fair, balanced and accepted appraisal practice the following steps are consistently used when conducting appraisals.

Define the Problem

The first step is to identify the property and the property rights. The address and legal description of the property are needed to conduct this component. The book and page references recorded at the Registry of Deeds will steer the appraiser in the right direction to research the property rights that may be recorded at the registry of deeds. Encumbrances such as easements and right of ways are important items for the appraiser to know when determining value. The appraiser also needs to know the purpose of the appraisal so that they know what format the final appraisal report should contain.

Preliminary Analysis and Plan

The appraiser needs to determine what type of approach will be used and what data will be needed to conduct the appraisal. They also will assess the neighborhood locations and zoning conditions.

Selection of Data and Analysis

The appraiser collects the data and information needed to conduct the appraisal. This information could be the legal description of the property, building and zoning code regulations, neighborhood conditions, encumbrances and rights of way that might impact the property and trends that may affect the use of the property.

Analysis of Highest and Best Use

The appraiser will compute the value of the land and building independently. Is the value of the land bringing in the maximum value for the property? Is it being utilized to its highest and best use?

Selection of the Appraisal Approach

The appraiser determines the best approach to use to value the property. Reminder: The Three Approaches to Value are: the Sales Comparison Approach, Income Approach and Cost Approach. The appraiser selects the approach or combination of approaches that best suits the property.

The Reconciliation/Correlation of Values

The appraiser may use two methods to value the property. They give weight to different approaches such as 60% of value arrived via sales approach and 40% of the value arrived via income approach. This procedure is known as **reconciling the differences or correlation**.

Adjustments to Value

The appraiser may compare properties that are not identical in nature. It is possible for the conditions of a property or the size of comparables to vary.

Example : Comparing a three bedroom colonial to a two bedroom colonial. Since these are the only recent sales in the area the appraiser might need to use these properties.

In this case to make the properties comparable in nature the appraiser need to adjust the value of the comparables being used.

When the **comparable is superior in the nature** the appraiser will **reduce** the value of the comparable to make it equal to the property being appraised.

When the **comparable is inferior** in nature the appraiser will **increase** the value to comparable to make it equal to the subject property.

The Final Estimate of Value

This is the conclusion of the value. The appraiser details the comparative properties utilized, the date of opinion, conditions affecting the property and sources used to justify the opinion. The appraiser must be able to provide data and sources to justify their opinion. Similar to a research paper. The author must be able to cite the sources and back up their claims.

Appraisal

You should have an understanding of the following terms and concepts to master this chapter

Makes notes for yourself for a study review.

<p>What is an Appraisal?</p> <p>What are the requirements to become an Appraiser?</p> <p>What is a Competitive Market Analysis?</p> <p>What is Title XI?</p> <p>What is USPAP?</p> <p>What is URAR?</p> <p>What is a Certificate of Reasonable Value?</p> <p>Where does an Appraiser measure?</p> <p>What is Gross Living Area?</p> <p>What is Market Value?</p> <p>What is Market Price?</p> <p>What is Value?</p> <p>What is Book Value?</p> <p>What are the Four Elements of Value?</p> <p>What indicator is used to measure the National Economy?</p> <p>What is the principle tool used to measure inflation?</p> <p>Principle Variables of Value (know the differences)</p> <ul style="list-style-type: none"> Supply/Demand Anticipation Conformity Change Contribution Increasing/Diminishing Returns Highest & Best Use Substitution Twin Principle – <p>Progression/Regression</p> <ul style="list-style-type: none"> Plottage Value/Assemblage <p>What is GRM?</p> <p>What is GIM?</p> <p>What are the three approaches of value used by an Appraiser?</p> <p>What approach is best suited</p>	
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<p>determining the value of land?</p> <p>What approach is best suited when determining the value of an office building?</p> <p>What approach is best suited when determining the value of a library?</p> <p>What factors assist with the value of an investment property?</p> <p>What is the Rate of Return?</p> <p>What formula is used when taking into account the monthly rents?</p> <p>What formula is used when taking into account the annual rent?</p> <p>What is deferred maintenance?</p> <p>Reproduction will give you a _____?</p> <p>Replacement will give you property with _____?</p> <p>What are the three steps used in determining the cost approach?</p> <p>What is depreciation?</p> <p>What method is used when determining depreciation?</p> <p>What is economic life?</p> <p>What is effective age?</p> <p>What is Functional Obsolescence?</p> <p>What is External Obsolescence?</p> <p>What is Straight Line Depreciation</p> <p>What is Correlation or Reconciliation?</p>	
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Property Valuation Quiz

<p>1. When conducting an appraisal John depreciated all of the following except:</p> <ul style="list-style-type: none"> A. Age of the house. B. Condition of the bath. C. Age of the land. D. Age of the kitchen. <p>2. The economic life of a property is known as:</p> <ul style="list-style-type: none"> A. Age of the property. B. The number of years remaining on the loan. C. The estimate of time for required renovations. D. The time period remaining for the profitable use of the property. <p>3. A building that possesses an old fashioned heating system would have:</p> <ul style="list-style-type: none"> A. Functional Obsolescence B. Economic Obsolescence C. Deterioration D. Depreciation <p>4. When appraising an office complex, which method of appraising would be the best approach for an appraiser to use?</p> <ul style="list-style-type: none"> A. Cost Approach B. Income Approach C. Comparison Approach D. The Mixed Commercial Approach 	<p>5. Which of the following is not an element of value?</p> <ul style="list-style-type: none"> A. Demand B. Desire C. Utility D. Scarcity <p>6. When a contractor creates a reproduction of a property it is known as a:</p> <ul style="list-style-type: none"> A. Replacement B. Reproduction C. Replica D. Utility <p>7. A replacement of a property creates a property that boasts:</p> <ul style="list-style-type: none"> A. Same Utility B. Cost Value C. Transferability D. Security <p>8. A rate of return expected when investing in a property is known as:</p> <ul style="list-style-type: none"> A. Equity B. Plottage Value C. Capitalization Rate D. Gross Rent Multiplier

9. When conducting an appraisal the appraiser places a value to the following pair:

- A. Kitchen/Bath
- B. Bedroom/Living Room
- C. Building/Land
- D. Yard/Bedrooms

10. A homeowner improves their property by enlarging the kitchen. Which principle variable best describes their intention?

