UNIT 1
BECOMING A LICENSED REAL ESTATE BROKER

Unit Overview

This unit begins with an explanation of who must be licensed and the qualifications necessary for obtaining a Florida broker license. The prelicense education requirement and the various ways the experience requirement can be satisfied are detailed. Post-licensing and continuing education requirements are also presented, as are exemptions from the educational requirements. Finally, the unit discusses how to obtain a broker's license through mutual recognition and contrasts real estate licensure and registration. It also covers license regulation in detail.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.
- Explain the broker applicant requirements and situations that may cause an application to be denied.
- Identify the consequences of failing to disclose a prior conviction.
- Explain the broker education and experience requirements, explain mutual recognition, and identify exceptions to the course requirement.
- Identify the post-licensing and continuing education requirements for brokers and sales associates.
- Explain how it is unlawful to perform real estate services with an expired real estate license.
- Distinguish between licensure and registration.
- Distinguish between multiple licenses and a group license and explain the provisions for issuance of multiple licenses.
- Identify the rules regarding change of address, residency, and change of business address.
- Identify real estate services that require a real estate license and exemptions from licensure.

Key Terms

compensation
Florida resident
group license
involuntary inactive status
licensure
multiple licenses
mutual recognition
nonresident
registration
voluntary inactive status

Teaching Outline

I. Licensure

A. A license is required to perform real estate services for others for compensation or anticipation of compensation

B. A broker associate holds a broker's license but chooses to register and work under the direction of another broker

C. Sales associates and broker associates are agents of their employer

D. Individuals who apply for a Florida real estate license must
1. Be at least 18 years old
2. Have a high school diploma or its equivalent
3. Possess a U.S. Social Security number
4. Be honest, truthful, and trustworthy
5. Be competent and qualified to make real estate transactions and conduct negotiations

E. Application fees
1. Applicants are assessed an application fee and a biennial license fee
2. If applicable, an unlicensed activity fee and a Real Estate Recovery Fund fee are also assessed
3. The license exam fee and the fingerprint processing fee are paid directly to the vendor that is providing the service

F. Initial license fee exemptions for three categories of applicants
1. Low-income applicants
2. Military personnel and their spouses
3. Military veterans and their spouses

G. In all cases, license applicants are required to submit
1. License fee
2. Application fee

H U.S. Social Security number
1. U.S. citizenship is not required of applicants
2. Applicants may correct a deficiency and submit an amended application or file a new application

I. Deficient license application
1. Applicant may correct deficiency and submit an amended application or file a new application

J. Denial of an application
1. Results in applicant being denied licensure
2. Requires a decision by the FREC during a Commission meeting

K. Time periods
1. 30-day period allowed after receipt of application by DBPR to check for errors and omissions and send application a notice of insufficiency
2. 90 days to inform applicant of approval or denial of the application
   21 days from the date of receipt of the order to request a hearing

II. What to Disclose on the License Application

A. Fingerprint process
1. Criminal background check
2. The applicant must disclose if ever convicted or found guilty of a crime, ever entered a plea of nolo contendere (no contest), ever charged with moral turpitude, or is currently under investigation
3. Expungement and sealed documents

B. Applicant agendas
1. Applicants who disclose one or more crimes and applicants whose fingerprint results reveal past criminal history are flagged by the DRE
2. A list of flagged applicants is prepared each month and placed on a non-appearance Consent Agenda
3. FREC either approves the application or determines that the applicant should appear before the FREC in a Summary of Applicant (SOA) agenda
4. After the applicant appears on the SOA agenda, the FREC votes to approve or deny the applicant for licensure

C. Reciprocity for U.S. Armed Service members and their spouses
1. DBPR provides license reciprocity to active duty and former active-duty members of the U.S. armed forces and their spouses
2. At the time of application, the applicant must hold a valid license for the corresponding profession in another state
3. Must complete a satisfactory background check

III. Nonresident Applicant Requirements

A. Florida resident is defined as a person who has resided in Florida continuously for four calendar months or more within the preceding year

B. Mutual recognition agreements
1. Applies to nonresidents licensed in other states
2. Must complete the process of Florida licensure before becoming a resident of Florida
3. 40-item state license exam on Florida law (passing grade is 75%)
4. Mutual recognition is not reciprocity

IV. Broker Prelicense Education and Experience Requirements

A. Prelicense education

1. Complete broker prelicense course (Course II) with grade of at least 70 on the end-of-course exam
2. Florida sales associates must complete the 45-hour post-license education requirement to be eligible for a broker's license
3. State license exam consists of 45 points on law, 40 points on principles and practices, and 15 points on real estate mathematics (Includes eight questions on the Closing Disclosure and seven questions on general math calculations)
4. Exceptions to the broker prelicense course requirement
   a. Applicants with a four-year degree or higher in real estate are exempt from the prelicense and post-license education courses (but must complete the CE requirement)
   b. An active member in good standing with The Florida Bar is exempt from Course I and the CE requirement (but not exempt from Course II or the post-license requirement)

B. Broker experience requirement
   1. Broker applicants must complete 24 months of real estate experience during five years preceding application
   2. Experience is established by
      a. Holding an active sales associate license under a Florida broker or a broker in another state or nation
      b. Holding an active sales associate license working as a salaried employee of a government agency
      c. Holding an active broker license in another state or nation
   3. Experience cannot be established by working for an owner-developer

C. Florida broker license examination
   1. Passing score is 75%
   2. Computerized multiple-choice test offered in English and Spanish
   3. Active sales associates who pass the broker license exam and plan to continue working for the same employer as broker associates do not need to submit any paperwork–the DBPR records will be updated to indicate the licensees are broker associates
   4. Inactive licensees that pass the exam will receive an inactive broker license
   5. Applicants may review their most recent exam and file an objection
   6. Examinees also have the right to a formal hearing regarding their exam

V. Licensee Education Requirements

A. Broker licensees must complete a 60-hour broker post-license requirement before the initial renewal of license

B. Failure to complete post-license requirement before the first renewal will result in the license becoming null and void by operation of law
   1. In such cases, the licensee may receive a sales associate license after completing 14 hours of continuing education within six months following expiration of the broker's license
   2. Hardship cases
      a. FREC may allow additional six months to complete post-license education if, due to individual physical hardship or economic hardship as defined in rule
      b. No legislative authority to extend beyond six-month period

C. Continuing education
   1. 14 hours during each two-year license period
   2. Includes three-hour core law requirement and 3-hour ethics course
   3. Active members in good standing with The Florida Bar are exempt from the CE requirements
   4. A licensee may not practice real estate with an expired license

D. Licensees may substitute attendance at one legal agenda session of the FREC for three classroom hours (not core law) of continuing education credit
   1. May substitute three CE credits only one time per renewal cycle
   2. May not earn CE credit for attending a legal agenda session if the licensee is a party to a disciplinary action slated for that FREC legal agenda

VI. License Renewal Periods

A. Upon passing the license exam, an applicant is issued an initial license
   1. Licenses expire on either March 31 or September 30

2. The expiration date of the initial license is the date (March 31 or September 30) that provides at least 18 months of initial licensure but does not exceed 24 months

B. License renewal
1. Armed Forces Renewal Exemption
    a. Member of U.S. Armed Forces is exempt from renewal requirements while on active duty and for 2 years after discharge from active duty
    b. Military exemption applies to a licensed spouse if the military duty is out of state

C. Active vs. inactive status
1. Two types of inactive status
    a. Voluntary inactive licensee has applied to the DBPR to be placed on inactive status
    b. Involuntary inactive license is not renewed at the end of the license period
2. Voluntary inactive
    a. Individual is qualified for licensure but voluntarily chooses not to engage in the real estate business
    b. May not perform any real estate services for compensation
3. Involuntary inactive
    a. Individual previously qualified for current license status but did not renew before the license expired (other than the first renewal)
    b. When a current active or voluntary inactive license expires, the license reverts automatically to involuntary inactive status
    c. A license that has been on involuntary inactive status for more than two years expires automatically and becomes null and void without further FREC or DBPR action
    d. When a license has been involuntary inactive for 12 months or less, licensees must complete 14 hours of CE
    e. When a license has been involuntary inactive for more than 12 months but less than 24 months, licensees are required to complete 28 hours of a Commission- prescribed reactivation education course
    f. Licensees registered with a broker, whose license is suspended or revoked, are placed on inactive status

VII. Registration and Licensure

A. Registration
1. Registration is the process of submitting to the DBPR information about a person or entity so that the information can be entered in the DBPR database
2. Associates must be registered under their employing broker or an owner-developer, if applicable
3. Only one registered employer at any given time

B. Registering associates under an owner-developer
1. A real estate development company owns land that it develops and then builds and sells homes
2. Owner-developers are not regulated (licensed) by the DBPR
3. Name and address of the owner-developer is registered with the DBPR
4. An owner-developer may hire unlicensed salespeople or licensed associates to sell its properties
    a. Unlicensed salespeople must be paid on a salaried basis
    b. To be paid on a transactional basis, salespeople must hold active real estate licenses

C. Licensure
1. To perform real estate services for compensation an individual must hold an active real estate license

2. To be licensed, an individual must demonstrate real estate knowledge and competency by providing proof of education, experience, and passing the license exam
3. License serves as prima facie evidence (accepted on face value) that the licensee is licensed

VIII. Multiple Licenses and Group Licenses

A. Multiple licenses are issued to brokers who qualify as the broker for more than one business entity

B. Licensed brokers may have more than one active broker license

C. Sales associates and broker associates may work for only one employer and therefore may not hold multiple licenses

D. Issued to sales associates or broker associates who work for an owner-developer

E. One employer (owner-developer)

F. No distinction on the face of the license

IX. Change of Address, Residency, and Business Address

A. Current mailing address
   1. The current residential address a licensee uses to receive mail through the U.S. Postal Service
   2. A PO box is considered an acceptable mailing address
   3. DBPR sends official communication to a licensee's last known mailing address or email address (the address of record
   4. Place of practice is physical location of real estate brokerage office

B. Change of address
   1. Notify the DBPR in writing within 10 calendar days of a change in current mailing address or email address

C. Change of residency
   1. A Florida licensee who moves out of state and becomes a nonresident must notify the Commission within 60 days of the change in residency

D. Change of business address

E. Change of registered employer

X. Real Estate Services

A. A BAR SALE

B. Business opportunities
   1. Business brokers must hold Florida real estate licenses

C. Presumption of acting as a real estate broker

D. Exemptions from a real estate license

Unit 1 True-False Quiz

Please check the appropriate box.

	T	F
1. An individual applying for a real estate sales associate or broker license must be at least 21 years old.		
2. Sales associate or broker applicants who have earned a four-year degree or higher in real estate from an accredited institution of higher education must take the pre-license and post-license education courses.		
3. The expiration date of the initial license is the date that provides at least 18 months of initial licensure but does not exceed 24 months.		
4. Individuals can legally perform a limited set of compensated real estate services after placing their licenses on voluntary inactive status.		
5. A license that has been on involuntary inactive status for more than two years expires automatically and becomes null and void by operation of law.		
6. Brokers may hold multiple licenses, but sales associates may hold only one license.		
7. Business entities are free to conduct transactions involving their own real property without licensure.		
8. Registration and licensure are synonymous terms.		
9. For application and licensing purposes, Florida law defines a resident of Florida as a person who has resided in Florida continuously for four months or more within the preceding year.		
10. A post office box is not a valid current mailing address under FREC rules.		

Unit 1 True-False Quiz
Answer Key and Rationale

1. **An individual applying for a real estate sales associate or broker license must be at least 21 years old.**
FALSE. Applicants for sales associate or broker licenses must be at least 18 years old.

2. **Sales associate or broker applicants who have earned a four-year degree in real estate from an accredited institution of higher education must take the pre-license and post- license education courses.**
FALSE. Applicants who have earned a four-year degree in real estate from an accredited institution of higher learning are exempt from the pre- and post-license education courses.

3. **The expiration date of the initial license is the date that provides at least 18 months of initial licensure but does not exceed 24 months.**
TRUE. Initial licenses expire on the nearest six months' renewal date short of two years. Initial licenses are therefore valid for at least 18 months but not more than 24 months.

4. **Individuals can legally perform a limited set of compensated real estate services after placing their licenses on voluntary inactive status.**
FALSE. Individuals who elect to place their licenses on voluntary inactive status cannot perform real estate services for others and receive compensation for those real estate services.

5. **A license that has been on involuntary inactive status for more than two years expires automatically and becomes null and void by operation of law.**
TRUE. Ninety days before expiration, the DBPR notifies the licensee of the upcoming deadline. Upon expiration, the license becomes null and void without further DBPR action.

6. **Brokers may hold multiple licenses, but sales associates may hold only one license.**
TRUE. Because sales associates can work for only one employer at a time, they cannot hold multiple licenses.

7. **Business entities are free to conduct transactions involving their own real property without licensure.**
TRUE. Both individuals and business entities such as corporations, partnerships, trusts and joint ventures are free to buy, sell, exchange, and lease their own real property. Salaried employees of owner-developers that sell, exchange, or lease real property for their employers are exempt from licensure as well, so long as they are not paid commissions or other compensation on a transactional basis.

8. **Registration and licensure are synonymous terms.**
FALSE. Licensure requires education and testing. Registration is entry in a database.

9. **For application and licensing purposes, Florida law defines a resident of Florida as a person who has resided in Florida continuously for four months or more within the preceding year.**
TRUE. Such residency is valid regardless of whether the residence was a recreation vehicle, a hotel, a rental unit or other temporary or permanent location.

10. **A post office box is not a valid current mailing address under FREC rules.**
FALSE. A post office box may be used to receive mail and is a valid current mailing address according to FREC rules.

UNIT 2
OPENING A REAL ESTATE OFFICE

Unit Overview

An active broker may choose to be the sole owner of a real estate business or form a business with others. Florida laws allow certain types of businesses to register as real estate brokerage entities. The type of business entity chosen will have serious legal and tax implications; therefore, a broker should seek the advice of an attorney and an accountant.

This unit describes the various types of business entities that may engage in real estate brokerage activities in Florida. Other issues that affect the creation of a real estate office, such as the statutory requirements for principal offices and branch offices and the registration of officers, directors, and sales associates, also are explained. Administrative rules governing signs, advertising, recordkeeping, and conduct are discussed as well. The unit concludes with an explanation of important federal and state laws regulating accessibility to commercial facilities, nondiscriminatory advertising, and telemarketing.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Describe the characteristics of the various business structures that may be registered as brokerage entities; the characteristics of officers, directors, and partners of real estate brokerage corporations and partnerships; and the statutes/rules pertaining to operating under a broker's own name.
- Identify the requirements associated with registering a trade name with the DBPR and the requirements for fictitious name registration.
- Identify the rules and requirements regarding real estate brokerage offices, branch offices, and temporary shelters.
- Identify the rules and requirements related to entrance signs.
- Identify the accessibility requirements outlined in the Americans with Disabilities Act pertaining to public accommodations and commercial facilities.
- Explain the statutes and rules pertaining to classified advertising and self-promotion, "for sale" signs and "sold" signs, and rental lists.
- Explain the Fair Housing Act as it applies to advertising and the display of the fair housing poster
- Explain the provisions of the Federal Communications Commission's (FCC) do-not-call rules, describe the applicable exemptions under the Florida Telemarketing Act, and explain the provisions of the CAN-SPAM Act and the Junk Fax Prevention Act.

Key Terms

blind advertisements
corporation
Fictitious Name Act
general partnership
joint venture (joint adventure)
limited liability company
limited partnership
ostensible partnership (quasi-partnership)
S corporation
sole proprietorship
telephone solicitation
trade name

Teaching Outline

I. Business Structures that May be Registered as Brokerage Entities

A. Sole Proprietorship
1. Broker is the only (sole) owner
2. Broker is personally liable for business debts and torts
3. Broker must register sole proprietorship with the DBPR
4. Broker must register trade name (if applicable) with the DBPR

B. General Partnership
1. Association of two or more persons for the purpose of jointly conducting a business
2. Created by contract (written, oral, or implied)
3. All general partners are personally liable
4. Each partner is responsible for all partnership debts
5. Each partner can bind the other partners in contracts
6. Each partner shares equally in profits and losses of the business unless a different share is specified in a written agreement
7. Real estate brokerage general partnerships
   a. The partnership must register with the DBPR under the partnership name
   b. At least one partner must be licensed as an active Florida broker
   c. Active Florida brokers, inactive Florida brokers, and unlicensed individuals may be partners
   d. All general partners must be registered with the DBPR
   e. Partners who will deal with the public and perform services of real estate must be licensed as active brokers
   f. Sales associates and broker associates may not be general partners in a real estate brokerage partnership

C. Limited Partnership
1. At least one general partner and one limited partner are required
2. General partners are personally liable for business debts
3. Limited partners invest cash and may not participate in management
4. Limited partners have limited personal liability
5. A certificate of limited partnership must be filed with the Florida DOS
6. Partnership name must identify entity as a limited partnership, for example, "Limited" or "Ltd."
7. Real estate brokerage limited partnerships
   a. Must register with the DBPR under the limited partnership name
   b. General partners may be active brokers, inactive brokers, and unlicensed persons
   c. General partners who deal with the public and perform real estate services must be licensed as active brokers
   d. Inactive brokers and unlicensed individuals may perform managerial functions
   e. At least one general partner must be licensed as an active Florida broker
   f. All general partners must register with the DBPR
   g. Sales associates and broker associates may not be general partners, but may be limited partners
   h. Limited partners are not required to register with the DBPR

D. Limited liability partnerships (LLPs)
1. Limited liability for all partners
2. File limited liability partnership with the Florida DOS
3. Name must identify entity as a limited liability partnership, for example, "Limited Liability Partnership" or "L.L.P."
4. Broker must register

a. Brokerage limited liability partnership with the DBPR
b. All general partners with the DBPR
c. Trade name with the DBPR

E. Corporations
1. Limited liability for all shareholders, directors, and officers
2. File articles of incorporation with the Florida DOS
3. Name must identify entity as a corporation, for example, "Corporation", "Corp.", "Incorporated", "Inc.", "Company", or "Co"
4. Exists until dissolved (perpetual existence)
5. Shares of stock represent ownership
6. Annual report and fee must be filed with the Division of Corporations, Florida DOS
7. Real estate brokerage corporations
   a. Corporation must register with the DBPR
   b. At least one of the officers or directors must be licensed as an active Florida broker
   c. Active Florida brokers, inactive Florida brokers, and unlicensed people may serve as officers and directors
   d. Officers and directors who deal with the public and perform real estate services must be licensed as active brokers
   e. All officers and directors who are not licensed must be registered with the DBPR for identification purposes
   f. Inactive brokers and unlicensed individuals may perform administrative functions
   g. Sales associates and broker associates may not be officers or directors, but may be shareholders
   h. Sales associates, broker associates, and individual brokers are registered under the brokerage corporation

F. S corporations
1. Avoid double taxation by passing income, loss deductions, and credits to its stockholders
2. Must be a domestic corporation
3. Limited to no more than 100 stockholders
4. A husband and wife count as a single shareholder
5. Nonresident aliens cannot be shareholders

G. Limited liability company
1. Protection from personal liability
2. IRS treats entity as a partnership for tax purposes
3. Sales associates and broker associates cannot be members of a an LLC

II. Vacancy of Office

A. If the only active broker of a brokerage entity dies, resigns, or is unexpectedly unable to remain as active broker, the vacancy must be filled within 14 calendar days
1. Vacancy may be filled with either a permanent or temporary broker
2. Failure to appoint another active or temporary broker within 14-day deadline will result in automatic cancellation of the brokerage registration and licensees of all people associated with the brokerage will become inactive
3. New brokerage business may not be performed by the brokerage or by a licensee registered with the brokerage until a new permanent or temporary broker is appointed and registered with the DBPR

B. A temporary broker may be registered with the DBPR for up to 60 days without the need to comply with the DOS registration requirements

1. No later than 60 days after the DBPR registration of the temporary broker, the brokerage must file with the DBPR proof that a new permanent broker is properly registered with the DOS

III. Other Business Forms that May Not Register

A. Corporation sole
   1. An ecclesiastical or religious organization

B. Joint adventure (or joint venture)
   1. A temporary form of business arrangement
   2. When composed of separate real estate brokers, the joint venture can provide real estate services

C. Business trust
   1. A business entity formed to engage in transactions involving its own real property

D. Unincorporated associations
   1. A cooperative association conducts commercial business and may convey, sell, or buy its own property
   2. An unincorporated association generally is recognized as a group of people associated for some noncommercial common purpose

E. Ostensible partnership
   1. Exists when there is no real partnership, but the parties act or do business in such a manner that the public, having no knowledge of the parties' private relations, reasonably would assume that a partnership exists

IV. Trade Names

A. Trade name is a business name other than the legal name of the person or a business entity
   1. DBPR uses the term trade name
   2. Fictitious name refers to the name registered with the Florida DOS

B. Registering a trade name with the DBPR
   1. A broker or a brokerage entity must register their trade name with the DBPR
   2. DBPR will not allow a broker or brokerage entity to register a trade name if the name has already been registered with the DBPR or the Florida DOS
   3. May be registered under only one trade name

C. Broker associates and sales associates must have their real estate licenses issued in their legal names and may not be licensed or registered under a trade name or a fictitious name

D. DOS registration of a fictious name
   1. Individuals licensed by the DBPR are exempt under the Fictitious Name Act from registering a fictitious name with the DOS
   2. Brokerage corporations, limited partnerships, limited liability companies, and limited liability partnerships that have registered the business entity with the DOS are considered to have met the requirements for fictitious name registration

E. Forming a professional association in associate's legal name
   1. Broker associates and sales associates may form a professional association so that their broker can pay commission to the professional association rather than to the individual

2. Chapter 475 requires such a professional entity to be composed of only one individual
3. DBPR issues the license in the licensee's actual (legal) name and includes the entity designation on the face of the license

V. Real Estate Office Requirements

A. Principal office is broker's primary office
1. If local zoning allows, broker's office may be in residence
2. Must have required sign and be registered with the DBPR
3. Out-of-state brokerage offices
4. Florida law does not regulate the specifics of a broker's office
5. Associates cannot open officer of their own

B. Branch office requirements
1. Broker must register each branch office
2. Branch office registration is not transferable to a new location
3. Temporary shelters do not require registration

C. Entrance signs
1. Active real estate brokers must display sign on either the exterior or interior of the entrance to the principal office and all branch offices
2. Sign must include
   a. Trade name (if applicable)
   b. Broker's name
   c. Words, "Licensed (or Lic.) Real Estate Broker"
3. Names of sales associates and broker associates may be placed below broker's name
4. Line or observable space must separate broker's name from associates' names

VI. Americans with Disabilities Act (ADA)

A. Access to public accommodations and commercial facilities
1. New construction and renovation
2. Employment practices

B. Florida Americans with Disabilities Accessibility Implementation Act

VII. Advertising and Self-Promotion

A. FREC rules require that all advertisements include the brokerage firm's name as it is registered
1. May not abbreviate firm name in ads
2. When licensee's own name appears in an ad, licensee's last name as registered must be used
3. Teams must file with employing broker a designated licensee to be responsible for team advertising. Team name may not include words suggesting the team is separate from the brokerage.

