

FLORIDA

Real Estate Principles, Practices & Law Instructor Manual

47th Edition | Linda L. Crawford with
Denise Stolar Johnson

Dearborn[™]
Real Estate Education

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FLORIDA REAL ESTATE PRINCIPLES, PRACTICES & LAW INSTRUCTOR
MANUAL 47TH EDITION

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I N T R O D U C T I O N

Florida Real Estate Principles, Practices & Law has been used successfully in private schools, universities, and community colleges throughout Florida since 1977. This popular textbook is updated and revised annually to assure instructors and students that they are using the latest material available.

This Instructor Manual is designed to help you, the instructor, use the current edition more effectively. The sequence of units in this manual conforms to the exact sequence of the units in the textbook and closely follows the current Florida Real Estate Commission (FREC) Course I syllabus. To facilitate your course planning and teaching, each unit in this manual is divided into the following eight sections:

- Unit Overview
- Learning Objectives
- Key Terms
- Teaching Outline
- Discussion Questions
- Classroom Exercises
- Instructor Resources Available Online
- Unit Quiz
- Unit Exam Questions Explanations

UNIT OVERVIEW

This section consists of a concise summary of the subject areas covered in the unit. If you find it helpful, this overview may be used (paraphrased) to introduce a unit to your students. However, before preparing your unit introductions, please read the comments under “Initial Motivation” to be found later in this introduction.

LEARNING OBJECTIVES

This section contains specific terms, concepts, and principles that the student needs to know and should be able to apply upon completing the unit. Because the purpose of every educational course is to alter human behavior in a desirable manner, it follows that the most significant goals should be stated in terms of observable student behavior. Good objectives allow students to clearly understand what is expected of them. Finally, it is easier for you, the instructor, to plan each educational unit and to prepare the accompanying tests and exams if you specify the objectives to be accomplished.

KEY TERMS

This section lists the major terms used in the unit, which is also a checklist of terms that students must be able to define and use. The key terms list may be used to alert students in advance to the important terminology in the unit and/or to help them test their understanding of the main terms after the unit has been covered.

TEACHING OUTLINE

This section consists of organized notes on the unit material in outline form. It follows the order of the subject matter in each unit of the textbook. The purpose of an outline is to enable an instructor to survey each lesson as a whole, to size up the major and minor points, to gauge the length of time each segment (and the lesson as a whole) will take, and to decide where insertions should be made to the outline. Each unit's "Teaching Outline" must be tailored to change it from a skeletal outline to an individual instructor's lesson plan. This is called fleshing it out, or putting meat on the bare bones of an outline. For example, every unit outline should have time insertions by segment [e.g., "9:15 to 9:30 (15 minutes)"]; visual aids to be used (e.g., "show PowerPoint slide #4" or "give handout #6"); special segments (e.g., "Quiz" or "Exam"); and illustrations and examples to turn abstract concepts into practical, easy-to-understand information.

The most widely accepted system for numbering, lettering, and indenting outlines is used:

- I. _____
 - A. _____
 - 1. _____
 - a) _____
 - (1) _____
 - (a) _____
 - i) _____

DISCUSSION QUESTIONS

This section is designed as a springboard for students to test and apply what has been learned in each chapter. Group discussion of main points, analysis of these points, and application to situations (real or imagined) can be a valuable tool. Effective instructors minimize their own participation during such times—except to provide factual information, keep the discussion on track, draw in quieter students, and provide closure.

CLASSROOM EXERCISES

This section offers activities to promote better student understanding of important points in each unit. For the most part, the suggested activities are designed to bring real estate practice into the classroom. As time permits and student needs emerge, the selection of one or more exercises will allow students the opportunity to apply, or see applied, the textbook and classroom concepts and principles to everyday situations they will face in the real estate business.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

This section features the web addresses of useful instructor resources on the internet. Crossword puzzles and PowerPoint presentations have also been developed for each unit. The crossword puzzles are in PDF format. The crossword puzzles, their corresponding answer keys, and the PowerPoint files are available at www.dearborn-fla.com.

UNIT QUIZ

Practice problems have been developed for your use. These practice problems may be used as additional classroom examples. If you prefer, they may be used as practice quizzes or homework assignments. The practice problems may be printed directly from the Instructor Manual (they do not require retyping).

The authors have attempted not to duplicate any of the end-of-unit or exam questions in any of their books. As a consequence, you have a practice bank of more than 1,500 questions from three books to use as you see fit in your FREC Course I and exam review sessions (see Figure I.1).

FIGURE I.1: Questions Available for Examination Preparation

Source	Number of Questions
<i>Florida Real Estate Principles, Practices & Law</i>	
Unit Exam Questions	327
Practice End-of-Course Exam	100
<i>Florida Real Estate Exam Manual</i>	
Sample Exam Questions	511
Final Exams	200
<i>Mastering Real Estate Math</i>	533
<i>Florida Real Estate Sales Associate Drill and Practice QBank</i>	304
TOTAL QUESTIONS AVAILABLE	1,975

UNIT EXAM QUESTIONS EXPLANATIONS

The textbook includes an answer key with the correct answer for each unit exam question. Included in each unit of this Instructor Manual are explanations for the correct answers.

PRACTICE END-OF-COURSE EXAM QUESTIONS EXPLANATIONS

In the back of this Instructor Manual are explanations of the correct answers for the practice end-of-course exam in the textbook.

COURSE OPENING

The following is a suggested format for the opening session of each sales associate course. Please alter it to suit your purposes and timing.

1. Greeting and welcome.
2. Allow students to introduce themselves.
3. Hand out and briefly highlight your prepared class schedule.
4. Explain overall course content:
 - a) Real estate principles and practices
 - b) Real estate license law
 - c) Real estate math

5. Direct attention to the introduction, table of contents, glossary, and index in the textbook.
6. Inform students of course details—include the following:
 - a) Class frequency
 - b) Necessity for promptness
 - c) Absentee policy
 - d) Homework assignments
 - e) Progress tests or quizzes
 - f) Course exam policies and standards (70% is passing)
7. Explain the necessity of students' studying the FREC Rules and Statutes. Students can download the rules and statutes at www.myfloridalicense.com/DBPR/real-estate-commission/statutes-and-rules/.
8. Explain the license application procedure and timing.
9. Explain the FREC license examination and scheduling plan—100 questions valued at one point each (75% is passing):
 - a) 45 questions—principles and practices
 - b) 45 questions—license law
 - c) 10 questions—math
10. Allow time for student questions to satisfy initial apprehensions and anxieties.
11. Proceed with the first lesson.

ORIENTATION

A well-planned orientation period at the beginning of each course, one in which students are allowed to participate even sparingly, will help you recognize individual student needs. Set a rapid and interesting pace. Help them recognize that their success in real estate will depend largely on their knowledge of—and ability to use—real estate principles and practices.

Introduce the textbook. Mention that it has been used successfully for years throughout the state. Do a verbal/visual walk-through of the textbook's table of contents, glossary, and index. Help the students get an overall feel of the course content.

Inform your students about additional materials that may aid them in being successful. For example, while math currently makes up only 10% of the state exam, it seems to represent about 90% of the anxiety for many students. Show them a copy of *Mastering Real Estate Math*, which provides step-by-step instructions and ample practice to help students not only improve their math skills, but also prepare them for the calculations they'll encounter in their real estate practice. To help reinforce what they've learned in the text, the *Florida Sales Associate Prelicensing Key Point Review Audio MP3s* allow students to listen to the most important terms and topics from wherever they are. With the *Florida Real Estate Sales Associate Drill and Practice QBank*, students can prepare for exam day by using the Performance Tracker to help them hone their areas for further study. Students can create custom quizzes to help them improve their skills and knowledge. When used outside of the classroom, these products can make in-class time more productive for you and your students.

The *Florida Real Estate Exam Manual* is for the period between the end of the course and the state licensing examination. Included in it are exam strategies, sample exam questions organized by chapter, and two 100-question practice exams that, when taken as suggested, tend to be a good barometer of readiness for the state exam. The questions in the *Florida Real Estate Exam Manual* include detailed explanations of the answers. All materials previously mentioned are carefully sequenced to follow this manual and the text.

INITIAL MOTIVATION

Do not assume that every student is eager to learn every segment of the course. Before launching into your presentation for each segment, take a minute or two to interest students in subject matter by motivating them to want to learn about it. Make certain that they recognize the need to learn each subject, beyond passing two examinations. Help them see the benefits of learning each subject area in terms of the rewards they will receive once in the business.

CONCEPTS AND EXAMPLES

In this course, teaching methods must be used that aid students in working with abstractions. Students will get more from the course if the concepts you teach and the teaching points you make are visualized and vividly presented in everyday language and experience. Concrete examples from your own experience will give meaning to abstract statements and general principles. The real estate principles and practices course is best when short, relevant examples are used generously. Sprinkling the course with “for instance,” “as an example,” and “this is what ABC Realty did” will help students grasp meanings and applications more easily. Give preference to examples from business life.

Sample forms, case studies, and unifying problem scenarios are provided in appropriate units to allow progression from lecture to application, from hearing to doing.

The Florida Real Estate License Law and the Florida Real Estate Commission specify the course content and number of classroom hours required to satisfy the academic qualification prerequisites to apply for a real estate sales associate’s license. *Florida Real Estate Principles, Practices & Law* is specifically written to cover the required subject areas.

Your success as an instructor is our primary concern. Your suggestions and comments relating to your use of this Instructor Manual and to *Florida Real Estate Principles, Practices & Law* will be given serious attention and are very much appreciated. We are pleased to furnish this manual to you at no cost. It is our wish that it will contribute significantly to your success in the classroom.

Linda L. Crawford
Denise Stolar Johnson
November 2023



THE REAL ESTATE BUSINESS

UNIT OVERVIEW

When the various parts of real estate activity are viewed together, the enormous scope of the real estate business becomes apparent. Every day, real estate licensees aid buyers, sellers, and investors in making decisions involving billions of dollars. Because the real estate industry is big business in terms of laws and regulations, licensees must be familiar with the role of federal, state, and local governments in the regulation of real estate activities.

This unit introduces the real estate business. It describes brokerage and development and construction activities of the real estate business. Selected major professional organizations are introduced.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Describe the various activities of real estate brokerage.
- Distinguish among the five major sales specialties.
- Identify the role of property managers and situations that require a CAM license.
- Describe activities that require appraiser services, *USPAP*, state regulation of appraisers and distinguish among a CMA, a BPO, and an appraisal.
- Understand the mortgage process and the role of the mortgage loan originator.
- Explain the three phases of development and construction.
- Distinguish among the three categories of residential construction.

KEY TERMS

absentee owner	comparative market	property manager
appraisal	analysis (CMA)	real estate brokerage
appraiser	dedication	REALTOR®
broker's price opinion (BPO)	farm area	rental agent
business broker	follow-up	subdivision plat map
business opportunity	multiple listing service	target market
community association	(MLS)	
manager (CAM)	property management	

TEACHING OUTLINE

- I. An Introduction to the Real Estate Business
 - A. Real estate brokerage activities consist of those activities that provide specialized service for others in return for a commission or a fee.
 - B. Expert knowledge is required in three areas:
 1. Knowledge of property transfer
 2. Knowledge of market conditions
 3. Knowledge of how to market real estate and businesses
- II. Real Estate Brokerage
 - A. Real estate brokerage is the business of bringing together buyers and sellers and owners and renters and completing real estate transactions (paid a fee or a commission for services).
 - B. There are five major sales specialties:
 1. Residential
 - a) Requires knowledge of neighborhoods, property taxes, homestead exemptions, restrictive covenants, approximate utility costs, et cetera
 - b) Specialization by most real estate licensees in the sale and purchase of owner-occupied residential property
 2. Commercial
 - a) Customers are typically investors
 - b) Requires knowledge of income-producing properties and the various techniques for increasing after-tax cash flow
 3. Industrial
 - a) Must have technical knowledge of the needs of different industries
 - b) Involves industrial parks and subdivisions, redevelopment areas, et cetera
 4. Agricultural
 - a) Must be familiar with the operation of farms and related problems
 - b) Requires knowledge of federal programs affecting farm operations

5. Businesses
 - a) Real estate licensees who engage in the sale, purchase, or lease of businesses are called *business brokers*.
 - b) The activity is called *business opportunity brokerage*.
 - c) Presumption in Florida law is that businesses will have some sort of real property involved.
 - d) Real estate licensees must hold active licenses.
 - C. Target marketing
 1. Expertise in locating prospects using a database of potential customers
 2. Farm area—a selected and limited geographical district to which a sales associate devotes special attention and study; to farm an area in a neighborhood
- III. Property Management
- A. Property management
 1. Property manager is devoted to managing and maintaining property for the property owner.
 2. Rental agents (or leasing agents) act as intermediaries between tenant and owner; they find a tenant and collect a fee for services rendered.
 3. Property managers continue to manage the property once a tenant is secured.
 4. Primary function is to produce the greatest possible net income over the longest possible time.
 5. Property manager is the local representative of the owner.
 6. The absentee owner does not reside on the property and often relies on a professional property manager.
 - B. Compensation and Licensure Requirements
 1. The property manager's compensation is outlined in the management agreement.
 2. A property manager who is paid by commission or on a transaction basis must be licensed as a real estate broker.
 - C. Community Association Manager (CAM)
 1. A community association manager (CAM) must hold a CAM license when the community association consists of more than 10 units or has an annual budget in excess of \$100,000.
- IV. Appraising
- A. Appraising
 1. The process of developing and communicating an estimate of a property's value.
 2. An opinion given by a skilled appraiser that concludes with an estimate of the property's worth
 3. An "art" relying heavily on experience and judgment
 4. State-certified, licensed, and registered trainee appraisers (requires separate license)

5. Appraisal reports involving a federally related transaction; must be prepared by a state-certified or licensed appraiser
 6. Appraisal fee based on time and difficulty of the work
 - a) Appraisers are not paid a commission, which reduces the possibility of a conflict of interest.
- B. Valuation and real estate licensees
1. Real estate licensees may not represent themselves as state-certified or licensed appraisers (separate license required).
 2. Appraisers and real estate licensees must abide by the *Uniform Standards of Professional Appraisal Practice (USPAP)* when conducting appraisals.
 3. *USPAP* is a set of guidelines (Standards of Practice).
- C. Comparative market analysis (CMA) and broker's price opinion (BPO)
1. CMAs are developed by collecting information concerning real estate activity in the area, including recent sales of similar properties, properties currently offered for sale, and recently expired listings.
 2. Licensees typically prepare CMAs for sellers for free as a courtesy to the sellers and to solicit new business.
 3. A BPO is a written opinion of the value of real property.
 4. Licensees are allowed to prepare and charge for a CMA/BPO, provided the CMA/BPO is not called an appraisal.
 5. Sales associates may perform BPOs only at the direction and under the control and management of the employing broker.
 6. *USPAP* standards do not apply to CMAs and BPOs.
- V. Financing
- A. Real estate licensees may not operate as mortgage loan originators unless they also hold a Florida mortgage loan originator license.
- B. Counseling
1. Provides advice to individuals and firms regarding the purchase and use of real estate investments
 2. In demand by developers, investors, corporations, and large-scale buyers and sellers
- VI. Development and Construction
- A. Involves dividing larger parcels of land into lots, constructing roads and other on-site improvements, and then constructing buildings on the developed lots
- B. Phases of development and construction
1. Land acquisition
 - a) Developers and builders acquire raw land and prepare the site.
 - b) Zoning and land use plans are studied.
 - c) Developer seeks approval from local municipality.
 - d) Costs are incurred for engineering plans, attorney fees, surveys, and application fees.

2. Subdividing and development
 - a) *Subdividing* is the process of converting parcels of land into smaller units or lots.
 - b) *Development* is the process of improving raw land.
3. Recording the subdivision plat map
 - a) The subdivision plat map indicates the size and location of individual lots, streets, and public utilities, including water lines and arrangements for sewage disposal.
 - b) *Dedication* is the gift of land by an owner to a governmental body for a public use.

VII. Residential Construction

A. Three general categories of residential construction

1. *Speculation* (spec) involves purchasing one or more lots and constructing a home(s) without securing a buyer in advance of construction.
2. A *custom* builder constructs homes under contract with a buyer, often using building plans provided by architects or buyers.
3. *Tract homes* involve the construction of model homes in a new subdivision so that buyers can see the builder's products and choose a floor plan. The buyer then has a home built on a lot in the subdivision.

B. The Role of Government

1. Local government
 - a) Assessment and collection of property taxes
 - b) Regulatory activities that include occupational licenses, building permits, building moratoriums, zoning, and building codes
2. State government
 - a) Collection of documentary and intangible taxes on real property sales
 - b) State lands
 - c) Protected coastal regions
3. Federal government
 - a) Fiscal and monetary policies
 - b) Federal agencies (HUD, FHA, VA, EPA, IRS, etc.)

VIII. Professional Organizations

A. National Association of REALTORS® (NAR)

1. Composed of state and local boards
2. REALTOR®—real estate professional who is a member of a local board (association) of REALTORS® and is affiliated with the Florida Realtors® and the NAR
3. Code of Ethics
4. NAR sponsorships of affiliated organizations that offer professional designations to real estate licensees and appraisers

- B. Real estate licensees vs. REALTORS®
 - 1. Terms REALTOR® and *real estate licensee* not synonymous
 - a) REALTORS® are members of a local board (association) of REALTORS®.
 - 2. Department of Business and Professional Regulation (DBPR) not involved in setting NAR rules, fees, or membership requirements
- C. Multiple listing service (MLS)
 - 1. Database allows real estate brokers representing sellers under a listing agreement to share information about properties with real estate brokers who may represent potential buyers.
 - 2. Buyers working with licensees who are members of their local MLS have access to information about all properties regardless of which brokerage has the property listed.
 - 3. MLS is not a registered trademark of the NAR; anyone can create an MLS.

DISCUSSION QUESTIONS

- 1. What do you perceive to be the difference between the terms *licensed real estate sales associate* and *real estate professional*?
- 2. In your opinion, will a specialist or a general practitioner in the real estate business generate higher personal earnings?

CLASSROOM EXERCISES

- 1. Government agencies abound at the federal, state, county, and city levels. The laws and regulations pertaining to each of these agencies are often complex and burdensome to citizens. Many directly impact the real estate industry.
 - a. For each governmental level, have the class name some of the powerful departments, agencies, commissions, boards, councils, and so on that directly and indirectly affect the real estate business and its practitioners:
 - i. Federal
 - ii. State
 - iii. County
 - iv. City, town, or village
 - b. Have the class explain how the real estate industry and its licensees are directly affected by these governmental bodies.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

You can download a current copy of the Code of Ethics and Standards of Practice of the National Association of REALTORS® at www.realtor.org/code-of-ethics/.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 1 QUIZ

- The leasing, managing, marketing, and overall maintenance of property for others is called
 - property management.
 - apartment leasing.
 - onsite leasing.
 - commercial leasing.
- A gift of land by an owner to a governmental body for a public use is called
 - escheat.
 - dedication.
 - devisee.
 - eminent domain.
- Which category of residential construction involves using several model homes?
 - Tract homes
 - Speculative homes
 - Custom homes
 - Modular construction
- Individuals who find tenants for property for a fee are called
 - property managers.
 - absentee owners.
 - rental agents.
 - business brokers.
- Real estate licensees who engage in the sale, purchase, and lease of businesses are called
 - commercial managers.
 - business brokers.
 - personal property brokers.
 - business dealers.
- Owners of investment real estate who do NOT reside on the premises are called
 - tenants.
 - property managers.
 - absentee owners.
 - foreign investors.
- Which statement is TRUE regarding comparative market analyses (CMAs)?
 - CMAs are also called appraisals.
 - Real estate licensees may charge a fee for preparing a CMA.
 - Real estate licensees must follow the guidelines in the *Uniform Standards of Professional Appraisal Practice* when preparing a CMA.
 - CMAs are typically ordered by lenders when a short sale is involved.
- The process of purchasing one or more lots and constructing homes on the lots without first securing buyers for the homes is called
 - building on speculation.
 - constructing tract homes.
 - building custom homes.
 - subdividing and developing.
- Which statement concerning broker price opinions (BPOs) is FALSE?
 - BPOs must be performed under the direction and control of the employing broker.
 - BPOs are often requested by relocation companies.
 - BPOs must follow *USPAP* guidelines.
 - A BPO is a written opinion of the value of real property.
- When a residential sales associate specializes in a particular location within a community, the location is called a
 - special use property.
 - residential development.
 - target market.
 - farm area.

SPECIAL UNIT 1 QUIZ

ANSWER KEY

1. a Property management is devoted to the leasing, managing, marketing, and overall maintenance of property for others.
2. b Dedication is the gift of land by an owner to a governmental body for a public use.
3. a Tract homes involve the construction of model homes in a new subdivision so that buyers can see the builder's products and choose a floor plan. The buyer then has a home built on a lot in the subdivision.
4. c Rental agents (or leasing agents) act as intermediaries between tenant and owner; they find a tenant and collect a fee for services rendered.
5. b Real estate licensees who engage in the sale, purchase, or lease of businesses are called business brokers.
6. c The absentee owner does not reside on the property and often relies on a professional property manager.
7. b Licensees are allowed to prepare and charge for a CMA, provided the CMA is not called an appraisal.
8. a Speculation (spec) involves purchasing one or more lots and constructing a home(s) without securing a buyer in advance of construction.
9. c USPAP standards do not apply to CMAs and BPOs. BPOs cannot be called appraisals.
10. d A farm area is a selected and limited geographical district to which a sales associate devotes special attention and study to obtain listings and sales.

UNIT 1 EXAM QUESTIONS

EXPLANATIONS

The Unit Exam Questions Explanations refer to the Unit Exams at the end of each unit in the textbook, *Florida Real Estate Principles, Practices & Law*.

1. b A REALTOR® is a real estate licensee who belongs to the National Association of REALTORS® (NAR). The Florida Realtors® and NAR are privately run professional organizations.
2. d Follow-up is one of the best ways to ensure satisfied buyers and sellers.
3. a Real estate licensees may appraise real property for compensation as long as they do not claim to be state-certified, registered, or licensed appraisers and comply with *USPAP*.
4. c The increase in absentee ownership has led to growth and specialization in the field of property management.
5. a The *USPAP* Standards of Practice do not apply to real estate licensees who, in the ordinary course of business, perform CMAs or BPOs. Appraisers and real estate licensees must abide by *USPAP* when conducting appraisals of real property.
6. a Appraisers are paid a fee, not a commission, to reduce the possibility of any conflict of interest.
7. b The five major sales specialties are residential, commercial, industrial, agricultural, and businesses.
8. b Property management is devoted to the leasing, managing, marketing, and overall maintenance of property for others.
9. c A custom builder constructs homes under contract with a buyer, often using building plans provided by architects or buyers.
10. a Dedication is the gift of land by an owner.
11. c There is a presumption in Florida law that businesses will have some sort of real property involved, either land and physical improvements or a longer-term lease. Florida license law requires an active current real estate license to sell or lease business opportunities.
12. c Many sales associates prefer to select one specific portion of a city and become an expert in that particular portion, called a farm area.
13. d A CAM license is not required to manage apartment buildings, commercial property, or single-family dwellings. CAM licenses are applicable to mobile home parks, planned unit developments, homeowners associations, cooperatives, time-shares, and condominiums.
14. c Target marketing involves expertise in locating prospects.
15. b When a broker or a sales associate is asked to perform a CMA to obtain a listing or prospective sale, the CMA may not be called, or represented as, an appraisal.