- A. Change
- B. Contribution
- C. Anticipation
- D. Supply and Demand

11. Two properties with similar characteristics are being offered for sale. One house is being offered at \$479,000, while the other is being offered at \$450,000. The property at \$450,000 is receiving greater attention. Which principle variable best describes this situation?

- A. Highest and Best Use
- B. Conformity
- C. Change
- D. Substitution

12. The city of Desire has enacted a rent control bill. Which of the following forces might have an impact on the value of the property?

- A. Social
- B. Economic
- C. Governmental
- D. Physical

13. John purchased a single-family property. The actual price paid for the house is known as the:

- A. Market Value
- B. Market Price
- C. Assessed Value
- D. Ad Valorem

14. When conducting an appraisal on a property with a VA loan, the appraiser will prepare:

- A. A Comparative Market Analysis.
- B. A Certificate of Appraising.
- C. A Certificate of Reasonable Value.
- D. A Competitive Market Analysis.

15. When a Certificate of Reasonable Value concludes that a property value is less than the purchase price the buyer has all of the following options except:

- A. Ask the seller to reduce the selling price.
- B. Decide not to purchase the property.
- C. Pay the difference in cash.
- D. Force the seller to pay the difference.

16. The highest price an informed seller is willing to accept and an informed buyer is willing to pay is:

- A. Market Price
- B. Market Value
- C. Assessed Value
- D. Utility

17. When an appraiser values a library, they would use the following approach:

- A. Sales Comparison
- B. Market Approach
- C. Commercial Approach
- D. Cost Approach

18. In the absence of a formal appraisal, a real estate agent would:

- A. Conduct a survey.
- B. Review current property listings.
- C. Prepare a competitive market analysis.
- D. Conduct an appraisal.

19. When determining the value of land, which approach might an appraiser find most suitable?

- A. Cost Approach
- B. Market Approach
- C. Income Approach
- D. Land-Value Approach

20. The most widely used method to appraise residential property is the:

- A. Market Comparison Approach
- B. Cost Approach
- C. Income Approach
- D. Net Income Approach

21. Which of the following is not an approach to value utilized by an appraiser?

- A. Cost Approach
- B. Replacement Approach
- C. Income Approach
- D. Market Approach

22. Which of the following is not a method utilized to estimate the cost of replacing a property?

- A. Comparative Unit Method
- B. Quantity Survey Method
- C. Competitive Unit Method
- D. Unit in Place Method

23. Which of the following is not a type of depreciation considered by an appraiser?

- A. Physical Depreciation
- B. Functional Obsolescence
- C. Economic Obsolescence
- D. Economic Recovery

24. John purchased a property in 2000. The neighbors on both sides of him have houses in disrepair and yards full of debris. John's property suffers from:

- A. Physical Depreciation
- B. Functional Obsolescence
- C. Economic Obsolescence
- D. External Deterioration

<p>25. When two lots are combined together to form a larger parcel, which variable best describes the situation?</p> <p>A. Plottage B. Assemblage C. Highest and Best Use D. Change</p> <p>26. When measuring a property, the appraiser looks for the:</p> <p>A. Square Footage B. Gross Living Area C. URAR D. Certificate of Reasonable Value</p> <p>27. An appraiser concludes an appraisal at the :</p> <p>A. Point of Completion B. Point of Beginning C. Point of Value D. Benchmark</p> <p>28. Properties are desirable in the Oak Hill Neighborhood. There is little turnover in the community and prices remain strong. Which element of value is a key factor?</p> <p>A. Transferability B. Demand C. Scarcity D. Utility</p>	<p>29. Which of the following is most common format used when preparing a residential appraisal?</p> <p>A. USPAP B. BPO C. CMA D. URAR</p> <p>30. When an improvement to a property brings in a return greater than the cost of the improvement, it is called:</p> <p>A. A Principle of Change B. A Principle of Contribution C. An Increasing Return D. Assemblage</p> <p>31. When there are scores of properties for sale in a town, prices may deflate. This principle is known as:</p> <p>A. Decreasing Return B. Substitution C. Supply and Demand D. Anticipation</p> <p style="text-align: center;">Appraisal Answers</p> <p>1. C 2. D 3. A 4. B 5. B</p> <p>6. C 7. A 8. C 9. C 10. B</p> <p>11. D 12. C 13. B 14. C 15. D</p> <p>16. B 17. D 18. C 19. B 20. A</p> <p>21. B 22. C 23. D 24. C 25. A</p> <p>26. B 27. B 28. C 29. D 30. C</p> <p>31. C</p>
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Massachusetts Academy of Real Estate

Massachusetts Laws Rules & Regulations Sample Test

1. Broker Joe sold a property and the closing took place today. When does Broker Joe have to remit the escrow deposit?

- A. At the closing.
- B. The day before the closing.
- C. Within 7 days from the closing.
- D. Within a reasonable time.

2. When is a broker required to disclose his/her relationship with a prospective buyer?

- A. Before taking an offer.
- B. At the signing of the purchase and sale contract.
- C. At the first personal meeting to discuss properties.
- D. At the signing of the offer.

3. How long is the Broker required to retain an agency disclosure form signed by a prospective buyer?

- A. 2 years
- B. 1 year
- C. 6 months
- D. 3 years

4. Documentary tax stamps amount to:

- A. \$2.28 per \$500 of the sale.
- B. \$2.56 per \$1,000 of the sale.
- C. \$4.56 per \$500 of the sale.
- D. \$15.00 per \$1,000 of the sale.

5. Which party pays for the Documentary stamp tax?

- A. Buyer
- B. Lender
- C. Seller
- D. Seller/Buyer jointly

6. A listing contract that allows the listing office to be paid a commission equal to the difference between the selling price and the desired selling price is known as:

- A. Triple Net Agreement
- B. Balloon Listing
- C. Net Listing
- D. Exclusive Listing

7. John went to work for ABC Realty Group. There are several employees, agents and managers at the firm. Who would be responsible for the office?

- A. Office Manager
- B. Associate Broker
- C. Employing Broker
- D. Office Broker

8. Broker Jane listed a property for sale. The basement was full of debris and Jane had a difficult time viewing the walls. Two weeks later Jane found a buyer who made an offer that was accepted. A week before the closing, Jane noticed that the basement wall had a crack. In this case Jane must:

- A. Tell the seller about the crack once it is noticed.
- B. Tell the bank about the crack once it is noticed.
- C. Say nothing about the crack once it is noticed.
- D. Tell the buyer about the crack once it is noticed.