B. Team advertising
1. Each team must file with their broker the name of the licensee whom the team designates to be responsible for ensuring that the advertising complies with Florida law and rules
2. At least monthly, the broker must maintain a current written record of each team's members

3. Teams must advertise in the name of the brokerage

4. All advertising must be in a manner in which reasonable persons would know they are dealing with a team
5. Team name in advertisements may be no larger than the name of the registered broker
6. Team names may include the word team or group as part of the name
7. Words that may not be used in team names (see Figure 2.5)

C. Blind advertisements
1. Advertisements must clearly reveal the licensed name of the brokerage firm
2. Blind advertisements fail to disclose the license name of the brokerage firm

D. False advertising

E. Internet sites
1. Point of contact information refers to any means by which to contact the brokerage firm

F. Unauthorized use of association names

G. Licensees selling their own property

H. Rental Information and Lists
1. 75% refund within 30 days if the tenant does not obtain a rental
2. 100% refund within 30 days if list is inaccurate
3. Copy sent to the DBPR
4. Violation of rental list requirements is a first-degree misdemeanor

VIII. Fair Housing and Advertising

A. Fair Housing Act prohibits brokers from making, printing, and publishing advertisements that state a preference, limitation, or discrimination
1. Race, color, national origin
2. Religion
3. Sex
4. Handicap
5. Familial status
   a. Defined as the presence of one or more children under the age of 18 who live with either a parent or guardian
   b. Also includes pregnant woman

B. Housing for older persons
1. Certain housing for older persons is exempt
   a. All units occupied by persons 62 years of age or older, or
   b. At least 80% of the units are occupied by one or more persons 55 years of age or older

C. Unprotected classes

D. Equal Housing Opportunity poster
1. Available from HUD
2. Must be displayed at real estate brokerage offices

IV. Telephone Consumer Protection Act (TCPA)

A. Telephone solicitation is the initiation of a telephone call for the purpose of encouraging the purchase of, or investment in, property, goods, or services
1. National do-not-call registry
2. Licensees must search the registry before making a telephone solicitation call

3. Violators of the federal law subject to fine
4. Prerecorded telemarketing calls

B. State regulation
1. Florida's telemarketing law is administered through the Department of Agriculture and Consumer Services
   a.
   a. Florida law exempts real estate licensees who solicit listings in response to "For Sale" yard signs; however, the federal law does not exempt calls to for sale by owners (FSBOs)
   b. Florida's no solicitation list is part of the federal do-not-call registry
2. Brokers who use telephone solicitation must establish written procedures and train personnel on how to comply
3. Email advertising
4. Fax solicitations

Unit 2 True-False Quiz

Please check the appropriate box.

	T	F
1. A general partnership involves an association of three or more persons for the purpose of jointly conducting a business.		
2. Ostensible partnerships exist when parties act as individuals despite the existence of a real partnership.		
3. A corporation sole is a nonprofit religious organization.		
4. S corporations must have no more than 100 stockholders; the stockholders must be citizens or residents of the United States.		
5. If a broker conducts business from multiple locations, such locations fall beneath the registration of the main office.		
6. Brokers who lease rather than purchase office space are exempt from state and federal laws regarding accessibility for mentally and physically disabled individuals.		
7. An advertisement that includes only a post office box, telephone number, and street address is an example of blind advertising.		
8. Partners must pay a set fee of $500 to establish a limited partnership.		
9. The partners in a registered limited liability partnership are subject to the same limitations imposed on limited partners in a traditional limited partnership.		
10. The Fair Housing Act does not prohibit an advertisement that encourages families with less than three children to purchase homes in a particular subdivision.		

Unit 2 True-False Quiz
Answer Key and Rationale

1. **A general partnership involves an association of three or more persons for the purpose of jointly conducting a business.**
FALSE. A general partnership involves an association of two or more persons.

2. **Ostensible partnerships exist when parties act as individuals despite the existence of a real partnership.**
FALSE. An ostensible partnership exists when there is no real partnership, but parties act or do business in such a manner that the public, having no knowledge of the parties' private relations, reasonably would assume that a partnership exists.

3. **A corporation sole is a nonprofit religious organization.**
TRUE. A corporation sole is an ecclesiastical or religious organization and may not register as a real estate brokerage entity.

4. **S corporations must have no more than 100 stockholders; the stockholders must be citizens or residents of the United States.**
TRUE. Nonresident aliens cannot be stockholders in an S corporation.

5. **If a broker conducts business from multiple locations, such locations fall beneath the registration of the main office.**
FALSE. A broker must register each additional location as a branch office; the DBPR charges a fee for each branch office registration.

6. **Brokers who lease rather than purchase office space are exempt from state and federal laws regarding accessibility for mentally and physically disabled individuals.**
FALSE. State and federal laws regarding accessibility apply to brokers regardless of whether they lease or purchase their office space. Real estate offices are commercial facilities and public accommodations under Title III of the Americans with Disabilities Act.

7. **An advertisement that includes only a post office box, telephone number, and street address is an example of blind advertising.**
TRUE. Blind advertising includes any advertising that fails to disclose a brokerage firm's registered name.

8. **If the only active broker of a brokerage business resigns, the vacancy must be filled within 10 business days.**
FALSE. If the only active broker of a brokerage entity dies, resigns, or is unexpectedly unable to remain as the active broker, the vacancy must be filled by either a permanent or a temporary broker within 14 calendar days.

9. **The partners in a registered limited liability partnership are subject to the same limitations imposed on limited partners in a traditional limited partnership.**
FALSE. Limited liability partners are not subject to the same limitations imposed on limited partners in a traditional limited partnership.

10. **The Fair Housing Act does not prohibit an advertisement that encourages families with less than three children to purchase homes in a particular subdivision.**
FALSE. The Fair Housing Act prohibits advertising that discriminates on the basis of race, color, religion, sex, handicap, familial status, or national origin.

UNIT 3
OWNING, MANAGING, AND SUPERVISING A REAL ESTATE OFFICE

Unit Overview

This Unit describes the many tasks required when a broker decides to open a real estate office. Opening a real estate brokerage firm requires a substantial investment of time and capital. The Unit details the reasons a broker should develop a realistic business plan. There is a discussion of how to estimate start-up costs and operating costs for at least six months. Business structures are described so that the new broker may learn which type offers the most benefits. The broker must decide where to locate the office and whether to recruit salespersons. Taxes are covered to help the broker decide whether salespersons will be employees or independent contractors. The compensation plan for salespersons should be described in the plan. The pros and cons of joining a franchise are described. The broker should develop a policies and procedures manual so that all members of the firm have a guide for their activities.

Learning Objectives

Once your students have completed this chapter, they will have accomplished the following.

- Describe what considerations are involved in developing a business plan and what types of initial start-up costs are involved in opening a real estate business.
- Describe factors to consider when projecting income and expenses of a real estate business and list typical fixed and variable expenses incurred by a real estate business.
- Compare the advantages of purchasing a franchise versus remaining an independent broker.
- Distinguish between cash basis accounting and accrual basis accounting.
- Describe considerations when hiring sales managers, personal assistants and when recruiting sales associates, and identify IRS treatment concerning employees versus independent contractors.
- Describe the considerations regarding development of employment agreements, including the various commission structure plans and what fees and payments typically are deducted from the associate's commission.
- Identify important topics to include in a training program for sales associates and what should be included in a policy and procedures manual.

Key Terms

accrual basis accounting
business plan
buyer brokerage
cash basis accounting
company dollar
employee
Employee Identification Number (EIN)
franchise
graduated commission
independent contractor
personal assistant
policy manual

Teaching Outline

I. Capital and Start-up Costs

A. Sufficient capital to cover start-up costs and to supplement income for a given period of time

B. Initial start-up costs
1. Attorney and accountant fees
2. Office setup and occupancy
   a. Purchase
   b. Rental
3. Office equipment and furniture
4. Internet technology
5. Signs and lockboxes
6. Board of REALTORs® and Multiple Listing Service (MLS) fees
7. Office supplies
8. Forms and promotional materials
9. Initial promotional (advertising) costs

II. Business Plan

A. Developing a realistic business plan

III. Income Projections

A. Projecting income and expenses will vary based on
1. Scope of company operations
2. Market area and general market conditions
3. Number and projected productivity of sales associates

IV. Income sources

A. Operating expenses

B. Typical fixed expenses
1. Office rental or mortgage payments
2. Salaries and personnel costs
3. Equipment rental and maintenance
4. Furniture rental
5. Business risk (liability) insurance
6. Property contents insurance
7. E & O Insurance
8. Annual association and MLS fees
9. Annual business taxes

C. Typical variable expenses
1. Advertising
2. Sales commissions
3. MLS listing fees
4. Telephone
5. Utilities
6. Office supplies

7. Printing
8. Technology

V. Franchise vs. Independent Firm

A. Franchise advantages
1. Built in referral network
2. Formal training programs
3. National recognition
4. Advertising assistance
5. Management and sales training program

B. Advantages of remaining an independent broker
1. Lower overhead
2. Increased operational freedom
3. Local personality
4. Reduced start up fees

VI. Tax Considerations

A. Bookkeeping system (cash vs. accrual method)

VII. Personnel Issues

A. Support staff
1. Receptionist/secretary
2. Accounting staff
3. Additional support staff

B. Real estate sales associates
1. Number of associates relates to budget
2. Total transactions needed divided by average sales per agent indicates number of agents required
3. Space considerations
4. Hiring part-time associates
5. Need for a sales manager
6. Unlicensed personal assistants and clerical assistants
7. Formula for minimum monthly transactions
8. Unlicensed personal assistants and clerical assistants
9. Permissible activities

C. Miscellaneous contract services
1. Janitorial services
2. Sign delivery and construction
3. Computer programming and technical support

D. Recruitment and selection
1. Set recruiting goals
2. Recruiting Sources
   a. Media Advertising
   b. Career nights
   c. Prelicensing schools
   d. Support personnel
   e. Personal contacts

        f. Applicants for licensure
        g. Referrals from sales associates
    3. ADA requirements regarding hiring personnel

E. Application process
    1. Application forms
    2. Verifying license status
    3. References
    4. Interview

VIII. Employment Arrangements and Agreements

A. Important factors to consider when hiring
    1. Tax considerations
    2. IRS Treatment Concerning Employees vs. Independent Contractor
        a. The nature of the independent contractor relationship
    3. Factors that describe an employee relationship
    4. Reporting payments to employees and independent contractors
    5. Non-compete clauses
    6. Hours and working conditions
    7. Written understanding and acceptance of company policies

B. Compensation of sales associates
    1. Methods
        a. Straight salary
        b. 100% commission with management fee
        c. Straight commission split
        d. Commission with bonus
        e. Graduated commission

    2. Typical commission reductions
        a. Fees and payments
        b. Franchise fees
        c. Sign fees

IX. Training and supervision of sales associates

A. Factors involved in teaching real estate
    1. Company policies and procedures
    2. Technical skills
    3. Listing skills
    4. Selling skills
    5. Technology skills

B. Policy and procedures manual
    1. Define the company's function
    2. Statement of company's objectives
    3. Items to include in policy manual

C. Broker/sales manager responsibilities
    1. Broker liability under Chapter 475 Florida Statutes
    2. Supervision and control of sales staff
        a. Monitoring sales activities and evaluating performance
        b. Assuring compliance with office policies
        c. Assisting sales associates who have problems
        d. Supervising advertising

e. Assigning floor duty
f. Assuring compliance with rules and regulations
g. Conduct regular sales meetings
h. Monitor listings

Unit 3 True-False Quiz

Please check the appropriate box.

	T	F
1. Start-up cost and expense reserves always will be insubstantial if a new firm is small and has no employees.		
2. Property insurance is a variable expense.		
3. Office supplies is a variable expense.		
4. A class that teaches new sales associates how to prepare a CMA is technical training.		
5. Most small business taxpayers avoid cash basis accounting because it is complicated.		
6. One of the best orientation classes for new sales associates uses the policies and procedures manual.		
7. Most real estate brokerage firms treat their employees as independent contractors.		
8. The ability to establish a local personality is one of several reasons many brokers remain independent despite the benefits of buying a franchise.		
9. One advantage of purchasing a franchise is the opportunity to participate in management training programs.		
10. The Americans with Disabilities Act requires employers to make accommodations to allow disabled persons to do their jobs, regardless of the hardship such accommodations may place on the business.		

Unit 3 True-False Quiz
Answer Key and Rationale

1. **Start-up cost and expense reserves always will be insubstantial if a new firm is small and has no employees.**
   FALSE. Even if a new firm is small, with no sales associates or employees, start-up costs and expense reserves may be substantial.

2. **Property insurance is a variable expense.**
   FALSE. Property insurance is a fixed expense. Other fixed expenses include occupancy costs, payroll costs, equipment and maintenance costs, furniture rental, and liability insurance.

3. **Office supplies are a variable expense.**
   TRUE. Office supplies are a variable expense. Other variable expenses include commissions, advertising, MLS listing fees, telephone connections, office supplies, and printing costs.

4. **A class that teaches new sales associates how to prepare a CMA is technical training**
   True. Technical skills classes teach time management, goal setting, completing forms for listings and contracts, comparative market analysis, financing techniques, and closing costs.

5. **Most small business taxpayers avoid cash basis accounting because it is complicated.**
   FALSE. To the contrary, most small business taxpayers employ cash basis accounting because of its simplicity.

6. **One of the best orientation classes for new sales associates uses the policies and procedures manual.**
   TRUE. The policy manual is the best orientation course for new sales associates.

7. **Most real estate brokerage firms treat their employees as independent contractors.**
   TRUE. If a broker meets all requirements, treating employees as independent contractors results in substantial savings, primarily from the employer's share of Social Security taxes, worker's compensation insurance, unemployment taxes and other fringe benefits.

8. **The ability to establish a local personality is one of several reasons many brokers remain independent despite the benefits of buying a franchise.**
   TRUE. Local personality is easier to achieve as an independent business than as a franchise. Some brokers believe that customers want to do business with strictly local companies.

9. **One advantage of purchasing a franchise is the opportunity to participate in management training programs.**
   TRUE. Many franchises offer management training programs that help brokers become more effective in planning and operating their firms.

10. **The Americans with Disabilities Act requires employers to make accommodations to allow disabled persons to do their jobs, regardless of the hardship such accommodations may place on the business.**
    FALSE. ADA legislation requires employers to accommodate the disabled, provided the accommodations do not place an undue hardship on the business.

UNIT 4
ESCROW MANAGEMENT

Unit Overview

This unit begins with a discussion of the requirements for establishing and maintaining an escrow (or trust) account. Rules regarding timely deposit of escrow funds and the requirements for maintaining interest-bearing escrow accounts are presented. Also, the procedure for completing the monthly reconciliation statement, including how to determine the broker's trust liability and reconciled bank balance, are detailed. The unit concludes with a discussion of the escrow disbursement dispute process and an explanation of how to handle escrow issues involving special types of properties.

Learning Objectives

Once your students have completed this unit, they should be able to:

- describe the requirements for establishing an escrow account and the requirements for timely deposit of escrow funds, including interest-bearing escrow accounts;
- describe the requirements for placing escrow deposits with title companies and attorneys;
- calculate the broker's trust liability and the reconciled bank balance and prepare a monthly reconciliation statement; and
- distinguish among the four settlement procedures and recognize exceptions to the FREC's notification and settlement requirements.

Key Terms

arbitration	escrow account	mediation
commingle	escrow disbursement order	postdated check
conflicting demands	good-faith doubt	treble damages
conversion	immediately	trust account
declaratory judgment	interpleader	trust liability

Teaching Outline

I. Establishing Escrow Accounts

A. An escrow account is an account for the deposit of money a disinterested third party (neither the buyer or the seller) holds in trust for others
   1. A deposit is a sum of money, or its equivalent, delivered to a real estate licensee as earnest money, payment, or partial payment in connection with a real estate transaction

B. Types of monies placed in escrow
   1. Sales escrow accounts
      a. Earnest money
      b. Advance fees paid by sellers for marketing expenses not covered by the broker (timeshare exception)
   2. Property management escrow accounts
      a. Rent
      b. Security deposits
      c. Pet deposits
      d. Maintenance deposits

C. Monies paid in advance for performing real estate services
   1. Deposit monies received in advance of performing real estate services in an escrow account
   2. Time-share Act prohibits a real estate licensee from collecting an advance fee for the listing of a time-share unit

D. Commingling of funds and conversion
   1. To commingle funds is to mix the money of a buyer or a seller, or a tenant or landlord which is held in trust with the broker's own money, or to combine escrow money with personal or business operating funds
   2. Conversion is the unauthorized use of another person's funds or property for one's own use

E. Setting up escrow accounts
   1. Authorized depositories
      a. Florida commercial banks
      b. Credit unions
      c. Savings associations
   2. Brokers may choose to open more than one escrow account
      a. Non-interest-bearing account (sales and/or property management)
      b. Interest-bearing escrow account (sales and/or property management)
   3. The funds may be held in a Florida-based title company that has trust powers or a trust account may be maintained by a Florida attorney
      a. Brokers are not required to establish an escrow account
   4. Signatory on escrow account
      a. Broker must be a signatory on all brokerage escrow accounts
      b. Designated broker may choose another person to sign checks on the account
      c. Broker is accountable for reviewing the escrow accounting procedures and supervising those who handle these account

F. Timely deposit of escrow funds
   1. Sales associates and broker associates must deliver escrow deposits to their broker by the end of the next business day following receipt of the funds
   2. Brokers must deposit escrow funds by the end of the third business day following the day that the funds are accepted on behalf of the brokerage

3. Broker must get written permission from all parties before placing trust funds into an interest-bearing escrow account

4. Postdated checks and promissory notes
   a. Noted on purchase and sale contract
   b. Seller's approval must be obtained
   c. Secure in office safe
   d. Once date become current, deposit immediately
   e. Broker is not responsible for check returned for insufficient funds if broker made timely deposit

G. Interest-bearing escrow accounts
   1. All parties to the transaction must give written consent before a broker may place funds into an interest-bearing escrow account and written agreement as to who gets the interest
   2. Broker must transfer principal and interest to a non-interest-bearing escrow account before disbursing the funds to stop interest from accruing
   3. If the broker is designated to receive the interest, the principal portion is transferred to the non-interest-bearing escrow account, and the interest is transferred directly to the broker's operating account
   4. Failure to stop interest from accruing before disbursement may result in a notice of noncompliance

II. Title Company and Attorney Escrow Accounts

A. If deposited with title company or attorney, the following rules apply:
   1. Licensee who prepared the contract must include name, business address, and phone number of title company or attorney
   2. No later than 10 business days after deposit is due, broker must make written request to title company or attorney for verification of deposit
   3. No later than 10 business days after making the written request, the broker must provide seller's broker with copy of written verification

III. Recordkeeping Requirements

A. Broker must keep at least one legible copy of all business records, books, and accounts in compliance with Florida law and Commission rules
   1. Brokers must make all business records, books, and accounts available for audit or spot checks by the DBPR at any reasonable time
   2. Records must be preserved for at least five years:
      a. From the date of receipt of any money, funds, deposits, or checks entrusted to the broker
      b. From the date of any executed agreement, including buyer brokerage agreements, offers to purchase, rental property management agreements, rental or lease agreements, even if no funds were entrusted to the broker
   3. Must keep records two years beyond court proceeding
   4. Brokers may save business records electronically

B. Trust liability
   1. The total sum of deposits received and being held by the broker at any point in time, usually at the reconciliation cutoff time
      a. Sales escrow account trust liability consists of earnest money deposits
      b. Property management trust liability consists of undisbursed rents, owner reserves, and security deposits
      c. Calculating the trust liability (refer to example in Figure 4.3)

C. Broker's money to maintain escrow account
1. $1,000 in sales escrow
2. $5,000 in property management escrow

B. Monthly reconciliation statement
1. Broker must compare the total trust liability with each trust account's reconciled bank balance monthly
2. Information broker must include in the monthly reconciliation statement
3. Broker must review, sign, and date the monthly reconciliation statement
4. Trust liability is the total sum of all deposits received, pending, and being held by the broker at any point in time
5. Determining reconciled bank balance

C. Preparing a monthly reconciliation statement — An Example (review example with class)

D. Disciplinary guidelines for failing to reconcile escrow accounts
1. Citation issued for failing to reconcile an escrow account monthly
2. A citation is issued only when the account balances
3. A shortage results in a disciplinary case against the broker

IV. Escrow Disputes

A. Conflicting demands occur when the buyer and seller make demands regarding the disbursing of escrowed property that are inconsistent with the other party's request and cannot be resolved
1. To report the escrow dispute, the broker must submit the DBPR form *Notice of Escrow Dispute/Good Faith Doubt.* The form is available on the DBPR website and is a form-fillable pdf that can be completed online. The completed form must be printed and mailed or faxed to the DBPR/DRE

B. Four settlement procedures
1. Mediation
2. Arbitration
3. Litigation
    a. Interpleader
    b. Declaratory judgment
4. Escrow disbursement order

C. Escrow disbursement dispute process
1. If a broker requests an EDO and the escrow dispute is either settled or goes to court before the EDO is issued, the broker must notify the FREC within 10 business days
2. If Commission declines to issue an EDO, broker must use other settlement procedure

D. Good faith doubt
1. Broker doubts either party's intention to act in good faith according to the contract
2. Notify the FREC in writing within 15 business days of having the doubt
3. Begin a settlement procedure within 30 days of having the doubt

V. Exceptions to Notice and Settlement Procedures

B. Condominium residential unit purchases
    a. Right to cancel within 15 days rescission period (new construction from developer)
    b. Right to cancel within 3 business days rescission period (resales)
    c. Exempt from conflicting demands notification

A. HUD-owned property

1. Residential sale contracts used by HUD in the sale of HUD-owned property are required to comply with the earnest money deposit requirements of the specific HUD contract

C. Financing contingency
   1. Buyer in good faith fails to satisfy the terms specified in the financing clause of a contract for sale and purchase

Unit 4 True-False Quiz

Please check the appropriate box.