2

REAL ESTATE LICENSE LAW AND QUALIFICATIONS FOR LICENSURE

UNIT OVERVIEW

Every state requires that individuals who practice real estate for another for compensation be licensed. Florida Statute 475 is one of the most comprehensive real estate regulatory laws in the nation. The Florida law sets forth operating standards for licensees and penalties for noncompliance or violation.

This unit provides the student with a brief history of real estate license laws. Candidates for real estate sales associate and broker licenses in Florida are required to meet a number of qualifications before becoming licensed. The steps each prospective licensee must take before licensure are explained. Who must be licensed and who is exempt from licensure are described.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Distinguish among the federal and state laws and administrative rules important to real estate.
- Distinguish among the three license categories.
- Describe license application requirements.
- Describe nonresident application requirements and explain mutual recognition agreements.
- Identify the qualifications for a sales associate license.
- Describe the education requirements for post-license education and continuing education.
- Identify the qualifications for a broker license.
- Distinguish between registration and licensure.
- Identify real estate services that require a real estate license and exemptions for licensure.

KEY TERMS

broker	mutual recognition	reciprocity
broker associate	agreement	registration
compensation	nolo contendere/no	sales associate
expungement	contest	sealed
Florida resident	owner-developer	withhold adjudication
license	prima facie evidence	
license by endorsement	real estate services	

TEACHING OUTLINE

- I. Statutes and Rules Important to Real Estate
 - A. F.S. Chapter 20 establishes the structure of the executive branch of Florida's government.
 - B. F.S. Chapter 475 establishes legal rights and responsibilities of real estate licensees:
 1. Part I, real estate brokerage (FREC)
 2. Part II, real estate appraisal (FREAB)
 3. Part III, Commercial Real Estate Sales Commission Lien Act
 4. Part IV, Commercial Real Estate Leasing Commission Lien Act
 - C. F.S. Chapter 455, The Regulation of Professions and Occupations, defines practices and procedures of the Department of Business and Professional Regulation (DBPR) and all licensees.
 1. 455.10 provides that an individual cannot be disqualified from practicing a profession regulated by the State of Florida because the individual is not a U.S. citizen.
 2. It concerns the unlicensed practice of a profession.
 3. It concerns license examinations and professional testing services.
 4. 455.227 authorizes the FREC to discipline a licensee who failed to notify the Commission within 30 days of conviction or pleading guilty or nolo contendere to a crime, regardless of jurisdiction.
 - D. F.S. Chapter 120, The Administrative Procedures Act, defines the process by which regulatory agencies decide and implement agency action; the licensing and disciplinary process for licensees is outlined.
 - E. Chapter 61J2, F.A.C. establishes FREC rules.
- II. General Licensing Provisions
 - A. Three real estate license categories
 1. Sales associate
 - a) A real estate career begins in Florida as a licensed *sales associate*.
 - b) A licensee initially qualifies as an inactive sales associate.
 - c) Sales associates and broker associates are employed by and work under the direction and control of a broker or an owner-developer.

- d) An *owner-developer* is an unlicensed entity that sells, exchanges, or leases its own property.
 - (1) Owner-developer's sales staff must hold active real estate licenses in order to be paid a commission or other compensation based on actual sales (transactional basis).
 - (2) Sales staff is exempt from real estate licensure if paid strictly on a salaried basis.

2. Broker

- a) A broker is a person who, for another and for compensation or other consideration (or anticipation of compensation or other consideration), performs real estate services.
- b) Broker status requires additional education, experience, and passing the broker license exam.

3. Broker associate

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

III. Application Requirements

- A. Application fee in addition to initial biennial license fee (unlicensed activity fee and recovery fund fee, if applicable in license period)
- B. DBPR exempts three categories of applicants from the initial license fee
 - 1. Low-income applicants
 - 2. Military personnel and their spouses
 - 3. Military veterans and their spouses
- C. Fee waiver for military veterans and their spouses
 - 1. Application fee, initial biennial license fee, and unlicensed activity fee for military veterans and their spouses who apply for a license within 60 months after honorable discharge
 - 2. If the 60-month time period is not met, military veterans and their spouses can request the exemption of the initial biennial license fee.
 - 3. The comprehensive fee waiver applies to all types of DBPR licenses for veterans and spouses who apply within 60 months of honorable discharge.
- D. Fingerprints
- E. Background check questions
 - 1. Background check required concerning whether the applicant is currently under criminal investigation or has been convicted of a crime, pled guilty to a crime, or pled *nolo contendere*/no contest
 - 2. Must disclose prior conviction even if court action (*adjudication*) was withheld
 - 3. Disclose on the application any other name or alias, including a maiden name

4. Background questions concern criminal matters, judgments, denial of licenses or applications, and previous disciplinary actions
 - a) Applicants are not required to disclose personal financial information such as bankruptcy, foreclosures, or credit information
 5. Applicants should confirm that a criminal matter has been expunged and no longer appears on the criminal history
- F. Applicant agendas
1. Applicants who answered yes to the background questions or whose fingerprints revealed a previous criminal conviction may be placed on the FREC consent agenda.
 2. FREC reviews the application and supporting documents to determine whether the applicant must be placed on the Commission's SOA agenda.
 3. After appearance, FREC votes to approve or deny the application.
- G. Time periods
1. 30-day period for the DBPR to check application for errors and omissions
 2. 90 days to inform applicant of approval or denial
- H. Exam eligible
1. DBPR notifies test vendor
 2. Proof of satisfactory completed prelicense course or letter of equivalency from DBPR must be given to test vendor by the student at the time of exam. Schools do not send proof to DBPR or to the test vendor
 3. Theft of license exam or unauthorized copying of an exam is a third-degree felony
- I. License by endorsement for U.S. armed service members and their spouses
1. License by endorsement for active duty and former active duty members and their spouses (including surviving spouses)
 2. Former active duty members must have been honorably discharged
 3. At the time of application, applicant must currently hold a valid license for the corresponding profession in another state or foreign jurisdiction
 4. Applies to spouses (or surviving spouse)
 5. Applies to all DBPR licenses if the member applicant holds a valid license for the corresponding profession
 6. A license by endorsement is issued without requiring the prelicense course or state license exam
- IV. Nonresident Applicant Requirements
- A. Florida resident is defined as follows:
1. Person who has resided in Florida continuously for a period of four calendar months or more within the preceding year
 2. Person who currently resides in Florida with the intention to reside continuously in Florida for a period of four months or more

- B. Mutual recognition agreements
 - 1. Intent is to recognize the education and experience that real estate licensees acquired in another state or nation with which Florida has a contractual agreement.
 - 2. A person who is licensed in a mutual recognition state and who wants to obtain a Florida license through mutual recognition must complete the process of Florida licensure *before* becoming a resident of Florida.
 - 3. Applicant submits a Florida real estate license application and a certification of license history from the real estate commission of the state in which applicant is licensed.
 - 4. Applicant must pass a 40-question Florida-specific real estate law examination with a grade of 75% or higher.
 - 5. Licensees licensed through mutual recognition must complete the Florida post-licensing requirement.
 - 6. Mutual recognition is not the same as reciprocity.
 - a) Reciprocity is an agreement between two states that allows a licensee with a valid license in one state to obtain a license in the other state.
 - b) Florida does not have reciprocity with other states.
- V. Sales Associate Qualifications for Licensure
 - A. Sales associate applicant must meet the following requirements:
 - 1. Be 18 years of age or older
 - 2. Have a high school diploma or equivalent
 - 3. Possess a U.S. Social Security number
 - 4. Be honest and of good character and possess a reputation for fair dealing
 - 5. Be competent and qualified to make real estate transactions and conduct negotiations with safety to investors and others
 - 6. When completing the application, applicant must disclose the following:
 - a) If ever convicted, found guilty, or entered a plea of *nolo contendere*; or if currently under criminal investigation
 - b) If the applicant has done business under any name or alias other than the full legal name indicated on the application (including a maiden name)
 - c) If ever had disciplinary action taken against a license to practice in any regulated profession
 - d) If ever denied real estate licensure in any state or jurisdiction
 - B. Sales associate education requirements
 - 1. Complete the Commission-prescribed prelicense course for sales associates (Course I) with a passing score of at least 70 on the end-of-course exam
 - a) 60 hours of instruction
 - b) If applicant does not pass state exam within two years of course completion date, the course completion expires and applicant must again complete Course I

2. Exemptions to the prelicense course requirement
 - a) Individuals with a four-year degree or higher in real estate from an accredited institution of higher learning are exempt from Course I, but must pass the license exam
 - b) Attorneys who are active members of The Florida Bar are exempt from Course I, but must pass the license exam
- C. License examinations
 1. Multiple-choice questions are administered as a computerized test.
 2. License exam is offered in English and Spanish.
 - a) Examinees are required to show two forms of ID to the test vendor.
 - b) Examinees must give a copy of the grade report from the class to the exam vendor.
 3. Grade of 75% or higher is required to pass the license exam.
 4. Exam is graded by the test vendor, and an exam report is provided immediately following completion of the exam.
 - a) Exam report will state Passed for students with a grade 75% or higher.
 - (1) New licensees may not begin working until the DBPR website indicates that the license is in active status under the employing broker or owner-developer.
 - (2) Brokers may register new licensees online
 - b) Failure notice and examinee rights to review the exam
 - (1) Application for reexamination
 - (2) 21 days to request exam review of questions answered incorrectly
 5. Qualifications of reexamination in a foreign language other than Spanish
- VI. Post-Licensing Education
 - A. Sales associates must complete the 45-hour post-licensing course before the expiration of the initial sales associate license.
 1. Failure to complete the post-licensing requirement prior to the expiration date will cause the license to become null and void by operation of law.
 2. Sales associates who do not complete the post-licensing requirement must requalify for licensure by again completing Course I and passing the state license exam.
 3. Florida-licensed attorneys who are also licensed real estate sales associates must complete the post-licensing education requirement.
 4. Licensed sales associates who have received a four-year degree or higher in real estate from an accredited institution of higher education are exempt from the sales associate post-license education requirement.

- B. Hardship cases
 - 1. If granted, allows licensees an additional six-month period following the initial license expiration to complete the post-license education
 - 2. No legislative authority to extend the post-license requirement beyond the six-month period
- C. Continuing education
 - 1. Following the initial license period, active and inactive licensees must complete 14 hours of continuing education during every two-year license period.
 - 2. Licensees must take a three-hour Business Ethics course once during each license renewal period.
 - 3. Licensees must also complete a three-hour core law course once during each license renewal period.
 - 4. Licensees may substitute attendance at one legal agenda session of FREC for three classroom hours of specialty continuing education (CE) (once per renewal cycle).
 - 5. Attorneys who are active members of The Florida Bar are exempt from continuing education.

VII. Broker Requirements

- A. Complete Course II (commission prescribed prelicense course for broker candidates) with a passing score of at least 70 on the end-of-course exam
 - 1. Broker prelicense course 69 hours plus 3 hours for end-of-course exam (72-hours total)
- B. Broker applicants who hold a Florida real estate sales associate's license must complete the 45-hour post-licensing education for sales associates before expiration of the initial sales associate's license or before applying for a broker's license (whichever occurs first) to be eligible for a broker's license
- C. Exempt from broker prelicense Course II (see Figure 2.3 Summary of Education Exemptions)
 - 1. Applicants that have a four-year degree or higher in real estate from an accredited institution of higher education are exempt from the broker prelicense course.
- D. Broker experience requirements
 - 1. Broker applicants must fulfill an experience requirement in addition to the education requirement consisting of 24 months of real estate experience during the five-year period before becoming licensed as a broker.
 - 2. Broker applicants can fulfill the experience requirement in one of three ways:
 - a) Hold an active sales associate license for at least 24 months during the preceding five-year period under a Florida real estate broker or a broker licensed in another state or foreign jurisdiction
 - b) Hold an active sales associate license while working as a salaried employee of a governmental agency and performing services of real estate for at least 24 months in the preceding five years
 - c) Hold an active broker license in another state or foreign jurisdiction for at least 24 months during the preceding five-year period

- E. Broker post-license education
 - 1. Florida brokers must complete the 60-hour broker post-licensing education before the first renewal of their license
 - 2. Failure to complete the post-licensing requirement before the expiration date will cause the license to become null and void by operation of law
 - 3. In such cases, the broker may revert to a sales associate license if individual completes 14-hour CE course within six months after expiration of broker's license
 - 4. A licensee who has received a four-year degree or higher in real estate from an accredited institution of higher education is exempt from broker post-license education

VIII. Registration and Licensure

- A. *Registration*—process of submitting information to the DBPR that is entered into the Department's records
- B. Information placed on record—includes the name and address of each licensed broker and sales associate; the name and business address of a sales associate's employer; sales associate or broker license status (active or inactive); and a person's involvement as an officer, director, or partner of a real estate business entity
- C. Sales associates and broker associates licensed in Florida—must be registered under the employing broker
- D. Wallet-size license and certificate of registration
- E. Effective date and expiration date on license
- F. Serves as prima facie evidence
 - 1. Evidence that is good and sufficient on its face
 - 2. Unless refuted by evidence to the contrary, prima facie evidence will prove case
- G. Prefix code to license number

IX. Real Estate Services

- A. Include any real estate activity involving compensation for performing the service for another and the following activities in the sale, exchange, or lease of real property, including mineral rights, business enterprises, or business opportunities:
 - 1. Offer to, agree to, or attempt to perform real estate activities
 - 2. Advertise or otherwise indicate to the public that one is in the business of performing real estate services
 - 3. Direct or assist in the procurement of sellers, buyers, lessors, or lessees
 - 4. Negotiate or close a real estate transaction (the intention to close a transaction is sufficient)
- B. *Compensation*—anything of value or a valuable consideration, directly or indirectly paid, promised, or expected to be paid or received
 - 1. Includes money in the form of a salary, bonuses, commissions, and gratuities
 - 2. Also includes things of value, such as dinner, flowers, wine, gift certificates, event tickets, and so forth

- C. Memory aid—A BAR SALE
 - 1. Advertise real estate services
 - 2. Buy
 - 3. Appraise (non-federally related transactions)
 - 4. Rent or provide rental information or lists
 - 5. Sell
 - 6. Auction
 - 7. Lease
 - 8. Exchange
- D. Presumption of acting as a real estate broker
 - 1. If a person performs services of real estate for another and a disciplinary case is filed, there is a presumption that the individual acted as a real estate licensee.
 - 2. Individuals may be held liable even if acting for another without being compensated for the services.
- X. Individuals Who Are Exempt From a Real Estate License
 - A. A person who performs real estate services for others must be licensed, unless specifically exempted by law.
 - B. Five groups of exemptions
 - 1. Owner exemptions
 - 2. Exemptions based on career
 - 3. Salaried employee exemptions
 - 4. Court and legally appointed persons
 - 5. Miscellaneous exemptions
 - C. Owner exemptions
 - 1. Property owners may buy, sell, exchange, or lease their own property.
 - 2. Officers and directors of corporations partnerships (and owners of other business entities) may buy, sell, exchange, or lease the property of the business entity.
 - 3. Partners in a real estate partnership are exempt from licensure if selling property owned by the partnership provided the partners receive a share of the profits in proportion to their interest in the partnership.
 - 4. Owners of time-share periods who own the time-share for their own use and occupancy may later sell their interest.
 - D. Exemptions based on career
 - 1. Attorneys-at-law when acting within the scope of their professional duties (Holding a Florida attorney license does not entitle an attorney to compensation for performing services of real estate.)

2. Certified public accountants (CPAs) when performing accounting duties within the scope of their professional duties
 3. State-certified and licensed real estate appraisers licensed under Chapter 475, Part II
- E. Salaried employee exemptions
1. Salaried employees of a business entity may buy, sell, exchange, and lease property for their employers, provided they are not paid on a transactional basis
 2. Salaried employees of an apartment community who work in an onsite rental office in a leasing capacity and who do not receive commission (no restriction on duration of rental leases)
 3. Salaried managers of condominium or cooperative apartment complexes who rent individual units for periods no longer than one year and who are not paid a commission (Salaried managers of community associations must obtain CAM licenses.)
 4. Salaried employees of an owner-developer (real estate developer), provided they do not receive commission
- F. Court and legally appointed persons
1. Court-appointed individuals acting within the limitations of their duties
 2. A person given a power of attorney to sign contracts on another's behalf
- G. Miscellaneous exemptions
1. Persons who sell cemetery lots (This exemption exists because Chapter 475, F.S., excludes cemetery lots from the definition of real property.)
 2. Individuals who rent lots in a mobile home park or recreational travel park (Rentals in mobile home parks and recreational vehicle lot rentals are not considered real property.)
 3. Dealers who are registered with the SEC selling business enterprises to accredited investors
 4. Hotel and motel clerks who rent lodging accommodations on behalf of the establishment
 5. Tenants of an apartment community may receive a fee up to \$50 for the referral of a new tenant to the same apartment community

DISCUSSION QUESTIONS

1. What is the difference between *registration* and *licensure*?
2. Is it appropriate that those candidates for licensure who have been convicted of a crime, have pleaded *nolo contendere* to an offense, or have a criminal or civil proceeding pending against them should have to disclose this information on their applications? Why?
3. How long does an applicant have to apply for licensure following completion of the required academic course or courses? Why?
4. Why should a licensee keep the DBPR informed of all changes in information that appear on the face of the license and the record?

CLASSROOM EXERCISES

1. Have a student work at the board and have the class provide estimated time intervals and calendar dates to reflect the approximate date when class members might reasonably expect to sit for the state licensing examination for sales associates. Beginning with the date after the end-of-course exam is graded, allow reasonable time for notification of results to students, completion of application forms, fingerprint scan, processing time, et cetera.
2. When the flow chart in exercise 1 has been completed, ask the class to find ways to reduce the time involved (e.g., complete fingerprint cards before the end of course, line up references, etc.).
3. Form two or more groups of students and have each group develop examples of a person or a firm functioning in each of the eight services of real estate. Have the groups compare their results to make the idea come alive and to ensure full understanding of each real estate service.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

You can download a current copy of the sales associate's real estate license application. Follow the instructions at the DBPR website at www.myfloridalicense.com/dbpr/. Select "Apply or Manage My License" and follow the instructions.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 2 QUIZ

1. Within what period must an applicant pass the state license exam without having to retake the prelicense education course?
 - a. Six months
 - b. One year
 - c. Two years
 - d. Indefinitely
2. Which qualification is required to be a Florida real estate licensee?
 - a. U.S. citizen
 - b. U.S. Social Security number
 - c. Florida resident
 - d. 21 years of age or older
3. A person who is broker-qualified but who works under the direction of a broker is called
 - a. an inactive broker.
 - b. an active sales associate.
 - c. an active broker.
 - d. a broker associate.
4. A student has completed the sales associate's prelicense course and has taken the end-of-course exam. The student received a grade of 68% on the end-of-course exam. Which statement BEST describes what the student must do to successfully complete the prelicense education?
 - a. The student may retake the end-of-course exam as many times as necessary until earning a grade of at least 70%.
 - b. The student must wait at least 30 days from the date of the original end-of-course exam to take a different form of the end-of-course exam.
 - c. The student must wait at least four days from the date of the original end-of-course exam to retake the end-of-course exam.
 - d. The student must repeat the prelicense course before retaking the end-of-course exam.
5. When completing the license application, information must be included in the background information section of the application concerning whether applicants have been convicted of a crime. Which statement is TRUE regarding completing this section of the application?
 - a. Applicants should attach details of cases, even if adjudication was withheld.
 - b. Applicants are not required to report a conviction if the applicant entered a plea of no contest.
 - c. A conviction that occurred more than 10 years ago will not show up on the FDLE fingerprint check.
 - d. Applicants should report repeated speeding offenses.
6. Part III of Chapter 475, F.S., applies exclusively to which type of real estate?
 - a. Residential
 - b. Commercial
 - c. Rental property
 - d. Business opportunities
7. The DBPR can waive the application fee, initial biennial license fee, and the unlicensed activity fee for military veterans and their spouses who apply for a real estate license within what period after honorable discharge?
 - a. 30 days
 - b. 60 days
 - c. 6 months
 - d. 60 months
8. For purposes of a real estate license, FREC rules define a resident of Florida as a person who has resided in Florida continuously for how many calendar months?
 - a. 3
 - b. 4
 - c. 6
 - d. 12

9. An owner of a large apartment complex in a college town has sent a letter to each tenant indicating that if the tenant refers a prospect and the prospect signs a rental agreement, the owner will pay the tenant a \$50 finder's fee for the referral. Which statement is TRUE regarding this arrangement?
- Owners of apartment complexes are exempt from licensure for the purpose of paying a finder's fee to tenants of the apartment complex.
 - For this arrangement to be legal, the owner of the apartment complex must be a licensed real estate broker.
 - It is illegal to pay an unlicensed tenant a finder's fee for referring a prospect.
 - It is illegal to pay a finder's fee in excess of \$25 to a tenant for the referral of a prospect.
10. Which individual is exempt from a real estate license?
- A person who works for an owner-developer and is compensated based on the number of signed contracts.
 - A real estate attorney who receives a fee for referring investors to a broker.
 - An individual who sells burial lots in Meadow Lawn Cemetery.
 - Salaried managers of a cooperative apartment complex who arrange two- and three-year leases of individual units.

SPECIAL UNIT 2 QUIZ

ANSWER KEY

1. c If an applicant does not pass the state exam within two years after the course completion date, the course completion expires and the applicant must again complete the prelicense education course.
2. b A U.S. Social Security number is required to apply for a real estate license. The Social Security number is used to determine whether applicants are in compliance with child support obligations.
3. d A broker associate is a person who meets the requirements of a broker but who chooses to work in real estate under the direction (employ) of another broker.
4. b A student failing the end-of-course exam must wait at least 30 days from the date of the original examination to retest.
5. a Applicants must disclose a prior conviction even if court action (*adjudication*) was withheld.
6. b Chapter 475, Part III is the Commercial Real Estate Sales Commission Lien Act.
7. d The DBPR provides a fee waiver for military veterans and their spouses who apply for a professional license within 60 months after honorable discharge.
8. b Chapter 475, F.S., defines a Florida resident for license purposes as a person who has resided in Florida continuously for a period of four calendar months within the preceding year.
9. a An owner of an apartment complex may pay a finder's fee of up to \$50 to an unlicensed person who is a tenant of the apartment complex for the referral of a prospect who decides to rent an apartment in the same complex.
10. c Cemetery lots are not considered real property; therefore, a real estate license is not required.

UNIT 2 EXAM QUESTIONS

EXPLANATIONS

1. b Licensed sales associates may perform real estate services for compensation under the direction of their registered employer.
2. c Florida sales applicants must submit an application fee, be 18 years of age or older, and possess a Social Security number. Florida residency is not a requirement for sales associate licensure.
3. d A broker applicant must fulfill an experience requirement by having held an active real estate license for at least 24 months during the five-year period preceding application to become a Florida real estate broker. The experience cannot be earned by working for an owner-developer unless the owner-developer is a licensed broker who holds a current, valid, active real estate license.
4. c The license indicates the licensee's full name and address, type of license, license number, effective date, expiration date, and the names of the governor and the DBPR secretary.
5. b U.S. citizenship is not a requirement to hold a real estate license; therefore, proof of citizenship is not required on the license application.
6. a A sales associate is employed by and works under the direction and control of a broker, or in some cases, an owner-developer. A sales associate must be registered under the employing broker.
7. d The Latin term *nolo contendere* means no contest.
8. c The DBPR issues a license by endorsement for eligible military applicants, spouses, or surviving spouses who currently hold a valid real estate license issued in another state, U.S. territory, or foreign jurisdiction at the time of application. The initial fees are waived except for fingerprinting. The applicants are exempt from taking the prelicense education and the state exam.
9. b A conviction of fraud may cause the FREC to refuse to certify an applicant for licensure.
10. a A resident of Florida who is licensed in a mutual recognition state cannot apply for a Florida real estate license under mutual recognition. The applicant has resided in Orlando for four or more months.
11. a To become licensed as a real estate broker in Florida, a Florida sales associate must fulfill the 45-hour post-licensing education requirement.
12. b Individual property owners who buy, sell, exchange, or lease their own real estate are exempt from licensure.
13. d A sales associate applicant may legally begin to operate as a licensee once the applicant appears on the DBPR website as active with a designated brokerage or owner-developer. The broker can activate a sales associate or broker associate through their DBPR online account.