9. Properties that refer to ghosts, homicides and suicides are known as:

- A. Supernatural Properties
- B. Paranormal Properties
- C. Psychologically Impacted/Stigmatized Properties
- D. Haunted Properties

10. John had a one year lease on a one bedroom condominium. He gave the owner first/last months rent in addition to a half month security deposit. He left the apartment after one year. John's security deposit should be returned with interest within:

- A. 10 days
- B. 15 days
- C. 30 days
- D. 7 days

11. A Real Estate Agent renews their license:

- A. Biannually
- B. Triannually
- C. Annually
- D. Biennially

12. If an agent did the following, they would automatically lose their license:

- A. Hired an unlicensed agent.
- B. Stole deposit money.
- C. Found guilty of violating Fair Housing Laws by MCAD.
- D. Took cash from the buyer.

13. A Broker had a complaint issued against him/her. How much time must the board give the agent to respond to the complaint?

- A. 30 days
- B. 7 days
- C. 20 days
- D. 10 days

14. The seller is required to pay a fee to record a deed. This fee is called:

- A. Documentary stamps
- B. Excise fee
- C. Conveyancing stamps
- D. All of the above

15. An agent received a notice of suspension by the Division of Professional Licensure. The agent can appeal the decision by:

- A. Asking for a new hearing.
- B. Appealing to the Supreme Court.
- C. Appealing to Superior Court.
- D. Appealing to the Legislature.

16. If an agent loses their license they must turn it over to the state within:

- A. 10 days
- B. 7 days
- C. 30 days
- D. 3 days

17. Massachusetts Real Estate laws are originated and enacted by:

- A. The Governor
- B. The Division of Professional Licensure
- C. The State Legislature
- D. The Massachusetts Association of Realtors

18. Real Estate laws are known as:

- A. Governing ordinances
- B. Police Power
- C. Promulgated ordinances
- D. Police enactments

19. The Real Estate Board consists of how many members?

- A. 6 members
- B. 3 members
- C. 5 members
- D. 7 members

20. The Real Estate Board meets a minimum of ____ times a year?

- A. 4 times
- B. 3 times
- C. 8 times
- D. 6 times

21. The purpose of licensing laws is to:

- A. Regulate Brokers
- B. Regulate Deposits
- C. Regulate Real Estate Laws
- D. Protect the Public

22. The term served by a member of the Real Estate Board is:

- A. 1 year
- B. 3 years
- C. 4 years
- D. 5 years

23. Members of the Real Estate Board are appointed by the:

- A. Division of Professional Licensure
- B. State Legislature
- C. Massachusetts Association of Realtors
- D. Governor

24. Brenda saw an attractive listing in the newspaper. The ad indicated the property was a three bedroom home with two baths. The ad also indicated that interested parties should call 555-1212 or send email inquiries to purchasethishouse.com. When Brenda called she learned that the property was being offered for sale by a real estate company. This is an example of:

- A. Advertising Superior
- B. Soliciting Respondents
- C. Blind Advertising
- D. Commingled Advertising

25. Real Estate laws are promulgated by the:

- A. Board of Registration of Brokers and Salespersons
- B. State Legislature
- C. Massachusetts Association of Realtors
- D. State Auditor

26. A salesperson may collect commissions from:

- A. The seller
- B. Listing Agents
- C. Employing Broker
- D. Listing Office

27. Who must obtain a Bond in order to conduct Real Estate transactions?

- A. Employing Brokers
- B. Employing Salespersons
- C. Listing Brokers
- D. All Brokers

28. A bond issued by a surety for a Real Estate Broker must be in the amount of:

- A. \$5,000
- B. \$3,000
- C. \$15,000
- D. \$10,000

29. Broker Joe was found guilty of unfaithful accounting of funds he was holding on behalf of the buyer. If a claim is filed against Broker Joe's bond, who receives the \$5,000?

- A. The seller
- B. The buyer
- C. The Massachusetts Association of Realtors
- D. The Commonwealth of Massachusetts

30. If the seller has a septic system, they must bring the following document to the closing:

- A. Declaration of Septic
- B. V A Notification
- C. Title V Certificate
- D. Buyer Acknowledgement Notice

31. It is the seller's responsibility to bring the following items to the closing:

- A. Deed
- B. Title V Certificate
- C. Smoke Detector Certificate
- D. All of the Above

32. Broker Joe had a complaint issued against him. Which of the following is true?

- A. He is entitled to cross examine witnesses.
- B. He is entitled to an attorney.
- C. He is entitled to expenses incurred if found innocent.
- D. He is entitled to the \$5,000 to defray costs.

33. The Chairperson for the Real Estate Board is selected by the:

- A. Board of Registration members
- B. The Legislature
- C. The Governor
- D. Massachusetts Association of Realtors

34. If a Rental Agent charges a fee to prospective tenants, the agent must:

- A. Provide the seller with a list of all names of prospective tenants.
- B. Provide the buyer with a fee disclosure form.
- C. Provide the seller with a fee disclosure form.
- D. Provide the state with copies of all paperwork.

35. An individual who is purchasing a commercial property is requesting information about the environmental condition of the property. He/She would be looking for:

- A. Title V Certificate
- B. Lead Paint Disclosure Form
- C. 21 E Certificate
- D. Seller Disclosure Statement

36. John listed a property for sale. The seller did not fill out a property disclosure statement. Two weeks after John began marketing the property the seller told him that a murder occurred in the house six months ago. In this case, John:

- A. Must disclose the murder to prospective buyers.
- B. Must disclose the murder to the real estate agents in his office.
- C. Is not allowed to disclose the information to the buyer unless specifically asked about it.
- D. Is not allowed to disclose the information at all.

37. The seller of a property is required to bring the following to the passing of papers:

- A. A Certification of Title signed by the Registrar of Deeds.
- B. A Smoke Detector Certificate signed by the local fire chief.
- C. A Mortgage Discharge signed by the mortgagee.
- D. A Bill of Sale for the property.

38. A buyer asked a real estate agent if there is ledge under a property. The agent lets the buyer know that several houses in the area were built on ledge. In this case, the buyer may want to have what type of test?

- A. Mold test
- B. Radon test
- C. Ledge test
- D. Ore test

39. John has offered property for sale that is not located within the Commonwealth of Massachusetts. Which of the following situations are not true?