	T	F
1. An escrow account is established for the deposit of money the broker holds in trust for others.		
2. Brokers must deposit escrow funds no later than the end of the fourth business day following receipt of the item to be deposited.		
3. Brokers may keep up to $5,000 of their own money in their sales escrow account.		
4. Trust liability is defined as the total sum of all deposits received, pending, and being held by the broker at any point in time.		
5. A broker who places a binder deposit with a title company must make a written request for verification of the deposit within 10 calendar days.		
6. A broker has no duty to notify the Commission of a dispute regarding a good faith deposit when the buyer of a residential resale condo unit timely delivers written notice to cancel the sale contract.		
7. If a buyer chooses to void the purchase contract for a newly constructed condominium within the 15-day "cooling off" period, a broker may return the deposit without notifying the FREC.		
8. Brokers may place funds in an interest-bearing escrow account without notifying other parties involved in the transaction.		
9. Brokers who receive escrow funds must retain and make available to DBPR, or its authorized representative, all deposit slips, bank statements, and agreements between the parties to a transaction.		
10. Mediation is a negotiated settlement procedure.		

Unit 4 True-False Quiz
Answer Key and Rationale

1. **An escrow account is established for the deposit of money the broker holds in trust for others.**
   TRUE. An escrow account holds other people's monies. The term escrow account is synonymous with the term trust account.

2. **Brokers must deposit escrow funds no later than the end of the fourth business day following receipt of the item to be deposited.**
   FALSE. Escrow funds must be deposited no later than the end of the third business day following receipt of the item to be deposited. Saturdays, Sundays, and holidays are not considered business days.

3. **Brokers may keep up to $5,000 of their own money in their sales escrow account.**
   FALSE. Brokers are allowed to keep up to $1,000 of personal funds or brokerage funds in the sales escrow account.

4. **Trust liability is defined as the total sum of all deposits received, pending, and being held by the broker at any point in time.**
TRUE. Determining trust liability is also the first step in completing the monthly reconciliation.

5. **A broker who places a binder deposit with a title company must make a written request for verification of the deposit within 10 calendar days.**
FALSE. No later than 10 *business* days after deposit is placed with the title company, the broker must make a written request to the title company for verification of the deposit.

6. **A broker has no duty to notify the Commission of a dispute regarding a good faith deposit when the buyer of a residential resale condo unit timely delivers written notice to cancel the sale contract.**
TRUE. Even if the seller objects, real estate license law states that the broker may return the deposit to the purchaser without having to notify the Commission of conflicting demands.

7. **If a buyer chooses to void the purchase contract for a newly constructed condominium within the 15-day "cooling off" period, a broker may return the deposit without notifying the FREC.**
TRUE. The Condominium Act requires that the developer give a disclosure statement to each buyer stating that the buyer may void the contract within 15 days (3 days for unit owner resales) after signing the contract and receiving the condominium documents. If the buyer exercises this option, the broker need not notify the Commission.

8. **Brokers may place funds in an interest-bearing escrow account without notifying other parties involved in the transaction.**
FALSE. Brokers may place funds into an interest-bearing escrow account, but only if all parties to the transaction give written consent. The written consent must also designate the party to receive the interest and specify when the accrued interest is to be disbursed.

9. **Brokers who receive escrow funds must retain and make available to DBPR, or its authorized representative, all deposit slips, bank statements, and agreements between the parties to a transaction.**
TRUE. Brokers must accurately record deposit transactions and account for each separate bank account in which they have deposited such funds.

10. **Mediation is a negotiated settlement procedure.**
TRUE. Mediation is a no adversarial process intended to reach a negotiated settlement.

UNIT 5
OFFICE INSPECTIONS, DISCIPLINARY PROCESS, AND REAL ESTATE RECOVERY FUND

Unit Overview

This unit begins with a discussion of how to prepare for an office inspection and audit of the broker's escrow (trust) account. The unit also details the disciplinary process and concludes with an explanation of the Real Estate Recovery Fund.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Describe the office inspection process and the information and records that must be made available to the inspector during a routine office inspection and escrow account audit.
- Describe the steps involved in the complaint process.
- Explain the grounds for denial of an application and the result of a revocation without prejudice.
- Explain the various types of administrative penalties, explain the use and purpose of a notice of noncompliance, and describe the grounds and penalties for suspension and revocation of a real estate license.
- Distinguish between a first-degree misdemeanor and a second-degree misdemeanor, identify which real estate violation is a misdemeanor of the first degree, and recognize third-degree felonies.
- Describe the purpose and requirements associated with the Real Estate Recovery Fund, including payment limits for claims, assessment of fees, and persons not qualified to make a claim.
- Explain the requirements for self-reporting criminal convictions.

Key Terms

appeal
citation
complaint
emergency suspension order (ESO)
final order
formal complaint
formal hearing
informal hearing
judicial review
legally sufficient
notice of noncompliance
probable cause
probable cause panel
recommended order
stipulation
subpoena
voluntary relinquishment for permanent revocation

Teaching Outline

I. Division of Real Estate Authority and Responsibility

A. Office inspections and audits
1. Office requirements
2. Office entrance sign
3. Office records
4. Licenses
5. Brokerage relationship disclosures
6. Escrow account audit
    a. Required records
    b. May require an interim statement from the broker
    c. Reconciliation statements
    d. Broker's trust liability
    e. Penalties for violations discovered during audit

II. Disciplinary Procedure

A. DRE is responsible for investigative matters related to real estate
1. DRE is consumer driven
2. Investigations begin when a licensee or a consumer files a complaint against a licensee

III. The Complaint Process

A. Step 1: Filing the Complaint
1. An alleged violation of a law or rule is filed with the DRE
2. Complaints are submitted on the Uniform Complaint Form for Real Estate
3. Complaint must be in writing and legally sufficient containing facts indicating a violation of
    a. Florida statute 455 (DBPR and the professions under the DBPR)
    b. Florida statute 475 (Real estate license law)
    c. Commission (FREC) rule
4. Anonymous complaints

B. Step 2: Investigation
1. DRE has the authority to initiate an investigation on its own if it has reasonable cause to believe that a licensee has violated Chapter 455, F.S., Chapter 475, F.S., DBPR rule, or FREC rule
2. An investigation may be initiated as a result of an inspection of a brokerage office (including an audit of the broker's escrow account) or because a licensee self-reported a criminal matter
3. DRE forwards a copy of complaint to subject who may submit a written response to the complaint
4. Investigation is confidential until 10 days after probable cause have been found to exist
5. Written investigative report with supporting documentation is forwarded to the Division of the General Counsel
6. Emergency suspension order
    a. In rare situations, during the investigative process, the DBPR or DRE may uncover something so serious that it cannot allow the licensee to continue to endanger the public welfare
    b. The DBPR or the FREC may decide that emergency action is required
    c. The DBPR Secretary has the authority to issue an emergency suspension order

C. Step 3: Probable Cause
1. Reasonable grounds for prosecution
2. Determination of probable cause is made by majority vote of the probable-cause panel
3. Probable-cause panel is composed of two members of the Commission

4. Composition of the probable-cause panel
5. Probable cause proceedings are not open to the public
6. Panel makes the decision as to probable cause
    a. If panel finds that probable cause does not exist, it may dismiss the case, or it may dismiss the case with a *letter of guidance* to the subject
    b. If probable cause is found, a formal complaint is filed

D. Step 4: Formal Complaint
1. Formal complaint is a detailed list of charges against the licensee
    a. Also called an administrative complaint
    b. Administrative complaint is sent to the licensee's address of record and email address of record
    c. Licensees are responsible for notifying the DBPR of the licensee's current mailing address, email address, and place of practice
    b. Election of rights must be completed and returned to the DBPR on or before the 21st day after receipt of the administrative complaint
    c. Waiver hearing is conducted before FREC in an informal hearing if the licensee fails to timely return the election of rights form
    d. Settlement stipulation is a voluntary agreement between opposing counsels
    e. Voluntary relinquishment for permanent revocation
    f. Nullification of the prosecution

E. Step 5: Case is Presented in Either an Informal Hearing or a Formal Hearing
1. Informal hearing
    a. Conducted during a regular Commission meeting
    b. Can be no dispute of material facts
2. Formal hearing
    a. Prosecuted before an administrative law judge employed by Division of Administrative Hearings (DOAH)
    b. Subpoena is a command to appear at a certain time and place to testify
    c. Administrative law judge submits to the DBPR a recommended order

F. Step 6: Final Order
1. Final order is issued by the Commission (probable cause members excused)

G. Step 7: Judicial Review (Appeal)
1. Licensee may challenge the final order within 30 days by filing an appeal
2. Stay of enforcement stops enforcement of suspension or revocation in the final order pending the outcome of the appeal
3. Court of appeals must issue a writ of supersedeas

IV. Violations and Penalties

A. Grounds for denial
1. Application denials can result from a deficient application
    a. Applicant corrects the deficiency and submits an amended application
2. Grounds for denial of a license application are more serious and result in an applicant being denied licensure
    a. FREC issues denial during a Commission meeting

V. Administrative Penalties

A. Two types of administrative penalties are issued by the DRE

1. Notice of noncompliance can be issued for a first offense of a minor violation listed in rule
    a. Licensee must take corrective action within 15 calendar days
    b. Does not involve a fine
    c. Failure to comply with a notice of noncompliance may result in a citation
    d. Does not appear on the licensee's public record
2. Citations may be issued for violations that are not a substantial threat to the public
    a. Violations are listed in rule with fine
    b. Licensee has 30 days to accept or reject the alleged violation
    c. Licensees who dispute the alleged violation file a written objection
    d. Citations appear on the licensee's public record

B. Violations that can be issued by the FREC
1. Reprimand is the least severe penalty that FREC can issue
2. A legally sufficient complaint is investigated
3. Probable-cause panel fined probable cause to exist, and formal complaint is issued
4. Informal hearing is conducted and FREC rules a reprimand is appropriate
5. May impose education or attendance at Commission meetings and pay investigative costs

C. Administrative fine
1. Fine not to exceed $5,000 for each violation of Chapters 455 and 475

D. Administrative file

E. Suspension of a license for not more than ten years

F. Revocation of a license is permanent
1. When broker's license is revoked, the associates who are registered under the broker become inactive until the broker is replaced or the associate finds another employer

VI. Civil and Criminal Penalties

A. Civil penalties
1. In civil court, one person files a case against another person
   Civil cases generally have to do with disputes over money or property

B. Criminal penalties
1. Issued in criminal court
    a. Imprisonment penalties or fines (except administrative fines) obtained in court of law
b. DBPR refers criminal matters to the state attorney general's office
2. Felonies are the most serious type of crime
    a. First-degree felony is most serious type of felony crime
    b. Then second-degree felony followed by third-degree felony
1. Second-degree misdemeanor
    a. $500 fine and/or imprisonment for not more than 60 days
2. First-degree misdemeanor
    a. $1,000 fine and/or imprisonment up to one year
    b. Failing to provide accurate and current rental information for a fee
1. Third-degree felony
    a. Maximum penalty is a fine of $5,000 and/or five years in jail
    b. Three third-degree felonies associated with license law
        (1) Making misleading statements or giving false information on a DBPR license application
        (2). Unlicensed practice of real estate

(3). Theft or reproduction of a license exam

VII. Real Estate Recovery Fund

A. Purpose to reimburse consumers who have been financially injured by a licensee

B. Licensee requirements
   1. Possess a current, valid, active license at the time the activity occurred
   2. Not be the buyer, seller, landlord, or tenant in the transaction
   3. Acted solely in the capacity of a licensee

C. Claimant requirements
   1. Civil suit was filed and a final judgment was issued against licensee
   2. Attempt was made to collect on the judgment

D. Time limit to file a claim must be made within two years of
   1. The alleged violation
   2. Discovery of the alleged violation
   3. In no case, more than four years after the date of the alleged violation

E. Maximum payment
   1. $50,000 limit for single transaction
   2. $150,000 limit against one broker or sales associate based on more than one claim/transaction

F. Recovery fund fee charged to active and inactive licensees

G. Compensatory damage only
   1. Fund will not reimburse attorney's fees, court costs, treble (triple) damages, or punitive damages

H. Mandatory suspension
   1. License is automatically suspended on payment from the fund
   2. Licensee must reimburse the fund with interest before the license will be reinstated

I. Claim resulting from an EDO
   1. Broker who is sued for complying with an EDO may be reimbursed up to $50,000 from the fund
   2. Commission may pay the broker-defendant's attorney fees and court costs
   3. If the plaintiff prevails, the plaintiff's attorney fees, and court costs may be reimbursed
   4. Punitive damages and interest are never paid from the fund

VII. Self-Reporting Criminal Convictions

A. 30 days to notify FREC of being convicted or found guilty of a crime

Unit 5 True-False Quiz

Please check the appropriate box.

	T	F
1. The DPBR is authorized to inspect brokerage offices but not audit the books of real estate brokers.		
2. DBPR investigators may issue a notice of noncompliance for a minor violation, provided the violation is an initial offense.		
3. Complaints filed with the DPBR may be against a licensee or an applicant for licensure, but not against an unlicensed person.		
4. Probable cause proceedings are open to the public.		
5. The informal hearing precedes the probable cause proceedings.		
6. The Real Estate Recovery Fund exists to reimburse claimants for compensatory damages committed by a holder of an active or an inactive real estate license during a transaction involving real property in Florida.		
7. During an office inspection and audit, DBPR inspectors do not review brokerage relationship disclosures.		
8. Practicing real estate without a real estate license is a third-degree misdemeanor.		
9. Recovery fund claims based on judgments against one broker or sales associate may not exceed, in total, $50,000.		
10. The probable cause panel consists of two individuals; one may be a former commissioner, but at least one must be a current FREC member.		

Unit 5 True-False Quiz

Answer Key and Rationale

1. **The DPBR is authorized to inspect brokerage offices but not audit the books of real estate brokers.**
   FALSE. The DPBR is authorized to inspect real estate brokerage offices and audit the broker's escrow accounts (books).

2. **DBPR investigators may issue a notice of noncompliance for a minor violation, provided the violation is an initial offense.**
   TRUE. However, failure to correct the problem within 15 days results in a citation ranging from $100 to $1,000 per offense.

3. **Complaints filed with the DPBR may be against a licensee or an applicant for licensure, but not against an unlicensed person.**
   FALSE. Anyone can file a complaint against a licensee, an applicant, or an unlicensed person.

4. **Probable cause proceedings are open to the public.**
   FALSE. Intended to function as a grand jury, probable cause proceedings are closed to the public and to FREC members not on the probable cause panel.

5. **The informal hearing precedes the probable cause proceedings.**

FALSE. If the probable cause panel has met and determined that probable cause exists, it directs the DBPR to charge a licensee or respondent with a formal complaint. The licensee/respondent is then entitled to either an informal or a formal hearing.

6. **The Real Estate Recovery Fund exists to reimburse claimants for compensatory damages committed by a holder of an active or an inactive real estate license during a transaction involving real property in Florida.**
FALSE. Licensees must hold an active license at the time of the alleged act and act in the capacity of a real estate licensee in the transaction.

7. **During an office inspection and audit, DBPR inspectors do not review brokerage relationship disclosures.**
FALSE. Inspectors review brokerage relationship disclosures to verify compliance with agency law. Inspectors also review minimum office requirements concerning office and branch office maintenance, the presence and compliance of an office entrance sign, copies of all pertinent licenses and registrations, and escrow accounts and their related statements and files.

8. **Practicing real estate without a real estate license is a third-degree misdemeanor.**
FALSE. It is a felony of the third degree for a person to perform real estate services for others without a real estate license.

9. **Recovery fund claims based on judgments against one broker or sales associate may not exceed, in total, $50,000.**
FALSE. Payments for recovery fund claims based on judgments against one broker or sales associate may not exceed, in the aggregate, $150,000. Payments for claims arising out of the same transaction may not exceed $50,000.

10. **The probable cause panel consists of two individuals; one may be a former commissioner, but at least one must be a current FREC member.**
TRUE. Each probable-cause panel is composed of two individuals. One of the panel members must currently serve on the Commission.

UNIT 6
OVERVIEW OF REAL ESTATE VALUATION

Unit Overview

This unit explains state certification and licensure of appraisers and introduces the Uniform Standards of Professional Appraisal Practice. The various types of value are discussed, and basic appraisal principles are described. This unit is not focused on how to "conduct" an appraisal—rather on how to "analyze" an appraisal report. The unit concludes with a discussion of the steps involved in the appraisal process.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Describe the purpose of an appraisal and identify which appraisal assignments must be performed by state certified or licensed appraisers and discuss how real estate licensees must comply with the *USPAP* when conducting appraisals, but not CMAs or BPOs.
- Define a federally related transaction and recognize which appraisal assignments must be performed by state-certified or state- licensed appraisers.
- Describe the appraisal certification and licensure classifications.
- Distinguish among price, cost, and value.
- Distinguish among the various types of value and identify sources of market value definitions.
- Distinguish among the various principles of value and understand how each influences value.
- Distinguish between highest and best use as though vacant and highest and best use as improved.
- Describe the steps in the appraisal process.
- Distinguish between the types of appraisal reports.