14. b Sales associates who fail to complete the post-licensing requirement and want to continue in the real estate business are required to requalify for licensure by repeating the prelicense course and end-of-course exam and again passing the state licensing exam.
15. c Persons who buy or sell cemetery lots are specifically exempted from licensure. Florida Real Estate License Law identifies the following eight real estate-related activities as real estate services: (1) advertise real estate services; (2) buy; (3) appraise non-federally related transactions; (4) rent or provide rental information or lists; (5) sell; (6) auction; (7) lease; and (8) exchange. These services can be remembered by the acronym A BAR SALE.
16. d A license is required for anyone who performs any real estate services for another for compensation, unless specifically exempted by law.
17. d An employee of a real estate developer who receives bonuses based on sales quotas in addition to a salary must hold a real estate license in Florida.
18. d Employees who are paid a salary as managers of condominiums or cooperative apartment complexes who rent individual units, if the rentals are for periods no longer than a year, are exempt from licensure.
19. d The son was employed by his father, the owner-developer. Had the son been paid a salary only, the arrangement would have been legal. But because the father promised to pay and the son expected to receive a lot free and clear as additional compensation, both the father and the son violated Chapter 475 of Florida license law.
20. a Because the man had his Georgia real estate broker license revoked and because he entered a plea of nolo contendere, the FREC will probably decide that the Florida applicant is not qualified for licensure.

3

REAL ESTATE LICENSE LAW AND COMMISSION RULES

UNIT OVERVIEW

Every state has a regulatory body charged with the responsibility of overseeing real estate practices. In addition, some mechanism exists in each state for providing the necessary administrative support to that regulatory body so that it can carry out its duties. Licensing of individuals, firms, and schools involved in real estate activities is the primary day-to-day effort in license law work.

This unit describes the Florida Real Estate Commission (FREC), its composition and powers, and the relationships between and among the Department of Business and Professional Regulation, the Division of Real Estate, and the FREC. Registration of proprietary schools of real estate is covered, as are license requirements, active and inactive status, license activation, void and ineffective licenses, and fee schedules.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Describe the scope and function of the DBPR and the DRE.
- Describe the composition and member qualifications of the Florida Real Estate Commission.
- Describe the Commission's general powers and duties.
- Distinguish between active and inactive license status and describe the regulations regarding involuntary inactive status.
- Distinguish between multiple and group licenses.

KEY TERMS

active license
cancel
cease to be in force
current mailing address
current status
executive power

group license
involuntary inactive
ministerial duties
multiple licenses
null and void
promulgates

quasi-judicial
quasi-legislative
voluntary inactive
voluntary relinquish

TEACHING OUTLINE

- I. Department of Business and Professional Regulation (DBPR)
 - A. Agency charged with licensing and regulating businesses and professionals
 - B. Intent of the Florida Legislature
 1. Right of qualified individuals to practice
 2. Professions and occupations licensed only under the following conditions:
 - a) Unregulated practice can harm the public.
 - b) The public is not otherwise protected.
 - c) Less restrictive means of regulation are not available.
 - C. DBPR
 1. Under the executive branch of the governor
 2. Authority to investigate consumer complaints, issue subpoenas when conducting investigations, issue cease and desist orders to unlicensed individuals, and issue citations to licensees
 3. Secretary of DBPR an appointee of governor, subject to Florida Senate confirmation
 - D. Divisions under DBPR important to real estate
 1. Division of Professions—regulates education courses and license exams
 2. Division of Service Operations
 - a) Customer Contact Center
 - b) Central Intake Unit
 3. Division of Florida Condominiums, Timeshares, and Mobile Homes
 4. Division of Real Estate (DRE)
 - a) Administrative and ministerial duties
 - (1) Administrative duties include routine duties and clerical functions on behalf of the FREC.
 - (2) Ministerial duties involve recordkeeping.
 - b) Florida statute—mandates that the DRE offices and the principal office of the Commission are located in Orlando
 - c) Director of the DRE—appointed by the DBPR secretary, subject to approval by majority vote of the FREC
- II. Florida Real Estate Commission (FREC)
 - A. Purpose of the FREC
 1. Regulatory body charged by the Florida Legislature to protect the public by regulating real estate brokers and brokerage firms, broker associates, sales associates, and real estate schools and instructors
 2. To ensure at least minimal competence of licensees

- B. Composition and qualifications
 - 1. Seven members
 - a) Five of the members are professional (licensed) members
 - (1) Four licensed real estate brokers who have held active licenses during the five years preceding appointment
 - (2) One member who is either a broker or sales associate who has held an active license for two years preceding appointment
 - b) Two consumer (or lay) members who have never been real estate licensees
 - 2. Appointed by the governor, subject to state senate confirmation
 - 3. Four-year staggered terms
 - 4. Accountable to the governor for proper performance
 - 5. Members exempt from civil liability
 - 6. One member who must be 60 years of age or older
 - C. Compensation
 - 1. \$50 per day for official business and meetings, plus expenses incurred for official activities
 - D. Legal counsel, meetings, and minutes
 - 1. Monthly meetings at DRE headquarters in Orlando
 - 2. Quorum of four commissioners to conduct business
 - 3. Legal counsel provided through the Office of the State Attorney General of the Department of Legal Affairs
- III. Commission General Powers and Duties
- A. Commission powers and duties include three general areas of responsibility
 - 1. Executive—power to regulate and enforce license law
 - a) Foster education of applicants and licensees
 - b) Adopt a seal
 - c) Establish fees
 - 2. Quasi-legislative—power to enact administrative rules and bylaws
 - a) Create and adopt (promulgate) rules and bylaws
 - b) Regulate professional practices
 - 3. Quasi-judicial—power to discipline licensees
 - a) Grant or deny applications for licensure
 - b) Suspend or revoke licenses and impose administrative fines
 - c) Make determinations of violations
 - d) The FREC must inform the Division of Florida Condominiums, Timeshares, and Mobile Homes when disciplinary action is taken against any of its licensees

- B. Commission powers limited to administrative matters
 - 1. The FREC may not impose imprisonment as a penalty.
 - 2. DRE provides services required to administer Florida license law.
- IV. License Renewal and License Statuses
 - A. License renewal periods
 - 1. The initial effective date is the date the DBPR issues the license.
 - 2. Licenses expire on either March 31 or September 30.
 - 3. The initial assigned expiration date gives the licensee as close to 24 months of licensure as possible without exceeding 24 months.
 - B. License renewal
 - 1. 90 days before expiration, DBPR sends a renewal notice to licensees
 - 2. Must renew before expiration date or license will revert to involuntary inactive status
 - 3. 24 months to renew, provided licensee does not practice real estate during that period
 - 4. Must complete post-licensing or continuing education
 - 5. Armed forces renewal exemption
 - a) Members of U.S. Armed Forces who have licenses in good standing are exempt from license renewal while on active duty and for two years after discharge.
 - b) If the military duty is out of state, the exemption also applies to a licensed spouse.
 - c) The exemption does *not* apply if the licensee engages in real estate brokerage activity in the private sector for profit during that period.
 - C. Active versus inactive status
 - 1. Active license—required for engaging in real estate brokerage services (To be active, sales associates must be registered with an employer.)
 - 2. Voluntary inactive—qualified but chooses not to be active; holds an inactive license
 - a) Can activate anytime if 14 hours of CE completed every two years
 - 3. Involuntary inactive—previously qualified but allowed license to expire
 - 4. Active license not renewed—reverts to involuntary inactive status (post-licensing exception)
 - 5. Involuntary inactive more than two years—status automatically expires without FREC action
 - 6. Involuntary inactive reactivation
 - a) 12 months or less, complete 14 hours of continuing education
 - b) More than 12 months but less than 24 months, complete 28 hours of a Commission-prescribed reactivation education course

7. The FREC may reinstate a null and void license if the former licensee failed to comply with the statute because of physical hardship or economic hardship—six months to apply
- D. Other license classifications
1. Null and void—when a license is void, it no longer exists. License becomes null and void when the following occur:
 - a) A license that is involuntary inactive more than two years becomes null and void without further action by the DBPR or the FREC.
 - b) Revocation of a license following a disciplinary proceeding is permanent.
 - c) A licensee failing to complete postlicense education by the initial expiration date will cause a license to become null and void.
 - d) A person who no longer wants to engage in the business can voluntarily relinquish (cancel) the license, provided there is no investigation or discipline pending against the licensee.
 2. Cease to be in force—when certain events occur, a license ceases to be in force (the licensee cannot conduct business) until the DBPR is properly notified; the Commission must be notified within 10 days when
 - a) a broker changes business address,
 - b) a real estate school changes business address,
 - c) a sales associate changes employer, or
 - d) an instructor changes employer.
- E. Current mailing address
1. The residential address a licensee uses to receive mail through the U.S. Postal Service.
 2. A post office box is an acceptable mailing address.
 3. Licensees must notify DBPR in writing within 10 calendar days of a change in current mailing address or email address.
 4. DBPR sends official communication to licensee’s mailing address or email address on file.
- F. Nonresident applicant requirements
1. Proof of U.S. citizenship is not required; however, applicants must possess a U.S. Social Security number.
 2. Applicants do not have to be residents of Florida.
 3. Nonresident applicants must indicate on the application that they are not residents of Florida.
 4. Resident licensees who move out of the state (become nonresidents of Florida) must notify the Commission of the change in residency within 60 days.
 5. Nonresident licensees must comply with all Chapter 475, F.S., requirements and FREC rules.

- G. Eligibility for Receiving Commission
 - 1. Real estate licensees whose license is inactive at the time of performing real estate services may not receive compensation.
 - 2. Sharing commission or paying a fee to a person who is not properly licensed may be subject to disciplinary action.
- H. DBPR License Portal Online Service
 - 1. Primary status is the first status followed by the secondary status.
 - 2. The primary status must state either current or probation to be eligible to operate as a licensee.
- I. Change of employer
 - 1. Sales associates who work for a different brokerage firm have certain responsibilities to their former employer.
 - 2. Duplication of records from a previous employer is breach of trust.
 - 3. Fiduciary duties do not end with termination of employment.
- V. Multiple Licenses and Group License
 - A. Multiple licenses
 - 1. Multiple licenses are issued to a broker who qualifies as the broker for more than one business entity.
 - 2. For each business that a person is a broker, a separate broker license must be obtained.
 - 3. Because sales associates and broker associates may have only one registered employer at a time, they may not hold multiple licenses.
 - B. Group license
 - 1. A group license is sometimes issued to sales associates and broker associates who are registered under an owner-developer.
 - a) An owner-developer may own properties in the names of various entities.
 - b) If the entities are all connected so that ownership and control is with the same individuals, licensees employed by the owner-developer may be issued a group license.
 - 2. Owner-developers are not required to hold real estate licenses if they only sell their own properties.
 - a) A pseudo number (not a real estate license) is entered into the DBPR records.
 - b) The pseudo number is a placeholder under which associates register.

DISCUSSION QUESTIONS

1. What qualifications must a real estate licensee possess to be appointed to the FREC?
2. What is the relationship between the FREC and the DBPR?
3. What is the difference between voluntary inactive and involuntary inactive status?

CLASSROOM EXERCISES

1. Which divisions under the DBPR are important to real estate licensees?
2. Take the class to a Commission meeting, or obtain a copy of the Commission's agenda for one of its regular monthly meetings, and discuss the items on the agenda, including their impact on prospective and practicing licensees.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 3 QUIZ

- Who appoints members to the Florida Real Estate Commission?
 - Governor
 - Florida Senate
 - DBPR secretary
 - DRE director
- A sales associate FREC member must have held an active real estate license for how many years preceding appointment?
 - One
 - Two
 - Three
 - Four
- The FREC's ability to interpret questions regarding the practice of real estate is an exercise of which general power?
 - Executive
 - Quasi-legislative
 - Quasi-judicial
 - Ministerial
- Brokers must notify the DBPR in writing of a change in business address within how many calendar days?
 - 10
 - 15
 - 30
 - 60
- Which date is one of two dates on which real estate licenses expire?
 - January 1
 - March 30
 - September 30
 - November 15
- Which statement is TRUE of the Division of Real Estate?
 - The director of DRE is appointed by the governor and confirmed by the state senate.
 - The Division's duties include executive, quasi-legislative, and quasi-judicial.
 - DRE personnel are appointees, not state employees.
 - The Division's ministerial duties involve recordkeeping.
- A license has been involuntary inactive for 12 months. This is the third renewal cycle. What is the education requirement to renew the license?
 - 7 hours of continuing education
 - 14 hours of continuing education
 - 14 hours of reactivation education
 - 28 hours of reactivation education
- How many consecutive terms may Commission members serve?
 - One
 - Two
 - Three
 - Four
- An involuntary inactive license becomes null and void after what period?
 - One year
 - Two years
 - Four years
 - Five years
- Which licensee may be issued a group license?
 - Inactive broker
 - Active broker for several real estate brokerage entities
 - An unlicensed owner-developer
 - A sales associate employed by an owner-developer

SPECIAL UNIT 3 QUIZ

ANSWER KEY

1. a The governor, subject to confirmation by the Florida Senate, appoints Commission members.
2. b One member must be either a Florida real estate broker or sales associate who has held an active license during the two years preceding appointment.
3. b Quasi-legislative responsibilities include the power to enact and revise administrative rules and regulations and to interpret questions regarding the practice of real estate.
4. a Brokers have 10 calendar days to notify the DBPR regarding a change in business address or a change in current mailing address. Licensees are responsible for notifying the DBPR of their current mailing address, email address, and place of practice.
5. c All real estate licenses are issued with an expiration date of either March 31 or September 30.
6. d The duties of the DRE are essentially administrative and ministerial. The DRE's administrative duties include implementation of the Florida real estate license law set by statute and rule. The DRE's ministerial duties involve recordkeeping.
7. b When a license has been involuntarily inactive for 12 months or less (unless the initial renewal), the licensee may satisfy the education requirement by completing 14 hours of FREC-approved continuing education.
8. b Commissioners may not serve more than two four-year consecutive terms.
9. b When a license has been involuntarily inactive for more than two years, the license becomes null and void by operation of law, without any further action by the DBPR or FREC.
10. d A group license is sometimes issued to sales associates and broker associates who are registered under an owner-developer.

UNIT 3 EXAM QUESTIONS

EXPLANATIONS

1. c Members of the Commission are appointees, not employees.
2. d All seven members of the Commission are appointed to four-year terms by the governor, subject to confirmation by the state senate.
3. c Quasi-legislative responsibilities include the power to enact and revise administrative rules and decide questions regarding the practice of real estate. Adopting a seal is an executive power. Granting or denying applications for licensure and making determinations of violations are quasi-judicial responsibilities.
4. d A member of the U.S. armed forces who at the time of entry to active duty was a Florida licensee in good standing is exempt from all renewal requirements while on active duty and for two years thereafter.
5. b Each Commission member is appointed to a four-year term.
6. c Commission members do not receive a salary. Instead, they are paid \$50 per day for each day they attend an official meeting and for each day they participate in other Commission business. Additionally, they are reimbursed for expenses connected with their official activities.
7. d Quasi-judicial responsibilities include the power to grant or deny license applications.
8. c The Commission is not empowered to levy imprisonment as a penalty. The Commission is, however, empowered to do the following: adopt a seal; foster the education of applicants and licensees; make determinations of violations, that is, report any criminal violation of Chapter 475 or any disciplinary actions to the proper authorities; regulate professional practices; create and pass rules and regulations; establish fees; grant or deny applications for licensure; and suspend or revoke licenses and impose administrative fines.
9. d The Department of Business and Professional Regulation (DBPR) is responsible for providing the services necessary for the preparation and administration of all examinations.
10. c Commission members are appointed by the governor, subject to state senate confirmation. The Legislature granted the DBPR authority to investigate consumer complaints, administer oaths, take depositions, and issue subpoenas and citations.
11. b The DBPR is under the executive branch of the governor, and it is governed by Chapter 120, F.S.
12. a The FREC may reinstate the license of an individual whose license has become null and void if the Commission determines that the former licensee failed to comply with the statute because of physical hardship or economic hardship.

13. a One Commissioner must be either a Florida real estate broker or sales associate who has held an active license during the two years preceding appointment. Two of the Commissioners must be unlicensed (lay persons) and at least four members must hold active broker licenses.
14. a An individual who did not renew the license before it expired is placed in involuntary inactive status.
15. a A license that has been in involuntary inactive status for more than two years becomes null and void without further FREC or DBPR action.
16. d Sales associates are required to complete the post-licensing education requirement before the first renewal of their licenses. Failure to do so will cause the initial license to become null and void.
17. a A sales associate or broker associate who is issued a group license is considered to hold one license and have one employer.
18. a Because the broker did not notify the Commission of his business address change within 10 days of the change, the broker's license will cease to be in force until proper notification is received by the Commission.
19. b Multiple licenses are issued to a broker who qualifies as the broker for more than one business entity.
20. d A broker who changes a business address must notify the Commission of the change no later than 10 days after the change occurs. The broker must also inform the FREC of the names of any sales associates who are no longer employed with the broker. These sales associates are placed in inactive status.



AUTHORIZED RELATIONSHIPS, DUTIES, AND DISCLOSURE

UNIT OVERVIEW

This unit details the various types of brokerage relationships practiced in Florida. The licensee’s duties and obligations to principals and customers are also explained.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Distinguish among agency relationships in general business dealings.
- Describe the three brokerage relationship options.
- Describe the duties owed in a no brokerage relationship (nonrepresentation).
- Describe the duties that single agents have to their principals.
- Describe the duties owed in a transaction broker relationship.
- Describe the process of transition from a single agent to a transaction broker.
- Describe the disclosure procedures and the required content and format of the disclosure notices.
- Describe the disclosure requirements for nonresidential transactions where the buyer and seller have assets of \$1 million or more.
- List the events that will cause a brokerage relationship to be terminated.

KEY TERMS

agent	fiduciary	residential sale
caveat emptor	general agent	transactions
consent to transition	limited representation	single agent
customer	no brokerage relationship	special agent
designated sales associates	principal	subagent
dual agent		transaction broker

TEACHING OUTLINE

- I. Law of Agency
 - A. When people delegate authority to someone to act on their behalf, agency relationships are created
 - B. Three types of law society to look to for guidance regarding agency relationships
 1. Common law (unwritten law or case law)
 - a) Based on usage, general acceptance, and custom
 - b) Judge-made (case law)
 2. Statutory law (written statutes)
 3. Administrative law (FREC rules)
 - C. Agency relationships in general business dealings
 1. The person who delegates authority to another is the principal.
 2. The person who accepts this authority is the agent.
 3. Fiduciary relationships contrast:
 - a) with people with adverse interests who deal at arm's length with one another,
 - b) with people who conduct negotiations on their own behalf without trusting the other's fairness or integrity, and
 - c) with legal doctrine of caveat emptor (let the buyer beware).
 4. Degrees of authority
 - a) General agent—continued operations of a certain business of the principal (sales associate is a general agent of the employing broker)
 - b) Special agent—authorized by the principal (broker or owner-developer) to perform a specific act
- II. Brokerage Relationships in Florida
 - A. Three brokerage relationship options in residential transactions
 1. No brokerage relationship—the brokerage firm simply facilitates the transaction
 2. Single agent for either the buyer or the seller (but not for both parties in the same transaction)
 3. Transaction broker for the buyer and/or the seller
 - B. Appropriate type of brokerage relationship is determined by the broker
 1. Sales associates should consult with employing broker regarding what type of brokerage relationships the brokerage practices
- III. No Brokerage Relationship (Nonrepresentation)
 - A. Buyers and sellers may opt out of representation
 1. Broker is not an agent of either party in the transaction

2. Broker may only relay information to the parties and may not negotiate on behalf of either party
- B. No brokerage relationship duties
1. Account for all funds entrusted to the licensee
 2. Deal honestly and fairly
 3. Disclose all known facts that materially affect the value of residential real property that are not readily observable to the buyer
- IV. Single Agent Representation
- A. Represents, as a fiduciary, either the buyer or the seller, but *not both*, in the same transaction
1. One unique feature is only one party is represented by the brokerage in a fiduciary capacity.
 2. The principal is the party with whom a real estate licensee has entered into a single agent relationship.
- B. Dual agency
1. Occurs when a brokerage firm represents as a fiduciary both the buyer and the seller in the same transaction.
 2. It is illegal to operate as a dual agent in Florida.
- C. *Subagents* authorized to assist and represent the agent
1. Broker's sales associates are subagents of their broker in dealings with the principal in a single agency relationship.
 2. In a single agent relationship, a broker is an agent of the principal.
 3. Because a sales associate is an agent of the broker, the sales associate is a subagent of the principal.
 4. Sales associates owe the same fiduciary obligations to the principal as their broker.
- D. Duties of a single agent
1. Account for all funds
 2. Deal honestly and fairly
 3. Disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer
 4. Skill, care, and diligence in the transaction
 5. Present all offers and counteroffers in a timely manner
 6. Confidentiality
 7. Obedience
 8. Loyalty
 9. Disclosure (full)

- V. Transaction Broker Relationship
 - A. For both the buyer and the seller to be represented in the same transaction within the same brokerage, transaction broker relationship was created.
 - B. Transaction brokers provide limited representation rather than full fiduciary representation (to avoid the problem of illegal dual agency).
 - 1. The buyer or seller is not responsible for the acts of the licensee.
 - 2. Parties give up their right to undivided loyalty.
 - 3. Allows licensee to facilitate the transaction by assisting both buyer and seller.
 - C. Transaction broker relationship is the presumed relationship in dealings with buyers and sellers.
 - D. Duties of a transaction broker are as follows:
 - 1. Account for all funds
 - 2. Deal honestly and fairly
 - 3. Disclose all known facts that materially affect the value of residential real property and are not readily observable by the buyer
 - a) Federal fair housing law and the Florida statutes mandate that the fact that an occupant of real property is infected or has been infected with the HIV virus or diagnosed with AIDS is not a material fact.
 - b) Personal medical information must not be disclosed without prior authorization.
 - c) The fact that a property was, or was at any time suspected to have been, the site of a homicide, suicide, or death is not a material fact.
 - d) A cause of action will not arise against a property owner or a licensee for failure to disclose any of the information or events listed in (1) through (3) above.
 - 4. Use skill, care, and diligence in the transaction
 - 5. Present all oral and written offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing
 - 6. Exercise limited confidentiality, unless waived in writing by a party, regarding the following:
 - a) Price
 - b) Motivation
 - c) Financing terms
 - 7. Perform additional duties that are mutually agreed to with a party
 - E. Limited confidentiality prevents disclosure of the following information:
 - 1. Seller will accept a price less than the asking or listed price
 - 2. Buyer will pay a price greater than the price submitted in a written offer

3. Motivation of the parties for selling (if the seller) and/or buying (if the buyer) of the property
 4. Seller or buyer will agree to financing terms other than those previously disclosed in writing
 5. Any other information requested by a party to remain confidential
- F. Real estate licensees are not required to give customers a written transaction broker notice; however, licensees must still fulfill the duties of a transaction broker when that form of representation is selected.
- VI. Transition From Single Agent to Transaction Broker
- A. Written consent to transition to transaction broker
1. Signature of principal required to transition
 2. If principal refuses to sign or initial consent to transition, broker must continue to act as single agent
- B. Authorized relationships in one brokerage firm in a single transaction
1. If working as a transaction broker for the seller, the brokerage firm can work as a transaction broker or in a no brokerage relationship with the buyer.
 2. If working as a single agent for the seller, the brokerage firm can work in a no brokerage relationship with the buyer.
- C. Brokerage Relationship Limitations
1. If the brokerage has a transaction broker relationship with the seller, the brokerage can also work with the buyer in the same transaction as a transaction broker or in a no brokerage relationship. The brokerage cannot represent the buyer as a single agent if it has a transaction broker relationship with the seller.
 2. If the brokerage is representing the seller as a single agent, the brokerage can work with the buyer in the same transaction in a no-brokerage-relationship capacity. The brokerage cannot represent the buyer as a single agent or work with the buyer as a transaction broker if it represents the seller as a single agent.
 3. The brokerage limitations apply even if the buyer and the seller are working with different sales associates in the same brokerage firm.
- VII. Disclosure Requirements
- A. Brokerage Relationship Disclosure Act (BRDA)
1. Mandates that the duties in the various relationships apply to both residential and nonresidential transactions.
 2. Written disclosures required only for residential sale transactions when the brokerage firm acts in the capacity of a single agent or in a no brokerage relationship.
- B. Residential sale is defined as the sale of
1. improved property of four or fewer residential units,
 2. unimproved property intended for use as four or fewer residential units, or
 3. agricultural property of 10 or fewer acres.