- A. He must obtain approval from the board before offering the property for sale.
- B. He must give prospective buyers a copy of a report published by the board.
- C. He must retain a receipt indicating he gave the buyer a report.
- D. He must pay an agent located within the state that the property is located a commission for showings.

40. Jane is offering property for sale located outside the Commonwealth of Massachusetts. She received a sales contract from a buyer and forwarded to them a copy of the report published by the board. In this situation, Jane:

- A. Conducted the transaction appropriately because she gave them a copy of the report.
- B. Acted inappropriately because she gave them a copy of the report.
- C. Acted inappropriately because she received a contract before giving them a copy of the report.
- D. Will lose her license if acted inappropriately.

41. A Broker could lose their license for the following reasons:

- A. Receiving a commission from the seller and buyer without the consent and knowledge of both parties.
- B. Giving an unlicensed friend a referral fee.
- C. Not having an active bond.
- D. All of the above.

42. If John, a sole proprietor, passed away, which of the following situations would be valid regarding a temporary license?

- A. The licensee must have real estate experience.
- B. The licensee must be a relative of John.
- C. The licensee can be anyone designated by the board.
- D. The licensee must pass the state test within 6 months.

43. James is operating as a salesperson without a license. He obtained his license before the closing took place. In this situation, who is owed a commission for the sale?

- A. James directly.
- B. Efficient and procuring cause of the sale.
- C. No one is due a commission.
- D. The broker.

44. In this situation, who does not need a real estate license?

- A. A rental agent.
- B. Attorney-in-fact.
- C. A listing broker.
- D. A sub-agent.

45. The Massachusetts Housing Finance Agency (MHFA) (known as Mass Housing) does the following:

- A. Assists low income buyers purchase homes.
- B. Provides financing to first-time homebuyers.
- C. Gives loans to veterans.
- D. Sells homes to first-time homebuyers.

46. When the Governor signs a law that effects the real estate profession, the change is in effect:

- A. Until the next legislative session.
- B. Until vetoed by the legislative.
- C. For five years, then it must be renewed.
- D. It is a permanent part of the law unless changed by the legislative.

47. Real Estate Licensing law prohibits one of the following:

- A. Charging 21% for a commission.
- B. Using the buyer's downpayment to defray costs.
- C. Representing the seller and buyer.
- D. Paying referral fees.

48. The Real Estate Board meets at the following location four times a year:

- A. 239 Causeway Street, Boston.
- B. Massachusetts Association of Realtors Headquarters.
- C. Wherever they desire.
- D. The State House.

49. The chairperson of the board is selected:

- A. Biennially.
- B. Biannually.
- C. Annually.
- D. By the Governor.

50. Broker Jane is the owner of a real estate office. She hires Broker Judy to work at the office. The Real Estate Board needs to be aware of the following information:

- A. The Errors and Emissions Company for the two Brokers.
- B. The home addresses of Jane and Judy.
- C. The compensation agreement between Jane and Judy.
- D. The business relationship between Jane and Judy.

51. Broker Joe could be subject to disciplinary action for failure to:

- A. Inform the board about the real estate agents working in his office.
- B. Place deposit funds in an escrow account.
- C. Place a copy of real estate licenses for the agents working in his office in a conspicuous place.
- D. All of the above.

52. The reason for a broker to maintain an escrow account would be:

- A. To protect the deposit.
- B. To guarantee the agent's commission.
- C. To protect the seller and buyer.
- D. To follow a state mandated law.

53. Joe Smith, the employing broker with ABC Realty, and Jim Smith, a sales agent within the office, come to an agreement with Joe Sales to sell his property. Which situation is correct?

- A. The seller decides the commission.
- B. The commission is set by the National Association of Realtors.
- C. The agent decides the commission.
- D. The commission is agreed upon by all the parties involved.

54. If yourself and three of your friends decide to open a Realty Brokerage Corporation, the following must occur:

- A. You must obtain a bond for \$10,000.
- B. You must designate each person as a member of the Board of Directors.
- C. You must get a broker's license in the corporation name.
- D. You must inform all potential sellers and buyers about the ownership status.

55. If yourself and three of your friends opened a Realty Brokerage Corporation, how many people need to have a broker's license in their own name?

- A. 4
- B. 3
- C. 2
- D. 1

56. If an agent is found guilty of violating Fair Housing laws by the Massachusetts Commission Against Discrimination, the Board would:

- A. Conduct a hearing to determine a course of action.
- B. Begin an investigation to determine license status.
- C. Suspend the licensee for 60 days.
- D. Suspend the licensee for 90 days.

57. Which of the following violations result in an automatic loss of a real estate license?

- A. Commingling of funds.
- B. Hiring an unlicensed agent.
- C. Not sharing commissions equally.
- D. A final finding by MCAD.

58. If a non-resident desired to practice real estate in Massachusetts, they must meet which of the following obligations?

- A. Practice real estate for 2,000 hours before applying for a license.
- B. File a Power of Attorney with the State Board.
- C. Obtain a broker's license within 30 days.
- D. File for a temporary license.

59. Broker Sue would like to offer property for sale that is not located in Massachusetts. Which of the following is not a requirement?

- A. The State Board will hold a public hearing to decide whether the offering will be allowed.
- B. Broker Sue must apply for permission to market the property.
- C. The state will charge Broker Sue for the cost to inspect the property.
- D. Broker Sue will pay for the cost of a publication by the Commonwealth of Massachusetts that will approve the offering.

60. James Smith is the sole proprietor of his business. He passed away after 20 years in business. Which situation would be true?

- A. Because James died as a sole proprietor, his business no longer exists.
- B. The state can grant a temporary license to someone to continue to operate up to one year.
- C. The state will allow the business to continue if another broker worked in the office.
- D. The state will issue a temporary license to continue to operate for up to two years.

61. Which of the following situations would be true about a temporary licensee?

- A. The temporary licensee must have one year experience since they are now managing a real estate company.
- B. The temporary licensee must be related to the former owner.
- C. The temporary licensee can be anyone as long as approved by the state board.
- D. The temporary licensee can renew the license.

62. In a Real Estate advertisement, a broker is required to:

- A. Advertise the purchase price.
- B. Disclose the APR in the ad.
- C. Indicate the number of bedrooms.
- D. Indicate the company name in the ad.