Key Terms

anticipation
appraisal
appraisal report
assessed value
conformity
demand
external economies and diseconomies
federally related transaction
FIRREA
going-concern value
highest and best use
increasing and decreasing returns
insurable value
investment value
liquidation value
market value
overimprovement
reconciliation
restricted appraisal report
salvage value
substitution
supply
The Appraisal Foundation
USPAP
value in use

Teaching Outline

I. Introduction to Appraisal

A. Appraisal defined
1. An opinion of value
2. Appraisal report is a written or oral communication of an appraisal relating to the nature, quality, value, or utility of a specified interest in real property
   a. Communicates the appraisal analysis, opinion, or conclusion of value

B. Purpose of an appraisal
1. Identify the problem
   a. Identify the purpose of the appraisal
   b. The client and intended users
   c. How the appraisal report will be used
2. Overall purpose is twofold
   a. Determine how to conduct the appraisal based on client needs
   b. Type of value to be estimated
3. Appraisal terminology
   a. Client is party who contracts with appraiser
   b. Intended use is how the appraisal report will be used
   c. Intended user is the client or other party identified by name or type

B. Relationship between licensed brokers and professional appraisers
3. Ch. 475, Part I, pertains to real estate licensees
   a. Under Part I, appraising is included in the definition of real estate services
   b. Real estate licensees may not represent themselves as certified or licensed appraisers
   c. Cannot perform appraisals that require a state-certified or licensed appraiser
   d. Must abide by *USPAP*
3. Ch. 475, Part II, pertains to appraisers

II. Federal Regulation

A. FIRREA requires states to license and certify appraisers involved in federally related transactions
B. FIRREA recognizes the Appraisal Foundation as the source for the promotion of professional standards of behavior and appraiser qualification
   1.Two independent boards
      a. Appraisal Qualifications Board (AQB)
      b. Appraisal Standards Board (ASB)
C. USPAP is a set of guidelines (standards of practice)

D. A federally related transaction is any real estate-related financial transaction entered into, that any of the major federal financial regulatory agencies or any of its regulated institutions engages or contracts for and that requires an appraiser's services

1. Fannie Mae, Freddie Mac, HUD, VA, and FHA require licensed or certified appraisers regardless of transaction value

III. Appraisal Certification and Licensure
A. Registered trainee appraiser
B. Licensed appraiser
C. Certified residential appraiser

D. Certified general appraiser

IV. Price, Cost, and Value

A. Price represents dollars or other accepted currency that a particular buyer agrees to pay and a particular seller agrees to accept
B. Cost is the total dollar expenditure for land, labor, materials, overhead, and entrepreneurial profit required to bring a property into existence
C. Value, as of a certain time, represents the monetary worth of goods and services to buyers and sellers

IV. Types of Value

A. Types of value encountered by real estate brokers include:
  1. Assessed value
  2. Going-concern value
  3. Insurable value
  4. Investment value
  5. Liquidation value
  6. Salvage value
  7. Value in use
  8. Market value
    a. Market value definitions

V. Principles of Value

A. Supply and demand
  1. Supply is the amount and type of real estate available for sale or rent at differing price levels in a given real estate market
  2. Variables that influence supply include
    a. Availability of skilled labor
    b. Availability of construction loans and financing
    c. Availability of land
    d. Availability of materials
  3. Demand is the is the desire and ability to purchase or rent goods and services
  4. Variables that influence demand include
    a. Price of real estate
    b. Population numbers and household composition
    c. Income of consumers
    d. Availability of mortgage credit
    e. Consumer taste or preferences

B. Anticipation
  1. Based on the premise that expectation of future benefits creates value

C. Substitution
  1. Holds that when several goods or services offering similar benefits are available, consumers tend toward the one with the lowest price
  2. The premise of all three approaches to value

D. Increasing and Decreasing Returns
  1. When one or more factors of production are increased while others are held constant, output may increase up to a certain point

a. Overimprovement occurs when owner invests more money in structure than can reasonably expect to recapture

E. Conformity
1. Suggests that property values are maximized when architectural homogeneity and uniformity of land use occur in a neighborhood

F. External economies and diseconomies
1. External economies result from positive external factors that enhance property values
2. External diseconomies have a negative impact on value

VI. Highest and Best Use

A. Must be legally permissible, physically possible, and financially feasible

B. Two types of highest and best use
1. Highest and best use as vacant
2. Highest and best use as improved

VII. The Appraisal Process

A. Identify the problem to be solved, identifying the
1. Client
2. Intended users
3. Use of the appraisal

B. Determine the scope of work necessary to develop a credible appraisal
1. Extent to which the property is identified
2. Any tangible property inspected
3. Type and extent of data researched
4. Type and extent of analyses applies

C. Develop the appraisal according to the scope of work
1. The client and other intended users
2. The intended use of the appraiser's opinions and conclusions
3. Type and definition of value
4. Effective date of the appraisal
5. Identify the subject property and the property's relevant characteristics
6. Extraordinary assumptions and hypothetical conditions necessary in the assignment
7. Land-use regulations, economic supply and demand, and market-area trends
8. Opinion of the highest and best use of the real estate
9. Collect, verify, and analyze information
10. Identify and define the type of value, including source of definition
11. Reconcile the approaches
12. Report the appraisal

VIII. Types of Appraisal Reports

A. Oral and written reports
1. Not misleading
2. Contain sufficient information to enable the intended user to understand the report
3. Identify the client and intended users
4. State the intended use of the appraisal
5. Summarize information sufficient to identify the subject property

6. State the real property interest appraised
7. State and define the type of value and source of the definition
8. State the effective date of the appraisal
9. Summarize the scope of work used to develop the appraisal
10. Summarize the information analyzed
11. State the use of the real estate
12. The opinion of highest and best use
13. Extraordinary assumptions and hypothetical conditions
14. Signed certification

B. Two written report options
   1. Appraisal report
   2. Restricted appraisal report

C. Appraisal report formats
   1. Form report
   2. Narrative report

Unit 6 True-False Quiz

Please check the appropriate box.

	T	F
1. A federally related transaction is a real estate transaction involving a federal building or federal properties, particularly the transfer of military installations or research facilities to the private sector.		
2. Price represents the dollars or other accepted currency that a particular buyer agrees to pay and a particular seller agrees to accept under the specific circumstances surrounding a transaction.		
3. Salvage value is the amount a property most likely will bring at a forced or hurried sale.		
4. The principle of anticipation is based on the premise that the expectation of future benefits creates value.		
5. The principle of highest and best use states that the values of sites and properties are maximized when the real estate is used most efficiently.		
6. External diseconomies have a positive impact on value.		
7. The first step in the appraisal process is the preliminary analysis—the selecting and collecting of data.		
8. Reconciliation is the process of evaluating and weighting each value indication obtained from the three approaches to value.		
9. When prices rise, demand goes down.		
10. Licensed real estate brokers and sales associates can legally perform appraisals for compensation, provided the transaction is not federally related.		

Unit 6 True-False Quiz
Answer Key and Rationale

1. **A federally related transaction is a real estate transaction involving a federal building or federal properties, particularly the transfer of military installations or research facilities to the private sector.**
FALSE. A federally related transaction is any real estate-related financial transaction entered into, that any of the major federal financial regulatory agencies or any of its regulated institutions engages or contracts for and that requires an appraiser's services.

2. **Price represents the dollars or other accepted currency that a particular buyer agrees to pay and a particular seller agrees to accept under the specific circumstances surrounding a transaction.**
TRUE. What a particular buyer and seller agree to, however, does not necessarily imply what other consumers will agree to.

3. **Salvage value is the amount a property most likely will bring at a forced or hurried sale.**
FALSE. Salvage value is the amount that part or all of a property's improvements can be sold for at the end of its economic life, taking into consideration the cost of removing the improvements from the land. Liquidation value is the amount a property will most likely bring at a forced or hurried sale.

4. **The principle of anticipation is based on the premise that the expectation of future benefits creates value.**
TRUE. The value of residential property, for example, is based on the perceived benefits from amenities and quality of lifestyle.

5. **The principle of highest and best use states that the values of sites and properties are maximized when the real estate is used most efficiently.**
TRUE. Highest and best use is the probable and legal use of real property that is physically possible, defendable, and financially feasible and that results in the highest value.

6. **External diseconomies have a positive impact on value.**
FALSE. External diseconomies have a negative impact on value. They occur when actions of people external to a property impose costs on others, such as the cleanup cost of pollution not caused by the property owner.

7. **The first step in the appraisal process is the preliminary analysis—the selecting and collecting of data.**
FALSE. Defining the problem to be solved is the first step in the appraisal process.

8. **Reconciliation is the process of evaluating and weighting each value indication obtained from the three approaches to value.**
TRUE. An appraisal report usually contains three indicated values, and the appraiser reconciles these into a final estimate of value.

9. **When prices rise, demand goes down.**
TRUE. There is an inverse relationship between price and the demand for real estate. When prices rise, demand goes down. When prices decrease, demand goes up.

10. **Licensed real estate brokers and sales associates can legally perform appraisals for compensation, provided the transaction is not federally related.**
TRUE. Real estate brokers and sales associates can perform appraisals for compensation. They may not, however, represent themselves as certified or licensed appraisers unless they hold

such certifications or licenses. Furthermore, only certified or licensed appraisers can perform appraisals involving a federally related transaction.

UNIT 7
SALES COMPARISON, COST, AND INCOME APPROACHES

Unit Overview

This unit explains the procedures used in the three approaches to value and their underlying theories. Appraisers use three variations of the sales comparison approach: direct sales comparison, direct sales comparison using statistical inference, and regression analysis. Direct sales comparison, which is the most common variation of the sales comparison approach, requires a small sample of comparable sales (three or four typically) and produces a single point estimate of value. Direct sales comparison is the traditional methodology that prevails in appraisal practice and therefore is the focus of this unit. The unit also explains the cost-depreciation and income-capitalization approaches.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Describe the assumptions underlying the sales comparison approach.
- Construct a sales comparison adjustment grid using the proper sequence of adjustments.
- Distinguish among normal sale price, market conditions-adjusted normal sale price, and final adjusted sale price.
- Describe considerations regarding the applicability of the cost approach.
- Distinguish between reproduction cost and replacement cost and describe the three methods for estimating cost.
- Distinguish among the types of accrued depreciation and the methods for estimating accrued depreciation.
- Estimate the site value.
- Perform a GIM analysis.
- Develop a reconstructed operating statement.
- Calculate a market-derived capitalization rate and estimate value using the income approach formula.
- Reconcile the various approaches to value into a final value estimate.

Key Terms

accrued depreciation
arm's-length transaction
contract rent
curable
economic life
effective age
effective gross income (EGI)
external obsolescence
fixed expense
fixture
functional obsolescence
gross income multiplier (GIM)
gross rent multiplier (GRM)
incurable
market rent
net operating income (NOI)
personal property
physical deterioration
potential gross income (PGI)
reconstructed operating statement
replacement cost
reproduction cost
reserve for replacements
subject property
trade fixture
vacancy and collection loss
variable expense

Teaching Outline

I. Sales Comparison Approach

   A. Usefulness of the approach
      1. Considered most reliable for single-family homes

2. Used to appraise vacant residential lots in established neighborhoods

B. Rationale for the approach
1. Two underlying assumptions
   a. Market price is valid evidence of market value
   b. A well-informed buyer will not pay more for a property than the price of equally desirable substitute properties

II. Elements of Comparison

A. Challenges associated with appraising real property
1. Each property is unique or heterogeneous
2. Arm's-length transaction

B. Transactional characteristics
1. Conditions of sale
   a. Verify whether an arm's-length transaction
      (1) Sales between family members or business partners
      (2) Foreclosure
2. Financing terms
   a. Nonmarket financing
      (1) Mortgage assumption
      (2) Seller financing
      (3) Contract for deed
   b. Methods of adjustment
      (1) Market abstraction
      (2) Cash equivalency
3. Sales concessions
   a. Examples of sales concessions
      (1) Interest rate buydowns
      (2) Seller-paid points and loan origination fees
      (3) Seller-paid closing costs customarily paid by the borrower
   b. Methods of adjustment
      (1) Market abstraction
      (2) Cash equivalency
4. Market conditions
   a. Successive sales analysis
   b. Market conditions adjustment
5. Personal property
   a. Fixture
   b. Trade fixture
6. Location
   a. Paired-sales analysis
7. Property characteristics
   a. Matched pairs analysis
   b. Examples of property characteristics

III. Methods of Adjustment

A. Dollar and percentage adjustments

B. Sequence of adjustments
1. Normal sale price
2. Market conditions-adjusted normal sale price

3. Final adjusted sale price

C. Reconciliation of adjusted sale prices
   1. Weighted average of comps to derive indicated value

IV. Cost Approach

A. Applicability of the approach
   1. Most reliable for new or proposed construction
   2. Owner-occupied residential properties
   3. Special-use property
   4. Insurance appraisals

B. Steps in the cost approach
   1. Estimate cost of improvements
      a. Quantity survey method
      b. Unit-in-place method
      c. Comparative-unit method
   2. Reproduction cost vs replacement cost
      a. Reproduction cost is the dollar amount that would be required to build a structure that is an exact duplicate of the structure being appraised
      b. Replacement cost is the dollar amount that would be required to construct improvements of equal utility to those being appraised, although not the exact physical duplicate
   3. Estimate depreciation and deduct from cost
      c. Accrued depreciation is total accumulated depreciation from all sources
      b. Types of depreciation
         (1) Physical deterioration (curable vs incurable)
         (2) Functional obsolescence
      c. External obsolescence
   4. Three methods of estimating accrued depreciation
      a. Breakdown method
      b. Market extraction method
      c. Age-life method
         (1) Formula: effective age ÷ total economic life × reproduction cost new = depreciation
         (2) Effective age is the age indicated by a structure's condition and utility
         (3) Economic life (useful) life is the total estimated time in years that an improvement is expected to contribute to the property's value5. Estimate site value
      a. Estimate site value and nonstructural site improvements value as if vacant at site's highest and best use

   6. Add site value and site improvements to depreciated cost new

V. Income Approach

A. Basic concepts and uses of the income approach
   1. Knowledgeable purchaser would not pay more than the present value of the expected future income generated from the property
   2. Converts the anticipated income a property generates into present value

B. Gross Rent Multiplier (GRM)
   1. GRM is the ratio between a property's gross monthly rental income and the sale price of the property
   2. Steps in the gross rent multiplier analysis
      a. Develop a market-area GRM
      b. Formula: sale price ÷ gross monthly rent – gross rent multiplier

  c. Estimate the subject property's market rent
  d. Multiply the market rent by the GRM
  e. Market rent × market-area GRM = estimated market value

C. Gross income multiplier (GIM)
  1. GIM is the ratio between a property's gross annual income and its selling price
  2. Formula: sale price ÷ gross annual income = gross income multiplier

VI. Reconstructed operating statement

A. Steps in the income- approach
  1. Estimate potential gross income (PGI)
    a. Contract rent is the rent the tenants pay currently
    b.) Market rent is the rent the property would command if it were leased today at the prevailing rate
  2. Estimate typical vacancy and collection loss
    a. Vacancy and collection loss is an allowance for reductions in potential gross income due to vacancies and uncollected rent
    b. Estimated as a percentage of PGI
  3. Estimate the effective gross income (EGI)
    a. Subtract vacancy and collection loss from PGI, add any miscellaneous income the property produces
    b. EGI is the anticipated income from the property less the vacancy and collection loss allowance plus miscellaneous income
  4. Derive the net operating income (NOI)
    a. The income remaining after all relevant operating expenses have been subtracted
    b. Operating expenses are classified into three types
      (1) Fixed expenses
      (2) Variable expenses
      (3) Reserve for replacements
  5. Analyze comparable investment properties to derive an appropriate capitalization rate for the subject property
  6. Divide the subject property's NOI by the market-derived cap rate to obtain the capitalized value

Unit 7 True-False Quiz

Please check the appropriate box.

	T	F
1. The sales comparison approach assumes that market price is not necessarily a valid indicator of market value.		
2. A fixture is considered personal property, but a trade fixture is considered real property.		
3. The market conditions-adjusted normal sale price is the price a comparable property would likely sell for in today's market.		
4. The first step in the cost approach is to estimate the amount of depreciation and deduct it from the reproduction (or replacement) cost.		
5. Reproduction cost is the dollar amount that would be required to construct improvements of equal utility to those being appraised, although not the exact physical duplicate.		
6. The difference between the home's reproduction (or replacement) cost new and the perceived market value of the home today is referred to as accrued depreciation.		
7. Over time, appraisers have developed a precise mathematical equation for determining effective age.		
8. Economic life is the estimated number of years that an improvement is expected to contribute to a property's value.		
9. Potential gross income is the income remaining after all relevant operating expenses have been subtracted.		
10. Variable expenses are expenses that vary with the health of the economy and the real estate market in general.		

Unit 7 True-False Quiz
Answer Key and Rationale

1. **The sales comparison approach assumes that market price is not necessarily a valid indicator of market value.**
   FALSE. The sales comparison approach assumes that market price is valid evidence of market value and that a well-informed buyer will not pay more for a property than the price of equally desirable substitute properties.

2. **A fixture is considered personal property, but a trade fixture is considered real property.**
   FALSE. A fixture is personal property that has become real property through permanent attachment to real property. A trade fixture is an article a commercial tenant attaches as a necessary part of the tenant's trade. A trade fixture remains personal property regardless of how the article is affixed.

3. **The market conditions-adjusted normal sale price is the price a comparable property would likely sell for in today's market.**
   TRUE. The market conditions-adjusted normal sale price becomes the value base for adjustments for location and physical characteristics.

4. **The first step in the cost approach is to estimate the amount of depreciation and deduct it from the reproduction (or replacement) cost.**
   FALSE. Estimating the amount of depreciation and deducting it from the reproduction cost is the second step in the cost approach. A licensee must first estimate the current reproduction (or replacement) cost of the improvements.

5. **Reproduction cost is the dollar amount that would be required to construct improvements of equal utility to those being appraised, although not the exact physical duplicate.**
   FALSE. Reproduction cost is the dollar amount that would be required to build a structure that is an exact duplicate of the structure being appraised. The dollar amount that would be required to construct improvements of equal utility that are not exact physical duplicates is known as replacement cost.

6. **The difference between the home's reproduction (or replacement) cost new and the perceived market value of the home today is referred to as accrued depreciation.**
   TRUE. The home's reproduction cost is an estimate of the improvement value as if it were new. Deducting the accrued depreciation enables the appraiser to estimate the improvement's market value.

7. **Over time, appraisers have developed a precise mathematical equation for determining effective age.**
   FALSE. Effective age is the age indicated by a structure's condition and utility. The type and quality of construction, the building materials chosen, and the presence or absence of maintenance and modernization over time all impact effective age. No precise methodology exists for making such assessments.

8. **Economic life is the estimated number of years that an improvement is expected to contribute to a property's value.**
   TRUE. Economic life is the estimated number of years that an improvement is expected to contribute to a property's value. Appraisers often use cost-estimating services as a source of information regarding total economic life.

9. **Potential gross income is the income remaining after all relevant operating expenses have been subtracted.**

FALSE. Potential gross income is the maximum income a property would produce during a one-year period if it were totally rented or leased at the prevailing market rate. The income remaining after all relevant operating expenses have been subtracted is known as net operating income.

10. **Variable expenses are expenses that vary with the health of the economy and the real estate market in general.**
FALSE. Variable expenses are operating expenses that vary with the level of occupancy. These expenses include management, utilities, and maintenance, and repair.

UNIT 8
COMPARATIVE MARKET ANALYSIS (CMA)

Unit Overview

This unit will help licensees understand the logic behind the preparation of a comparative market analysis (CMA). There are many similarities between an appraisal and a comparative market analysis. These similarities include the need to collect sufficient market data, the need to analyze the data correctly, and the need to ensure that the results are not misleading. The differences between the two are significant. Appraisals are used as a basis for mortgage lending—CMAs are not. Appraisers estimate market value by using all three approaches to value, when appropriate, whereas licensees who prepare CMAs use primarily the sales comparison approach. The CMA would normally have fewer adjustments to sales prices of similar properties. Sales prices of comparable sales, in addition to listing prices of properties currently for sale and those which did not sell are used in preparing a CMA. CMAs normally include a range of value for a given property; an appraisal normally reports a single estimate of value.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Distinguish between a formal appraisal, a comparative market analysis (CMA) and a broker price opinion (BPO).
- Explain the three major sections of a typical CMA report form, the information necessary to prepare a CMA or BPO, and the major elements of comparison between properties.
- Calculate the square footage of a building and prepare a CMA that would allow a seller or buyer to understand values in the neighborhood.

Key Terms

broker price opinion
comparative market analysis (CMA)
curb appeal
gross living area (GLA)
opinion of value

Teaching Outline

I. Appraisals, CMAs, and BPOs

   A. The appraisal

   B. The Comparative Market Analysis (CMA)

   C. The Broker Price Opinion (BPO)

   D. Differences between appraisals, CMAs, and BPOs

II. Preparation of a Comparative Market Analysis

   A. The CMA form

   B. Categories of comparables
      1. Currently on the market
      2. Recently sold
      3. Recently expired

   C. Obtaining comparables

   D. Common elements of comparison
      1. Location
      2. Size and shape of lot
      3. Landscaping
      4. Construction quality
      5. Style
      6. Design
      7. Age
      8. Square feet of gross living area
      9. Measure the structure
      10. Number of rooms
      11. Number of bedrooms
      12. Number of bathrooms
      13. Kitchen
      14. Other space
      15. Condition
      16. Garage
      17. Other improvements

   E. Adjusting for differences
      1. CIA-CBS—If the comparable is inferior, add; if the comparable is better, subtract

   F. Reconciliation

   G. Computerized CMAs

   H. Attachments to CMA

Unit 8 True-False Quiz

Please check the appropriate box.

	T	F
1. A CMA typically uses the three approaches to value.		
2. A BPO is often prepared for a lender whose loan is delinquent.		
3. It is important that the properties used in a report cover a wide spectrum of sizes, ages, amenities, and locations.		
4. Because a screened-in porch is not counted in gross living area, it does not add value in the CMA report.		
5. All properties within a single neighborhood can be used as comparables without adjustments for location.		
6. While they may result in some difference in value, variances in construction quality will not disqualify a property as a comparable.		
7. The total room count should include every room except the foyer and bathrooms.		
8. In completing a CMA, licensees must make as many adjustments as necessary, regardless of how significant or insignificant the differences between the properties.		
9. A measurement of gross living area should include the basement.		
10. A licensee should never use a new home as a comparable for 20-year-old home, even if the houses are identical in every other way and on neighboring plots.		

Unit 8 True-False Quiz
Answer Key and Rationale

1. **A CMA typically uses the three approaches to value.**
FALSE. The typical CMA provides a limited market data approach.

2. **A BPO is often prepared for a lender whose loan is delinquent.**
TRUE. BPOs are most often prepared for distressed properties.

3. **It is important that the properties used in a report cover a wide spectrum of sizes, ages, amenities, and locations.**
FALSE. Because the properties must be comparable, it is important that all properties used in the report are similar to the subject property in as many ways as possible.