UNIT 4 Authorized Relationships, Duties, and Disclosure

- C. Types of transactions that do not require broker relationship disclosures
 - 1. Nonresidential transactions
 - 2. Rent or lease agreements (unless option to purchase residential property)
 - 3. Business opportunities (except for property with four or fewer residential units)
 - 4. Auctions
 - 5. Appraisals
- D. Disclosure format
 - 1. Written single agent disclosure and no brokerage relationship disclosure
 - a) Signature line following disclosure information
 - b) If incorporated into another document, disclosure notice must be same size or larger type than rest of the document
 - c) List of duties must be in the same order as listed in statute
- E. Written disclosure requirements for residential transactions
 - 1. Duties of the no brokerage relationship must be disclosed in writing before the showing of property.
 - 2. Single agent disclosure must be made before, or at the time of, entering into a listing agreement or an agreement for representation, or before showing property, whichever occurs first.
 - 3. Under Florida law, it is presumed that all licensees are operating as transaction brokers unless another brokerage relationship is established.
 - a) There is no requirement to give a written transaction broker disclosure notice to the buyer and/or the seller.
- F. Recordkeeping and retention of disclosure documents
 - 1. Retain brokerage relationship disclosure documents and buyer broker agreements for five years.
 - 2. Retention of brokerage documents applies to residential transactions that result in a written contract and nonresidential transactions that use designated sales associates.
- G. Exceptions to disclosure requirements
 - 1. A licensee is not required to give buyers or sellers a disclosure notice in six situations:
 - a) When the licensee knows that a single agent or a transaction broker represents the buyer or the seller
 - b) At a bona fide open house or model home showing (unless certain conditions apply)
 - c) During unanticipated casual encounters between a licensee and a buyer or a seller that does not involve eliciting certain information
 - d) When responding to general factual questions concerning properties advertised for sale

- e) Communication limited to providing general factual information about the qualifications, background, and services of the licensee or the licensee's brokerage firm
- f) When an owner is selling new residential units built by the owner and the circumstances and setting should reasonably inform the potential buyer that the licensee is acting on behalf of the owner

VIII. Nonresidential Transactions

A. Designates sales associates

1. Two designated sales associates
2. Broker serves as advisor to the designated sales associates
3. Buyer and seller must have assets of \$1 million or more

B. Disclosure requirements

1. Buyer and seller must sign disclosure notice
2. Buyer and seller must request that the broker use the designated sales associate representation

IX. Terminating a Brokerage Relationship

A. A brokerage relationship is terminated when the objectives have been accomplished according to the terms of the contract.

B. A brokerage relationship may be terminated for any of the following reasons:

1. Fulfillment of 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 renounces the transaction broker relationship by giving notice to the customer
5. Principal revokes a 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. Destruction of the property or condemnation by eminent domain
8. Bankruptcy of the principal or the customer

DISCUSSION QUESTIONS

1. What obligation(s) does a broker have to the customer?
2. Who do buyers think are representing them in everyday real estate transactions? Discuss this situation.
3. Can a real estate licensee ethically and legally represent both the seller and buyer in the same transaction? Discuss this situation.

CLASSROOM EXERCISES

1. Assume the role of a broker who has advertised for new sales associates. The students play the role of recently licensed sales associates. Allow the students to ask questions regarding the broker–sales associate relationship, sales associate–principal relationship, sales associate–customer relationship, sales associate–cooperating broker relationship, handling of disagreements in the office, problems with principals or customers, or whatever is appropriate and beneficial to the lesson material.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

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SPECIAL UNIT 4 QUIZ

1. Which type of agent is authorized by the principal to perform acts associated with the continued operations of a certain business of the principal?
 - a. Special
 - b. Dual
 - c. General
 - d. Subagent
2. Which type of brokerage relationship is presumed to exist unless another type of relationship is created?
 - a. Single agent
 - b. Special agent
 - c. Transaction broker
 - d. No brokerage relationship
3. Which type of duty is NOT a duty in a no brokerage relationship?
 - a. Use skill, care, and diligence
 - b. Deal honestly and fairly
 - c. Disclose all known facts that affect value of residential property
 - d. Account for all funds
4. The Latin term meaning *let the buyer beware* is
 - a. *lis pendens*.
 - b. *caveat emptor*.
 - c. *fiduciary*.
 - d. *laissez faire*.
5. Which duty applies exclusively to a single agency relationship?
 - a. Perform additional duties that are mutually agreed to
 - b. Disclose all known facts that affect the value of residential property
 - c. Use skill, care, and diligence
 - d. Obedience
6. For what period must brokers retain brokerage relationship disclosure documents for residential transactions that result in a written contract?
 - a. Six months
 - b. One year
 - c. Two years
 - d. Five years
7. In nonresidential transactions, the buyer and the seller may request designated sales associates to represent them if the buyer and the seller each meet which criteria?
 - a. Experienced investors
 - b. Hold real estate licenses
 - c. Have assets of \$1 million or more
 - d. Sign a release of liability
8. In which brokerage relationship is the buyer or the seller NOT responsible for the acts of a licensee?
 - a. Single agency
 - b. Transaction broker relationship
 - c. General agent relationship
 - d. Universal agent relationship
9. Case law is also called
 - a. common law.
 - b. statutory law.
 - c. actual notice.
 - d. constructive notice.
10. Which type of agency relationship is prohibited in Florida?
 - a. Special
 - b. Subagent
 - c. Fiduciary
 - d. Dual agent

SPECIAL UNIT 4 QUIZ

ANSWER KEY

1. c A general agent is authorized by the principal to perform acts associated with the continued operations of a particular job or a certain business of the principal. Sales associates are general agents of the broker with whom they are registered.
2. c Under Florida law, it is presumed that all licensees are operating as transaction brokers unless one of the other two brokerage relationships is established, in writing, with the customer.
3. a A broker working in a no brokerage relationship owes three duties to customers: (1) account for all funds, (2) deal honestly and fairly, and (3) disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer.
4. b Caveat emptor (a Latin term meaning “let the buyer beware”) exists in normal trading transactions where people with adverse interests deal at arm’s length with one another.
5. d Obedience is a single agent duty. Performing additional duties that are mutually agreed to applies exclusively to a transaction broker. The other two duties listed apply to all three brokerage relationships.
6. d Brokers must retain brokerage relationship disclosure documents for five years for all residential transactions that result in a written contract to purchase and sell real property. Documents may be stored in a digital format. Files of properties that have failed to close must also be retained. If a transaction fails to close, the broker should retain the brokerage relationship disclosure documents with the purchase and sales contract and other documents associated with the property and place them in the “dead” (failed to close) file.
7. c In a nonresidential real estate transaction where the buyer and seller each have assets of \$1 million or more, the broker at the request of the buyer and the seller may designate two sales associates to act as single agents for the buyer and the seller in the same transaction.
8. b The customer in a transaction broker relationship is not responsible for the acts of a licensee as a principal might be in a single agent relationship.
9. a Common law is judge-made law manifested in decrees and judgments of the courts (case law), as opposed to statutory law.
10. d Dual agency occurs when a brokerage firm represents as a fiduciary both the buyer and the seller in the same real estate transaction. It is illegal in Florida for a real estate licensee to operate as a dual agent.

UNIT 4 EXAM QUESTIONS

EXPLANATIONS

1. d Because the seller and the buyer have each entered into a single agent relationship with the brokerage firm, they must both give written consent to transition to transaction broker relationships in order for the buyer to be shown the seller's home.
2. b The disclosure requirements in Chapter 475, F.S., apply to residential sale transactions.
3. a A single agent is a fiduciary. Single agents must avoid any situation that might breach their fiduciary relationship. Loyalty (faithfulness) requires the broker to always put the principal's interest above those of other people with whom the broker deals.
4. b A transaction broker provides limited representation to a buyer, a seller, or both in a real estate transaction, but does not represent either the seller or the buyer in a fiduciary capacity.
5. c Licensees are not required to give the no brokerage relationship notice if (1) the licensee knows that a single agent broker represents the buyer, or (2) at a bona fide open house. The licensee must give the no brokerage relationship notice to a for sale by owner (FSBO) seller before showing the residential property to a buyer customer of the brokerage firm.
6. b The broker is obligated to disclose all known facts that materially affect the value of residential real property that are not readily observable to the buyer.
7. d There are seven listed duties of a transaction broker. Three of the duties are (1) using skill, care, and diligence in the transaction; (2) disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer; and (3) limited confidentiality. Obedience is a duty of a single agent broker.
8. d Unless a party has previously directed the licensee otherwise in writing, the licensee must present all offers and counteroffers in a timely manner.
9. b Typically, it is a transaction in which the parties are dealing from equal bargaining positions and looking out for their own individual best interest.
10. d The broker is at all times obligated to act in conformity with the principal's instructions as long as those instructions are legal and relevant to the contractual relationship. If a broker feels that carrying out the principal's legal directions will harm the principal, the broker must promptly inform the principal of all facts, along with the broker's opinion. However, if the principal will not change the instructions, the broker must either carry them out or withdraw from the relationship.
11. b Brokers have a duty to account for all funds entrusted to the broker.

12. a In nonresidential transactions, and where the buyer and the seller each have assets of \$1 million or more, the broker, at the request of the customers, may designate two sales associates to act as single agents for different customers in the same transaction.
13. b A general agent is authorized by the principal to perform acts associated with the continued operations of a particular job or a certain business of the principal. Sales associates and broker associates are general agents of their employing broker.
14. d Destruction of the listed property will terminate a brokerage relationship.
15. c These three duties are fundamental to honest, fair business dealings—so much so that real estate licensees are bound to these three duties in all three types of brokerage relationships. They account for all funds, deal honestly and fairly, and disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer.

5

REAL ESTATE BROKERAGE ACTIVITIES AND PROCEDURES

UNIT OVERVIEW

This unit explains many of the influences affecting the day-to-day operation of a real estate office. Statutory requirements spell out office and branch office regulations as well as rules governing signs, advertising, recordkeeping, and conduct. The broker's role as an expert and the proper handling of escrow funds, fees for rental information or rental lists, and compensation are discussed in detail. The various forms of business entities that may be encountered and that are permitted to engage in real estate brokerage activities are described.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Identify the requirements for a broker's office(s) and explain what determines whether a temporary shelter must be registered as a branch office.
- List the requirements related to sign regulation.
- List the requirements related to the regulation of advertising by real estate brokers.
- Explain the term *immediately* as it applies to earnest money deposits.
- Describe the four settlement procedures available to a broker who has received conflicting demands or who has a good-faith doubt as to who is entitled to disputed funds.
- Explain the rule regarding the advertisement of rental property information or lists or negotiation of rentals.
- Describe the regulations regarding lien rights for unpaid sales commission.
- Contrast the features of the various types of business organizations.

KEY TERMS

arbitration	general partnership	personal assistant
blind advertisement	good-faith doubt	point of contact
commingle	immediately	information
conflicting demands	interpleader	professional
conversion	kickback	association (PA)
corporation	limited liability	sole proprietorship
deposit	company (LLC)	team advertising
earnest money	limited liability	trade name
escrow account	partnership (LLP)	
escrow disbursement	limited partnership	
order (EDO)	litigation	
failure to account or	mediation	
deliver	ostensible partnership	

TEACHING OUTLINE

- I. Brokerage Offices
 - A. Minimum requirement—all active brokers must maintain an office, at least one room in a permanent building
 1. Offices must be registered with the DBPR.
 2. Offices must provide privacy to conduct negotiations and closings, consisting of at least one enclosed room in a building of stationary construction.
 3. Books, records, transaction files, et cetera, are maintained in the office.
 4. Law does not require (does not regulate) the broker to have a telephone, desk, business checking account, or escrow account.
 5. If local zoning allows, and the broker complies with applicable homeowners association rules (or restrictive covenants and rules), the broker's office may be in the broker's residence, provided the required signs are at the entrance of the office.
 6. Sales associates may not open their own offices.
 7. Sales associates must be registered from and work out of an office maintained and registered in a broker's name.
 - B. Branch offices
 1. A broker may have additional offices.
 2. Each branch office must be registered and fee paid.
 3. Use and character of a temporary shelter determines the need to register.
 4. Registrations are not transferable to other locations; brokers may reopen a branch office in the same location during the same license period by requesting a reissue of the branch office license without paying an additional fee.

- C. A temporary shelter in a subdivision being sold by a broker is not a branch office if the shelter is intended only for protection of customers and sales associates
 - 1. If business records are maintained at the locations, and sales associates are assigned to the location, the temporary shelter must be registered as a branch office.
- II. Office Signs
 - A. A sign must be displayed at or near the exterior or interior of the entrance to the principal office and all branch offices.
 - B. The prescribed format of office signs is as follows:
 - 1. Trade name (if one is used)
 - 2. Broker's name
 - 3. The words "Licensed Real Estate Broker" or "Lic. Real Estate Broker"
 - C. In the case of a partnership, corporation, limited liability company, or limited liability partnership, the sign must also include the name of the business and the name of at least one of the active brokers.
 - D. If the sign contains names of sales associates and broker associates, the names must not appear misleading, false, deceptive, or fraudulent.
- III. Advertising
 - A. Advertising—a broker activity
 - 1. All advertising must include the name of the brokerage firm and be under the supervision of the broker.
 - 2. Sales associates may not advertise listings in their own names.
 - 3. The broker is accountable for all advertising.
 - 4. Advertising includes letterhead stationery and flyers, business cards, yard signs and billboards, newspaper and magazine ads, internet, radio, and television, and promotional materials.
 - 5. Sales associate's promotional materials must include the licensed name of the brokerage firm.
 - 6. The brokerage firm's address and phone number are not required to be included in the advertisement (exception regarding internet advertising).
 - B. Team advertising
 - 1. Teams allow associates to specialize in their area of expertise and join forces to serve a wider group of customers.
 - 2. Teams must advertise in the name of the brokerage firm.
 - 3. Teams must perform licensed activities under the supervision of their registered broker.
 - 4. One licensee team member must be designated responsible for team advertising compliance.

5. The broker must maintain a written record of team member names.
 6. In advertisements, the team name may be in print no larger than the name or logo of the registered brokerage.
 7. Review Figure 5.3: Words That May Not Be Used in Team Names
- C. Blind advertisements
1. Failure to include the name of the brokerage in an ad results in a *blind advertisement*.
 2. Advertisements must not mislead public that an offer is being made by a private individual rather than a real estate licensee.
- D. Personal information in advertisements
1. Licensees may insert their personal names (nicknames) in ads provided they include their last name as registered with DBPR.
 2. Licensees may use their nickname in combination with their last name.
 3. Yard signs, classified ads, and promotional advertising must include the name of the real estate brokerage firm.
- E. False advertising
1. A licensee may not disseminate false or misleading information for the purpose of conducting real estate services
 2. A broker associate cannot use the title broker because the associate is not working in a broker capacity for the brokerage
 3. False and misleading advertising is a second-degree misdemeanor
- F. Internet sites
1. The name of the brokerage firm must appear adjacent to or immediately above or below point of contact information when advertising on an internet site.
 2. *Point of contact information* includes mailing address, physical street address, email address, telephone numbers, and fax numbers.
- G. Unauthorized use of association names
1. Licensees cannot use an association's name or an organization's designation unless the licensee is currently a member of the association in good standing.
- H. Licensee selling property by owner
1. A licensee who owns property and is selling the property "by owner" may place a classified ad.
 2. Licensees are not required to indicate in the ad that they are licensees.
 3. Licensees should disclose to prospective buyers that they are licensed before entering into serious negotiations.

- I. Telephone solicitation
 1. *Telephone solicitation* is the initiation of a telephone call for the purpose of encouraging the purchase of, or investment in, property, goods, or services.
 2. The Telephone Consumer Protection Act established a national do-not-call registry.
 3. Real estate licensees must abide by the telemarketing restrictions.
 4. Licensees must search the national registry before making telemarketing calls to prospective buyers and sellers.
 - a) Violators may be fined for each violation of federal law
 - b) No FSBO exception (must check registry)
 5. Licensees may contact clients and customers with whom they have had previous business relationships:
 - a) up to 18 months after a business transaction has been concluded, or
 - b) up to 3 months after a business inquiry.
 6. Prerecorded telemarketing calls
 - a) Robocalls are unsolicited prerecorded telemarketing calls to landline home telephones, and all autodialed or prerecorded calls or text messages to wireless numbers.
 - b) FCC bans text messages sent to mobile phones using an auto dialer unless consumer previously gave consent.
 7. Cold calls made by licensees are required to follow federal telemarketing laws regardless of Florida telemarketing exemptions.
 8. Florida's telemarketing law is administered through the Department of Agriculture and Consumer Services.
 - a) Maintains a no-sales-solicitation-calls list
 - b) Calls restricted to 8:00 am to 9:00 pm
 - c) Violators may be fined for each illegal call
 - d) FSBO exception
 9. Businesses that use telemarketing must develop and adhere to written procedures regarding the firms' calling policies.
- J. Electronic mail advertising
 1. CAN-SPAM Act restricts sending unwanted commercial electronic mail messages to computers and wireless devices
 2. Commercial electronic mail messages must allow the consumer to "opt out" of receiving future messages
 3. 10 days to honor opt-out requests

IV. Escrow or Trust Accounts

A. Brokers handle money for others in the ordinary course of business, including earnest money deposits, rent deposits, and security deposits.

1. *Deposit*—a sum of money delivered to a licensee as earnest money, payment, or partial payments in connection with a real estate transaction
 - a) Brokers who hold in trust, money associated with leasing property must hold the funds in an escrow account.
 - b) Brokers are not required, but are recommended, to keep earnest money deposits separate from rental deposits.
2. *Escrow account*—an account for the deposit of money held by a third party
3. Acceptable depositories
 - a) Interest-bearing or non-interest-bearing escrow account in a Florida bank, savings association, or credit union
 - b) May have a Florida-based title company with trust powers maintain the escrow funds
 - c) If designated in the sale contract, a Florida attorney may escrow the funds
4. *Immediately defined*
 - a) Sales associates must deliver earnest money deposits and rental deposits to their broker no later than the end of the next business day.
 - b) Brokers must deposit in an escrow account no later than the end of the third business day following receipt by the brokerage (such as an associate or a receptionist) of the item to be deposited.
5. Personal checks, postdated checks, and insufficient funds
 - a) Postdated checks are considered promissory notes
 - b) Must obtain seller's approval before accepting
 - c) Broker not held responsible for the nonpayment of an escrow check, provided the broker timely deposits the check into the escrow account and the broker's own carelessness (culpable negligence) did not cause the check not to be honored

B. Management of escrow accounts

1. Signatory on escrow accounts
 - a) Broker must be a signatory on all brokerage escrow accounts
 - b) Broker must review, sign, and date monthly bank reconciliations
 - c) Broker may designate another person to sign checks on the account

C. Interest-bearing escrow accounts

1. Must get written permission from all parties before placing funds into an interest-bearing escrow account
2. Broker may receive the interest earned if agreed to by all parties

- D. Money to maintain escrow account
 - 1. Brokers may deposit in the sales escrow account up to \$1,000 of their own money to open and maintain the account.
 - 2. Brokers may deposit in a property management escrow account up to \$5,000 of their own money.
 - 3. If a broker maintains sales escrow funds and property management escrow funds in a single escrow account, the amount of personal funds or brokerage funds in the account cannot exceed \$5,000.
- E. Recordkeeping and retention
 - 1. Records must be preserved for at least five years from the date of receipt of money, funds, deposits, or checks entrusted to the broker.
 - 2. Records must be retained for at least five years from the date of any executed agreement, including buyer brokerage agreements, listing agreements, offers to purchase, rental property management agreements, rental or lease agreements, or any other written or verbal agreements that engage the services of the broker.
 - 3. Records that have been the subject of litigation or have served as evidence for litigation must be preserved for two years beyond the conclusion of the civil action or the conclusion of an appellate proceeding, but in no case for less than five years.
- F. Mishandling of escrow funds
 - 1. *Conversion* is the unauthorized control or use of another person's funds or property for one's own use.
 - 2. *Commingle* is the illegal practice of mixing buyer's, seller's, tenant's, or landlord's funds with the broker's personal funds or business funds.
 - 3. *Failure to account or deliver* occurs when a licensee fails to deliver personal property, such as money, legal documents, or a real estate commission, to a person entitled to receive it.
- G. Title company and attorney escrow accounts
 - 1. If a broker chooses not to have an escrow account, the broker must place escrow funds with a title company or an attorney who will serve as the escrow agent
 - 2. Broker must turn trust funds over to the escrow agent no later than the end of the third business day following the day the funds are accepted on behalf of the brokerage
 - 3. This is the procedure to be used when a deposit is placed with a title company or with an attorney
 - a) The licensee who prepared the contract must indicate on the agreement the title company's name (or attorney's name), address, and phone number.
 - b) No later than 10 business days after the deposit is due under the terms of the sale contract, the licensee's broker must request a written verification of receipt of the deposit.
 - c) No later than 10 business days after the date the broker made the written request for verification of the deposit, the broker must provide the seller's broker with a copy of the written verification.
 - 4. If the deposit is held by the title company or attorney nominated in writing by the seller or the seller's agent, verification waived

- V. Notice and Settlement Procedures
 - A. Good-faith doubt
 - 1. The broker is unclear as to which party should receive the escrowed property.
 - 2. The broker must notify the FREC in writing within 15 business days and institute one of four settlement procedures within 30 business days of having doubt.
 - B. *Conflicting demands* occur when the buyer and the seller make demands regarding the disbursing of escrow property that are inconsistent and cannot be resolved.
 - 1. The broker must notify the FREC in writing of receiving conflicting demands within 15 business days and institute one of four settlement procedures within 30 business days from the time the broker received the conflicting demands.
 - C. Four settlement procedures (MALE)
 - 1. Obtain the written consent of all parties to submit the dispute to mediation (nonbinding).
 - a) Informal, nonadversarial process intended to reach a negotiated settlement
 - b) Independent third party works to help parties resolve their differences
 - 2. Obtain the prior written consent of all parties to submit the dispute to arbitration (binding).
 - a) The matter is submitted to a disinterested third party
 - b) Third party makes a binding judgment in favor of one side or the other
 - c) Parties agree in advance to abide by the arbitrator's final decision
 - 3. Litigate in a court of law.
 - a) Interpleader brokers do not have a financial claim to the disputed escrow funds.
 - b) Declaratory judgment brokers believe that they are entitled to a portion of the disputed funds.
 - 4. The broker may request that the FREC issue an escrow disbursement order (EDO) if the escrowed funds are being held in a broker's trust account.
 - a) The FREC makes a determination as to who is entitled to the disputed funds that are being held in a real estate broker's trust account only; there is no jurisdiction if held by an attorney or a title company.
 - b) EDO procedure is only available if the disputed deposit does not exceed \$50,000 and the funds are held in a broker's escrow account.
 - c) Broker must notify the FREC within 10 business days if the dispute is settled between the parties or if the matter goes to court before an EDO is issued.
 - d) If licensees promptly use one of the above escape procedures and act legally, no complaint may be filed against them.
 - e) If the broker promptly uses one of the escape procedures and follows the resulting directions, the broker is exempt from disciplinary action.