63. Property taxes that are due semi-annually would be due on:

- A. May 1st/November 1st
- B. November 1st/April 1st
- C. January 1st/July 1st
- D. January 1st/June 1st

64. Property taxes that are due quarterly are due on:

- A. Jan 1st/April 1st/
June 1st/Sept. 1st
- B. Aug 1st/Nov 1st/
Feb 1st/Apr 1st
- C. Nov 1st/Feb 1st/
May 1st/Aug 1st
- D. July 1st/Nov 1st/
Mar 1st/July 1st

65. Sandy received her annual tax bill and believes it is too much money. Sandy can do the following:

- A. Apply for an abatement and then pay the taxes.
- B. Pay the taxes and then apply for an abatement.
- C. Pay half the taxes up front before an abatement hearing.
- D. Pay nothing until the abatement status is posted.

66. A person who works in a real estate office as an unlicensed assistant can do the following:

- A. Put advertisements in the newspaper.
- B. Take an apartment listing from a property owner.
- C. Conduct an open house.
- D. Provide information to buyers over the telephone.

67. For what purpose does the state mandate a non-resident file a Power of Attorney with the Real Estate Board?

- A. To inform the board about the owner of a property.
- B. In case of an accident at the property.
- C. To provide the board with legal notice involving litigation to the property.
- D. To provide the board with knowledge regarding the buyers.

68. Broker Jane and Agent Jim are real estate professionals in Boston. Broker Jane is the listing agent of a property, and Agent Jim is the selling agent for that property. Agent Jim has not met the seller of the property, and Broker Jane has not met the buyer of the property. There are not any contractual agreements between Agent Jim and the buyer. What is the relationship status?

- A. Broker Jane is a sub-agent of Agent Jim.
- B. Broker Jane and Agent Jim represent the seller.
- C. Broker Jane and Agent Jim represent the buyer and seller.
- D. Agent Jim represents the buyer.

69. When is an agent required to provide a potential buyer with an agency disclosure form?

- A. When they first meet
- B. When the buyer makes an offer on a property
- C. When they first meet to discuss specific properties
- D. At the open house

70. An agent who is writing up an offer on a property represented the seller. The buyer requested a list of home inspectors. In this situation, the agent can:

- A. Provide a few names because the buyer asked.
- B. Provide a list of inspectors located in the town.
- C. Provide a list of the top rated inspectors.
- D. Provide a list that includes every home inspector in the Commonwealth.

71. Is a buyer of a two-family home built prior to 1978 allowed to waive the lead paint inspection?

- A. No, because it was built before 1978, the test is mandatory.
- B. Yes, the buyer is not required to test for lead.
- C. Yes, as long as the buyer knows it is a requirement to remove the lead.
- D. No, because if lead is found the seller is required to remove it.

72. The form required to be signed by a seller, agent and buyer regarding lead paint is:

- A. Property Transfer Notification Form.
- B. Property Transfer Nullification Fact.
- C. Property Transference Notice.
- D. Property Transfer Notification Fact.

73. A Real Estate Agent is required to inform a prospective buyer about the possibility of lead based materials in properties built before:

- A. 1987
- B. 1968
- C. 1988
- D. 1978

74. An agent taking an offer on a property must provide the buyer with the following document before writing up the offer.

- A. Deed to the house
- B. Tax bill for the property
- C. Your Rights as a Consumer Bulletin
- D. Your Property Rights Bulletin by HUD

75. How many days must a prospective buyer be given to conduct a lead paint inspection?

- A. 7 days
- B. 14 days
- C. 30 days
- D. 10 days

76. Massachusetts Consumer Protection Laws are aimed at preventing deceptive practices and providing full disclosure of information. The penalty for a violation could be triple damages. This law is known as:

- A. Title V
- B. 183A
- C. 93A
- D. Title 10

77. How many inspectors may a Buyer Agent refer:

- A. 0
- B. 3
- C. The entire list of inspectors.
- D. There is no requirement

78. If an agent is earning a commission from both the buyer and seller without their prior knowledge and consent, it is known as:

- A. Disclosed Dual Agency.
- B. Commingling.
- C. By-Agency.
- D. Undisclosed Dual Agency.

79. Agent Joe is selling a property. The buyers backed out of the deal due to defect found during the home inspection. In this situation, Agent Joe must:

- A. Tell the sellers to fix the defects.
- B. Disclose to future buyers the defects found.
- C. Do nothing because the buyer must have their own inspection.
- D. Do nothing because they represent the seller.

80. Joe is purchasing a two-family property. The unit he intends to rent has lead paint. In this case, which is true?

- A. Joe can turn down prospective tenants with children because he owner occupies the property.
- B. Joe cannot turn someone away because they have children.
- C. Joe must not rent the apartment until the lead is removed.
- D. Joe must sue the seller for not telling him about the lead.

81. If an agent is representing a seller and a buyer with permission, the agent would be a:

- A. Joint Agent.
- B. Undisclosed Dual Agent.
- C. Dual Agent.
- D. Exclusive Agent.

Answer Key

1. D
2. C
3. D
4. A
5. C
6. C
7. C
8. D
9. C
10. C
11. D
12. C
13. D

14. D
15. C
16. B
17. C
18. B
19. C
20. A
21. D
22. D
23. D
24. C
25. A
26. C

27. D
28. A
29. D
30. C
31. D
32. A
33. C
34. B
35. C
36. C
37. B
38. B

39. D
40. C
41. D
42. C
43. C
44. B
45. B
46. D
47. B
48. C
49. D

50. D
51. D
52. C
53. D
54. C
55. D
56. C
57. D
58. B
59. C
60. B

61. C
62. D
63. A
64. C
65. B
66. A
67. C
68. B
69. C

70. D
71. B
72. A
73. D
74. C
75. D
76. C
77. D
78. D
79. B
80. B
81. C

Massachusetts Academy of Real Estate

General Practice Exam

Sample General Test

1. A lease that calls for increases in rent at specific periods of time is known as a:

- A. Percentage Lease.
- B. Estate for years.
- C. Graduated Lease.
- D. Adjustable Lease.

2. John, a property manager, will work in the best interest of:

- A. His company.
- B. The tenant.
- C. The property owner.
- D. His own best interests.

3. If a parcel of property is abandoned, the state could take ownership of the property via:

- A. Eminent Domain.
- B. Condemnation.
- C. Escheat
- D. Taxation.