4. **Because a screened-in porch is not counted in gross living area, it does not add value in the CMA report.**
FALSE. A screened-in porch adds value even though it is not counted in gross living area. The licensee should adjust for this difference.

5. **All properties within a single neighborhood can be used as comparables without adjustments for location.**
FALSE. Location can affect value even within a single neighborhood. A house next to a busy street normally has lower value than a home on a quiet, residential street.

6. **While they may result in some difference in value, variances in construction value will not disqualify a property as a comparable.**
FALSE. Significant differences in construction quality can disqualify a property as a comparable.

7. **The total room count should include every room except the foyer and bathrooms.**
FALSE. The total room count should exclude the foyer, bathrooms, and basement.

8. **In completing a CMA, licensees must make as many adjustments as necessary, regardless of how significant or insignificant the differences between the properties.**
FALSE. Making many adjustments for less significant items may mislead and could give the appearance that the licensee is trying to "back in" to a predetermined value.

9. **A measurement of gross living area should include the basement.**
FALSE. CMAs should not include below-grade space, as it has less value than grade-level space.

10. **A licensee should never use a new home as a comparable for 20-year-old home, even if the houses are identical in every other way and on neighboring plots.**
TRUE. Even within the same subdivision, CMAs should not include homes of a widely different age.

UNIT 9
BUSINESS VALUATION

Unit Overview

This unit begins with a discussion of the different types of legal entities which may be encountered by a business appraiser. A business appraisal serves many purposes, and each may require a different approach. The business appraisal process is described in detail. Business appraisers may have to make adjustments to financial statements because accounting principles often do not reflect fair market value. Several examples are provided that show how certain accounting practices can distort value estimates. A section on ratio analysis describes this important step used in business appraisals. The appraiser should pay attention to indications that adjustments to financial statements may be required. Adjusted financial statements are discussed with examples. Finally, there is a description of how an appraiser applies the approaches of value to a business.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Distinguish between real property valuation and business valuation.
- Explain the business appraisal process and the problems associated with accounting principles.
- Describe the steps in the analysis of financial statements and the elements of a balance sheet and an income statement, as well as the calculations for current ratio, quick ratio, inventory turnover ratio, debt-to-worth ratio, and net-profit-to-owner capital ratio.
- Describe the various approaches to business valuation, the different types of intangible assets, and the techniques used to value intangible assets.

Key Terms

accrual basis accounting
balance sheet
book value
cash basis accounting
current ratio
debt-to-worth ratio
Going-concern value
goodwill
income statement
intangible asset
inventory turnover ratio
liquidation value
market value
quick ratio

Teaching Outline

I. Fundamentals of Business Appraisal

A. Similarities to real estate appraisal

B. Business appraisal definitions

C. Reasons for a business appraisal
1. Contemplated sale or purchase of a business
2. Allocation of value to specific assets
3. Financial reporting purposes
4. Buy-sell agreements
5. Liquidation of a business
6. Divorce
7. Estate and inheritance taxation
8. Condemnation proceedings
9. Determination of insurable value

D. The business appraisal process
1. Define of the assignment
2. Establish the date of the appraisal
3. Collect the data
4. Analyze the data
5. Determine the final estimate of value
6. Prepare the appraisal report

II. Understanding and Using Financial Statements

A. Overview of financial statements

B. Some problems with financial statements
1. Estimates are necessary
2. Assets are reported at cost
3. Valuation accounts do not reflect value
4. Assets and liabilities may be missing
5. Differences in accounting methods are permitted
    a. Cash versus accrual accounting
    b. Inventory costing methods
        (1) FIFO
        (2) LIFO
        (3) Average
        (4) Specific identification
    c. Research and development accounting differences

III. Analyzing financial statements
A. Construct historical series
B. Calculate financial ratios over time
1. Current ratio
2. Quick ratio
3. Inventory turnover ratio
4. Debt-to-worth ratio
5. Net-profit-to-owner-capital ratio

C. Investigate unusual items and results

D. Preparing financial statements for valuation purposes
   1. Adjusted balance sheet
   2. Market balance sheet
   3. Adjusted income statement
   4. Pro forma income statement

IV. Valuation Methods

A. Approaches to valuation
   1. Sales comparison approach
   2. Cost-depreciation approach
   3. Income capitalization approach
   4. Liquidation value approach

B. Valuation of intangible assets
   1. Problems valuing intangible assets
      a. Business goodwill
      b. Personal goodwill
      c. Separable intangible assets

   2. Methods of valuation
      a. Excess profits approach
      b. Market residual approach

Unit 9 True-False Quiz

Please check the appropriate box.

	T	F
1. The value of a business that is likely to continue operating is called going-concern value.		
2. An appraisal value date of July 18 of last year (the date the owner died) is called a prospective appraisal.		
3. A business's liquidation value is the value of business assets sold together with the business itself.		
4. The business appraisal process does not include making a preliminary analysis.		
5. A complete appraisal report should include a description of the subject business, summary of facts derived from the data collected, and supporting data.		
6. The income statement shows a company's financial position at an exact moment, while the balance sheet reflects a company's profitability over a previous accounting period.		
7. Accrual basis accounting recognizes income when it is actually received and expenses when they are actually paid.		
8. The major steps in the income capitalization approach include the following: preparing a pro forma income statement that is typical for the business; selecting the capitalization rate that appropriately reflects the rates on similar businesses; and dividing the net operating income by the capitalization rate.		
9. A firm's reputation, quality of service, product quality and residual advertising benefits are examples of separable intangible assets.		
10. Two of the most common approaches used by appraisers to value intangible assets are the excess profits approach and the market residual approach.		

Unit 9 True-False Quiz
Answer Key and Rationale

1. **The value of a business that is likely to continue operating is called going-concern value.**
TRUE. The value estimate assumes that the business is in operation at the time of the appraisal and that the operation is likely to continue is called **going-concern value**.

2. **An appraisal dated July 18 of last year (the date the owner died) is called a prospective appraisal.**
FALSE. A *prospective* appraisal is made for some time in the near future. A retrospective appraisal is back-dated.

3. **A business's liquidation value is the value of business assets sold together with the business itself.**
FALSE. A business's liquidation value is the value of business assets sold separately from the business itself.

4. **The business appraisal process does not include making a preliminary analysis.**
FALSE. The business appraisal process includes defining the problem, making a preliminary analysis, analyzing the data, preparing a final estimate of value, and preparing the appraisal report.

5. **A complete appraisal report should include a description of the subject business, summary of facts derived from the data collected, and supporting data.**
TRUE. A complete appraisal report also includes a summary and conclusion, purpose of the appraisal, definition of the value estimated, the appraisal's effective date, description of the appraisal process, statement of the conclusions the appraiser reached after analyzing the date, and assumption and limiting conditions.

6. **The income statement shows a company's financial position at an exact moment, while the balance sheet reflects a company's profitability over a previous accounting period.**
FALSE. The balance sheet shows a company's financial position at an exact moment, while the income statement reflects a company's profitability over a previous accounting period.

7. **Accrual basis accounting recognizes income when it is actually received and expenses when they are actually paid.**
FALSE. Accrual basis accounting recognizes income when the sale is made, rather than when the cash is collected.

8. **The major steps in the income capitalization approach include the following: preparing a pro forma income statement that is typical for the business; selecting the capitalization rate that appropriately reflects the rates on similar businesses; and dividing the net operating income by the capitalization rate.**
TRUE. Because the marketplace values net operating incomes and cash flows, the income capitalization approach is very important to the appraisal of a going concern.

9. **A firm's reputation, quality of service, product quality and residual advertising benefits are examples of separable intangible assets.**
FALSE. Franchises, licenses, copyrights, leasehold benefits and trademarks are examples of separable intangible assets. A firm's reputation, quality of service, product quality of service, and residual advertising benefits are examples of goodwill.

10. **Two of the most common approaches used by appraisers to value intangible assets are the excess profits approach and the market residual approach.**
TRUE. Appraisers use many techniques to value intangible assets.

UNIT 10
BROKERAGE RELATIONSHIPS AND DISCLOSURE REQUIREMENTS

Unit Overview

This unit begins with a general explanation of the law of agency and then details the various types of brokerage relationships practiced in Florida. The unit also explains the licensee's duties and obligations to principals and customers.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Describe which provisions of the Brokerage Relationship Disclosure Act apply only to residential real estate transactions and list types of real estate activities that are exempt from the disclosure requirements.
- Describe the required content and format of the various disclosure forms.
- List and describe the duties owed and the disclosure requirements in a no brokerage relationship.
- List and describe the duties owed and the disclosure requirements in a single agent relationship.
- List and describe the duties owed and the disclosure requirements in a transaction broker relationship.
- Identify the procedure for transition from a single agent to a transaction broker and describe the disclosure requirements for non-residential transactions where the buyer and seller have assets of $1 million or more.
- Describe the events that will cause a brokerage relationship to be terminated.

Key Terms

agent
customer
designated sales associate
dual agency
fiduciary
limited representation
no brokerage relationship
(nonrepresentation)
principal
residential sale
single agent
transaction broker

Teaching Outline

I. Law of Agency

A. Two types of law
1. Common law derives authority from customs rooted in the common law of England and from the judgments and decrees of the courts (case law)
2. Statutory law includes the statutes and rules enacted by legislatures and other governing bodies

II. Brokerage Relationships in Florida

A. Historical perspective

B. Brokerage relationship options
1. The brokerage firm may work as a transaction broker for the buyer and/or the seller
2. The brokerage firm may work as a single agent of either the buyer or the seller (but not for both the buyer and seller in the same transaction)
3. The parties may agree that the brokerage firm will not represent the buyer or the seller at all
4. Illegal to operate as a dual agent
   a. Dual agent means a broker who represents as a fiduciary both the buyer and the seller
   b. Florida license law prohibits a broker from creating a fiduciary relationship with both the buyer and the seller

C. Residential transactions
1. Duties and obligations in each type of brokerage relationship apply to all real estate transactions
2. Written disclosures required when dealing in residential transactions

D. Residential sale is the sale of improved residential property of four or fewer units, the sale of unimproved residential property intended for use as four or fewer units, or the sale of agricultural property of ten or fewer acres

E. Disclosure requirements do not apply to
1. Nonresidential transactions
2. The rental or leasing of real property, unless an option to purchase all or a portion of the property improved with four or fewer residential units is given
3. Auctions
4. Appraisals
5. Dispositions of any interest in business enterprises or business opportunities, except for property with four or fewer residential units

III. Written Disclosure Requirements for Residential Transactions

A. Timing of brokerage disclosure
1. No brokerage relationship notice disclosed in writing before the showing of property
2. Single agent disclosure made before, or at the time of, entering into a listing agreement or an agreement for representation, or before the showing of property, whichever occurs first
3. Transaction brokerage relationship is presumed therefore no disclosure requirement unless another brokerage relationship is chosen

B. Recordkeeping requirements
   1. Retain disclosure documents for five years for all residential transactions that result in a written contract and all nonresidential transactions that utilize designated sales associates
   2. Includes files of properties that failed to close

C. Exceptions to disclosure requirements
   1. When licensee knows a single agent or transaction broker represents buyer or seller
   2. Open house or model home showing
   3. Casual encounters
   4. Responding to factual questions concerning properties advertised for sale
   5. Communications with prospects limited to providing written or oral communication that is factual information about the qualifications of the licensee or licensee's broker
   6. Owner is selling new residential units built by the owner (developer) and setting informs potential buyer that the agent is acting on behalf of the owner

IV. No Brokerage Relationship (Nonrepresentation)

A. Florida law does not require that prospective buyers or sellers be represented
   1. Prospective buyers and sellers are customers

B. Duties of a licensee in a no brokerage relationship (ADD)
   1. **A** Account for all funds
   2. **D** Disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer
   3. **D** Deal honestly and fairly

C. No brokerage relationship disclosure given to the customer before the showing of property

V. Single Agent Relationship

A. Principal and subagents defined
   1. Principal is the party with whom a real estate licensee has entered into a single agent relationship
   2. Subagents are persons authorized to assist and represent the agent
   3. Sales associates and broker associates are subagents of their employing broker

B. Single agent duties
   1. Account for all funds
   2. Disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer
   3. Deal honestly and fairly
   4. Confidentiality
   5. Obedience
   6. Loyalty
   7. Full disclosure
   8. Use skill, care, and diligence
   9. Present all offers and counteroffers

C. Four unique duties of a single agent (COLD)
   1. **C** Confidentiality
   2. **O** Obedience
   3. **L** Loyalty
   4. **D** Disclosure (full)

D. Single agent notice

1. Duties apply to all real estate transactions (residential and otherwise) when single agent relationship is used
2. Written single agent disclosure is required for residential transactions
3. Notice must be given to the principal before, or at the time of, entering into a listing agreement or an agreement for representation

VI. Transaction Broker Relationship

A. Presumption of transaction broker relationship
1. Under Florida law, it is presumed that all licensees are operating as transaction brokers unless a single agency or no brokerage relationship is established in writing
2. Broker provides limited representation to a buyer, a seller, or both, but does not represent either party in a fiduciary capacity
3. Seller or buyer is a customer
4. Buyer or seller (customer) is not responsible for the acts of a licensee

B. Fiduciary and nonfiduciary relationships
1. Transaction broker
a. No fiduciary relationship; works with customer
2. Nonrepresentation
    a. No fiduciary relationship; works with customer
3. Single agent
    a. Fiduciary relationship; works with principal/client

C. Transaction broker duties
1. Account for all funds
2. Disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer
3. Deal honestly and fairly
4. Use skill, care, and diligence
5. Present all offers and counteroffers in a timely manner
6. Exercise limited confidentiality, unless waived in writing by a party
7. Perform any additional duties that are mutually agreed to with a party

VII. Transition to Another Relationship

A. Written consent required

B. Consent to transition to transaction broker notice

C. Designated sales associates
1. Requirements
    a. Nonresidential transactions only
    b. Minimum assets required
2. Disclosure notice required

VIII. Terminating a Brokerage Relationship

A. Brokerage relationship may be terminated for following reasons:
1. Fulfillment of the brokerage relationship's purpose
2. Mutual agreement to terminate the brokerage relationship
3. Expiration of the terms of the agreement
4. Broker renounces the single agent relationship by giving notice to the principal or the broker renounces the transaction broker relationship by giving notice to the customer

5. Principal revokes the single agent relationship or the customer revokes a transaction broker relationship by giving notice
6. Death of the seller's broker or the seller before the broker finds a ready, willing, and able buyer
7. Death of the buyer's broker or the buyer before the broker finds a suitable property for the buyer
8. Destruction of the property or condemnation by eminent domain
9. Bankruptcy of the principal or the customer

Unit 10 True-False Quiz

Please check the appropriate box.

	T	F
1. The duties of a licensee who has no brokerage relationship with a buyer or seller must be fully described and disclosed in writing to the buyer or seller.		
2. Exercise limited confidentiality is a duty of all three brokerage relationships.		
3. The principal is a broker who represents, as a fiduciary, either the buyer or seller, but not both, in the same transaction.		
4. A seller's single agent can disclose to a buyer the fact that a seller is forced to sell because of poor health.		
5. A licensee must inform a buyer if a building lot is in a floodplain and requires landfill before it can be used.		
6. If a brokerage firm wants to represent both buyer and seller in the same transaction, it acts as a transaction broker, providing limited representation to both parties.		
7. A sales associate who conducts an open house must give each customer a notice of nonrepresentation.		
8. Designated sales associates serve as neutral parties in certain nonresidential transactions who advise the broker, not the seller (or landlord) and buyer (or tenant.)		
9. An agency relationship between a principal and a broker may be terminated by the principal's bankruptcy.		
10. A broker can sell an in-house listing as a single agent of the seller and a nonrepresentative of the buyer.		

Unit 10 True-False Quiz
Answer Key and Rationale

1. **The duties of a licensee who has no brokerage relationship with a buyer or seller must be fully described and disclosed in writing to the buyer or seller.**
TRUE. The disclosure is called the No Brokerage Relationship Notice and must be given to the customer before the showing of the property.

2. **Exercise limited confidentiality is a duty of all three brokerage relationships.**
FALSE. The duty to exercise limited confidentiality is a transaction broker duty.

3. **The principal is a broker who represents, as a fiduciary, either the buyer or seller, but not both, in the same transaction.**
FALSE. The principal is the buyer or seller with whom a real estate brokerage firm enters into a single agent relationship.

4. **A single agent can disclose to a buyer the fact that a seller is forced to sell because of poor health.**
FALSE. An agent cannot reveal to a third party, without the principal's permission, personal or private information that might lessen the principal's bargaining position.

5. **A licensee must inform a buyer if a building lot is located in a floodplain and requires landfill before it can be used.**
   TRUE. Sellers and licensees have a duty to disclose to buyers all known facts that materially affect the value of residential property.

6. **If a brokerage firm wants to represent both buyer and seller in the same transaction, it acts as a transaction broker, providing limited representation to both parties.**
   TRUE. In Florida dual agency is not allowed in brokerage relationships.

7. **A sales associate who conducts an open house must give each customer a notice of nonrepresentation.**
   FALSE. An open house that does not invove eliciting confidential information or the execution of an offer does not create a brokerage relationship.

8. **Designated sales associates serve as neutral parties in certain nonresidential transactions who advise the broker, not the seller (or landlord) and buyer (or tenant).**
   FALSE. The broker serves as a neutral party who advises the designated sales associates, not the seller (or landlord) and buyer (or tenant).

9. **An agency relationship between a principal and a broker may be terminated by the principal's bankruptcy.**
   TRUE. The principal's bankruptcy is one of the possible reasons for terminating an agency relationship between a principal and a broker.

10. **A broker can sell an in-house listing as a single agent of the seller and a nonrepresentative of the buyer.**
    TRUE. A real estate broker who works with both the buyer and seller in the same transaction may complete the sale, with one party in a nonrepresentative role.

UNIT 11
CONTRACTS

Unit Overview

Contracts are agreements between two or more parties to do or not do a specific thing. Contracts are essential to real estate transactions, and licensees must be able to understand and apply the law of contracts to their daily business. This unit describes the gathering of the required information for contracts. Also, it has samples of some of the more common contract forms, such as a listing agreement, buyer broker agreement and sales contract. There is a section covering the required disclosures for subjects such as stigmatized properties, lead-based paint, and transaction fees.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Describe the characteristics of the various types of listings and describe at least three statutory requirements for listing agreements.

- Identify the four types of legal contracts that licensees may prepare, the requirements of the statute of frauds, and the exceptions allowed under the law.
- Describe the information needed in order to prepare a contract.
- Explain the various components of a Contract for Sale and Purchase and the differences between specific performance and liquidated damages.
- Explain the provisions of Chapters 689 and 760, F.S. regarding occupants infected with HIV or AIDS, the effects of *Johnson v. Davis Supreme Court* rulings on real estate practice in Florida, and the requirements under Chapters 718 and 720, F.S. regarding disclosure of condominiums and homeowner associations.
- Describe the differences between an option contract and a right of first refusal.

Key Terms

compensatory damages
contingency
earnest money deposit
effect a sale
find a purchaser
joint tenancy
lease option agreement
lease purchase agreement
liquidated damages
procuring cause
right of first refusal
specific performance
statute of frauds
tenancy by the entireties
tenancy in common
time is of the essence

Teaching Outline

I. Brokerage Compensation

   A. Listing agreements
      1. Written documents
      2. Oral (parol) agreements

   B. Types of listing agreements
      1. Open listing
      2. Exclusive agency listing
      3. Exclusive-right-of-sale listing
      4. Net listing

   C. Entitlement to Commission
      1. Find a ready, willing, and able buyer versus effect a sale
      2. Referral fee

   D. Procuring cause

   E. Commercial Real Estate Sales Commission Lien Act

   F. Commercial Real Estate Leasing Commission Lien Act

   G. Buyer Brokerage Agreement

II. Purchase and Sale Contracts

   A. Unauthorized practice of law

   B. Statute of Frauds

   C. E-Sign Act

III. Documents for Preparing to Write the Contract

   A. Seller documents
      1. Deed
      2. Survey
      3. Mortgage
      4. Zoning, zoning variances, and nonconforming uses

IV. Provisions of Real Estate Contracts

   A. Dates
      1. Effective date

   B. Parties to the contract
      1. Seller
      2. Buyer
         a. Sole owner
         b. Joint tenancy with right of survivorship versus tenancy in common
         c. Tenancy by the entireties

C. Earnest money deposit
   1. Inserting the amount and wording in the earnest money blank
   2. No escrow account
   3. Form of funds
      a. Third-party checks
      b. Subsequent additional earnest money
      c. Notes as earnest money
      d. Old earnest money for a new contract
      e. When a licensee is the buyer

D. Legal description
   1. Street address

E. Purchase price
   1. How price is to be paid

F. Financing terms
   1. Time limit for loan application and loan commitment
   2. Owner occupied as principal residence
   3. Conditional on buyer obtaining a loan

G. Specify types of financing
   1. Cash sale
   2. Seller to carry first mortgage
   3. New conventional first mortgage
   4. Interest rate
   5. New VA loan
   6. Seller's concessions and nonallowables
   7. New FHA loan
   8. FHA/VA amendatory clause
   9. Adjustable-rate loans
   10. Loan assumptions
   11. Lender consent with no changes
   12. Lender consent plus loan changes

H. Chattel and fixture inclusions
   1. Sales tax on personal property in contract

I. Evidence of title
   1. Time to examine title
   2. Quality of seller's title

J. Date and place for closing

K. Proration of expenses and income

L. Possession of property
   1. Seller retaining possession
   2. Buyer occupying before closing
   3. Possession when tenant-occupied
   4. Insurance for delayed possession

M. Time allowed for acceptance of offer and counteroffers

N. Type of deed to be delivered

O. Specific performance versus liquidated damages
  1. Division of forfeited earnest money
     a. Liquidated damages
     b. Rescission on breach
     c. Compensatory damages
     d. Specific performance

P. Miscellaneous provisions
  1. Special assessments
  2. Licensee acting as buyer or seller
  3. Conditional on sale of buyer's property
  4. Property inspections
  5. Conditional on spouse's approval
  6. Right of first refusal

Q. Signatures and copies
  1. Witnesses and acknowledgment

V. Disclosure

A. Psychologically impacted or stigmatized property

B. Occupant infected with HIV or AIDS
  1. Section 760.50, F.S.

C. Homeowners' Association Disclosure

D. Other required disclosures
  1. Ad Valorem Tax Disclosure
  2. Energy-Efficiency Brochure
  2. Transaction fees

E. Duty of seller to disclose
  1. *Johnson vs. Davis*
  2. Community Development Districts (CDDs)
  3. Required disclosure to purchaser

I. Other disclosures
  1. Building code violations

VI. Other Contracts

A. Lease Purchase Agreements

B. Option Contracts

Unit 11 True-False Quiz

Please check the appropriate box.