- D. Florida Statute 475 provides three exceptions to notice and settlement procedures
 - 1. Brokers holding earnest money concerning a residential sales contract used by HUD in the sale of HUD-owned property are required to comply with the earnest money deposit requirements for the specific HUD contract.
 - 2. If a buyer of a residential condominium unit timely delivers to a licensee written notice of the buyer's intent to cancel the contract as authorized by the Condominium Act, the broker may return the escrow property to the purchaser.
 - 3. If a buyer in good faith fails to satisfy the terms specified in the financing clause of a contract for sale and purchase, the broker may return the escrowed funds to the purchaser.
 - 4. Under these three exceptions, the broker is not required to notify the FREC of conflicting demands and does not need to institute a settlement procedure.
 - E. Title company or attorney as escrow agent
 - 1. Broker has no obligation to report an escrow dispute to FREC or to institute a settlement procedure.
 - F. Monies paid in advance for performing real estate services
 - 1. Funds must be placed into an escrow account until the services are completed.
 - 2. Once service is completed, the broker may transfer funds into the broker's operating account.
 - 3. Timeshare Act prohibits a real estate licensee from collecting an advance fee for the listing of a time-share unit.
- VI. Broker's Commission
- A. Sales associate's commission
 - 1. Sales associates must work under the supervision of a broker or an owner-developer.
 - 2. All commissions, listings, and contracts are legally the property of the broker.
 - 3. Monies earned by sales associates for real estate services must be paid to the associates by the employer and not directly by the buyer or the seller.
 - 4. There is an exception for sharing commission with a party to the transaction with full disclosure in writing to all interested parties.
 - B. Antitrust laws—amount of commission is negotiable, and it is arrived at by agreement between the broker and customer/principal
 - 1. Price-fixing occurs when competing brokers conspire to establish a standard commission rate.
 - 2. Market allocation occurs when brokers agree to split up competitive market areas among themselves.
 - C. Liens on real property for unpaid sales commission
 - 1. Only the broker can initiate an action for unpaid commission.
 - 2. Sales associates cannot sue a customer or client for unpaid commission.

3. Regulations regarding unpaid sales commission are dictated by the type of real estate.
4. Residential property—brokers may not place a lien on property unless authorized by contractual agreement
5. Commercial Real Estate Sales Commission Lien Act
 - a) Gives brokers lien rights for nonpayment of earned commission
 - b) Applies only to commercial property as defined in Chapter 475
 - c) Lien is against owner's net proceeds (personal property) from the sale and does not attach to the commercial real property
 - d) Broker must disclose at the time of executing the listing agreement that the agreement creates lien rights for commission earned and that the seller cannot waive the lien rights once the seller has agreed to the broker's lien right
6. Commercial Real Estate Leasing Commission Lien Act
 - a) Gives brokers lien rights for earned commission associated with a brokerage agreement to lease commercial real estate
 - b) If landlord obligated to pay leasing commission, broker's lien attaches to landlord's interest in commercial real estate
 - c) If tenant obligated to pay leasing commission, broker's lien attaches to tenant's leasehold estate

D. Kickbacks

1. A kickback (or rebate) is an unearned fee paid to a licensee associated with a real estate transaction for non-real estate services
 - a) Buyer and seller must be fully informed of all facts regarding kickback in advance.
 - b) Kickbacks must not violate RESPA or other law.
 - c) Real estate licensees are prohibited from sharing a commission with an unlicensed person for real estate services.
 - d) Florida law allows the sharing of the commission with the buyer or seller in a real estate transaction, provided the rebate is disclosed to all interested parties.
 - e) Sharing a portion of the commission with a party to the transaction is an example of a legal (permissible) kickback or rebate.
 - f) Tenants of an apartment complex may receive up to \$50 for referring a prospect who becomes a tenant of the apartment complex.
2. Florida law prohibits a real estate licensee from paying an unlicensed person money for the referral of real estate business or for performing real estate services.

VII. Types of Business Entities That May Register as a Brokerage Entity

A. Sole proprietorships

1. One-owner business
2. Can register as a broker

3. May use own name or a fictitious name as a trade name once registered with the DBPR (not required to file with the Florida DOS)
 4. The simplest form of business organization; however, they provide no legal protection for the broker's personal assets.
 5. May be dissolved by the following:
 - a) No longer doing business and notifying the DBPR
 - b) Expiration of license
 - c) Court order
 - d) Death of owner
- B. Partnerships
1. *General partnership*—association of two or more persons for the purpose of jointly conducting business, each being responsible for all the debts incurred in the business
 2. Created only by contract (written, oral, or implied)
 3. Every general partner equally shares in the profits and losses of the business (unless a different share is specified in a written agreement).
 4. Each general partner has unlimited personal liability because each is responsible for all the debts incurred in conducting that business and each has the power to bind the other(s).
 5. Real estate brokerage general partnerships
 - a) Partnership must be registered.
 - b) At least one partner must be a licensed active broker.
 - c) All partners who deal with the public and perform real estate services must be licensed active brokers.
 - d) Sales associates or broker associates cannot be general partners.
 - e) It is the responsibility of every active broker in a real estate brokerage partnership to see that the partnership and all of its partners and sales associates have current and appropriate registration and licenses.
 6. Limited partnership—created by a written instrument filed with the Florida Department of State (DOS)
 - a) Partnership must be registered with the DBPR.
 - b) Partnership must have one or more general partners and one or more limited partners.
 - c) All general partners must be licensed or registered as in a general partnership.
 - d) A sales associate or a broker associate cannot be a general partner in a firm in which employed, but may be a limited partner.
 - e) Limited partners are not required to register with DBPR.
- C. Limited liability partnership (LLP)
1. Protection from personal liability for acts of another partner or by an employee, agent, or representative of the limited liability partnership

D. Corporations

1. A legal entity created by law and consists of one or more persons
2. Must file articles of incorporation with Florida Department of State (as do “foreign” corporations)
3. Owners of the corporation—the stockholders; stockholders elect the board of directors to manage the corporation and the officers carry out the directives of the board
4. Corporation as a real estate broker
 - a) Registering with DBPR is required.
 - b) At least one officer or director must be licensed as an active broker.
 - c) All officers and directors who deal with the public in brokerage transactions must be licensed active brokers.
 - d) All other officers and directors must be registered.
 - e) Inactive brokers and unlicensed individuals may perform managerial functions that do not involve real estate functions.
 - f) Sales associates or broker associates may not be members of the board of directors or officers of a real estate brokerage corporation.
 - g) Sales associates or broker associates can be stockholders.
 - h) An active broker must be replaced within 14 days.
5. License law—makes no distinction between profit and nonprofit corporations

E. Limited liability companies (LLCs)

1. Provide protection from personal liability for business debts
2. Treated by IRS as partnerships for tax purposes
3. Not subject to Florida’s corporate income tax

F. Vacancies of office

1. Vacancy of the only active broker must be filled within 14 calendar days.
2. A temporary broker may be registered with the DBPR for up to 60 days without the need to comply with the Department of State registration requirements.
3. Failure to appoint another permanent or temporary broker within the 14-day deadline will result in the automatic cancellation of the brokerage registration.
4. A brokerage entity with more than one active broker is not affected by a vacancy.

VIII. Business Entities That May Not Register as a Brokerage

A. Ostensible partnerships (quasi-partnerships) are prohibited and not intentionally created.

1. These types of partnerships could be viewed as fraudulent and deceitful.
2. Brokers of separate brokerages who do business in the same building must follow license law with separate signage, office supplies, and space.

- B. Corporation sole
 - 1. A nonprofit entity designed to ensure continuity of ownership of dedicated property
 - C. Joint venture (joint adventure)
 - 1. A temporary form of business arrangement
 - 2. Used when two or more individuals combine efforts to complete a single business transaction or a fixed number of transactions
 - 3. Sales associate cannot join with brokers to form real estate joint ventures
 - D. Business trust
 - 1. Formed to engage in transactions involving its own property
 - 2. Title to real property acquired in the name of a trustee or group of trustees
 - 3. Cannot be registered as a broker
 - 4. Must employ licensees unless sales personnel are on salary and receive no additional compensation for sales
 - E. Cooperative association
 - 1. Recognized as commercial organization
 - 2. Cannot be registered as a broker
 - F. Unincorporated association
 - 1. Organized to accomplish noncommercial common purpose; for example, neighborhood association
 - 2. Cannot be registered as a broker
 - 3. Exercise caution when real estate matters are involved
- IX. Trade Names
- A. A trade name (or fictitious name) is a business name other than the legal name of the person doing business
 - 1. T/A—trading as
 - 2. D/B/A—doing business as
 - B. Fictitious name—the name registered with the Department of State (DOS)
 - C. DBPR registration of a trade name
 - 1. Must register the trade name with the DBPR.
 - 2. The DBPR will not allow a broker to register a trade name if another business entity has previously registered the same trade name with the DOS or the DBPR.
 - 3. Sales associates may not use a trade name.
 - 4. A brokerage entity cannot be registered or operate under more than one trade name.

- D. DOS registration of a fictitious name
 - 1. Individuals licensed by the DBPR are exempt under the Fictitious Name Act from registering a fictitious name with the DOS.
 - 2. When a brokerage entity registers the business entity with the DOS, it satisfies the DOS fictitious name registration requirement.
- E. Forming a professional association in the associate's legal name
 - 1. Florida license law provides that broker associates and sales associates may be licensed in only their legal name or in their legal name as a professional corporation, limited liability company, or professional limited liability company.
 - a) In such cases, the broker can pay commission to the professional association rather than to the individual.
 - 2. DBPR issues the license in the licensee's legal name and includes the entity designation on the face of the license.
 - 3. Forming a professional association for income tax purposes should not be confused with forming a brokerage business entity to conduct real estate services.
- X. Personal Assistants
 - A. Perform administrative functions in support of a real estate licensee
 - B. Unlicensed personal assistants
 - 1. May perform only administrative tasks
 - 2. May not perform any service of real estate
 - 3. May not be paid a commission or compensated per transaction
 - C. Licensed assistants
 - 1. May perform services of real estate
 - 2. Must be paid by broker for any service of real estate
 - 3. Licensee may pay the licensed assistant for performing administrative duties

DISCUSSION QUESTIONS

1. What constitutes timeliness in depositing earnest money into an escrow account?
2. What are the principal differences between *independent contractor* and *employee status* for a sales associate?

CLASSROOM EXERCISES

1. Assume the role of a broker who has advertised for new sales associates. The students play the role of recently licensed sales associates. Allow the students to ask questions regarding independent contractor versus employee status, commission percentages, incentives and plateaus, handling of advertising, sign placement, floor time, policy manuals, or whatever is appropriate to the lesson material.
2. Simulate a situation in which the students work for you as their broker. They receive an earnest money deposit from a prospective purchaser, and the check is made out to them or is postdated. Discuss the actions to be taken.
3. Both the buyer and the seller lay claim to the buyer's deposit, which you are holding. Ask the students what courses of action are open to them as the broker involved. Show them a copy of a blank escrow disbursement order once this exercise reaches the appropriate point to do so.
4. Discuss the pros and cons of organizing a real estate brokerage firm as a corporation versus a partnership.
5. Ask the class to describe a situation that could result in the creation of an ostensible partnership.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 5 QUIZ

1. What information must be included on the broker's entrance sign?
 - a. Telephone number
 - b. Address
 - c. Company's trade name
 - d. Sales associates' names
2. Which entity administers Florida's telemarketing law?
 - a. Department of Agriculture and Consumer Services
 - b. Florida Telecommunication Service
 - c. Department of Business and Professional Regulation
 - d. Florida Department of State
3. Which entity requires its members who advertise unlisted real property as for sale by owner to disclose their membership status to buyers and sellers?
 - a. Federal Trade Administration
 - b. National Association of REALTORS®
 - c. Better Business Bureau
 - d. Department of Agriculture Consumer Services
4. Sales associates must deliver binder deposit checks to their broker by the end of the
 - a. third business day.
 - b. third calendar day.
 - c. next business day.
 - d. next calendar day.
5. What amount of the broker's personal funds may be placed in the broker's sales escrow account?
 - a. None
 - b. \$500
 - c. \$1,000
 - d. \$5,000
6. Brokers must notify the FREC of conflicting demands within
 - a. 10 calendar days.
 - b. 10 business days.
 - c. 15 calendar days.
 - d. 15 business days.
7. Which nonjudicial settlement procedure includes a third party who makes a binding judgment regarding the matter?
 - a. Mediation
 - b. Arbitration
 - c. Litigation
 - d. EDO
8. If a broker requests an EDO and the dispute is either settled or goes to court before the EDO is issued, within how many business days must the broker notify the FREC of this fact?
 - a. 5
 - b. 10
 - c. 15
 - d. 30
9. Which statement is TRUE regarding unlicensed personal assistants?
 - a. An unlicensed personal assistant can assist a buyer with negotiating a purchase sale contract as long as the sales associate is available by phone.
 - b. An unlicensed personal assistant can answer questions and supply detailed listing information about a property as long as they are professional.
 - c. An unlicensed personal assistant is entitled to a portion of the commission on the sale of a home from the sales associate as long as the broker approves it.
 - d. An unlicensed personal assistant can post marketing items to social media for the sales associate as long as the associate has approved it.
10. A business owned by one person is called a
 - a. sole proprietorship.
 - b. corporation sole.
 - c. limited partnership.
 - d. joint venture.

SPECIAL UNIT 5 QUIZ

ANSWER KEY

1. c The entrance sign must include the name of the broker or the trade name, if one is used.
2. a Florida's telemarketing law is administered through the Department of Agriculture and Consumer Services (FDACS). The FDACS maintains a "no sales solicitation calls" registry for consumers who do not wish to receive telephone solicitation calls on their residential and mobile telephones.
3. b NAR requires that member REALTORS® who advertise unlisted real property for sale or lease in which they have an ownership interest disclose their status as owners (or landlords) and as REALTORS®.
4. c Sales associates and broker associates who receive a binder deposit from a buyer or a rental deposit from a tenant must deliver it to their broker-employer no later than the end of the next business day. Saturdays, Sundays, and legal holidays are not counted as business days.
5. c A broker is allowed to place in the sales escrow account an amount up to \$1,000 of personal or brokerage funds. Brokers may keep up to \$5,000 of their own monies in a property management escrow account.
6. d If a broker who maintains an escrow account receives conflicting demands on escrowed property, the broker must notify the FREC, in writing, within 15 business days of receiving the conflicting demands unless specifically exempted.
7. b Arbitration is a process whereby, with the prior written consent of all parties to the dispute, the matter is submitted to a disinterested third party. Each side presents its case to a third party who makes a *binding* judgment in favor of one side or the other.
8. b FREC rules require a broker to notify the Commission within 10 business days if the dispute is settled between the parties or if the matter goes to court before the EDO is issued.
9. d An unlicensed assistant can maintain posting of marketing materials to the sales associates website or social media accounts as long as the sales associate has approved it.
10. a A sole proprietorship is a business owned by an individual. A corporation sole should not be confused with a sole proprietorship or a corporation.

UNIT 5 EXAM QUESTIONS

EXPLANATIONS

1. c Sales associates must be issued licenses in their legal names only. Sales associates may form a limited liability company, and in this case, the DBPR issues the license in the licensee's legal name and includes the entity designation on the face of the license.
2. c The sales associate received the binder deposit on Monday (day 0). The broker has three business days to deposit the check into the escrow account (day 1 is Tuesday, day 2 is Wednesday, day 3 is Thursday).
3. b If a check is made out to the sales associate personally, it should be immediately endorsed and include the words "For Deposit Only to the (name of the escrow account)" and turned over to the broker.
4. c Brokers may keep the earned interest from an interest-bearing escrow account only if all parties to the transaction give written consent.
5. c If a broker receives conflicting demands on escrowed property, the broker must notify the FREC in writing, within 15 business days of the party's last demand unless specifically exempted.
6. d The purchase contract must include the name, address, and telephone number of the title company.
7. c A sales associate or a broker associate may form and register with DBPR their legal name with a P.A., PLLC, or LLC for tax purposes. The statute does not allow an INC to be form except as a registered brokerage.
8. b FREC does not require that the brokerage firm's phone number or address be included in advertisements.
9. d An unlicensed assistant may not perform any service of real estate.
10. d To establish a broker's lien rights, the broker must disclose to the owner (seller) at or before the time the owner executes the brokerage agreement for the listing (and subsequent sale) of commercial property, that F.S. 475, Part III, creates lien rights for commission earned by the broker.
11. b The limited partners must make an investment of cash or property, but not services.
12. c Business entities that may register as a real estate broker include corporations, partnerships, sole proprietorships, limited liability companies, and limited liability partnerships.
13. d The entrance sign must contain the name of the broker, the trade name, and the words "Licensed Real Estate Broker." The word *licensed* may be abbreviated.

UNIT 5 Real Estate Brokerage Activities and Procedures

14. c If two parties form a joint venture to provide real estate services for compensation, both parties must be licensed real estate brokers.
15. c A broker who receives conflicting demands on escrowed property must notify the FREC, in writing, within 15 (not 10) business days of the party's last demand unless specifically exempted. Further, the broker must institute one of four settlement procedures within 30 business days after the broker received conflicting demands.
16. b The amount of commission to be paid is negotiable, and it is arrived at by agreement between the broker and the buyer or the seller.
17. b A temporary broker may be registered with the DBPR for up to 60 days without the need to comply with the Secretary of State registration requirements.
18. d Listings belong to the broker and commissions are paid to the broker.
19. a The payment of a kickback must not violate the Real Estate Settlement Procedures Act (RESPA). RESPA prohibits the payment of a kickback or unearned fee associated with a settlement (closing) service, including title insurance.
20. c A joint venture structure is normally used when two or more parties combine their efforts to complete a single business transaction.

6

VIOLATIONS OF LICENSE LAW, PENALTIES, AND PROCEDURES

UNIT OVERVIEW

This unit details the step-by-step procedures for investigations and hearings via the complaint process. Many types of violations of the laws and rules governing real estate activities are outlined, and the possible consequences that may result are discussed. Finally, the Real Estate Recovery Fund is explained as to its function when damages are incurred by persons or corporations in real estate transactions with Florida licensees.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Distinguish among the legal terms presented in this unit.
- Explain the procedures involved in the reporting of violations, the elements of a valid complaint, and the investigation of complaints.
- Describe the composition of the probable-cause panel.
- Describe the hearing process.
- Recognize events that would cause a license application to be denied.
- Distinguish among the various violations and administrative penalties.
- Distinguish among the various penalties that may be issued by a court of law.
- Explain the provisions of the Real Estate Recovery Fund.

KEY TERMS

breach of trust	fraud	recommended order
citation	legally sufficient	stipulation
complaint	material fact	subpoena
concealment	misrepresentation	summary (emergency)
culpable negligence	moral turpitude	suspension order
final order	notice of noncompliance	voluntary relinquishment
formal (administrative) complaint	probable cause	for permanent revocation
	probation	

TEACHING OUTLINE

- I. Legal Terms to Know
 - A. Breach of trust—breaking of a promise or obligation
 - B. Concealment—to withhold information or a material fact
 - C. Culpable negligence—not paying careful attention to one’s duties
 - D. Fraud—intentional deception to induce a person to part with something of value
 - E. Material fact—information that affects the value of the property and is relevant to a person making a decision about the property
 - F. Misrepresentation—untrue statement or false representation of the facts
 - G. Moral turpitude—conduct contrary to honesty, justice, good morals, or accepted custom
- II. The Complaint Process
 - A. Complaint is filed with the DBPR
 1. Definition—an alleged violation of a law or rule
 2. Complaint—must be *legally sufficient*
 3. Anonymous complaints and confidential informants
 - B. Complaint is investigated
 1. DRE conducts investigation and notifies licensee/respondent.
 2. Investigative report and supporting documents are sent to DBPR general counsel to determine what violation(s), if any, have occurred.
 3. DBPR general counsel prepares case file for FREC probable-cause panel review.
 4. Summary suspension (or emergency suspension order) must be issued by the DBPR secretary.
- III. Probable Cause
 - A. Probable-cause panel
 1. Definition—reasonable grounds for prosecution
 2. Chapter 455, F.S. mandates that the determination as to whether probable cause exists be made by majority vote of a FREC probable-cause panel.

- B. Composition
 - 1. Each probable-cause panel is composed of two individuals.
 - a) One of the panel members must currently serve on the Commission.
 - b) Various combinations of current and former commissioners are used on the panels.
 - C. Probable cause determination
 - 1. After a review of the record, the probable-cause panel makes a determination as to whether probable cause exists.
 - 2. Panel has 30 days from receipt of the final investigative report to make a decision.
 - 3. If probable cause is found, DBPR or the FREC must give timely written notice to licensee's broker or employer.
- IV. Formal Complaint
- A. Formal complaint (or administrative complaint)
 - 1. If probable cause is found, the FREC directs DBPR to issue a formal complaint.
 - 2. A formal complaint consists of facts and charges against the licensee.
 - B. Address of record
 - 1. Formal (administrative) complaint is sent by email, regular U.S. mail, and certified mail to the licensee's address of record.
 - C. Election of rights
 - 1. Licensee may choose one of the following on the election of rights:
 - a) Not dispute the allegations and request an informal hearing
 - b) Dispute the allegations and request a formal hearing
 - c) Not dispute the allegations and waive the right to be heard
 - D. Settlement stipulation
 - 1. The licensee-respondent and an attorney may meet with DRE attorney to agree to a stipulation.
 - a) Agreement as to the facts of the case and the penalty reached between the DRE attorney and the licensee.
 - b) Terms of the stipulation are approved or denied by the FREC during a Commission meeting.
 - E. Voluntary relinquishment for permanent revocation
 - 1. Licensee-respondent chooses to avoid a disciplinary hearing.
 - 2. Licensee voluntarily relinquishes the real estate license in lieu of discipline.
 - 3. Permanently puts the licensee out of the real estate business.