4. If John signed a contract to sell his property to Sandra and changed his mind two days before the closing, Sandra would have the following option:

- A. Sue for Adverse Possession
- B. Sue for Unlawful Detainer
- C. Sue for Acceleration of Sale
- D. Sue for Specific Performance

5. If a mortgage broker charged John an interest rate that was higher than the law allowed, it would be referred to as:

- A. Mortgage Gouging.
- B. Usury.
- C. Stepped Up Mortgage.
- D. Acceleration Mortgage.

6. The listing price of a property is determined by the:

- A. Employing Broker.
- B. Salesperson.
- C. Owner.
- D. Real Estate Board.

7. If we utilize legal descriptions to outline a property by a series of directions and distances from a specific point of beginning, we are referring to:

- A. Government Rectangular Survey.
- B. Metes and Bounds.
- C. Lot and Block System.
- D. Base Lines and Meridians.

8. A holdover tenant does the following:

- A. Renews a lease
- B. Becomes a TAW
- C. Remains in possession of a rental unit without permission
- D. Creates an estate for years

9. If an appraiser is utilizing the income approach to determine value, the appraiser is looking at which type of property?

- A. A cooperative apartment unit
- B. A townhouse
- C. An office building
- D. A vacant parcel of land

10. John has a title insurance policy that protects against losses that:

- A. Are caused by unrecorded easements that the policy does not recognize.
- B. Are caused by recorded easements that the policy does not recognize.
- C. Are caused by changes in local zoning ordinances.
- D. Are caused by an encumbrance to which the policy was not aware of.

11. When we refer to “time is of the essence”, we are indicating:

- A. Within one business day
- B. ASAP
- C. Within one calendar day
- D. Within seven business days

12. Susan is a lessee who is relieved from her obligation to furnish rental payments under which circumstance?

- A. She abandoned her lease
- B. She filed for personal bankruptcy
- C. She constructively evicts
- D. She files for unlawful detainer

13. A land owner leased his property to a tenant that utilized the property for a farm. The owner sold the property in the month of August. In this case, at the time of the closing, the crops belongs to:

- A. The original owner since it is his land.
- B. The tenant because they are emblements.
- C. The new owner because he purchased the land.
- D. The bank since they put up money for the purchase.

14. John has a loan that allows the interest rate to fluctuate. He has what type of loan?

- A. A reverse annuity mortgage
- B. An adjustable rate mortgage
- C. A participation mortgage
- D. A compound interest mortgage

15. If an appraiser is using the cost approach to determine the value of a single family home, the appraiser would do the following:

- A. Establish the net operating income
- B. Establish the replacement cost and subtract depreciation
- C. Establish a list of comparable sales
- D. Determine the income generated minus depreciation

16. If we are referring to the sale of securities, we are referring to:

- A. Stocks and cooperative.
- B. A pool of rental properties.
- C. Vacation properties.
- D. High rise buildings.

17. The owner of a single family house will itemize their deductions when preparing their income taxes. The following can be deducted:

- A. Repairs incurred to the property
- B. Depreciation of the property
- C. Principal paid on the loan
- D. Interest paid on the loan

18. A property manager will determine the net operating income of a property by taking the effective gross income and subtracting. . . .

- A. Annual gross income.
- B. Operating costs.
- C. Debt service
- D. Effective gross costs.

19. The Federal Fair Housing Act of 1988 would allow for the following individual to obtain familial status exemption:

- A. A 18 year old single person
- B. A 63 year old retired police officer
- C. A 52 year old retired government office worker
- D. A 39 year old stockbroker

20. A verbal agreement regarding the sale of real property is:

- A. Valid under oral contracts.
- B. Standard at the offer stage.
- C. Not enforceable in a court of law.
- D. Binding after arbitration.

21. If John donates a parcel of land to his town to be used as a park, it would be called:

- A. Eminent Domain.
- B. Adverse Possession.
- C. Dedication
- D. Escheat.

22. A real estate broker could be known as:

- A. Secret Agent
- B. Binding Agent
- C. Special Agent
- D. Office Agent

23. Under Regulation Z, a lender is required to provide the borrower with the following document:

- A. Contract for Deed
- B. Statement of Interest
- C. Mortgage Schedule
- D. Disclosure Statement

24. If an appraiser is utilizing the sales comparison approach, which records may be used to assist in determining value of a subject property?

- A. Current listings
- B. Distress Sales
- C. Multiple listing records
- D. Foreclosure and estate sales

25. The process utilized to retain a property being lost through the foreclosure process is known as:

- A. Equity of Inaction.
- B. Equity of Redemption.
- C. Equity of Acceleration.
- D. Equity of Restriction.

26. If a town allows a property to be utilized in a manner inconsistent with current zoning regulations because the use existed prior to zoning charges, it would be known as:

- A. Variance.
- B. Existing Use.
- C. Nonconforming Use.
- D. Special Use.

27. A condominium development has a tennis and bocce court. These enhancements would be known as:

- A. Special assessed enhancements.
- B. Defeasible interests.
- C. Common elements.
- D. Special limited common elements.

28. If the value of a property is decreasing due to the presence of a neighboring waste disposal site, it is known as:

- A. Straight line depreciation.
- B. Economic obsolescence.
- C. Actual deterioration
- D. Functional obsolescence.

29. If a new buyer assumed an existing loan from the previous owner, the lender may accelerate the loan due to the following mortgage clause:

- A. Due On Sale Clause
- B. Defeasance Clause
- C. Prepayment Penalty Clause
- D. Equity of Redemption Clause

30. When a salesperson arranges to sell a property, they are establishing a listing contract between:

- A. Broker and seller.
- B. Seller and buyer.
- C. Salesperson and seller.
- D. Salesperson and buyer.

31. An owner of a cooperative apartment and an owner of a condominium would:

- A. Receive a unit deed
- B. Receive an annual property tax bill
- C. Receive an assessment notice
- D. Receive ownership status of real property

32. Which property would be appraised by using the sales comparison approach?

- A. A commercial strip center
- B. A recently closed house of worship
- C. A fifty unit apartment complex
- D. A modern single family home

33. Braintree Luxury Condominiums is a desirable place to purchase. The complex has a gym, tennis courts and a swimming pool. These amenities could be known as:

- A. Limited common elements.
- B. Fee simple ownership elements.
- C. Leasehold elements.
- D. Common elements.

34. A retail chain leases property from Jane Jones to build a new store. The retail chain has what type of interest in the property?