	T	F
1. An exclusive agency listing is a unilateral contract because only the seller is obligated to perform.		
2. A written listing agreement may be renewed automatically.		
3. A licensee who prepared a contract may explain an intent not shown in the contract's contents.		
4. The Florida REALTORS®/Florida Bar Contract for Sale and Purchase is appropriate for use in a business purchase or sale.		
5. It may be considered practicing law if a licensee advises buyers about which tenancy to use when taking title to real property.		
6. If the buyer takes early occupancy or if the seller remains in possession following closing, the parties should make certain to acquire proper fire, casualty, and liability insurance.		
7. The fact that an occupant of real property is infected with HIV or AIDS is a material fact that must be disclosed in a real estate transaction.		
8. In the case of *Johnson v. Davis*, the Florida Supreme Court held that the seller had a duty to inform the buyer of the residential property about any known property defects that materially affected the property's value.		
9. A licensee may not prepare an agreement for deed because it is more like a mortgage than a sales contract.		
10. The Commercial Real Estate Sales Commission Lien Act gives a broker the right to file a lien against a property if the seller fails to pay the commission on the sale.		

Unit 11 True-False Quiz

Answer Key and Rationale

1. **An exclusive agency listing is a unilateral contract because only the seller is obligated to perform.**
FALSE. An open listing is a unilateral contract because only the seller is obligated to perform. The broker does not promise to perform and is not required to advertise or otherwise market the property. In an exclusive agency listing, the broker may make promises, for example, to put the listing into the MLS. That would make the contract bilateral.

2. **A written listing agreement may be renewed automatically.**
FALSE. A written listing agreement must have a definite expiration date and may not be renewed automatically.

3. **A licensee who prepared a contract may explain an intent not shown in the contract's contents.**
FALSE. If errors, omissions, or ambiguities exist regarding the material terms of a contract, the courts will not go outside the contents of the contract to decide intent.

4. **The real estate sales contract developed by the Florida REALTORS® and the Florida Bar—the Florida REALTORS®/Florida Bar Contract for Sale and Purchase— is appropriate for use in a business purchase or sale.**
FALSE. The Florida REALTORS®/Florida Bar Contract for Sale and Purchase is intended for use in routine transactions involving the sale of single-family dwellings or unimproved real property.

5. **It may be considered practicing law for a licensee to advise buyers about which tenancy to use when taking title to real property.**
TRUE. The best advice licensees can give is "See your attorney."

6. **If the buyer takes early occupancy or if the seller remains in possession following closing, the parties should make certain to acquire proper fire, casualty, and liability insurance.**
TRUE. When the party in possession is not the owner, homeowner's insurance does not provide appropriate coverage, particularly for the tenant's personal property.

7. **The fact that an occupant of real property is infected with HIV or AIDS is a material fact that must be disclosed in a real estate transaction.**
FALSE. Disclosure of such information violates Section 760.50, F.S.

8. **In the case of *Johnson v. Davis*, the Florida Supreme Court held that the seller had a duty to inform the buyer of the residential property about any known property defects that materially affected the property's value.**
TRUE. Chapter 475, F.S., holds licensees to the same standard.

9. **A licensee may not prepare an agreement for deed because it is more like a mortgage than a sales contract.**
TRUE. Recently, a licensee was disciplined for culpable negligence (fined $1,000 and suspended for three months) for preparing an agreement for deed.

10. **The Commercial Real Estate Sales Commission Lien Act gives a broker the right to file a lien against a property if the seller fails to pay the commission on the sale.**
FALSE. The lien is only against the owner's net proceeds (personal property) from the sale and does not apply to the commercial real property.

UNIT 12
FINANCING REAL ESTATE

Unit Overview

Major changes have taken place in the financial markets since the bank bailouts of 2008-09. This Unit describes some of the factors that caused the crisis, and the steps taken to prevent a recurrence. Many aspects of the mortgage finance field has remained unchanged, such as the legal instruments used in a mortgage loan and the rights of lenders and borrowers. This unit will cover the aspects of different types of mortgage loans to help licensees market properties more effectively. Several alternative financing approaches are discussed, such as contracts for deed, wraparound loans and sale-leaseback. There is coverage of the federal regulations affecting lending practices, such as the Equal Credit Opportunity Act, the Truth in Lending Act, and the Real Estate Settlement Procedures Act. The Unit also describes the process of loan application and processing, and how automated software is dramatically changing mortgage loan processing.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Distinguish between a mortgage and a note and list the essential elements of each, describe Florida's statutory foreclosure process, and understand mortgage priorities and the concept of subordination.
- Explain the calculation of the interest rate on an adjustable-rate mortgage (ARM) as well as the features and characteristics of various mortgages, including FHA-insured mortgage loans and Veterans Affairs (VA) loans, and calculate a mortgage payment on a new loan using financial tables and/or a financial calculator.
- Describe the characteristics of contracts for deed and sale-leasebacks.
- Understand the types of discrimination prohibited by the Equal Credit Opportunity Act (ECOA), the provisions of the Truth-in-Lending Act and Regulation Z, and the requirements of RESPA as they relate to mortgage loan applications.
- Describe the steps involved in residential loan underwriting; and calculate the minimum qualifying ratios for conventional and FHA mortgages and estimate the approximate yield to the lender based on the number of points charged.

Key Terms

buydown
conforming loan
contract for deed
discount points
fully amortized mortgage
home equity loan
lien theory
loan estimate
nonconforming loan
partially amortized mortgage
reverse annuity mortgage
sale and leaseback financing
secured note
term mortgage
title theory
unsecured note
yield

Teaching Outline

I. Mortgage Concepts and Practices

- A. Promissory note
  1. Essential elements of the note
- B. Mortgage
  1. Parties to the mortgage
  2. Essential elements of a mortgage
  2. Special provisions
     - a. Acceleration clause
     - b. Prepayment clause
     - c. Prepayment penalty clause
     - d. Due-on-sale clause
  3. Mortgage theory
     - a. Title theory
     - b. Lien theory
  4. Mortgage priorities
     - a. Effect and importance of chronology of recordation
     - b. Subordination of mortgages
- C. Rights of mortgage lenders
  1. Foreclosure procedure in Florida
  2. Lender must produce original note or an affidavit of lost, destroyed, or damaged note
     - a. Foreclosure sale
     - b. Deficiency judgment
     - c. Junior lien holders
  3. Right to transfer (assign) the mortgage
     - a. Right of possession
     - b. Equity of redemption

II. Types of Mortgage Loans

- A. Mortgages by method of payment
  1. Term (straight) mortgages
  2. Fully amortized mortgages
  3. Partially amortized mortgages
- B. Mortgages by payment or yield variability
  1. Adjustable-rate mortgage (ARM)
  2. Graduated-payment mortgage (GPM)
  3. Reduction option mortgage
  4. Early payment mortgage
  5. 15-year mortgage
  6. 3% down payment mortgage
  7. Buydowns
- C. Mortgages by purpose
  1. Purchase-money mortgage
  2. Participation mortgage
  3. Blanket mortgage
  4. Reverse mortgage

5. Package mortgage
6. Home equity loan

D. Conforming vs. nonconforming loans

E. Conventional mortgage loans
1. Definition and availability
2. General characteristics and interest rates
3. Computation of maximum loan amount and minimum down payment
4. Calculation of mortgage payment
5. Assumption of conventional mortgages
6. Private mortgage insurance (PMI)
7. Typical coverage and conditions

F. Government originated, insured, or guaranteed mortgage loans
1. FHA-insured mortgage loans
    a. FHA mortgage insurance concept (MIP)
2. FHA 203(b) residential loan
3. Section 203(k) construction loan
    a. Maximum loan amounts
    b. Lending source
    c. Interest rates
    d. Qualifying ratios
    e. Appraisal
    f. Prepayment
    g. Direct endorsement program for lenders

G. Department of Veterans Affairs (VA) loan
1. Mortgage guarantee concept
2. Eligibility and loan guaranty entitlement
    a. Interest rates
    b. Certificate of Reasonable Value (CRV)
    c. Closing costs and VA funding fee

H. Rural Housing Services Administration
1. Basic characteristics
2. Qualification requirements

III. Other Techniques Used in Financing Real Estate

A. Contract for deed

B. Sale and leaseback

C. Installment sale contract

IV. Laws Concerning Fair Lending and Credit Procedures

A. Consumer Financial Protection Bureau

B. Equal Credit Opportunity Act (ECOA)

C. Truth-in-Lending Act and Regulation Z

D. Real Estate Settlement Procedures Act (RESPA)
   1. Disclosures at the time of loan application
   2. Disclosures before settlement (closing)
   3. Disclosures before or at settlement
   4. Disclosures after settlement
   5. Limits on escrow accounts
   6. RESPA prohibitions

V. Residential Loan Underwriting

A. Initial interview and loan application

B. Borrower analysis
   1. Credit history
   2. Stability of income
   3. Income/expense ratios

C. Property analysis
   1. Appraisal
   2. Title examination
   3. Flood insurance

D. Loan analysis
   1. Loan-to-value ratio
   2. Interest rate and discount points
      a. Yield calculations
   3. Loan term
   4. Availability of mortgage insurance
   5. Loan fees and calculations
   6. Underwriting decision and loan commitment
   7. Takeout commitment

E. Automated underwriting

Unit 12 True-False Quiz

Please check the appropriate box.

	T	F
1. All notes are secured by a mortgage, but not all mortgages have a note.		
2. In Florida, property taxes and special assessments come before all other liens.		
3. Foreclosure is a process used after a mortgagor defaults on a note secured by a mortgage on real property.		
4. The FHA regulates interest rates.		
5. A reverse mortgage allows an elderly homeowner to use money that need not be paid back until he or she leaves the house or the house is sold (by the owner or his or her estate after his or her death).		
6. A sale and leaseback transaction is also called an installment contract.		
7. The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction based on race and religion, but not on marital status.		
8. A person may give or accept anything of value for referrals of settlement service business associated with a federally related mortgage loan.		
9. Real estate loan processing begins when the lender completes a standardized loan application form based on information the buyer provides.		
10. A lender must give the borrower a special information booklet and a Loan Estimate at the time of loan application or must mail the documents to the borrower withing three business days.		

Unit 12 True-False Quiz
Answer Key and Rationale

1. **All notes are secured by a mortgage, but not all mortgages have a note.**
FALSE. All mortgages must have a note, but not all notes are secured by a mortgage.

2. **In Florida, property taxes and special assessments come before all other liens.**
TRUE. Most institutional lenders require that their liens be in first position, with only property taxes and special assessments having higher priority liens.

3. **Foreclosure is a process used after a mortgagor defaults on a note secured by a mortgage on real property.**
TRUE. The property is sold at public auction, taking away the mortgagor's rights in the property. When the property is sold, the original mortgage lien and any lower priority liens are extinguished.

4. **The FHA regulates interest rates.**
FALSE. The FHA does not regulate interest rates; rates are set by lenders based on the market.

5. **A reverse mortgage allows an elderly homeowner to use money that need not be paid back until he or she leaves the house or the house is sold (by the owner or his or her estate after his or her death).**
TRUE. Many elderly persons on fixed incomes have substantial equity in their homes, but cannot qualify for conventional loans.

6. **A sales and leaseback transaction is also called an installment contract.**
FALSE. A **contract for deed is often called an installment sales contract.**

7. **The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction based on race and religion, but not on marital status.**
FALSE. Race, religion, and marital status are among the factors upon which ECOA prohibits discrimination in any aspect of a credit transaction.

8. **A person may give or accept anything of value for referrals of settlement service business associated with a federally related mortgage loan.**
FALSE. No person may give or accept anything of value (kickback) for referrals of settlement service business associated with a federally related mortgage loan. Neither may a person give or accept any part of a charge for services that are not performed.

9. **Real estate loan processing begins when the lender completes a standardized loan application form based on information the buyer provides.**
TRUE. All loan applications are designed to show a borrower's financial ability to meet a loan agreement's basic obligations.

10. **A lender must give the borrower a special information booklet and a Loan Estimate at the time of loan application or must mail the documents to the borrower withing three business days.**
TRUE. The lender must give the borrower a special information booklet and a **Loan Estimate** at the time of loan application, or must mail the documents to the borrower within three business days.

UNIT 13
CLOSING REAL ESTATE TRANSACTIONS

Unit Overview

Buyers and sellers expect their sales associates to carefully monitor and coordinate all details of their closings. Most lenders and title closing agents prepare documents competently, but a licensee should review the documents to ensure that they are correct. A transaction that goes smoothly from contract to closing reflects well on the firm as well as the sales associate. It is likely to result in additional business for the licensee. The closing of a real estate transaction is the final step in the process of title transfer that began when the contract for purchase and sale was written. A checklist helps organize the many details required for a smooth closing.
The Closing Disclosure, which replaced the HUD-1 Settlement Statement in 2015, must be used for mortgage loans covered by the Real Estate Settlement Procedures Act. This unit describes the closing process and helps the broker understand prorations and the Closing Disclosure.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Describe the tasks the broker must complete that lead to a successful closing, the major objectives of a preclosing inspection, and the three disclosures that a lender should make at the time of loan application.
- Describe the process used in prorating taxes, homeowners' association dues, and prepaid rents.
- Describe the major sections of the Closing Disclosure as well as prepare a Closing Disclosure.

Key Terms

365-day method	Closing Disclosure	intangible taxes
30-day month method	documentary stamp taxes	Loan Estimate

Teaching Outline

I. Preliminary Steps to a Closing

A. Notice of "under contract" to MLS
B. Binder deposited in bank
C. Deliver required condominium documents (if the subject property is a condominium resale)
D. Additional deposit received, if required
E. Loan application made by buyer
F. Contingencies cleared in writing
G. Appraisal
H. Loan approval
I. Title insurance ordered by lender or sales associate
J. Wood-destroying organisms inspection ordered
K. Required repairs ordered
L. Survey ordered
M. Buyer hazard insurance
N. Hazard insurance policy to closing agent
O. Buyer/seller contacted for closing appointment
P. Preclosing inspection
Q. Closing papers reviewed with the buyer or seller one day before closing
R. Buyer given closing amount in order to wire funds for closing
S. Earnest money check prepared for closing
T. At the closing
U. Signed closing papers received by sales associate
V. Post closing duties
W. IRS reporting requirements

II. Prorating Procedures

A. Items typically prorated between buyer and seller
1. Prorating property taxes
a. Answers to tax proration exercises:

Closing Date	**Taxes**	**Amount**	**Charge To**
June 10	$2,567	$1,125.26	Seller
November 13	$4,260 (Paid 11/3)	$ 571.89	Buyer
February 8	$1,892.56	$ 197.03	Seller

2. Prorating association dues
a. For annual payment dues
b. For monthly payment dues
3. Prorating rent
a. Answers to rent proration exercises:

Closing Date	**Rent Collected**	**Proration**	**Charge To**
May 10	$4,750	$3,370.87	Seller
November 13	$ 750	$ 450.00	Seller
February 8	$2,300	$1,725.00	Seller

4. Prorating hazard insurance
5. Documentary stamp taxes and intangible taxes
a. Answers to deed stamp exercise:

Sales Price	**Doc. Stamps-Deed**
$420,000	$2,940.00
$128,210	$ 898.10
$242,500	$1,697.50

b. Answers to note stamps exercise:

Mortgage Amount	**Doc. Stamps-Mortgage**
$436,000	$1,526.00
$141,202	$ 494.55
$316,500	$1,107.75

c. Answers to intangible tax exercise:

Mortgage Amount	**Intangible Tax-Mortgage**
$436,000	$872.00
$141,202	$282.40
$316,500	$633.00

III. Preparation of the Closing Disclosure

A. The Contract for Sale is the basis for the Closing Statement

B. The TILA-RESPA Integrated Disclosure (Closing Disclosure)

C. Nonresidential Closings

IV. Practice Closing Disclosure

Unit 13 True-False Quiz

Please check the appropriate box.

	T	F
1. The sales associate should conduct the preclosing walkthrough inspection.		
2. Lenders must prepare the Closing Disclosure form for the parties to a federally related residential mortgage loan.		
3. If a lender charges two points on a $100,000 loan, the borrower pays $200.		
4. The reserve is an escrow account the lender holds to ensure future payment for such recurring expenses as real estate taxes, mortgage insurance, and hazard insurance.		
5. After a real estate closing, the property taxes, paid in arrears, are the seller's responsibility to pay at year's end.		
6. When a mortgage payment is made on October 1, it pays the interest for the month of September.		
7. Prepaid rent is prorated for income property.		
8. Expenses of the seller are shown on Page 2 of the Closing Disclosure.		
9. Prorations are shown on Page 2 of the Closing Disclosure.		
10. A debit to the seller reduces the seller's proceeds; a debit to the buyer increases the amount due from the buyer.		

Unit 13 True-False Quiz
Answer Key and Rationale

1. **The sales associate should conduct the preclosing walkthrough inspection.**
FALSE. The buyer should make the preclosing walkthrough inspection. The sales associate should not conduct the inspection because of the liability involved.

2. **Lenders must prepare the Closing Disclosure for the parties to a federally related residential mortgage loan.**
FALSE. The Closing Disclosure is prepared by the lender.

3. **If a lender charges two points on a $100,000 loan, the borrower pays $200.**
FALSE. The borrower pays $2,000 because the loan discount, a one-time charge used to adjust the yield on the loan to what market conditions demand, usually is expressed as points. Each point equals 1 percent of the mortgage amount.

4. **The reserve is an escrow account the lender holds to ensure future payment for such recurring expenses as real estate taxes, mortgage insurance, and hazard insurance.**
TRUE. The lender collects an initial amount for each of these items to start the reserve account, and then adds a portion of each monthly payment to the account.

5. **After a real estate closing, the property taxes, paid in arrears, are the seller's responsibility to pay at year's end.**
FALSE. Property taxes, paid in arrears, are the buyer's responsibility at year's end. For this reason, the seller must compensate the buyer for the seller's share of the taxes.

6. **When a mortgage payment is made on October 1, it pays the interest for the month of September.**
TRUE. Interest on a mortgage is paid in arrears, so if a mortgage is assumed, the seller must compensate the buyer for the seller's share of the interest.

7. **Prepaid rent is prorated for income property.**
TRUE. The seller collects the rent and should compensate the buyer for the rent for the period after the closing. The buyer also should be credited for the security deposits collected by the seller.

8. **Expenses of the seller are shown on Page 2 of the Closing Disclosure.**
TRUE. Expenses for the parties are shown on Page 2 of the Closing Disclosure.

9. **Prorations are shown on Page 2 of the Closing Disclosure.**
FALSE. Prorations are shown on Page 3 of the Closing Disclosure.

10. **A debit to the seller reduces the seller's proceeds; a debit to the buyer increases the amount due from the buyer.**
TRUE. A debit is the same as a charge. When a seller is charged for an item, it reduces the amount of the seller's proceeds. When a buyer is charged, that increases the amount a buyer must pay.

UNIT 14
FEDERAL INCOME TAX LAWS AFFECTING REAL ESTATE

Unit Overview

Buyers and sellers expect real estate professionals to explain how income taxes affect ownership of personal homes and investment properties. While licensees are not expected to be tax experts, the duty of skill, care and diligence requires a basic understanding of this important subject. This unit begins by covering the deductibility of homeowners' expenses, such as taxes and interest. The material discusses the new rules permitting the use of IRA accounts for home investments as well as the tax deductions for vacation homes and home offices. It also describes the new rules for excluding taxes on the gain from sale of a personal home.

The next section of the unit deals with taxes on investment property and explains how to calculate taxable income from an investment property. The unit also covers the important issue of deducting an investment's tax losses from the investor's other income.