- E. Informal hearing
 - 1. Licensee signs election of rights and does not dispute allegations of material fact and requests an informal hearing before the FREC for final action of the complaint.
 - 2. Held during a regular Commission meeting.
 - 3. Probable cause members do not participate in informal hearing.
 - 4. Licensee must agree that there is no dispute of the material fact to choose informal hearing.
- G. Waiver hearing
 - 1. Subject of complaint failed to timely respond to election of rights.
 - 2. Licensee respondent has waived election of rights and an informal hearing is conducted.
- H. Formal hearing
 - 1. Respondent/licensee signs election of rights disputing allegations of material fact and requests a formal hearing to determine the facts.
 - 2. A formal hearing is mandatory if licensee/respondent disputes the allegations.
 - 3. An administrative law judge (ALJ) hears testimony.
 - a) ALJ prepares and submits a recommended order to the FREC that includes the judge's findings and conclusions.
 - b) Recommended penalty is based on the range of penalties in FREC rule.
- I. Final order
 - 1. Probable cause members do not participate.
 - 2. The Commission may accept, reject, or modify the conclusions of law in the ALJ's recommended order.
 - 3. Final orders
 - a) In writing, stating the facts, conclusions, and penalty
 - b) Effective 30 days after issued
- J. Judicial review (appeal)
 - 1. Petition for review—must be filed with the District Court of Appeals within 30 days
 - 2. Licensee may request appeals court to stop enforcement of the final order.
 - 3. Writ of supersedeas stops (stays) enforcement of penalty.
 - a) Writ supersedes the action of the FREC and allows the licensee to practice real estate until the case is heard on appeal.
- K. Stipulation case (review with students)

- V. Administrative Penalties
 - A. Three types of penalties for violations of license law
 - 1. Administrative
 - 2. Civil
 - 3. Criminal
- VI. Violations and Administrative Penalties
 - A. Types of penalties used by DBPR and FREC
 - 1. A notice of noncompliance may be issued for a first offense of a minor violation.
 - a) The notice is issued by the DRE for a minor violation listed in the administrative rule.
 - b) Licensees have 15 calendar days to take corrective action.
 - c) There is no fine and the notice of noncompliance does not appear on the licensee's public records as discipline.
 - 2. Citations are issued for minor violations outlined in the administrative rules.
 - a) Violations are of no substantial threat to the public's health, safety, and welfare.
 - b) DRE investigators may issue a citation if a minor violation is found during an inspection or audit.
 - c) Licensees have 30 calendar days to accept or reject the citation.
 - d) If a citation is accepted, the licensee must take corrective action within the 30-day period and pay the associated fine.
 - e) A citation appears as a disciplinary action on a licensee's public record.
 - f) A written rejection of the citation will result in an investigation being opened.
 - 3. A reprimand is the least severe penalty issued by the FREC.
 - a) The FREC determines that no public harm was caused.
 - b) Reprimands are used for violations that are outside of the guidelines to issue a notice of noncompliance or citation.
 - c) A final order is issued and it appears as disciplinary action on the licensee's public record.
 - 4. In the event an applicant commits a license law violation prior to being licensed, the FREC has the authority to issue a denial of an application for licensure.
 - 5. Administrative fine of up to \$5,000 per count or separate offense for violating Chapter 475 or Chapter 455
 - 6. Suspension for up to 10 years
 - 7. Revocation is the most severe administrative penalty issued by the FREC.
 - a) Revocation is permanent.
 - b) Revocation without prejudice occurs when a license was issued in error.

8. Probation is ordered for a specified time period to allow licensees to complete disciplinary requirements.
 - a) In addition to disciplinary guidelines, probation may require attendance at Commission meetings and completion of course offerings.

VII. Civil and Criminal Penalties

A. Civil penalties

1. Civil court case resulting from disputes between two parties over money or property

B. Criminal penalties

1. Issued by criminal courts
2. DBPR must refer criminal matters to the state attorney general's office

C. Second-degree misdemeanor

1. Least serious misdemeanor crime in Florida
2. If the Florida Legislature fails to classify a misdemeanor, then it is punishable as a second-degree misdemeanor.
3. A violation of real estate license law is a second-degree misdemeanor unless specifically deemed in statute to be a more severe violation.
4. The maximum penalty is a fine of \$500 and/or 60 days in jail.

D. First-degree misdemeanor

1. Most serious misdemeanor crime in Florida
2. Failing to provide accurate and current rental information is a first-degree misdemeanor.
3. The maximum penalty is a fine of \$1,000 and/or one year in jail.

E. Third-degree felony

1. Felonies are the most serious type of crimes.
2. A first-degree felony is a more serious crime than a second-degree or a third-degree felony.
3. If the Florida Legislature does not designate the degree of felony, the crime is a third-degree felony.
4. There are three third-degree felonies associated with license law.
 - a) Making misleading statements or giving false information on a DBPR license application
 - b) Unlicensed activity, including providing real estate services for compensation without a real estate license
 - c) Theft or reproduction of a license exam
5. The maximum penalty for a third-degree felony is a fine of \$5,000 and/or five years in jail.

- F. Requirement to self-report
 1. Licensees must inform the Commission, in writing, within 30 days of being convicted or found guilty of a crime, including misdemeanor offenses and felonies.
 2. Criminal Self-Reporting Document is available on the DRE website.
- VIII. Real Estate Recovery Fund
 - A. Purpose—to reimburse any individual or business entity judged by a Florida court to have suffered monetary damages as a result of an act committed by a licensee
 - B. Licensee requirements
 1. Hold a current, valid, active real estate license at the time the real estate activity occurred
 2. Not have been a buyer, seller, landlord, or tenant in the transaction (nor an officer, director, or partner of a business entity that was the seller, buyer, landlord, or tenant)
 3. Acted solely in the capacity of a real estate licensee in the transaction
 - C. Claimant requirements
 1. Must have a judgment against the individual licensee based on a real estate transaction (real estate sale contract or lease agreement)
 2. Must secure a writ of execution issued on the judgment and make a diligent attempt to satisfy the judgment from the assets of the licensee
 3. Cannot be the spouse of the offending licensee (the judgment debtor)
 - D. Claim—must be made within two years
 - E. Maximum payment from the fund
 1. Maximum amount from any one transaction: \$50,000
 2. Maximum amount payable as a result of several judgments against one licensee: \$150,000
 3. Will not reimburse attorney's fees, court costs, punitive damages, or interest
 - F. Mandatory suspension of license (except when in conflict with federal bankruptcy law) when a claim is paid from the fund due to judgment against a licensee after a hearing until licensee repays amount paid from fund plus interest
 - G. Claim resulting from an EDO
 1. The FREC is authorized to order reimbursement to a broker who is required by a court of law to pay money damages as a result of compliance with an EDO.
 2. No action is taken against a broker who complies with an EDO.
 3. Attorney's fees and court costs may be awarded from the fund only for EDO cases.
 4. If the plaintiff prevails, the plaintiff's attorney's fees and court costs may be reimbursed from the fund (but not punitive damages or interest).
 - H. Real Estate Recovery Fund Case Study (review with students)

DISCUSSION QUESTIONS

1. What is a *legally sufficient* complaint?
2. How liberal or conservative should the awarding of damages from the Real Estate Recovery Fund be? Why?

CLASSROOM EXERCISES

1. Ask students to contrast denial and revocation. Which is more likely to occur? Which is the more severe penalty? Ask students to justify their opinions.
2. Ask the students to close their books, pull out a blank sheet of paper, and write their name at the top of the paper. Have each student do the following from memory:
 - a. List three grounds for denial of an application.
 - b. List 10 types of conduct that could result in the suspension or revocation of a real estate license.
 - c. List the three categories of penalties that may be imposed for violations of F.S. 475 and cite an example of each.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Download a copy of the Uniform Complaint Form at www.myfloridalicense.com/dbpr/re/documents/re-2200-1.pdf.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 6 QUIZ

1. A sales associate signed the buyer's name on a termite inspection report to avoid a delay in the title closing date. The sales associate can be charged with
 - a. conversion.
 - b. commingling.
 - c. failure to account or deliver.
 - d. breach of trust.
2. The recovery fund will reimburse which expense(s) to a consumer who has been financially injured by a licensee?
 - a. Consumer's attorney fees
 - b. Amount of the judgment up to \$50,000
 - c. Broker's attorney fees
 - d. All of these expenses
3. One penalty that the Commission may NOT legally levy is to
 - a. deny the issuance of a license.
 - b. deny the payment of compensation.
 - c. suspend a license.
 - d. revoke a license.
4. A complaint must contain facts supporting that a violation of Florida statute or administrative rules has occurred in order to be deemed
 - a. legally sufficient.
 - b. a material fact.
 - c. a second-degree misdemeanor.
 - d. anonymous.
5. A broker who receives a notice of noncompliance has how many days to correct the minor violation?
 - a. 5
 - b. 10
 - c. 15
 - d. 30
6. What is the maximum amount of an administrative fine that the FREC may issue for one violation of F.S. 455?
 - a. \$100
 - b. \$500
 - c. \$1,000
 - d. \$5,000
7. The DBPR issues a legal document that outlines the allegations of facts and charges against a licensee in a complaint case. This document is called a
 - a. formal (administrative) complaint.
 - b. stipulation.
 - c. subpoena.
 - d. writ of supersedeas.
8. A licensee engages in false or deceptive advertising of real estate. Under F.S. 475, a court may find the licensee guilty of what type of criminal violation?
 - a. First-degree felony
 - b. First-degree misdemeanor
 - c. Second-degree felony
 - d. Second-degree misdemeanor
9. What is the maximum amount of claims that may be paid from the Real Estate Recovery Funds based on judgments against one licensee?
 - a. \$50,000
 - b. \$100,000
 - c. \$150,000
 - d. \$500,000
10. Which buyer may make a claim from the Real Estate Recovery Fund?
 - a. A buyer who is awarded a judgment against a seller who failed to disclose a material fact
 - b. A buyer who is awarded a judgment against a sales associate who misrepresented the property
 - c. A buyer who is awarded a judgment against a broker who owns the property and fails to disclose a material fact
 - d. A buyer who is awarded a judgment against a sales associate who misrepresented the property but did not hold an active license at the time

SPECIAL UNIT 6 QUIZ

ANSWER KEY

1. d A breach of trust is a violation of a legal or moral duty (in this case, securing the buyer's signature). It is the breaking of a promise or obligation, either by an act of commission or omission, default, or nonperformance.
2. b The recovery fund will reimburse a claimant for compensatory damages. Compensatory damages are actual monetary damages incurred by the claimant. The fund will not reimburse attorney's fees, court costs, treble (triple) damages, or punitive damages.
3. b A civil suit can be undertaken to recover money paid to a licensee or to deny payment of commission to an individual not entitled to the commission.
4. a A legally sufficient complaint must be in writing and contain facts indicating that a violation of Florida Statute 455 (DBPR), Florida Statute 475 (DRE), a DBPR rule, or a DRE rule has occurred in order for the DRE to start an investigation.
5. c If a licensee fails to take action to correct the minor violation within 15 days after being notified, the licensee may be issued a citation or the licensee may be subjected to a disciplinary proceeding.
6. d The FREC may impose a maximum fine of \$5,000 per violation of Chapter 455, F.S., and Chapter 475, F.S.
7. a A formal (administrative) complaint consists of allegations of facts and charges against the licensee.
8. d False and misleading advertising is a second-degree misdemeanor.
9. c Total payments for claims based on judgments against one real estate licensee may not exceed, in the aggregate, \$150,000.
10. b The Real Estate Recovery Fund reimburses consumers who have been financially injured by a licensee. The licensee must have a current, valid, and active real estate license at the time the real estate activity occurred. The licensee must not have been a buyer, seller, landlord, or tenant in the transaction.

UNIT 6 EXAM QUESTIONS

EXPLANATIONS

1. a A claim for recovery will not be accepted unless a civil suit has been filed and a final judgment subsequently rendered against an individual licensee as a defendant regarding a real estate brokerage transaction.
2. d The probable-cause panel's sole responsibility is to determine whether probable cause exists.
3. c A license may be revoked or canceled without prejudice if it is issued through the mistake or inadvertence of the Commission.
4. a There is one first-degree misdemeanor license law violation: failing to provide accurate and current rental information for a fee. The other license law violations are second-degree misdemeanors.
5. b The administrative law judge must prepare and submit to the DBPR and to all other parties a recommended order that includes the administrative law judge's findings and conclusions and the recommended penalty.
6. c A summary suspension is normally required only if an immediate danger to public health, safety, or welfare is considered to exist.
7. b The buyer can be reimbursed for the actual amount of a lost earnest money deposit (up to a maximum of \$50,000). However, punitive damages cannot be recovered from the Recovery Fund.
8. a Any complaint that is filed in writing and is legally sufficient will be investigated.
9. a There are two administrative penalties that are issued by the Division of Real Estate (DRE). The DRE may issue a notice of noncompliance for a first offense only of a minor violation that did not cause economic or physical harm or affect the public health, safety, or welfare. The DRE may also issue a citation in cases where there is no substantial threat to the public.
10. b If the subject of an administrative complaint fails to timely respond to the Election of Rights, the licensee-respondent is considered to have waived the election of rights. The case proceeds and is heard by the FREC in an informal hearing.
11. a A licensee who is issued a citation has 30 days to accept or reject the alleged violations in the citation. If the licensee disputes the alleged violation(s), the licensee must file a written objection within the 30-day time frame.
12. c Suspension of a license is mandatory on payment of any amount from the Real Estate Recovery Fund in settlement of a claim to satisfy a judgment against a licensee. The license is automatically suspended on the date of payment from the Recovery Fund.
13. c A real estate licensee must notify the DBPR of a conviction, plea, or adjudication of a crime (misdemeanors and felonies) within 30 days.

14. a All imprisonment penalties must be obtained in a court of law because the Commission lacks the authority to assess this penalty.
15. b Payment for claims arising out of the same transaction are limited to \$50,000 or the unsatisfied portion of a judgment claim, whichever is less, regardless of the number of claimants or parcels of real estate involved in the transaction.

7

FEDERAL AND STATE LAWS PERTAINING TO REAL ESTATE

UNIT OVERVIEW

The purchase of real property is always a large investment. For many families, the purchase of a home is the largest single investment they will make during their lifetimes. The federal government and all state governments have enacted laws to ensure that the public interest is adequately protected. This unit highlights some of the laws most important to Florida real estate practitioners. Licensees should study these laws to make certain they comply with them and better serve the public.

This unit deals with some of the more important housing laws and regulations affecting the real estate practitioner.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Describe the features of the Civil Rights Acts of 1866, 1964, and 1968 and explain the significance of the *Jones v. Mayer* court case.
- List the property exempt from the 1968 Fair Housing Act and describe the types of discriminatory acts that are prohibited under the Fair Housing Act.
- Describe the objectives and major provisions of the Americans with Disabilities Act.
- Describe the major provisions of the Interstate Land Sales Full Disclosure Act.
- Describe the provisions of the Florida Residential Landlord and Tenant Act.

KEY TERMS

blockbusting
Civil Rights Act of 1866
disability

Fair Housing Act
familial status
property report

public accommodations
redlining
steering

TEACHING OUTLINE

- I. Federal Fair Housing Laws
 - A. Civil Rights Act of 1866
 1. Discrimination on the basis of race in any real estate transaction (sale or rental) is prohibited, without exception.
 2. All citizens have the right “to inherit, purchase, lease, sell, hold, and convey real and personal property.”
 3. *Jones v. Mayer* upheld the Civil Rights Act of 1866.
 - B. Civil Rights Act of 1964 (Titles II and III)
 1. The act ended racial segregation in schools, the workplace, and public accommodations.
 2. Title II prohibits discrimination on the basis of race, color, religion, and national origin in places of public accommodation engaged in interstate commerce, including hotels, motels, restaurants, gas stations, and places of entertainment.
 3. Title III prohibits state and municipal governments from denying access to public facilities on the grounds of race, color, religion, or national origin.
 - C. Civil Rights Act of 1968: Fair Housing Act as amended
 1. This act is contained in Title VIII of the Civil Rights Act of 1968.
 2. Discrimination when selling or renting residential property to protected classes of people is prohibited.
 3. In 1988, Congress amended the Fair Housing Act to include familial status and person with disabilities, which is called the Fair Housing Amendments Act.
 - a) Seven protected classes
 - (1) Race
 - (2) Color
 - (3) Religion
 - (4) Sex
 - (5) National origin
 - (6) Familial status
 - (7) Disability
 - b) The 1988 amendment also created the equal housing opportunity poster.
 4. It is illegal to direct discrimination at a protected class.
 5. As of 2021, HUD is required to enforce the Fair Housing Act to prohibit discrimination based on sexual orientation and gender identity.
 - a) HUD extended protections based on sex discrimination to include sexual orientation and gender identity.

6. Equal housing opportunity poster
 - a) Available without charge from HUD
 - b) Must be displayed at real estate offices
 - c) Failure to display poster may be considered evidence of discrimination
 7. The Fair Housing Act does not include protection based on age, occupation, or marital status.
- II. Provisions of the Fair Housing Act as Amended
- A. Residential real estate transactions covered under the Fair Housing Act
 1. Government-owned residential property
 2. Single-family homes owned by a business entity
 3. Sale or rental of single-family property owned by a person who owns four or more houses
 4. Multifamily dwellings of five or more units
 5. Multifamily dwellings of four or fewer units if the owner does not reside in any of the units
 - B. Real estate transactions are exempted under the Fair Housing Act
 1. Certain residential transactions are exempt, provided a real estate brokerage was not involved and no discriminatory advertising was used.
 - a) Sale or rental of single-family property, provided the seller owns three or fewer single-family dwellings
 - b) Rental of multifamily dwellings with four or fewer family units, and the owner lives in one of the units
 2. Although these transactions are exempt under the Fair Housing Act, if racial discrimination occurs, the individual can be sued under the Civil Rights Act of 1866.
 - C. Housing for older persons is exempt where:
 1. all units are occupied by persons 62 or older; or
 2. at least 80% of the units are occupied by one or more persons 55 or older, and housing policies are published and followed that demonstrate an intent to be housing for persons 55 and older.
 - D. Special exemptions under the Fair Housing Act, provided the housing is not operated for commercial purposes
 1. Religious organizations may restrict dwelling units they own or operate to members of their religion provided the organization does not discriminate in accepting its membership.
 2. Private clubs may restrict rental or occupancy of its units to its members.
 - E. Prohibited activities
 1. Channel home seekers to or away from particular neighborhoods because they are members of a protected class (steering)

UNIT 7 Federal and State Laws Pertaining to Real Estate

2. Use the entry, or rumor of the entry, of a protected class into a neighborhood to persuade owners to sell (*blockbusting*)
 3. Deny loans by lenders or insurance coverage by insurers that present different terms or conditions for homes in certain neighborhoods (*redlining*)
 4. Refuse to rent to, sell to, negotiate with, or deal with a member of a protected class
 5. Quote different terms, conditions, or privileges for buying or renting
 6. Advertise that housing is available only to people of a certain race, color, religion, sex, national origin, disabilities, or familial status
 7. Deny membership in or use of any real estate service, broker's organization, or multiple-listing service
 8. Make false statements concerning the availability of housing for inspection, rent, or sale
- F. Enforcement of the Fair Housing Act
1. Complaints are filed with HUD under the Fair Housing Act.
 2. HUD's Office of Fair Housing and Equal Opportunity (FHEO) is charged with the following responsibilities:
 - a) Investigate fair housing complaints.
 - b) Assist individuals with obtaining agreements to resolve complaints.
 - c) Enforce fair housing laws.
 3. The Fair Housing Act requires HUD to bring the parties together to attempt conciliation.
 - a) Conciliation is voluntary.
 - b) If successful, both parties sign a conciliation agreement.
 - c) The FHEO monitors compliance with the agreement.
 4. Cases before HUD administrative law judges are handled by HUD's Office of General Counsel.
 5. Civil trial cases in the federal courts are handled by the DOJ.
- G. Florida Fair Housing Act prohibits discrimination in the following:
1. Sale or rental of housing
 2. Brokerage services
 3. Financing of housing or in residential real estate transactions
 4. Land use decisions and in permitting of development
- H. Responsibility and liability of real estate licensees (refer to PPL for more details)
- I. Fair Housing Case Study (review with students)
- III. Americans with Disabilities Act of 1990
- A. The act protects employment and accessibility rights of individuals with mental and physical disabilities.

- B. Access to public transportation, public accommodations, and commercial facilities
 - 1. It also prohibits discrimination in places of public accommodations—facilities open to the public, including sales and rental establishments, hotels, and shopping centers.
 - 2. Individuals with disabilities may not be denied access to public transportation, public accommodations, and commercial facilities.
 - C. New construction and renovation
 - 1. If broker's office is a private residence, accessibility standards apply to that portion of the home used exclusively as an office and to the portions of the house available to customers, including bathrooms.
 - D. Florida Americans with Disabilities Accessibility Implementation Act
 - 1. The intent of Florida law is to incorporate into state law the accessibility requirements of the ADA of 1990, as amended.
 - 2. The Florida Accessibility Code for Building Construction is equivalent to federal standards for accessibility of buildings, structures, and facilities.
 - 3. Accessibility guidelines and specifications are available from local building inspectors and the DOJ.
 - 4. Local municipal or county governments are responsible for enforcement of the codes.
- IV. Interstate Land Sales Full Disclosure Act (ILSA)
- A. The advertising and sale or lease of real estate in one state to buyers in another state is subject to federal regulations.
 - B. ILSA is intended to prevent fraudulent marketing schemes when land is sold without being seen by purchasers.
 - C. It has two components:
 - 1. Anti-fraud provision—Developers of 25 or more lots must provide each purchaser with a property report. The sale and purchase contract must clearly state the purchaser's right to cancel.
 - 2. Registration requirement—Land developers must register subdivisions of 100 or more lots by filing a statement of record with the Consumer Financial Protection Bureau.
- V. Florida Residential Landlord and Tenant Act (Chapter 83, F.S.)
- A. Under Florida law, a person must be at least 18 years old to enter into a rental agreement.
 - B. This applies only to the rental of a dwelling unit (residential tenancies).
 - 1. Deposits and advance rents
 - a) The Landlord and Tenant Act mandates how landlords (not real estate brokers) must account for and handle tenants' deposits and advance rents.
 - (1) Landlords must hold the money in a separate non-interest-bearing Florida bank account for the benefit of the tenant.