- A. Reversionary interest
- B. A sale/lease back interest
- C. A packaged interest
- D. A leasehold interest

35. Joseph, a homeowner, plans to go to Europe for a year. He gave the rental listing for his apartment to ABC Real Estate and asked the agent he hired to only rent to a white person. In this case:

- A. It would be okay to limit the rental because he is returning within a year.
- B. It would be okay because the property was owner-occupied.
- C. It would be a violation of the law because it violates the Federal Fair Housing Act.
- D. It would be a violation of the law because he needs to obtain a waiver.

36. The lender requires the buyer to purchase title insurance when they close on a property. This title insurance covers:

- A. The borrower if unrecorded liens are discovered.
- B. The lender if the borrower fails to make the scheduled payments.
- C. The borrower if he/she fails to make the scheduled payments.
- D. The lender if existing title defects were not discovered.

37. The 1988 Federal Fair Housing Act would recognize the following situations as a handicapped or disabled status:

- A. Addiction to illegal stimulants
- B. Inability to qualify for government backed programs
- C. Possessing an intellectual impairment that hinders major life functions
- D. Possessing a background from poverty

38. If an owner was transferring an uncertain interest in a property, they would want to use the following deed:

- A. Quitclaim Deed
- B. Uncertain Grant Deed
- C. Warranty Deed
- D. Special Warranty Deed

39. The financial figure that accounts for the price that a willing, informed buyer would pay and a willing, informed seller would accept is known as:

- A. The market value.
- B. The assessed value.
- C. The purchase value.
- D. The cost value.

40. The lessee of an office unit pays a fixed monthly rent plus expenses of insurance, utilities and taxes. They have the following lease:

- A. Commercial lease
- B. Office lease
- C. Gross lease
- D. Net lease

41. John owns an apartment building with 200 units of housing. There are 16 empty units at this time. The vacancy rate for the building is:

- A. 84%
- B. 12.5%
- C. 8%
- D. 68%

42. At a closing, the seller would pay the:

- A. Outstanding escrow.
- B. Mandatory title insurance policy.
- C. Title search fee.
- D. Real estate commission.

43. Who decides the amount of earnest money that a buyer provides when purchasing property?

- A. The real estate agent
- B. The anti-trust determination
- C. The legislature
- D. The seller and buyer

44. If a buyer took over a seller's existing loan, the following is true:

- A. The seller is no longer responsible for the loan.
- B. The seller is still responsible for the loan payments.
- C. The buyer is solely responsible for the prior loan agreement.
- D. The buyer may mortgage the property as the new owner with the new mortgage gaining priority status.

45. John purchased a property for \$375,000. He made a \$50,000 downpayment. The lender placed a lien against the property for \$325,000. What term best describes the difference between the \$375,000 and the \$325,000?

- A. The cash value
- B. The LTV ratio
- C. The downpayment
- D. The equity

46. John and Jane purchased a home as tenants in common. If John passed away, which situation would be true?

- A. Jane becomes the sole owner of the property in fee simple.
- B. Jane now owns the property as a tenant by entirety.
- C. Jane has a life estate interest in John's share.
- D. Jane retains her interest in the property, and John's share is given to his estate.

47. Contracts must contain certain elements to be valid and enforceable. Which of the following is a key element?

- A. Contains a land description of the property
- B. Contains a habendum clause
- C. Contain the signature of the buyer
- D. Contains a fee simple recording

48. If we are referring to an encroachment issue, we would be referring to:

- A. The R.O.W. that utility companies possess to cross over land
- B. The right that one party has to cross over land that belongs to another
- C. The right to use property that belongs to another for a limited period of time
- D. A garage built by a neighbor that crosses over boundary lines between two properties

49. When referring to the Federal National Mortgage Association, we are referring to:

- A. An organization that guarantees mortgages.
- B. An organization that insures mortgages.
- C. An organization that purchases mortgages.
- D. An organization that set mortgage rates.

50. If Sue pledged her 60" high-definition television and Bose stereo system, along with her condominium, as security for a loan, what type of mortgage would she provide:

- A. Partial Release Mortgage
- B. Package Mortgage
- C. Chattel Mortgage
- D. Blanket Mortgage

51. Broker Jane and agent Jim are real estate professionals in Boston. Broker Jane is the listing agent of a property, and agent Jim is the selling agent for that property. Agent Jim has not met the seller of the property, and broker Jane has not met the buyer of the property. There are not any written agreements between agent Jim and the buyer. What is the relationship status?

- A. Broker Jane is a sub-agent of agent Jim.
- B. Broker Jane and agent Jim represent the seller.
- C. Broker Jane and agent Jim represent the buyer and seller.
- D. Agent Jim represents the buyer.

52. John is the owner-occupant of a two-family house. He hires a real estate agent to find him tenants. He asks the agent to locate tenants of a Catholic background. In this case, the agent should (reminder John owner-occupies the home);

- A. Take the listing and show the property to Catholics only.
- B. Take the listing but do not show the property until the owner is more flexible.
- C. Take the listing and follow the owner's direction because it is an owner-occupied two-family.
- D. Do not take the listing because it would be illegal.

53. Susan and her two sons own property equally. Susan passed away and left one third of her interest in the property to one daughter and two thirds to the other daughter. What type of ownership existed:

- A. Tenancy in Severalty
- B. Tenants by the Entirety
- C. Joint Tenants
- D. Tenants in Common

54. When referring to the income approach, which situation would be correct?

- A. It provides the greatest estimate of value.
- B. It is used when determining the value of single family properties.
- C. It determines the value based on the return of income earned.
- D. It is the most widely method used.

55. Joe purchased a property that allowed him to take over the seller's existing loan. In this situation, which would be true?

- A. The seller is relieved from their obligation to repay the original loan because a new person took over the loan.
- B. The buyer is now responsible for all loan payments, if they are foreclosed on.
- C. The seller is still obligated to pay the loan if the buyer defaulted on the loan.
- D. The buyer must pay a prepayment penalty on behalf of the seller.

56. A person with a visual impairment filed an application for a two bedroom apartment. The apartment building has a no- pet policy. The person has a seeing eye dog. In this situation:

- A. The tenant cannot rent the apartment due to the no-pet policy.
- B. The tenant must pay an increased amount for a security deposit.
- C. The tenant would have to pay for any damages incurred by the dog.
- D. The tenant must keep the dog in the backyard.