The calculation of taxable gain or loss on investment property has become more complex. This unit provides the information necessary to estimate the taxes due from the sale of the property. The last section of the unit discusses installment sales and tax-deferred exchanges. With this knowledge, licensees can suggest ways for investors to defer taxes or, in some cases, reduce their tax liability. Of course, buyers and sellers should be advised to seek tax advice from an attorney or an accountant.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Identify two principal tax deductions available to homeowners and two types of home loans that qualify for a homeowner's interest deduction, the requirements for mortgage interest deductions and for deducting buyer-paid points, and how to use an IRA for contributing the down payment and acquisition costs of a new home.
- Describe how the tax treatment of vacation home rental income properties differs from other investment property as well as the special rules that apply for persons who deduct expenses for a home office.
- Know the requirements for excluding tax on the gain on sale of a principal home.
- Describe the steps required to calculate taxable income from the operations of an investment property and the process used to allocate the acquisition costs of a property between land and improvements as well as calculate after-tax cash flow, taxable income, and the depreciation (cost recovery) for residential and nonresidential investment property.
- Describe the procedure for calculating the taxes due on the sale of investment real estate.
- Describe the two methods for deferring taxes upon sale or disposition of investment property.

Key Terms

active participant
after-tax cash flow
capital gain
home acquisition loan
home equity loan
installment sale
investment interest
like-kind exchange
passive income
qualified intermediary

Teaching Outline

I. 2018 Tax Cuts and Jobs Act

II. Income Tax Treatment — Principal and Second Homes

A. Real estate property taxes
1. Principal residence
2. Second home

B. Mortgage Interest deduction
1. Home acquisition loans
2. Home equity loans
3. Home construction loans
4. Home improvement loans
5. Refinanced loans

C. Other types of loans
1. Reverse mortgage
2. Shared appreciation mortgage
3. Points
4. Deductibility of points

D. Prepayment Penalties

E. Other Benefits
1. The IRA deduction for down payment

III. Special Rules

A. Vacation homes

B. Office in home

C. Tax Incentives for Low-Income Housing

IV. Sale of Principal Residence

A. Exclusion of gain on sale or exchange of principal residence

B. Reporting requirements to IRS
1. Home sale related to change in employment
2. Home sale related to health
3. Home sale based on "unforeseen circumstances"

V. Real Estate Investment Operations

A. Accounting methods
1. Net operating income, before-tax cash flow, and after-tax cash flow

B. Determination of Net (Taxable) Income
1. Reserve for replacements

2. Interest
3. Depreciation
   a. Methods of calculating depreciation
   b. Losses

B. Taxes from operations
1. Passive versus nonpassive income
2. Tax classifications of investment
   a. Personal residence
   b. For sale to customers
   c. Trade or business
   d. Investment
3. Tax status of investor

VI. Sale of Investment Real Estate

A. Determination of gain or loss

B. Taxation of gain or loss
1. After-tax reversion

VII. Methods of Deferring Taxes Upon Disposition

A. Installment sales

B. Like-kind exchanges
1. Section 1031 Exchange

Unit 14 True-False Quiz

Please check the appropriate box.

	T	F
1. Home equity loans are deductible only if the proceeds are used to buy, build, or improve the home.		
2. If an individual borrows more than the allowed limit on a mortgage, the interest cannot be deductible as investment interest.		
3. For the acquisition or improvement of a personal home, points are deductible as interest if the borrower pays the points directly to the lender, not to a mortgage broker.		
4. Under recent tax legislation, first-time home buyers can use up to \$50,000 of the IRA savings for a down payment or related expenses.		
5. A single homeowner may exclude tax on the sale of a principal residence up to \$250,000 of the gain.		
6. For tax purposes, only two principal classifications of real property exist: personal residence and investment.		
7. A tax deduction is a 100 percent direct reduction in taxes. It is about three times better than a tax credit.		
8. An owner-developer who builds or rehabilitates low-income housing is entitled to a 9 percent credit of the qualified cost each year for ten years. The costs must exceed \$2,000 per unit.		
9. In an installment sale of depreciable property, the investor reports any depreciation recapture as income in the year following the sale.		
10. Like-kind property that may be exchanged includes commercial property, hotels, and residential income-producing property.		

Unit 14 True-False Quiz
Answer Key and Rationale

1. **Home equity loans are deductible only if the proceeds are used to buy, build, or improve the home.**
TRUE. Home equity loans are deductible only if the proceeds are used to buy, build, or improve the home.

2. **If an individual borrows more than the allowed limit on a mortgage, the interest cannot be deducted as investment interest.**
FALSE. If an individual borrows more than the allowed limit on a mortgage, the interest may be deductible as investment interest. The loan proceeds, however, must be segregated and used specifically for investment purposes, rather than for personal use.

3. **For the acquisition or improvement of a personal home, points are deductible as interest if the borrower pays the points directly to the lender, not to a mortgage broker.**
TRUE. If the borrower pays the points directly to the lender (and not to a mortgage broker) for the acquisition or improvement of a personal home, points are deductible as interest.

4. **Under recent tax legislation, first-time home buyers can use up to $50,000 of the IRA savings for a down payment or related expenses.**
FALSE. Under recent tax legislation, first-time home buyers can use up to $10,000 of the IRA savings for a down payment or related expenses.

5. **A single homeowner may exclude tax on up to $250,000 of the gain from the sale of his or her principal residence.**
TRUE. The Taxpayer Relief Act of 1997 made substantial tax savings available to homeowners.

6. **For tax purposes, only two principal classifications of real property exist: personal residence and investment.**
FALSE. For tax purposes, four principal classifications of real property exist: personal residence, for sale to customers, trade or business, and investment.

7. **A tax deduction is a 100 percent direct reduction in taxes. It is about three times better than a tax credit.**
FALSE. A tax credit is a 100 percent direct reduction in taxes. It is about three times better than a tax deduction.

8. **An owner-developer who builds or rehabilitates low-income housing is entitled to a 9 percent credit of the qualified cost each year for ten years. The costs must exceed $2,000 per unit.**
TRUE. The low-income housing tax credit program allows for this arrangement.

9. **In an installment sale of depreciable property, the investor reports any depreciation recapture as income in the year following the sale.**
FALSE. In an installment sale of depreciable property, the investor reports any depreciation recapture as income in the year of sale.

10. **Like-kind property that may be exchanged includes commercial property, hotels, and residential income-producing property.**
TRUE. Like-kind property that may be exchanged includes any of the following: residential income-producing property, commercial property, industrial property, vacant land held for investment (except dealer property), leaseholds for 30 years or more, and hotels and motels.

UNIT 15
INVESTMENT REAL ESTATE

Unit Overview

A broker who sells real estate investment property must be able to communicate factual information to principals and customers so they can make an informed decision. The broker should be able to present the physical characteristics of the property, regulatory requirements, lease terms, operating expenses, financing, and cash flows clearly. The broker must understand the customer's capabilities and goals and locate the right property for the investor's needs. By understanding and applying the principles of investment analysis, the broker's liability is reduced, and the broker can better satisfy the customer's needs.

This unit describes some of the steps investment brokers use to evaluate income property, including:

- matching an investor with the right property;
- evaluating the sites and improvements of income properties;
- determining the type of lease terms most appropriate for property;
- evaluating different financing alternatives; and
- analyzing the financial aspects of an investment using ratios and discounted cash flow methods.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Identify the characteristics that affect the value of an investment site, the structural components of an income property building, and the types of problems that might be observed by the broker.
- Explain the use of expense stops, caps, and rent concessions and calculate the additional rent required from financing a tenant improvement.
- Describe the various methods an investor can use to reduce the annual debt service on a mortgage and the priorities of leases compared with mortgages on the same property.
- Identify the basic components of a building and problem areas that should be considered.
- Describe common problem areas on an operating statement as well as develop an annual operating statement for an income property, calculate financial and investment ratios for an evaluation of the one-year statement, describe the process used to estimate the after-tax sales proceeds, and calculate the present value of a series of unequal cash flows, the net present value of an investment, and the internal rate of return.

Key Terms

add-on interest	gross leasable area	net lease
discounted cash flow analysis	gross lease	net present value (NPV)
expense stops and caps	internal rate of return	nominal interest rate

percentage rent	rent concession	triple-net lease
rentable area	simple interest	usable area

Teaching Outline

I. Matching Investment Properties with Investor Needs

A. Basic investor situation
1. Existing asset portfolio
2. Liabilities
3. Contingent liabilities (retirement needs, education for children, weddings, etc.)
4. Risk preferences
5. Earning potential
6. Real estate management capability
7. Specific investment goals
8. Investor's experience, reputation, ego

B. Basic property characteristics
1. Return
2. Risk level
   a. Business risk
   b. Financial risk
   c. Capital risk
   d. Regulatory risk
   e. Inflation risk
3. Liquidity

II. Leases and Lease Terminology

A. Rent determination
1. Area determination
2. Determination of base rent charge
   a. Importance of explicit dollar rental charges
3. Percentage (overage) rent
   a. Problem of specifying monitoring provisions
4. Rent concessions

B. Expenses
1. Expense stops
2. Pass-through expenses
3. Reimbursable vs non-reimbursable expenses
4. Expense caps
5. Pro-rata expenses
   a. Based on tenant's percentage of total building space
   b. Based on tenant's percentage of occupied space

C. Types of leases
1. Gross lease
2. Net lease
3. Escalator lease
4. Index lease
5. Step-up lease

D. Tenant improvement allowances
   1. New tenant
   2. Renewal tenant

E. Options
   1. Renewal option
   2. Expansion option
   3. Right of first refusal (ROFR)
   4. Right of first offer
   5. Termination option

III. Mortgages

A. Basic terms
   1. Interest computation
   2. Balloon date
   3. Amortization term
   4. Other terms affecting the payment
   5. Amortization
   6. Term/balloon mortgage

B. Recourse provisions
   1. Transferring mortgaged property

C. Legal Priority of Leases Relative to Mortgages

D. Prepayment Clauses

E. Estoppel Letter for Existing Mortgage

IV. Structural Knowledge

A. Type and condition of roof

B. Type and condition of HVAC system

C. Nature and capacity of electrical systems

D. Nature and capacity of telephone systems

E. Internet services/bandwidth capacity

F. Nature and condition of elevators

G. Insulation level

H. Sources of utilities

I. Adequacy of storm drainage system

J. Condition of appliances and special equipment

K. Condition and needs of drives and parking areas

- L. Survey of land and buildings
  1. Importance of verifying structure sizes
  2. Importance of easements and encroachments

- M. Environmental

- N. Identifying and verifying all current property expenses

- O. Identifying imminent capital expenditure needs

V. Investment Analysis: Case Study — Timberlane Office Suites

- A. Financial and investment ratios
  1. Debt coverage ratio
  2. Operating expense ratio
  3. Expenses per square foot
  4. Price per square foot
  5. Rent per square foot
  6. Break-even ratio
  7. Equity dividend rate
  8. Capitalization rate
  9. Loan constant

- B. The computation and interpretation of IRR and NPV
  1. Before tax calculations
  2. After tax calculations
  3. Importance of possible tax advantaged returns in real estate

- C. Basic risk analysis
  1. Evaluation of debt coverage ratio and break-even ratio relative to property type
  2. Sensitivity analysis (worst-case scenario)

Unit 15 True-False Quiz

Please check the appropriate box.

	T	F
1. A broker need only understand the value of a site's physical features and economic usefulness.		
2. Aluminum wiring is a better choice than copper wiring for a large building.		
3. Rentable area is all the area inside the tenants' space, including bathrooms and sometimes common hallways.		
4. In a percentage lease, if a tenant's base rent is $45,000 annually and the percentage is 4%, the sales threshold would be $1,125,000. If the store's sales for the year are $1,400,000, the total rent would be $56,000.		
5. A mortgage amortized over a short term increases cash flows and the investor's current return.		
6. If an apartment property will need new carpeting in three years, and the owner expects to pay $30,000 to replace it, he or she adds $10,000 per year to the reserves.		
7. If a property's net operating income is $62,500 and its value is $525,000, its overall capitalization rate (OAR) is 8 percent.		
8. Sensitivity analysis is a technique that measures anticipated returns using best case, worst case and most likely case scenarios.		
9. Two types of business risk include financial risk and capital risk.		
10. Static risk is associated with fire, storm, flood, theft or liability from accidents.		

Unit 15 True-False Quiz
Answer Key and Rationale

1. **A broker need only understand the value of a site's physical features and economic usefulness.**
FALSE. A broker must understand the value of a site's physical features, its location, the restrictions on its use and its economic usefulness.

2. **Aluminum wiring is a better choice than copper wiring for a large building.**
FALSE. Many properties built in the 1960s and 1970s have aluminum wiring, which later was found to be a fire hazard. Copper wiring is preferred.

3. **Rentable area is all the area inside the tenants' space, including bathrooms and sometimes common hallways.**
TRUE. Rentable area, sometimes called gross leasable area is all the area inside the tenants' space, including bathrooms and sometimes common hallways. Net leasable area normally includes only the area the tenants use.

4. **In a percentage lease, if a tenant's base rent is $45,000 annually and the percentage is 4%, the sales threshold would be $1,125,000. If the store's sales for the year are $1,400,000, the total rent would be $56,000.**
FALSE. The store's sales exceeded the threshold by $275,000. The additional rent would be $11,000 ($275,000 × .04) and the total rent would be $56,000.

5. **A mortgage amortized over a short term increases cash flows and the investor's current return.**
FALSE. A mortgage amortized over a short term reduces cash flows and the investor's current return.

6. **If an apartment property will need new carpeting in three years, and the owner expects to pay $30,000 to replace it, he or she adds $10,000 per year to the reserves.**
TRUE. This stabilizes the net operating income by making annual charges rather than a large charge in three years.

7. **If a property's net operating income is $62,500 and its value is $525,000, its overall capitalization rate (OAR) is 8 percent.**
FALSE. Overall capitalization rate (OAR) = Net operating income ÷ Value. $62,500 ÷ $525,000 = 12%

8. **Sensitivity analysis is a technique that measures anticipated returns using best case, worst case and most likely case scenarios.**
TRUE. Lenders and investors must analyze risk carefully using sensitivity analysis and other techniques.

9. **Two types of business risk include financial risk and capital risk.**
FALSE. Two types of business risk include static risk and dynamic risk.

10. **Static risk is associated with fire, storm, flood, theft or liability from accidents.**
TRUE. Usually, it is not a major risk because the investor can buy insurance to cover the risk.

UNIT 16
ZONING AND PLANNING, SUBDIVIDING OF LAND, AND SPECIAL ISSUES

Unit Overview

This unit begins with an overview of the evolution of zoning and planning laws in Florida. Nonconforming uses, special exceptions, and variances are explained. Other zoning-related matters are discussed, including flood zones, planned unit developments, and subdivision regulations. The provisions of the Interstate Land Sales Disclosure Act are presented. The unit concludes with a brief discussion of the federal Clean Water Act of 1997 and the Coastal Zone Management Act.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Describe the major features of Florida's Community Planning Act and explain the purpose of the concurrency provision.
- Distinguish between zoning and subdivision regulations.
- Distinguish among variance, special exception, and nonconforming use.
- Describe the characteristics of a planned unit development and a community development district.
- Describe the basic provisions of the National Flood Insurance Program.
- Briefly describe the purpose of the Clean Water Act and the Coastal Zone Management Act.
- Explain the basic provisions of the Interstate Land Sales Full Disclosure Act and Florida regulation concerning developments of regional impact.

Key Terms

community development district (CDD)
Community Planning Act
concurrency
dedication
development of regional impact (DRI)
hardship
impact fees
nonconforming use
planned unit development (PUD)
property report
special exception
special flood hazard areas (SFHA)
subdivider
subdivision
subdivision plat map
subdivision regulations
variance
wetlands
zoning
zoning board of adjustment
zoning ordinances

Teaching Outline

I. Historical Perspective

A. Laissez-faire is the philosophy of noninterference by government in business affairs
   1. First zoning ordinances introduced in 1916
   2. U.S. Supreme Court rules that zoning laws were constitutional in 1926

B. Growth Management Act required infrastructure to be in place before new development was allowed

C. Florida legislature revised growth management laws and titled the revised law Community Planning Act

D. Community Planning Act (CPA)
   1. Concurrency provision under CPA applies only to sanitary sewer, solid waste, drainage, and potable water
   2. State-mandated concurrency no longer required for transportation facilities, schools, and parks and recreation
   3. CPA downsized state growth planning and created the Department of Economic Opportunity
   4. Local government creates a comprehensive plan to anticipate changing needs

II. Zoning Regulations

A. Zoning is a municipality's regulation of structures and land uses in designated areas
   1. Zoning controls land use
   2. Exercise of police power
   3. Zoning ordinances regulate
      a. Permissible uses of land
      b. Lot size
      c. Type of structures
      d. Building heights
      e. Setback requirements
      f. Density

B. Subdivision regulations
   1. Establish standards, specifications, and procedures for street signs, streetlights, fire hydrants, storm drains, sanitary sewers, curbs, gutters, and sidewalks
   2. Subdivider buys undeveloped acreage and divides it into smaller lots for sale
   3. Impact fees charged subdividers to fund major, offsite infrastructure
   4. Dedication is return of title, of infrastructure facilities
   5. Subdivision plat map

III. Appeals and Exceptions to the Zoning Code

A. Zoning Board of Adjustment provides property owners with some degree of relief from otherwise rigid zoning codes
   1. Nonconforming use
   2. Variance
      a. Hardship involving land use exists
   3. Special exceptions

IV. Variations and Special Uses of Traditional Zoning

A. Planned unit development
   1. Clustered homes on smaller lots allows for open green spaces with same overall density as in a conventional development
   2. Mixed land use

B. Community development district (CDD)
   1. An independent special district
   2. Constructs, operates, and maintains communitywide infrastructure and services for the benefit of its residents
   3. Alternative way to fund and construct capital infrastructure
   4. Raises funds by issuing bonds
   5. Required disclosure

V. National Flood Insurance Program (NFIP)

A. Qualifying for Flood Insurance
   1. Community must participate in the NFIP for the community to be eligible for flood insurance
   2. FEMA administers the flood program
   3. Flood maps identify flood zones, which are geographic areas that FEMA has defined according to varying levels of flood risk and type of flooding
   4. Flood zones are show on the Flood Insurance Rate Maps (FIRMs)
   5. Zones are categorized as low-risk, moderate-risk, and high-risk areas

B. Special Flood Hazard Areas (SFHA)
   1. Coastal land located in SFHAs is identified on the FIRM as V zones
   2. Mandatory flood insurance for V zones in communities that participate in NFIP

C. Development Within SFHAs
D. Mortgage loan requirements

VI. Clean Water Act (CWA)

A. Wetland protection
   1. Permitting process

B. Coastal Zone Management Act
   1. Coastal Nonpoint Pollution Control Program

C. Coastal Construction Control Line Program (CCCL)

VII. Interstate Land Sales Full Disclosure Act (ILSA)

A. Intended to prevent fraudulent marketing schemes when land is sold without being seen by purchasers

B. Registration requirement
   1. Subdivisions of 100 or more lots
   2. Register with HUD

C. Property report
   1. Developers of 25 or more lots

2. Provide buyers with a property report before signing contract
3. Buyers may cancel contract up to 7 days following signing the contract

D. Developments of regional impact (DRIs)

   1. Impacts more than one county

Unit 16 True-False Quiz

Please check the appropriate box.

	T	F
1. A variance is a use established before zoning, or before the present zoning classification, and the use is allowed to continue despite its nonconformance with the current zoning code.		
2. In a planned unit development, the overall density of dwelling units is higher than that allowed for conventional, single-family developments.		
3. Zoning regulations control land use.		
4. Subdividers pay impact fees to fund major, off-site infrastructure expansion that serves the community at large.		
5. If a subdivision has 50 or more lots, the land developer must register the subdivision with HUD.		
6. Wetlands are the natural habitat for many plants and animals. Most importantly, wetlands are an invaluable source of minerals and trace elements for wildlife and humans.		
7. The Coastal Zone Management Act is aimed specifically at protecting wetland ecosystems.		
8. If complying with the zoning ordinance creates a hardship because of the particular features of the property, the owner may request a variance.		
9. The coastal construction control line is intended to protect Florida's beach and dunes system.		
10. The Florida Community Planning Act's concurrency provision includes state-mandated currency for transportation facilities, schools, and parks and recreation.		

Unit 16 True-False Quiz
Answer Key and Rationale

1. **A variance is a use established before zoning, or before the present zoning classification, and the use is allowed to continue despite its nonconformance with the current zoning code.**
FALSE. A variance is permission obtained from the appropriate governmental authorities to deviate from specific regulations under the zoning code. A nonconforming use is a use established before zoning, or before the present zoning classification, that is allowed to continue despite its nonconformance with the current zoning code.

2. **In a planned unit development, the overall density of dwelling units is higher than that allowed for conventional, single-family developments.**
FALSE. Clustering homes together on smaller lots results in the same overall density as in a conventional development; however, the clustered improvements result in more open common areas.

3. **Zoning regulations control land use.**
TRUE. Zoning regulations govern land use. Zoning ordinances are local laws that implement the comprehensive plan.

4. **Subdividers pay impact fees to fund major, off-site infrastructure expansion that serves the community at large.**
TRUE. Impact fees fund new roads, water treatment facilities, and so forth, which generally help both the subdivision and the community at large.

5. **If a subdivision has 50 or more lots, the land developer must register the subdivision with HUD.**
FALSE. The Interstate Land Sales Full Disclosure Act requires developers to register subdivisions of 100 or more lots with HUD.