- (2) Landlords must hold the money in a separate interest-bearing Florida bank account for the benefit of the tenant. The landlord must pay the tenant at least 75% of the annualized average interest rate payable on the account or 5% per year, simple interest, whichever the landlord elects.
 - (3) Landlords must post a surety bond with the clerk of the circuit court in the county in which the rental property is located in the total amount of the security deposits and advance rents or \$50,000, whichever is less. The landlord must pay the tenant interest on the security deposit or advance rent held on behalf of the tenant at the rate of 5% per year simple interest.
- b) Landlords of five or more units must give tenants written notice of the advance rent or security deposit either in the lease agreement or within 30 days after receipt of advance rent or security deposit.
 - c) If landlord is acting in role of licensee or if landlord hired broker to act as agent, licensee must abide by escrow requirements in Chapter 475.
 - (1) The deposits and advance rents are trust funds and, as such, must be deposited into the broker's escrow account by the end of the third business day after receipt of the trust funds.
 - (2) Brokers may keep up to \$5,000 of the broker's personal funds or business funds in a property management escrow account for the purpose of maintaining the escrow account.
 - (3) Sales associates who collect rent or deposits from a tenant must deliver the funds to their broker-employer no later than the end of the next business day.
 - (4) Landlords must approve or deny the rental application of an active military service member within seven days.
 - (5) Sale of property does not terminate a lease unless the lease specifically provides for its termination when title is transferred to a new owner.
 - (6) Property Management Case Study (review with students)
2. Landlord's obligation to maintain premises
 - a) Maintain unit to meet local building, housing, and health codes
 - b) Provide exterminating service for insect and rodent control
 - c) Provide garbage receptacles and pickup
 - d) Provide working equipment for heat and running hot water
 - e) Install working smoke detectors before the beginning of the lease period
 3. Tenant's obligations
 - a) Comply with applicable building, housing, and health codes
 - b) Keep occupied premises, including the dwellings and plumbing fixtures, clean and sanitary
 - c) Care in operation of plumbing, electrical, heat and air equipment
 - d) Tenants and guests not to disturb the peace

4. Landlord's access to rented premises
 - a) Legitimate entry by landlord (to inspect, make repairs, etc.)
 - b) Landlord's requirements when tenant is absent
5. Vacating premises
 - a) Landlord's claim on all or part of tenant's security deposit
 - (1) If landlord does not intend to make a claim, 15 days to return
 - (2) If landlord intends to impose a claim, 30 days to notify—the landlord may not seek a setoff against the deposit. The landlord may file a separate court action for damages after return of the deposit (with any accrued interest, if applicable).
 - (3) Tenant, 15 days after receiving written notification of landlord's claim to object in writing to the claim—a tenant who fails to make a timely written objection does not waive the right of the tenant to seek damages in a separate court action.
6. Termination of rental agreements by tenant and landlord
7. Eviction requirements
 - a) The tenant is served written notice allowing three business days to pay the rent or to vacate.
 - b) If tenant does not comply, the landlord may begin legal action to evict by filing a *complaint for eviction*.
 - c) If the court agrees with the landlord, the tenant is notified in writing.
 - d) The tenant has five business days to respond in writing to the court.
 - e) If the tenant does not respond or if a judgment is entered against the tenant, the clerk of the county court issues a *writ of possession* to the sheriff.
 - f) The sheriff notifies the tenant that eviction will take place in 24 hours.

DISCUSSION QUESTIONS

1. How has fair housing legislation affected the day-to-day real estate activities in your local area?
2. Do you believe that the content of the U.S. Supreme Court ruling in the *Jones v. Mayer* case is understood by all real estate licensees? What is not understood or practiced?
3. What does *fair housing violation* mean to you? Give an actual or possible example in your immediate area.

CLASSROOM EXERCISES

1. Appoint half the class as landlords and the other half as tenants. Allow each team of two people a designated number of minutes in front of the class to negotiate a lease. Include arrangements for a security deposit and advance rent, obligations of each party, and termination requirements.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Information concerning terms or phrases that may not be used in advertising real estate may be found on HUD's website at https://www.hud.gov/program_offices/fair_housing_equal_opp/advertising_and_marketing.

View "Fair Housing—It's Your Right" at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 7 QUIZ

1. Discrimination under the Fair Housing Act regarding familial status would apply to which individual?
 - a. A 23-year-old college student
 - b. A 39-year-old pregnant woman
 - c. A 68-year-old widow
 - d. All of these
2. Can an insurance company refuse to provide insurance coverage to applicants within a particular neighborhood because of the socioeconomic characteristics of the neighborhood?
 - a. Yes, provided the insurance company does not insure any of the homes within the neighborhood.
 - b. Yes, there is no regulation concerning insurance companies and discriminatory practices.
 - c. No, to do so is redlining, which is a violation of the Fair Housing Act.
 - d. No, to do so is steering, which is a violation of the Civil Rights Act of 1866.
3. What federal law requires developers of 25 or more lots to provide prospective purchasers with a property report before they sign a purchase contract?
 - a. Interstate Land Sales Full Disclosure Act
 - b. Fair Housing Act
 - c. Civil Rights Act
 - d. Landlord Tenant Act
4. Which business is considered a public accommodation under the Americans with Disabilities Act (ADA)?
 - a. Hotel
 - b. Restaurant
 - c. Shopping center
 - d. All of these
5. Which phrase, if used in advertising real estate, may constitute a violation of the Fair Housing Act?
 - a. Mother-in-law apartment
 - b. Quiet neighborhood
 - c. Nonsmoking tenants only
 - d. No wheelchairs
6. The Fair Housing Act of 1988 does NOT include which protected class?
 - a. Marital status
 - b. Race
 - c. Religion
 - d. Sex
7. Within how many days must landlords of five or more units notify tenants of how security deposits are handled according to the Florida Residential Landlord and Tenant Act?
 - a. 5
 - b. 10
 - c. 15
 - d. 30
8. If a tenant is properly notified of the landlord's claim on the security deposit, the tenant is allowed how many days after receipt of the landlord's notice to file an objection?
 - a. 10
 - b. 15
 - c. 30
 - d. 45
9. Which property is covered under the Florida Residential Landlord Tenant Act?
 - a. Commercial lease
 - b. Extended stay motel
 - c. Duplex unit
 - d. Medical facility
10. A real estate sales associate tells homeowners in a neighborhood that they should list their properties with the associate because property values may fall due to a recent sale in the neighborhood to a couple of a certain national origin. This violation of the Fair Housing Act is known as
 - a. redlining.
 - b. blockbusting.
 - c. channeling.
 - d. steering.

SPECIAL UNIT 7 QUIZ

ANSWER KEY

1. b Familial status protects families with one or more children under 18 and pregnant women.
2. c Denying insurance coverage by an insurer that presents different terms or conditions for homes in certain neighborhoods is called redlining and is prohibited.
3. a The Interstate Land Sales Full Disclosure Act (ILSA) requires developers of 25 or more lots to provide buyers with a property report before signing the sale contract.
4. d Public accommodations are facilities open to the public, including sales and rental establishments, hotels, restaurants, and shopping centers.
5. d The Americans with Disabilities Act (ADA) is a federal statute that protects the accessibility rights of individuals with mental and physical disabilities.
6. a No protection is given under the Fair Housing Act to individuals based on age, occupation, marital status, or sexual orientation.
7. d Landlords of five or more units must notify the tenant in writing of which method is used to hold the tenant's deposit.
8. b After receiving written notification of the landlord's claim on a deposit, the tenant has 15 days to object in writing to the claim.
9. c The Landlord and Tenant Act applies to the rental of dwelling units (residential tenancies).
10. b Blockbusting is the use of entry, or rumor of entry, of a protected class into a neighborhood to persuade owners to sell.

UNIT 7 EXAM QUESTIONS

EXPLANATIONS

1. b The Civil Rights Act of 1866 prohibits discrimination on the basis of race.
2. d The Interstate Land Sales Full Disclosure Act (ILSA) requires developers with subdivisions of 100 or more lots to register with the Consumer Financial Protection Bureau.
3. a Under the Fair Housing Act as amended, all discrimination is illegal in sales, leasing, advertising sales or rentals, financing, or brokerage services if such discrimination is based on race, color, religion, sex, national origin, disabilities, or familial status.
4. b Sales associates who collect rent or deposits from a tenant must deliver the funds to their broker-employer no later than the end of the next business day.
5. b The landlord is obligated to account for deposits in one of three ways. One of the ways is to post a surety bond with the clerk of the circuit court.
6. a Steering, or channeling, is the act of directing protected-class homeseekers away from areas that are not mixed with that class into areas that are.
7. d If the dwelling unit rented is a single-family home or a duplex, the landlord is obligated to provide working smoke detectors.
8. b The Florida Residential Landlord and Tenant Act requires that the landlord inform tenants in writing, within 30 days from the receipt of advance rent or security deposit, of the manner in which the tenant's funds are being held.
9. d The landlord has 30 days to notify the tenant if the landlord intends to impose a claim on the deposit. The law requires that the notification be in writing and sent by certified mail to the tenant's last-known mailing address.
10. a Residential property owned by a private individual who owns three or fewer homes and who does not employ the services of a real estate licensee is not covered by the Fair Housing Act.
11. a If the rent is current and the tenant notifies the landlord of an intended absence, the landlord cannot enter the premises during the period of absence except with the tenant's consent or in an emergency for the protection and preservation of the dwelling unit.
12. a The tenant first must give written notice to the landlord citing the noncompliance and stating the intent to cancel the agreement if the noncompliance is not corrected. Thereafter, the landlord has seven days to correct the noncompliance and resolve the problem.

13. c The Florida Residential Landlord and Tenant Act requires that in the event of a change in the designated rental agent, the tenants' security deposits and advance rent held in trust by the current rental agent must be transferred to the new rental agent, together with any earned interest and a final accounting showing the amounts to be credited to each tenant's account.
14. b Title II of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, and national origin in places of public accommodation engaged in interstate commerce, including hotels, motels, restaurants, gas stations, and places of entertainment.
15. a It is a violation of the Fair Housing Act to advertise that housing is available only to people of a certain race, color, sex, religion, national origin, disabilities, or familial status.

8

PROPERTY RIGHTS: ESTATES AND TENANCIES, CONDOMINIUMS, COOPERATIVES, AND TIME-SHARING

UNIT OVERVIEW

This unit deals with the physical components of real property and the evolution of our system of private ownership from historical origins to today's arrangements of weights and balances affecting private gain and public welfare. Individual types of estates and the rights included in each particular estate or tenancy are discussed. Multiple ownership interests are also described.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Define real property based on the definition in Chapter 475, F.S., and explain the physical components of real property.
- Distinguish between real and personal property and explain the four tests courts use to determine if an item is a fixture.
- Describe the bundle of legal rights associated with real property ownership.
- List the principal types of estates (tenancies), describe their characteristics, and describe the benefits and protections associated with the Florida homestead law.
- Distinguish among cooperatives, condominiums, and time-shares and describe the main documents associated with condominiums.

KEY TERMS

bundle of legal rights	freehold estate	real property
common elements	homestead	remainderman
concurrent ownership	joint tenancy	right of survivorship
condominium	land	riparian rights
condominium documents	leasehold estate	separate property
cooperative	life estate	tenancy at sufferance
declaration of condominium	littoral rights	tenancy at will
estate for years	nonfreehold estate	tenancy by the entirety
estate in severalty	personal property	tenancy in common
fee simple estate	proprietary lease	time-share
fixture	prospectus	trade fixture
	real estate	undivided interest

TEACHING OUTLINE

- I. Land, Real Estate, and Real Property
 - A. Definitions
 1. Land—surface, subsurface, and the air into infinity
 2. Real estate—the land and all improvements permanently attached to the land
 3. Real property—real estate plus a bundle of legal rights
 4. Definition of real property, Section 475.01, F.S.
 - B. Physical components of land
 1. Surface rights include the following:
 - a) Land rights
 - b) Water
 - (1) *Riparian rights* are associated with land abutting moving water, such as a river or a stream.
 - (2) *Littoral rights* abut nonflowing water, including ponds, lakes, ocean-front property, and gulf-front property.
 2. Definitions associated with water rights
 - a) *Accretion*—process of land buildup from water-borne rock, sand, and soil
 - b) *Alluvion*—new deposits of land as a result of accretion
 - c) *Erosion*—gradual loss of land through natural forces
 - d) *Reliction*—gradual receding of water, uncovering additional land
 3. Subsurface rights, often called *mineral rights*
 - a) Minerals
 - b) Petroleum, gas

4. Air rights
 - a) Building rights, easements
 - b) Aerial navigation
 5. May retain one or even two of the components if buyer and seller agree
- II. Real Property vs. Personal Property
- A. Two basic types of property—real property and personal property
1. Usually consists of items having a limited life that are easily movable from one place to another
 2. Also called *chattel* or *personalty*
 3. *Severance* (sever is to cut)—a change from real property to personal property
 4. Personal property—can become real property by attachment
- B. Fixtures
1. Items that were originally personal property but have been permanently attached to or made part of real estate and are now legally considered real property
 2. Legal tests to determine classification (IRMA)
 - a) Intent of the parties
 - b) Relationship or agreement of the parties
 - c) Method or degree of attachment
 - d) Adaptation of the item
- III. Basic Property Rights
- A. Ownership rights are called a bundle of legal rights
1. Disposition—the right to sell, mortgage, dedicate, give away, or otherwise dispose of all or a portion of the property
 2. Enjoyment—the right to enjoy and use the property without interference (the legal term, quiet enjoyment)
 3. Exclusion—the right to keep others from trespassing by entering or using the property without permission
 4. Possession—the right to occupy the property in privacy
 5. Control—the right to uninterrupted use and control of the property consistent with local laws (e.g., zoning)
- IV. Estates and Tenancies
- A. *Estate*—the degree, quantity, nature, and extent of the bundle of rights (ownership rights) in real property
1. The terms *estate* and *tenancy* may be used interchangeably.
- B. Estates—two classifications
1. Freehold (unknown duration)
 2. Leasehold or nonfreehold (fixed or known duration)

C. Freehold estates

1. Fee simple estate

- a) Largest bundle of legal rights (most comprehensive)
- b) Fee, fee simple, and fee simple absolute
- c) Power to use, to dispose of, and to allow the property to descend to heirs
- d) Highest type of real property interest recognized by law

2. Life estate

- a) Life estates can be created by the grantor or by operation of law
 - (1) Conventional life estates are created by the grantor who transfers the freehold estate to an individual for a period measured by a person's lifetime.
 - (2) Ownership (title) is for the lifetime of an individual.
 - (a) When the life estate ends, property reverts to original grantor (previous owner) or goes to a third party.
 - (b) Estate in reversion returns to original grantor.
 - (c) Remainder estate returns to the vested or contingent remainderman.
 - (d) Instrument (usually a deed) that establishes the life estate also designates the remainderman.
 - (e) Remainderman acquires either a fee simple estate in severalty or concurrent ownership if more than one remainderman is designated.
 - (3) Legal life estates are created by law (for example, in Florida, if a homesteaded property is titled in one spouse's name only, by operation of law, the surviving spouse receives a life estate to the homesteaded property and the children receive a remainder estate).

D. Homestead

1. Protection of the family (legal life estate)
2. Protection of the homestead from forced sale to satisfy judgment liens for debts owing to personal loans, credit card debt, and so forth
3. Tax exemption of up to \$50,000 for qualifying homesteads deducted from the assessed value
4. Size of the homestead (160 contiguous acres outside a municipality or up to half an acre of contiguous land and improvements within cities)
5. Personal property up to \$1,000 protected
6. Signatures of both spouses required to transfer title to homestead property

- E. Nonfreehold or leasehold estates
 - 1. Nonfreehold estates have a known duration and do not involve an ownership interest.
 - a) Nonfreehold or less-than-freehold estates—grant the right of quiet enjoyment (the right to use and possess but not own) real property
 - b) Nonfreehold estates—also called leasehold estates
 - 2. A leasehold estate (tenancy) is an interest in real property that a tenant possesses.
 - a) Measured in calendar time
 - b) Under a lease, the tenant possesses a leasehold estate and the landlord (property owner) possesses a reversion estate
 - c) At the end of the leasehold estate, the right of quiet enjoyment reverts to the property owner
 - 3. Types of leasehold estates are as follows:
 - a) Estate for years (or tenancy for years)
 - (1) Definite termination date
 - (2) Created by a properly executed lease agreement
 - (3) Conveys rights and interests for a designated period
 - (4) Does not convey actual title or the right of disposition; conveys some of the owner's rights and interest for a specified period
 - b) Tenancy at will
 - (1) A lease agreement that has a beginning date but no fixed termination date
 - (2) Termination notice determined by rent payment interval (for example, weekly or monthly)
 - (a) Week to week: 7 days' notice
 - (b) Month to month: 30 days' notice
 - c) Tenancy at sufferance
 - (1) Tenants, after rightfully being in possession of the rented premises, continue possession after their right has ended
 - (2) No estate or title; only “naked” possession
 - (3) No notice required to terminate legally
- F. Sole ownership vs. concurrent ownership—ways in which people hold freehold estates
 - 1. Interests—two kinds
 - a) May be owned by one person (in *severalty*)
 - b) May be owned by two or more persons at the same time (called concurrent ownership).

2. Separate property vs. marital property
 - a) Property that a spouse owns in her name only before marriage and property acquired by one spouse during the marriage by inheritance or gift is separate property.
 - b) Property acquired during marriage, except by inheritance or gift, is referred to as marital assets.
 3. Types of co-ownership
 - a) Tenancy in common
 - (1) Two or more persons taking title
 - (2) May acquire title at different times
 - (3) May hold different percentages of ownership
 - (4) Each owner having an undivided interest in the entire property
 - (5) No right of survivorship because decedent's interest goes to heirs
 - b) Tenancy by the entirety
 - (1) Only a married couple can create a tenancy by the entirety.
 - (2) It applies to all types of property a married couple purchases.
 - (3) When one spouse dies, that individual's ownership interest automatically transfers to the surviving spouse by right of survivorship.
 - (4) Divorce—creates a tenancy in common automatically, with equal shares in the property
 - c) Joint tenancy
 - (1) Right of survivorship—when one co-owner dies, the deceased's share goes to the surviving co-owners
 - (2) Four unities (PITT)
 - (a) Same rights of possession (undivided)
 - (b) Same interest (equal)
 - (c) Same time
 - (d) Same title (single deed)
 - (3) Must include specific wording regarding survivorship
 - (4) If joint tenants sell their share, buyers are tenants in common
- V. Cooperatives, Condominiums, and Time-Sharing
- A. Cooperative, condominium, and time-share regulations enforced by the Division of Florida Condominiums, Timeshares, and Mobile Homes, DBPR
 - B. Cooperatives
 1. Multi-unit building owned by a corporation
 2. Corporation holds title to land and improvements; unit purchasers receive shares of stock in the corporation

3. Authority vested in an elected cooperative association
 4. Stock ownership—entitles owners to a proprietary lease and right of occupancy of a unit
 5. Property taxes are assessed against each unit.
 - a) Shareholders pay a pro rata share of the property taxes.
 - b) Corporation pays the property tax bill.
 6. Disclosures and cancellation period
 - a) Disclosure in the sale contract stating that the buyer of a residential cooperative unit may cancel the contract within 15 calendar days of signing the contract
 - b) Residential resale contract of a cooperative unit, including required clause stating that the buyer acknowledges, at least three business days before signing the contract, receipt of
 - (1) articles of incorporation of the association,
 - (2) bylaws and rules of the association, and
 - (3) question and answer sheet
 - c) Buyer's right to cancel the contract—terminates at closing
- C. Condominiums
1. Consists of a unit in fee simple in a multi-unit structure, plus ownership of an undivided fractional share of the buildings and land (common elements)
 2. Property taxes are levied on individual units
 3. Condominium documents
 - a) Declaration of condominium
 - b) Articles of incorporation
 - c) Bylaws of the association
 - d) FAQ
 4. In addition to the four condominium documents, two additional disclosures are required to be given to prospective buyers when purchasing residential units from a developer.
 - a) Prospectus required if condominium consists of more than 20 residential units
 - b) Estimated operating budget
 5. In addition to the four condominium documents, there are three additional disclosures for resale from seller.
 - a) Most recent year-end financial report
 - b) Rules of the association
 - c) Governance form

6. Buyer has three business days to cancel resale contract
 7. 15-calendar-day right to cancel the contract for new construction
- D. Time-sharing
1. Property organized into a condominium
 2. Units divided into 52 time segments of ownership
 3. An undivided interest in a living unit according to the number of weeks purchased
- E. Time-Share Act
1. Time-share disclosures
 - a) Purchasers may cancel contract within 10 calendar days of contract signing or receipt of disclosure
 2. Sales personnel selling time-share plans must hold real estate licenses
 - a) Exception: Salesperson is a salaried employee of the owner-developer and is not paid a commission or otherwise compensated on a transactional basis.
 3. Time-Share Resale Listing Agreement Disclosure
 4. Time-share ownership
 - a) Interval ownership
 - b) Right-to-use

DISCUSSION QUESTIONS

1. Provide examples of fixtures becoming real property.
2. When would it be permissible to remove a fixture from real property that is being sold?
3. How is an owner's right of exclusion affected if the real property is a restaurant or a retail store?
4. What is the principal difference between *tenancy at will* and *tenancy at sufferance*?
5. What are the principal differences between a *cooperative unit* and a *condominium unit* from the standpoint of the individual unit tenant/owner?

CLASSROOM EXERCISES

1. Ask students to list, either orally or in writing, the different ways a sales associate might use the requirement to apply for homestead exemption as a means to foster goodwill and public relations with current and former customers (e.g., letter or card to customers during the first week of January, telephone contact with all current and recent former customers, etc.)
2. Ask students to see how many different acronyms they can create to take the place of *IRMA* after discussion of the tests used to determine whether an item is a fixture.
3. Obtain a thick, up-to-date abstract to show the class. Read some of the original entries to the class to demonstrate the time period covered.

4. Ask students to illustrate graphically their individual definition of land on a blank sheet of paper by drawing, sketching, or any method of description without words.
5. Ask students to illustrate their individual conception of a bundle of legal rights.
6. Bring to class a prospectus for a condominium or time-share plan located in your immediate area. Point out the essential elements in this chapter that are reflected in the prospectus (e.g., disclosures, ownership interest/title, etc.). Circulate copies among your students.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Information concerning the Division of Florida Condominiums, Timeshares, and Mobile Homes is available at www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/. Click on “Condominiums/Cooperatives” for information concerning condominiums. From the condominiums links page, you can download information concerning the Condominium and Cooperative Acts. Click on “Timeshare” for information concerning the Florida Vacation Plan and Timesharing Act.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 8 QUIZ

1. Describe a life estate. What happens at the end of a life estate?
2. Define *fixture*. Describe the four tests used to determine whether an item is a fixture. (Hint: The memory tool is IRMA.)
3. Define *right of survivorship*. Which estates are characterized by right of survivorship?
4. List the four unities of joint tenancy. (Hint: The memory tool is PITT.)
5. List the documents that define the rights and obligations of condominium owners.
6. A tenant, after rightfully being in possession of rented premises, continues possession after the right has ended. This action creates
 - a. a tenancy at will.
 - b. a tenancy at sufferance.
 - c. a fee simple estate.
 - d. an estate for years.
7. Which property interest is NOT included in the definition of *real property* according to Chapter 475, F.S.?
 - a. Lot for rent in a mobile home park
 - b. Interest in a business enterprise
 - c. Mineral rights
 - d. Time-share unit
8. The gradual loss of land associated with moving water and/or wind is called
 - a. accretion.
 - b. riparian.
 - c. erosion.
 - d. reliction.
9. A type of estate created when a married couple takes title in both of their names is called
 - a. a joint tenancy.
 - b. a tenancy by the entirety.
 - c. a tenancy in common.
 - d. an estate for years.
10. A mother executes a deed stating that upon her death the property will convey to her son, Abraham Lacey. The mother created which type of estate?
 - a. Estate in reversion
 - b. Estate for years
 - c. Nonfreehold estate
 - d. Life estate

SPECIAL UNIT 8 QUIZ

ANSWER KEY

1. A life estate is a type of freehold estate that is limited in duration to the life of its owner or the life of some other designated person. At the end of the life estate, the property either reverts to the original grantor (estate in reversion) or conveys to a remainderman (remainder estate).
2. A fixture is an article (e.g., a bathtub) that was originally personal property but has been attached to real property and, therefore, becomes part of the real property. The tests for whether an item is a fixture are as follows: intent of the parties, relationship between the parties, method of annexation, and adaptation of the article.
3. Right of survivorship means that when one co-owner dies, the deceased's share goes to the surviving co-owners and not to the deceased tenant's heirs. Right of survivorship is applicable to joint estates and estates by the entirety.
4. The four unities of a joint tenancy are as follows: possession, interest, title, and time.
5. The condominium documents are as follows: declaration, articles of incorporation, bylaws, and the FAQ.
6. b A tenancy at sufferance occurs when a tenant stays in possession of the property beyond the ending date of a legal tenancy without the consent of the landlord. The tenant has no estate or title but only "naked" possession and is not entitled to notice to terminate.
7. a Rentals in mobile home parks and recreational vehicle lot rentals are not considered to be real property.
8. c Erosion is the gradual loss of land due to natural forces (a landowner may lose land through the natural process of erosion).
9. b Any type of property (residential, commercial, industrial, et cetera) purchased by a married couple together, will be held as a tenancy by the entirety.
10. d An estate in real property that is limited in duration to the life of its owner (the mother in this case) is a life estate. The son has a remainder estate in the property.