57. Which item of personal property would become part of the real estate via attachment?

- A. Personalty
- B. Appliances
- C. Emblements
- D. Fixtures

58. John, a Vietnam veteran, is entitled to which of the following if he repaid his VA loan agreement?

- A. A Release of his Certificate of Reasonable Value
- B. A Restoration of his CRV
- C. A Restoration of loan benefits
- D. A Release of his Equity of Redemption from the VA

59. Jane listed a property for sale. She is working hard to sell the property, but the seller is placing unreasonable demands on her. In this situation, Jane would:

- A. Not be able to do anything because the seller has a contract with her.
- B. Be able to give 30 days notice to the seller to find a new agent.
- C. Be able to rescind the listing agreement without consent of the owners.
- D. Be able to sue the seller to get released from the agreement.

60. Joe is purchasing a three bedroom condominium. In addition to the condominium, he is purchasing a portable generator from the seller. Which document will assist with the purchase?

- A. A wrapped together loan
- B. An option loan
- C. A Bill of Sale
- D. An Adjusted Rate Mortgage

61. At the real estate closing, the buyer would pay for the following:

- A. Deed preparation
- B. Recording Stamps
- C. Redemption Stamps
- D. Mortgage recording

62. Who decides the final commission charged by the real estate broker?

- A. The State Real Estate Board
- B. The Massachusetts Association of Realtor
- C. The broker and principal
- D. The Multiple Listing Board

63. John hired agent Jane to sell his property. One week after taking the listing, John told agent Jane that the basement has leaked twice during the past year, but she should not tell prospective buyers because he thinks he fixed the problem when he regraded the contour of the land around the house. In this case, agent Jane should:

- A. Not tell prospective buyers because the problem is fixed.
- B. Only tell prospective buyers who ask questions about the basement about the leak.
- C. Tell the buyers to have a meeting with the seller about issues pertaining to the house.
- D. Inform John that she must disclose the information regarding the leak.

64. The seller would be responsible for paying the following expenses at a closing:

- A. Title Insurance
- B. Excise Tax Stamps
- C. Title Search
- D. Closing Attorney's fee

65. Sam owns a single family house. Which expense can be claimed when his taxes are filed?

- A. A roof replacement
- B. Debt service
- C. Principal payments
- D. Interest payments

66. Jane took a listing for a property. She obtained a copy of the deed and noticed a few limitations regarding the use of the property. These limitations would be known as:

- A. Herediments
- B. Holographic Amendments
- C. Restrictive covenants
- D. Condemnation

67. Jane is building a shopping mall. She wants the rent due from the future tenants to reflect the income generated from the tenants operation. Which type of lease agreement will Jane be looking for?

- A. Net Lease
- B. Net Netlease
- C. Percentage Lease
- D. Package Lease

68. When we refer to the Law of Agency, which of the following best describes the situation?

- A. It establishes a written contract for people to be bound by.
- B. It does not establish guidelines.
- C. It would establish a fiduciary relationship between the broker and seller.
- B. It would refer laws established by the Commonwealth of Massachusetts.

69. A requirement under the Truth in the Lending Act would be for a lender to provide a loan applicant with a copy of:

- A. The deposit check
- B. The deed to the house
- C. The Disclosure Statement
- D. A financial analysis

70. If an existing mortgage can be placed below a mortgage to be recorded in the future, the following clause must be present in the existing mortgage:

- A. An Assignment Clause
- B. An Exchange Clause
- C. A Subordination Clause
- D. A Priority Clause

71. An agent is showing a property that has a 20 foot easement in front of the property line. The town zoning calls for a building to have a 30 foot setback from the property line. In this situation:

- A. A building can be erected 10 feet from the property line because the easement is a natural buffer.
- B. A building can be erected 30 feet from the property line because the easement has no bearing to building placement.
- C. A building cannot be built without permission from the easement owners.
- D. A building cannot be erected at all.

72. The Settlement Statement (HUD 1) is a document prepared by the closing attorney or settlement agent. This document contains the following information:

- A. The costs associated with the seller.
- B. The costs associated with the buyer.
- C. The costs associated with the seller and buyer.
- D. The costs associated with a HUD loan.

73. John purchased a home for \$500,000.00 and obtained a loan for 100% financing. Which type of loan might he have?

- A. FHA Loan
- B. First-time homebuyer
- C. Triple AAA Credit Loan
- D. VA Loan

74. Which item would not need additional disclosure information when preparing a newspaper advertisement?

- A. \$25,000 downpayment
- B. \$1,500 monthly payments
- C. 20 years to complete the loan
- D. 6.875 annual percentage rate

75. John defaulted on his lease and abandoned the property. In this case, the property manager will:

- A. Bill John for triple damages for the defaulted rent.
- B. Sue John for Constructive Eviction.
- C. Inform John that he is responsible for the payments.
- D. Keep John's security deposit and find a new tenant.

76. Suzie makes an offer on a property and provides a check for \$1,000 as an earnest deposit. The lender she applied for the loan through approved her financing. Despite this approval, Suzie decides not to purchase the property and writes to the seller informing them of her decision. In this situation, which would be true?

- A. Suzie is entitled to her \$1,000 back because she notified the bank about the situation.
- B. Suzie owes the real estate office a commission because she backed out of the deal.
- C. The seller can sue Suzie for contract breach and keep the earnest money.
- D. Suzie can sue the real estate office to get out of the deal.

77. Joe and Jean are married and took ownership as Tenants in Common. This type of ownership allows for:

- A. Unequal ownership interests
- B. Ownership in severalty
- C. Ownership for married persons
- D. Survivorship interest

Answer Key

1. C	2. C	3. C	4. D	5. B	6. C
7. B	8. C	9. C	10. D	11. B	12. C
13. B	14. B	15. B	16. B	17. D	18. B
19. B	20. C	21. C	22. C	23. D	24. C
25. B	26. C	27. C	28. B	29. A	30. A
31. C	32. D	33. D	34. D	35. C	36. D
37. C	38. A	39. A	40. D	41. C	42. D
43. D	44. B	45. D	46. D	47. C	48. D
49. C	50. B	51. B	52. D	53. D	54. C
55. C	56. C	57. D	58. C	59. C	60. C
61. D	62. C	63. D	64. B	65. D	66. C
67. C	68. C	69. C	70. C	71. B	72. C
73. D	74. D	75. C	76.C	77. A	