6. **Wetlands are the natural habitat for many plants and animals. Most importantly, wetlands are an invaluable source of minerals and trace elements for wildlife and humans.**
FALSE. Wetlands are ecologically important because they provide the natural habitat for many plants and animals and as well as areas for storm waters to gather for their return to the groundwater and air.

7. **The Coastal Zone Management Act is aimed specifically at protecting wetland ecosystems.**
FALSE. The Coastal Zone Management Act is aimed specifically at managing coastal environmental problems. The Clean Water Act of 1997 (as amended) protects wetlands by requiring a permit from the US Army Corps of Engineers to engage in most dredging and filling activities in wetlands connected with navigable waters.

8. **If complying with the zoning ordinance creates a hardship because of the particular features of the property, the owner may request a variance.**
TRUE. The owner must show that a hardship exists or will be created by strict compliance with zoning requirements. The term hardship has nothing to do with economic or personal hardship. It involves land use, and the hardship must relate to the use of the property.

9. **The coastal construction control line is intended to protect Florida's beach and dunes system.**
TRUE. The Coastal Construction Control Line Program provides protection for Florida's beaches and dunes while assuring reasonable use of private property.

10. **The Florida Community Planning Act's concurrency provision includes state-mandated concurrency for transportation facilities, schools, and parks and recreation.**
FALSE. The concurrency provision under the Community Planning Act mandates that only sanitary sewer, solid waste, drainage, and potable water be in place concurrent with the development.

UNIT 17
ENVIRONMENTAL ISSUES AFFECTING REAL ESTATE TRANSACTIONS

Unit Overview

Real estate licensees must be alert to the possibility of environmental contamination on the properties they deal with. Potential environmental pollutants include asbestos insulation, underground storage tanks, chemical and petroleum spills, septic tank systems and so forth. A site may be contaminated as a result of current or past site activities, unauthorized dumping, or disposal or migration of contaminants from adjacent or nearby properties. There are serious legal consequences of selling property that is contaminated by hazardous substances.

The single most important environmental law affecting real estate transactions is the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This unit explores the many aspects of CERCLA, including how to define the term potentially responsible persons, access to the National Priorities List, and ordering an environmental site assessment. It also suggests ways to reduce liability, particularly when dealing in commercial and industrial properties. The unit covers other environmental issues, including radon gas and lead-based paint, and explains requirements regarding disclosure.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Explain the purpose and provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- Explain the provisions of the Superfund Amendment and Reauthorization Act (SARA), list the criteria for the innocent landowner defense, and explain the purpose of the National Priorities List.
- Describe the information contained in Environmental Assessment Phases I – III and identify ways to reduce liability.
- Describe the federal and state regulation of asbestos.
- Describe the disclosure requirements for radon gas.
- Identify the provisions and exceptions to the Residential Lead-Based Paint Hazard Reduction Act and explain the disclosure requirements for lead-based paint.
- Identify environmental issues unique to Florida.

Key Terms

asbestos
brownfields
CERCLA
environmental due diligence
environmental impact statement
environmental site assessment
innocent landowner defense
lead-based paint
National Priorities List (NPL)
Phase I - III assessment
potentially responsible person (PRP)
radon gas

Teaching Outline

I. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

A. Purpose and scope
   1. Provide governmental authorities with the ability to respond to releases of hazardous substances from site
   2. Established Superfund to clean up uncontrolled hazardous waste sites and to respond to spills

B. Goals of Superfund
   1. Clean up polluted sites to protect health and environment
   2. Involve communities in the process
   3. Make responsible parties pay for work at Superfund sites

C. Potentially responsible persons (PRP) liable for cleanup include
   1. Present owners and operators of a contaminated site
   2. Persons who owned or operated a site at the time hazardous substances were located at the site
   3. Generators of hazardous substances found at a site
   4. Persons who arranged to transport hazardous substances to a site

II. Superfund Amendments and Reauthorization Act (SARA)

A. Innocent landowner defense
   1. Pollution was caused by someone other than the current owner
   2. The landowner did not know that the property was contaminated at the time of purchase
   3. Once the contamination was discovered, the landowner reacted responsibly
   4. The owner made reasonable inquiries into the property's past uses before purchase to determine whether the property was contaminated

B. Due diligence
   1. The research or analysis that takes place in advance of purchase
      a. Purchaser should inspect the property visually
      b. Check government records concerning past ownership and property uses
      c. Investigate if the purchase price is obviously ower than the market price of comparable properties in the market area
      d. Purchaser of commercial, industrial, and agricultural property should include a contingency that allows the buyer to have an environmental site assessment
      e. Red flag if property is located or has been used as a gas station, dry cleaner, or other petroleum or chemical-based business
   2. Real estate licensees may be held liable for failure to disclose known or readily observable contamination

C. National priorities list
   1. Serves as an information and management tool
   2. Identifies sites that appear to warrant remedial actions
   3. Sites on National Priorities List are eligible for superfund monies for cleanup
   4. After removing the contamination, the EPA bills the identified responsible persons

D. Brownfields legislation
   1. Sites that expansion or redevelopment may be complicated by the presence of contamination
   2. Developers and lenders were reluctant to consider cleanup and revitalization of potentially contaminated sites
   3. Federal legislation enables contaminated industrial and commercial properties to become economically viable

4. Provides grants to encourage development of abandoned property by shielding innocent developers from liability of toxic waste that existed prior to purchase

III. Environmental Due Diligence

A. Environmental site assessment
   1. Study designed to assess the likelihood that hazardous substances may be present
   2. Lenders must exercise due diligence when making loans on property

B. Phase I
   1. Investigative phase during which due diligence work takes place
   1. Determine potential contamination or noncompliance with environmental laws
   2. Physical examination of the property and investigation of public records
      a. Historical study of the site's use
      b. Review of building, zoning, fire records
      c. Review of EPA National Priorities List
      d. Review of federal and state lists of registered underground storage tanks and lists of leaking USTs
      e. Inspection of site and improvements
      f. Verify whether present or past owners or tenants stored, created, or discharged hazardous materials
      g. Review permits and notices
      h. Analyze aerial photographs to determine construction and demolition of buildings and existence of ponds and disposal areas
      i. Determine whether asbestos-containing materials are present
      j. Determine potential levels of radon in the soil

C. Phase II
   1. Performed if red flags are discovered during Phase I
   2. Sampling and analysis of soil and other materials to determine presence and extent of contamination and the cost of remediation
   3. Purpose is to determine the presence and extent of environmental problems and the estimated costs of remediation

D. Phase III
   1. Involves complex soil, water, and air quality analysis
   2. Remedial action plans subject to regulatory approval and supervision

E. Environmental impact statement (EIS)
   1. Required for federally funded projects
   2. Details the project's impact on the environment

F. Reducing liability
   1. Commercial leases should include a provision prohibiting the use or storage of hazardous substances on the premises and require lessee to comply with environmental laws
   2. Refer to Figure 17.1 in textbook

IV. Asbestos

A. A mineral fiber that was used commonly until 1978 for insulation and as a fire retardant

B. Federal and state regulation
   1. EPA Asbestos Model Accreditation Plan
      a. Requires use of trained and accredited asbestos professionals
   2. National Emission Standards for Hazardous Air Pollutants
      a. Specify work practices for asbestos during demolition and renovation
   3. Florida DBPR licenses and regulates asbestos contractors and asbestos consultants

V. Radon

A. Decaying uranium in the soil produces radon gas

B. Florida radon disclosure requirements
   1. Mandatory radon disclosure at the time or before a person enters into a contract for sale and purchase or a rental agreement
   2. Required disclosure language
   3. Testing is not mandatory

VI. Lead-Based Paint

A. Required disclosure of known information on lead-based paint before the sale or lease of most housing built before 1978

B. Provide purchaser or lessee with a lead hazard information pamphlet

C. Disclose to the purchaser or lessee the presence of any known lead-based paint or lead-based paint hazards

D. Provide all test results available to the seller or lessor

E. Allow the purchaser ten days (unless the parties agree on a different period of time) to conduct a risk assessment or an inspection for the presence of lead-based paint hazards

F. Include the lead warning statement and acknowledgment in the sale or lease contract

G. Transactions exempt from the lead-based paint law

VII. Environmental Issues

A. Sinkholes
   1. Sellers of property that a sinkhole insurance claim has been made, must disclose to buyers before closing
      a. A claim has been made
      b. Whether the claim has been paid
      c. Where full amount of proceeds used to repair damage

B. Mold
   1. DBPR licenses mold assessors and mold remediators

C. Dockage
   1. Boat dock may be built on submerged land belonging to the state
   2. Boat dock owner has a lease with the state for 10-year periods
   3. Lessee may be required to pay state a lease fee

D. Beach Management Fund Assistance Program
   1. Regulated by Florida Department of Environmental Protection

E. Florida Aquatic Weed Control Act

Unit 17 True-False Quiz

Please check the appropriate box.

	T	F
1. If the current owners of a contaminated property have not participated in the disposal of a contaminated substance onto the property, they cannot be held liable for the cost to clean up the hazardous wastes.		
2. A Phase II environmental site assessment consists of Phase I activities plus complex soil, water, and air quality analysis.		
3. Environmental assessments reduce, but do not eliminate, uncertainty regarding a property's environmental condition.		
4. Asbestos-containing material poses serious environmental hazards, and steps should be taken to remove it in order to make structures habitable.		
5. Florida statutes require a radon disclosure statement for sale and lease contracts.		
6. Reducing radon levels in a home is an expensive, difficult procedure.		
7. The ingestion of paint-flakes containing lead is the leading cause of lead poisoning in children.		
8. For a sale transaction requiring lead-based paint disclosure, the disclosure must occur before the seller accepts the purchaser's written offer to purchase.		
9. The lead-based paint law does not apply to housing built before 1977.		
10. Florida's radon disclosure law requires testing of radon levels before the sale of residential real estate.		

Unit 17 True-False Quiz
Answer Key and Rationale

1. **If the current owners of a contaminated property have not participated in the disposal of a contaminated substance onto the property, they cannot be held liable for the cost to clean up the hazardous wastes.**
FALSE. Under the law, current as well as previous owners of a contaminated property are liable for clean-up costs whether or not they participated in or even knew about the disposal of hazardous waste—merely being an owner exposes them to liability, unless the current owner qualifies under the innocent landowner defense.

2. **A Phase II environmental site assessment consists of Phase I activities plus complex soil, water, and air quality analysis.**
FALSE. A Phase II assessment consists only of field testing and analysis; a Phase III assessment, which is a much more detailed analysis, consists of these more complex kinds of analyses.

3. **Environmental assessments reduce, but do not eliminate, uncertainty regarding a property's environmental condition.**
TRUE. Despite this fact, licensees should recommend environmental assessments whenever red flags appear.

4. **Asbestos-containing material poses serious environmental hazards, and steps should be taken to remove it in order to make structures habitable.**
FALSE. Not all asbestos-containing material poses a threat. It is best not to disturb asbestos material that is in good condition, because material in good condition does not release asbestos fibers.

5. **Florida statutes require a radon disclosure statement for sale and lease contracts.**
TRUE. Section 404.056, F.S., requires a radon disclosure statement on real estate sale and lease contracts before or at the time of executing a sale contract or a rental agreement.

6. **Reducing radon levels in a home is an expensive, difficult procedure.**
FALSE. Most homes can have their radon level reduced to acceptable levels for about the same cost as common home improvements.

7. **The ingestion of paint-flakes containing lead is the leading cause of lead poisoning in children.**
FALSE. The ingestion of household dust containing lead from deteriorating lead-based paint is the most common cause of lead poisoning in children.

8. **For a sale transaction requiring lead-based paint disclosure, the disclosure must occur before the seller accepts the purchaser's written offer to purchase.**
TRUE. If the potential purchaser makes an offer before receiving the required disclosures, the seller may not accept that offer until the disclosure activities are completed, and the potential buyer has had an opportunity to review the information.

9. **The lead-based paint law does not apply to housing built before 1977.**
FALSE. The lead-based paint law does not apply to housing built after 1977.

10. **Florida's radon disclosure law requires testing of radon levels before the sale of residential real estate.**

FALSE. Florida's radon disclosure requirements consist only of what radon is; it does not require testing to disclose radon levels before a sale or lease.

UNIT 18
PROPERTY MANAGEMENT

Unit Overview
Many employment opportunities are available in the field of property management. Some jobs in this field require a real estate license, but there are several exemptions. Types of income properties as well as the many skills property managers need also are discussed. Regional, neighborhood and property analyses are covered in detail. Because marketing property is extremely important, the Unit includes a section on advertising and showing property. Discussions of tenant relations, security deposits and rent collection policies are included, as is an explanation of the types of leases in general use. Maintenance programs, accounting and communications with owners are other important topics. The last part of the unit discusses the laws that are important to property managers.

Learning Objectives

Once your students have completed this unit, they will have accomplished the following.

- Identify the provisions of the Florida Landlord and Tenant Act, distinguish between a tenancy at will and a tenancy at sufferance, and describe the methods used to handle security deposits.
- Identify the protected classes under the Federal Civil Rights Acts and the Fair Housing Act and explain the Americans with Disabilities Act.
- Explain the licensing requirements for property managers and community association managers, the exemptions from the requirements, and the property management markets.
- Describe the skills required of a property manager.
- Explain the steps involved in analyzing the market and the property, understand the various components of a lease, and describe which leases may be filled out by a licensee.
- Describe the principal features of owner-management agreements.
- Discuss the manager's function of recruitment, selection, and training the staff.

Key Terms

Americans with Disabilities Act
Civil Rights Act of 1866
community association
Fair Housing Act
fixed lease
Florida Landlord and Tenant Act
gross lease
graduated lease
ground lease
net lease
percentage lease
sublease
tenancy at sufferance
tenancy at will
tenancy for years
three-day notice
writ of possession

Teaching Outline

I. Introduction

II. The Florida Landlord and Tenant Act

A. Part II—Residential
1. Landlord's statutory duties
2. Tenant's statutory duties
3. Tenant remedies for breach by landlord
4. Tenant security deposits and advance rent
5. Property management deposits and advance rent
6. Landlord's right to enter the premises during lease term
7. Eviction proceedings

B. Part I—Non-Residential
1. An unwritten lease is a tenancy at will
2. Termination of a tenancy at will
3. Holding over after term becomes a tenancy at sufferance
4. Right of possession upon default in rent
5. Landlord's lien for rent
6. Distress for rent
7. Distress for rent, trial, verdict, judgment
8. Causes for eviction
9. Tenant's right to withhold rent because the premises are wholly untenantable
10. Waiver of right to proceed with eviction claim
11. Removal of tenant
12. Removal of tenant; judgment

C. Broker property management

III. Applicable Federal and State Laws

A. Federal and state fair housing laws
1. Civil Rights Act of 1866
2. Civil Rights Act of 1968 (as amended)
3. Americans with Disabilities Act
4. Recording a lease

B. Environmental hazards

IV. Introduction to Property Management

A. Scope of property management
1. Property management firms
2. Affiliate of full-service real estate company
3. On-site management

B. Licensing requirements and exemptions
1. Activities requiring a real estate license
2. Rental activities exempt from the licensing requirement

V. Property management markets

A. Office building management
B. Retail management
C. Residential management
    1. Single-family homes
    2. Multifamily properties
    3. Condominiums and cooperatives
    4. Vacation rentals

D. Community associations
    1. Community Associations Management License

VI. Skills Required of a Property Manager

VII. The Rental Process

A. Evaluating the rental market
    1. Regional market analysis
    2. Neighborhood market analysis
        a. Boundaries and land use
        b. Transportation
        c. Economy
        d. Supply and demand
        e. Neighborhood amenities and facilities

B. Property analysis
    1. Evaluate interior and exterior's condition and utility
    2. Determine recommendations for the property

C. Marketing rental units
    1. Type of property
    2. Supply and demand
    3. Financial resources
    4. Advertising space for rent
        a. Signs and billboards
        b. Internet and social media
        c. Newspapers
        d. Broadcast advertising
        e. Direct mail
    5. Image
    6. Promotional programs
    7. Showing the property to prospective tenants
    8. Screening applicants in accordance with appropriate laws and regulations

D. Tenant policies
    1. Tenant relations
    2. Tenant complaints and conflicts among tenants
    3. Fees, security deposits, and rental collection
        a. Delinquency procedure

VIII. The lease agreement

A. Standard lease agreement clauses
    1. Terms and parties
    2. Property rented

3. Rent payments and charges
4. Deposits, advance rent, and late charges
5. Use of premises
6. Maintenance
7. Utilities
8. Casualty damage
9. Default
   a. Remedies and defenses–assignment and subleasing
10. Other clauses
    a. Leases with an option to purchase
11. Proration of rents
12. Assignment, sublease, and subordination of space

B. Maintenance
   a. Physical integrity
   b. Functional performance
   c. Housekeeping and cleanliness
   d. Merchandising
   1. Staff versus contract maintenance
   2. Schedules and inspections
   3. Supervising security

C. Accounting, recordkeeping
   1. Operating budget
   2. Recordkeeping

D. Risk management and insurance
   1. Identifying the risks
   2. Avoiding the risks
   3. Controlling the risks
   4. Transferring the risks
   5. Property insurance
   6. Manager's risk management

IX. The Owner-Manager Relationship

A. Responsibilities to owner
   1. Management associations
   2. Management agreement provisions
   3. Compensation for management services
   4. Personal communications
   5. Evaluating management performance

VII. Staffing and Employee Relations

A. Hiring Qualified Personnel
   1. Recruitment and selection
   2. Training
   3. Retaining personnel
   4. Job descriptions

Unit 18
True-False Quiz

Please check the appropriate box.

	T	F
1. Under Florida Statute 468, Part VIII, the term *community association* includes any association that is greater than 60 units or has an annual budget in excess of $100,000.		
2. A stable market with high occupancy rates demands a less intense marketing program than a high-vacancy market.		
3. Lease applications should only be taken for customers who are "serious" or who are a good fit for the property.		
4. The Florida Residential Landlord and Tenant Act relieves brokers of the duty to notify the FREC of disputes over security deposits.		
5. The property manager should not be named as an additional insured party in the owner's general liability policy.		
6. Even after receiving a final judgment against the tenant, the landlord must obtain a writ of possession in order to proceed with the eviction.		
7. In order to avoid losses due to negligence, the property manager must carefully screen prospective employees with regard to physical and mental aptitude.		
8. The property manager owes fiduciary duties to the tenants in a building; failure to do so is punishable by FREC disciplinary action as well as damages in a lawsuit.		
9. One of the property manager's most important functions is reducing risk to the owner and management company.		
10. The law requires three property management escrow accounts: one for security deposits, one for advance rent, and one for paying bills from current rent payments.		

Unit 18 True-False Quiz
Answer Key and Rationale

1. **Under Florida Statute 468, Part VIII, the term *community association* includes any association that is greater than 60 units or has an annual budget in excess of $100,000.**
FALSE. Under this law, the term community association includes any association that is greater than 10 units or has an annual budget in excess of $100,000.

2. **A stable market with high occupancy rates demands a less intense marketing program than a high-vacancy market.**
TRUE. A property manager with a healthy property might advertise in ways that enhance the property's image.

3. **Lease applications should only be taken for customers who are "serious" or who are a good fit for the property.**

FALSE. Every rental prospect, whether residential or commercial, should be asked to complete a lease application. All applicants and applications should be handled the same way to avoid possible violations of fair housing laws.

4. **The Florida Residential Landlord and Tenant Act relieves brokers of the duty to notify the FREC of disputes over security deposits.**
TRUE. Florida real estate licensees holding security deposits and advance rent may disburse the funds without complying with the Commission's escrow dispute and notification procedures if the brokers have complied with all requirements set forth in Section 83.49, F.S.

5. **The property manager should not be named as an additional insured party in the owner's general liability policy.**
FALSE. The manager should also get a certificate of insurance from the company.

6. **Even after receiving a final judgment against the tenant, the landlord must obtain a writ of possession in order to proceed with the eviction.**
TRUE. The writ of possession allows the landlord to have the sheriff evict the tenant; eviction begins 24 hours after the sheriff serves notice to the tenant.

7. **In order to avoid losses due to negligence, the property manager must carefully screen prospective employees with regard to physical and mental aptitude.**
FALSE. Title I of the Americans with Disabilities Act makes it unlawful to discriminate in employment against persons with physical or mental impairments. Therefore, the property manager should not ask prospective employees to list conditions or diseases, prior hospitalizations, or the amount of time absent from work last year.

8. **The property manager owes fiduciary duties to the tenants in a building; failure to do so is punishable by FREC disciplinary action as well as damages in a lawsuit.**
FALSE. The property manager owes fiduciary duties to the owner, not to the tenants. While all property managers should attempt to maintain the goodwill of tenants, suggesting to tenants that they will represent tenant interests in negotiations or complaints would make the manager a dual agent, which could result in FREC disciplinary action or monetary damages from a lawsuit.

9. **One of the property manager's most important functions is reducing risk to the owner and management company.**
TRUE. To do so, the manager must identify the risks and then avoid or control them with training and loss-reduction plans or transfer as many of them as possible through insurance or other means.

10. **The law requires three property management escrow accounts: one for security deposits, one for advance rent, and one for paying bills from current rent payments.**
FALSE. These accounts are not mandated by law, but are recommended because they make a FREC audit much more straightforward.

Inquiries to:
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