UNIT 8 EXAM QUESTIONS

EXPLANATIONS

1. d A fee simple estate is the largest bundle of legal rights. It is the highest type of real property interest recognized by law.
2. c The physical components of land include the earth's surface (including trees, water, land, and minerals) to the center of the earth, as well as the airspace above.
3. d A fixture is an object that was once considered to be personal property but has become real property because of attachment to, or use in, an improvement to real property.
4. d Property taxes are assessed for each individual condominium unit. The cooperative act stipulates that property taxes be assessed against each co-op unit and not against the corporation. However, the corporation pays the property tax bill. Each co-op unit owner pays a pro rata share of the property tax bill.
5. d Real property ownership rights (or bundle of legal rights) include the rights of disposition, enjoyment, exclusion, possession, and control.
6. a A remainder estate occurs when, at the end of a life estate, the property transfers to a third party, called a remainderman.
7. b A tenancy at sufferance exists when the tenant, after rightfully being in possession of the rented premises, continues possession after the tenant's right has ended.
8. a Fixtures are objects that were personal property but have been permanently attached to or made part of the real property and thus are now real property.
9. b The Florida constitution allows a tax exemption from assessed property value.
10. c The property is owned as a tenancy by the entireties. The deceased spouse's ownership interest automatically transfers to the surviving spouse by right of survivorship.
11. d Up to 160 contiguous acres outside a municipality or up to one-half acre within a municipality is exempt from forced sale.
12. b In a case in which a spouse who owns the homestead in severalty dies without leaving a will and is survived by a spouse and lineal descendants, the surviving spouse receives a life estate in the homestead, and the lineal descendants become vested remaindermen.
13. b Right of survivorship means that when one co-owner dies, the deceased person's share goes to the surviving co-owner(s) and not to the deceased tenant's heirs. A tenancy by the entireties is characterized by right of survivorship.

14. d According to Section 475.01, F.S., real property means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right. However, the term does not include any cemetery lot or right of burial in any cemetery, nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.
15. b The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation is the state agency charged with ensuring compliance with the laws regulating all three of these multiple-ownership forms.
16. c The Condominium Act requires that the developer give a disclosure statement to buyers stating that the buyer may cancel the contract within 15 days of signing the contract or receipt by the buyer of the condominium documents, whichever is later.
17. a The Condominium Act requires that before the sale of developer residential shared housing with more than 20 units, purchasers be provided with certain disclosure statements, including, for example, property description, form of title/interest, description of common areas and amenities, existence of judgments or liens, management arrangements, escrow provisions for deposits, restrictions on the sale or transfer of units, apportionment of common expenses, construction completion date, estimated operating budget, estimated closing costs, and copies of key documents.
18. d A deed to a condominium unit conveys the unit to the purchaser together with its proportionate ownership interest in the common elements.
19. d Filing a constitutional homestead exemption does not change the interest to a tenancy by the entirety; however, the family becomes protected in the event of the death of the owner.
20. c The woman has a fee simple estate in the grove, which is a type of freehold estate. Because she alone owns the property, it is an estate in severalty.

9

TITLE, DEEDS, AND OWNERSHIP RESTRICTIONS

UNIT OVERVIEW

This unit deals with the legal instruments and methods used to transfer title to real property. It is important for the student to have a clear understanding of the major kinds of deeds and to know when each of the basic types of deeds can and should be used. Public and private grants, other means of conveying title, and the many restrictions (both public and private) imposed on title to real property are of major importance to the real estate licensee.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Differentiate between voluntary and involuntary alienation, explain the various methods of acquiring title to real property, and describe the conditions necessary to acquire real property by adverse possession.
- Distinguish between actual notice and constructive notice.
- Distinguish between an abstract of title and a chain of title, and explain the different types of title insurance.
- Describe the parts of a deed and the requirements of a valid deed.
- List and describe the four types of statutory deeds and the legal requirements for deeds.
- List and describe the various types of governmental and private restrictions on ownership of real property and distinguish among the various types of leases and liens.

KEY TERMS

abstract of title	eminent domain	mechanic's lien
acknowledgment	encroachment	net lease
actual notice	equitable title	opinion of title
adverse possession	escheat	owner's policy
alienation	general lien	percentage lease
appurtenance	general warranty deed	police power
assignment	grantee	quitclaim deed
chain of title	granting clause	restrictive covenants
condemnation	grantor	seisin
construction lien	gross lease	specific lien
constructive notice	ground lease	sublease
deed	habendum clause	superior lien
deed restrictions	intestate	testate
easement	involuntary alienation	title
easement appurtenant	junior lien	title insurance
easement by necessity	legal title	variable lease
easement by prescription	lender's policy	voluntary alienation
easement in gross	lien	warranty forever

TEACHING OUTLINE

- I. Legal Title vs. Equitable Title to Real Property
 - A. A person who holds ownership rights in property has title.
 - B. Legal title is ownership of a freehold estate.
 - C. Equitable title implies that the individual will receive legal title in the future.
 - D. Equitable title is the interest in real property that a buyer receives upon executing a contract for purchase and before title closing.
 - E. Acquiring Legal Title
 1. Alienation—act of transferring ownership, title, or an interest in real property from one person to another
 2. Transfer by voluntary alienation is with the owner's control and consent
 - a) Deed
 - (1) Normal method of acquiring title to real property
 - (2) A written instrument that conveys legal title during the owner's lifetime
 - b) Will
 - (1) Conveys title to real and personal property after death
 - (2) Testate—the decedent (deceased person) prepared a will before death
 - (3) Voluntary alienation
 - (4) Property owner making will— *testator* or *testatrix*

- (5) Gift of real property—a *devise*; recipient—the *devisee*
 - (6) Gift of personal property—a *bequest*; recipient—the *beneficiary*
- F. Transfer by involuntary alienation
- 1. Descent
 - a) Intestate—without a will
 - b) Property descends to legal heirs
 - 2. Escheat to the state
 - a) Power of government to take the property of an owner who dies intestate with no known heirs entitled to receive the property
 - b) Practical way to ensure that property is always owned by someone
 - 3. Adverse possession
 - a) When the true owner of record fails to maintain possession and the property is seized by another
 - b) Conditions for alienation by adverse possession (HOT CAN)
 - (1) Hostile to and excluding true owner
 - (2) Open possession
 - (3) Adverse possessor—must pay property taxes during all years of possession
 - (4) Must be based on some claim of title, even an imperfect claim (color of title)
 - (5) Adverse possession that lasts seven or more consecutive years
 - (6) Notorious possession
 - 4. Eminent domain
 - a) Gives government the right to *take* private property for just compensation, provided the taking is for a public purpose
 - b) *Condemnation*—the legal process to exercise the power of eminent domain
 - c) Owner compensated with the appraised value of the property
 - d) Form of involuntary alienation
- II. Notice to Legal Title
- A. Two types of notice recognized by law
 - 1. *Actual notice* is direct knowledge acquired in the course of a transaction.
 - 2. *Constructive notice* refers to information made public by recording the information in the public records.
 - B. Both types have equal legal priority
 - C. To record a deed—needs grantor acknowledgment, which must be witnessed and certified by a notary (signatures of two witnesses also required)
 - D. Florida law—recording of documents not required

- E. *Acknowledgment*—formal declaration before a notary public that the signing is a free act
- III. Protection of Title
- A. *Chain of title* is the complete successive record of a property's ownership.
 - B. *Abstract of title* is a summary report of what the title search found.
 - C. Opinion of title is executed by an attorney.
 - 1. Opinion regarding marketable title
 - 2. Attorney does not guarantee the opinion of title
 - D. *Title insurance* is a contract that protects the policyholder from losses arising from defects in the title.
 - 1. Florida law does not require title insurance.
 - 2. Licensees are not qualified to render an opinion of title.
 - a) Licensees must advise buyer to either contact an attorney or a title insurance company to determine the condition of the seller's title.
 - b) When questions of title arise, licensees first must obtain a current opinion from an attorney before quoting an opinion that title to a property is good or marketable.
 - E. Two types of title insurance are as follows:
 - 1. Owner's title insurance issued for total purchase price, protects new owner, is not transferable, and has a one-time premium.
 - 2. Lender's title insurance issued for unpaid mortgage amount, protects lender, is transferable, and has a one-time premium.
 - F. Giving opinions to title
- IV. Deeds
- A. Definition—a written instrument that conveys legal title to real property
 - 1. Parties to a deed
 - a) Grantor—owner giving title
 - b) Grantee—new owner receiving title
 - 2. Must be signed by a competent grantor and two witnesses to be valid
 - B. Parts of a deed
 - 1. Premises
 - 2. Consideration
 - 3. Granting clause
 - 4. Legal description
 - 5. Appurtenances
 - 6. Habendum clause

7. Covenant of seisin
8. Signature lines
- C. Requirements for a valid deed
 1. In writing (statute of frauds)
 2. Names of the grantor and the grantee
 3. Grantor must be of legal capacity (competent and of legal age)
 4. Consideration must be described
 5. Legal description
 6. Signed by the grantor and two witnesses
 7. Voluntary delivery and acceptance
- V. Types of Statutory Deeds
 - A. Quitclaim deed
 1. Least protection to the grantee
 2. Contains a premises section with a granting clause
 3. No warranties about the quality or extent of interest conveyed
 4. Used to clear clouds on title (suit to quiet title)
 - B. Bargain and sale deed
 1. Grantor makes no warranties about quality or extent of title being conveyed
 2. Contains covenant of seisin, habendum clause, and granting clause
 3. No express warranty against encumbrances
 4. Most often used to transfer title from a foreclosure or tax sale
 - C. Special warranty deed
 1. Contains a granting clause, seisin clause, and habendum clause
 2. Grantor warrants title against acts by only grantor or grantor's representatives
 3. Does not defend actions of previous owners, only against title defects arising during the period of the grantor's ownership
 - D. General warranty deed (or warranty deed)
 1. Provides the greatest protection to the buyers
 2. In addition to the granting clause and habendum clause, the warranty deed includes the following covenants:
 - a) Covenant of seisin
 - b) Covenant against encumbrances
 - c) Covenant of further assurance
 - d) Covenant of quiet enjoyment
 - e) Covenant of warranty forever

- E. Special-purpose deeds
 - 1. Personal representative's deed
 - 2. Guardian's deed—minor or ward
 - 3. Committee's deed—legally incompetent
 - 4. Tax deed
- VI. Ownership Limitations and Restrictions—Two Types (Public or Government and Private)
 - A. Three government restrictions (PET)
 - 1. Police power
 - a) Basis is U.S. constitutional powers delegated down through state to local government
 - b) Broadest governmental power
 - c) Zoning ordinances, building codes, health ordinances, city planning, rent controls, et cetera
 - 2. Eminent domain
 - a) It's also called *taking for just compensation*.
 - b) Property taken must be for public use.
 - 3. Right of property—Taxation
 - a) U.S. government prohibited by the Constitution from taxing privately owned real property
 - b) Real estate taxes important to schools, local government, etc.
 - c) Increase in governmental services generally results in a tax increase
 - B. Four private restrictions on ownership (DELL)
 - 1. Deed restrictions
 - a) Most common and broadest private restrictions to ownership of real property
 - b) Deed restrictions a part of the deed and affect a particular property
 - c) Restrictive covenants recorded along with the subdivision plat; affect an entire subdivision
 - d) May not restrict as to race, color, religion, sex, national origin, families with children, disabilities, or public policy
 - 2. Easements
 - a) Right to use land of another for a specific and limited purpose
 - b) Nonpossessory interest in real property (does not convey ownership)
 - c) Easement appurtenant
 - d) Easement in gross

- e) Easement by prescription (20 years' use)
- f) Easement by necessity (ingress and egress to landlocked property)
- g) Encroachment—unauthorized use
 - (1) For more than seven years, may create an implied easement
 - (2) May cause title to be unmarketable and sale contract to be voidable

3. Leases

- a) An agreement between a landlord (lessor) and a renter (lessee)
- b) Lease for more than one year must be in writing and signed
- c) Should be prepared by attorneys unless licensee uses forms approved by Florida Supreme Court
- d) Types of leases
 - (1) Gross lease (landlord pays expenses; however, not uncommon for tenant to pay unit-related utility costs)
 - (2) Net lease (tenant pays expenses)
 - (3) Percentage lease (rent based on gross sales of tenant)
 - (4) Variable lease (rent changes periodically, either graduated at set times or tied to an index)
 - (5) Ground lease (long-term lease on land only)
- e) Calculating the rent owed for a percentage lease
- f) Calculating rent owed for a variable lease
- g) Assignment and sublease
 - (1) *Assignment*—the lessee offers to another all rights to the leased property for the full remaining portion of the lease
 - (2) *Sublease*—the lessee offers to another less than entire rights to property, or all the property for less than the full remaining period (may be called *subordination* or *subrogation of space*)

4. Liens

- a) Right or legal interest given to a creditor or a unit of government to have a debt satisfied out of some specific property belonging to a debtor; an encumbrance on property, but not synonymous with *encumbrance*
- b) Usually recorded with the clerk of the circuit court in the county where the property is located

C. General and specific liens

- 1. General liens—affect all property owned by a debtor
 - a) Judgment liens
 - b) Income tax liens
 - c) Estate tax liens

2. Specific liens—apply only to specified property of a debtor
 - a) Property taxes and special assessments
 - b) Mortgage liens
 - c) Vendors' liens
 - d) Construction liens
- D. Lien priority
 1. Superior liens
 - a) Real estate (property) tax liens
 - b) Special assessment liens
 - c) Federal estate tax liens
 2. Junior lien priority—usually based on date and time the lien was recorded
 - a) Mortgage liens
 - b) Judgment liens
 - c) Vendor's liens
 - d) Income tax (IRS) liens
 3. Construction (mechanics') liens priority—date that work began
 4. Priority—can be changed by a written subordination agreement

DISCUSSION QUESTIONS

1. Why is the transfer of title to real property more complicated than the transfer of title to an automobile?
2. If a grantor signed a deed to a parcel she owned and placed that deed in her safe, would title be legally transferred to the grantee in the event of the grantor's death while the deed is in the safe?
3. Which affords a buyer the greater protection: a certificate of title opinion or a title insurance policy? Why?

CLASSROOM EXERCISES

1. Ask students to list as many situations as they can imagine in which title to real property could pass involuntarily.
2. Ask the class to compare the different ways a deceased person's property might be legally transferred.
3. Distribute copies of a typical warranty deed and have the students identify the various clauses in the deed.
4. Obtain a printed will form from an office supply store and show the class the common wording used to convey title.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

To print a copy of Florida's Statute of Frauds go to *Online Sunshine* home page at www.leg.state.fl.us. Select "Florida Statutes." Click on "Title XLI" and then "Chapter 725" to proceed to "Unenforceable Contracts." Click on "View Entire Chapter" to view and print the statute.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 9 QUIZ

- Rent is \$1,800 per month plus 3% of gross sales. The total rent for last month was \$2,400. The gross sales for the same month were
 - \$20,000.
 - \$24,000.
 - \$30,000.
 - \$60,000.
- Which type of notice is accomplished from information a person has learned by reading, seeing, or hearing?
 - Constructive notice
 - Verbal notice
 - Legal notice
 - Actual notice
- The purpose of recording a deed is to
 - comply with real estate license law.
 - effect the transfer of ownership.
 - give actual notice of ownership.
 - give constructive notice of ownership.
- The deed that contains the covenant guaranteeing that the grantor will forever be responsible for warranting title and will defend the title and possession is a
 - general warranty deed.
 - special warranty deed.
 - public patent deed.
 - bargain and sale deed.
- The owner's title insurance policy is
 - issued for an amount no greater than the purchase price of the property and is transferable.
 - issued for an amount no greater than the purchase price of the property and is not transferable.
 - a separate policy for the amount of the unpaid balance of the mortgage and is transferable.
 - a separate policy for the amount of the unpaid balance of the mortgage and is not transferable.
- The recipient of real property under the terms of a will is the
 - testator.
 - devisee.
 - beneficiary.
 - bequest.
- Which part of a deed contains a promise by the grantor that the grantor owns the property and has the right to convey title?
 - Premises
 - Habendum
 - Seisin
 - Granting clause
- A tenant has just signed a five-year lease for an office suite. The lease calls for \$2,500 a month rent plus the tenant's portion of the maintenance and utility costs. This describes
 - a gross lease.
 - a net lease.
 - a percentage lease.
 - an index lease.
- Which lien is a superior lien?
 - Special assessment lien
 - Federal income tax lien
 - First mortgage lien
 - Mechanic's lien
- Which lien is a specific lien?
 - Judgment lien
 - IRS lien
 - Estate tax lien
 - Vendor's lien

SPECIAL UNIT 9 QUIZ

ANSWER KEY

1. a $\$2,400$ total rent – $\$1,800$ base rent = $\$600$ rent based on gross sales.
Part \div rate = whole. $\$600 \div .03$ rate = $\$20,000$ gross sales.
2. d Actual notice is direct knowledge acquired in the course of a transaction.
3. d Constructive notice (also called *legal notice*) is accomplished by recording a document in the public records. Recording an instrument of conveyance puts the world on notice regarding an owner's interests in real property.
4. a The covenant of warranty forever is a special covenant in general warranty deeds that states that the grantor guarantees to forever warrant and defend the grantee's title against all lawful claims.
5. b The owner's title insurance policy is issued for the total purchase price of the property. The policy is not transferable to another owner.
6. b A gift of real property is a devise and the recipient of the gift is the devisee.
7. c The covenant of seisin (also *seizin*) is a promise that the grantor owns the property and has the right to convey title to the property.
8. b In a net lease, the tenant (lessee) pays fixed rent plus property costs such as maintenance and operating expenses (taxes, insurance, and utilities). Net leases are typically used on commercial property.
9. a Superior liens take priority over all other liens. They are automatically *superior* to any other lien. Superior liens include property tax liens, special assessment liens, and federal estate tax liens (at time of death).
10. d Liens classified as specific do not affect all of the debtor's property, applying only to certain specified property. If a buyer of property (vendee) is unable to make the full down payment required, a seller (vendor) frequently will allow a purchase money mortgage to make up the amount of money the buyer is unable to produce. Any portion of the sale price remaining unpaid to the vendor creates a vendor's lien on that specific property.

UNIT 9 EXAM QUESTIONS

EXPLANATIONS

1. a Utility easements are easements in gross. They benefit the utility company and are not related to one specific property.
2. c Escheat provides for state government to take the property of an owner who dies without having left a will (intestate) and who has no known heirs entitled to receive the property.
3. b The deed must be signed by a competent grantor and witnessed by two people to be valid. The grantee need not be competent nor sign the deed.
4. d A quitclaim deed is a type of deed that will convey any present interest, claim, or title to real property that the seller (grantor) may own. This form of deed is useful for clearing existing or potential clouds on the title.
5. a If a sale contract does not specify the type of deed to be given by the seller, Florida law requires that the property be conveyed by a general warranty deed.
6. c Condemnation is the judicial or administrative proceeding to exercise the power of eminent domain. The appraised value of the property at the time of the appraisal is accepted by the courts as the valuation used to determine the amount of just compensation.
7. b A special warranty deed is a deed in which the grantor will only defend title during the grantor's ownership.
8. a The covenant of no encumbrances warrants that the property is free from liens or other encumbrances, except as noted in the deed. This clause gives the grantee notice of all encumbrances (liens, restrictions, and so forth) associated with the property.
9. b When questions of title arise, licensees are required to advise prospective buyers to have their attorneys examine the abstract or to obtain a title insurance policy.
10. d The covenant of seisin is a promise that the grantors own the estate in the land that they intend to convey and have the right to convey.
11. a The premises section of a deed names the parties to the deed and the date of the deed. The premises contains the granting clause with the necessary words used to convey the property.
12. b Deed restrictions are a part of the deed. They restrict the use of the property for the first owner and all subsequent owners. The limitations may be either perpetual or for a specified period.
13. d A lien is an encumbrance on the title to real property. Encumbrances can also be easements, covenants, deed restrictions, encroachments, and governmental regulations.

14. c The mortgagee (lender) policy is issued for the unpaid mortgage amount. Unlike the owner's title insurance, the mortgagee title insurance policy is transferable.
15. a Property tax liens are superior liens (ahead of other liens) and become liens as soon as the assessment is complete. Special assessment liens are ahead of private liens in priority and second only to real property tax liens.
16. a $195 \div 189 = 1.0317$. $1.0317 \times \$21.50 = \22.18 .
17. d An encroachment is an infringement or intrusion on property without the owner's consent (e.g., a fence or garage located beyond a legitimate boundary).
18. d When the use of property, such as a roadway, has continued openly without interruption for more than 20 years, an easement by prescription is considered to have been created and must be recognized.
19. c No conveyance instrument will be effective in transferring title to property until it is delivered to and accepted by the grantee. (If the owner wanted to transfer the property to a charity after his death, a will could be used to accomplish this.)
20. d $\$550,000 - \$400,000 = \$150,000$. $\$150,000 \times .05 (5\%) = \$7,500$. $\$2,000$ base rent $\times 12$ months = $\$24,000$ annual base rent. $\$24,000 + \$7,500 = \$31,500$ total annual rent.

10

LEGAL DESCRIPTIONS

UNIT OVERVIEW

This unit introduces the various methods used to locate and describe the boundaries of real property. Basic to the real estate business is a working knowledge of *legal land descriptions* (a term often shortened by practitioners to *legals*). Unless property can be located accurately, the best of contracts and the combined efforts of the most knowledgeable brokers in the world will be defeated. For many students, legal descriptions of land, while difficult to grasp, can be more easily understood through visual presentations that show the step-by-step construction of legal descriptions.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Describe the purpose of legal descriptions and understand the licensee's role and responsibilities as it pertains to legal descriptions.
- Describe the process of creating a legal description using the metes-and-bounds method.
- Locate a township by township line and range.
- Locate a particular section within a township and understand how to subdivide a section.
- Calculate the number of acres in a parcel based on the legal description and convert acres to square feet.
- Explain the lot and block survey method and the use of assessor's parcel numbers.

KEY TERMS

base line	monument	survey
check	point of beginning (POB)	tier
government survey system	principal meridian	township
legal description	range	township line
lot and block	section	
metes-and-bounds description		

TEACHING OUTLINE

- I. Purposes of Legal Descriptions
 - A. The primary purpose is to describe a particular parcel of property in sufficient detail that it will be accepted by a court of law.
 - B. Additional purposes are as listed:
 - 1. Obtain current and accurate boundary information
 - 2. Establish exact quantity of area
 - 3. Reestablish lost or obliterated boundaries
 - 4. Obtain data to divide large tracts into smaller units
 - 5. Identify and describe encroachments
 - C. Licensee's role and responsibilities
 - 1. Title problems can arise from an inaccurate legal description.
 - 2. Use a reliable document for an accurate legal description.
- II. Description by Metes-and-Bounds
 - A. Oldest method
 - 1. *Metes* refers to distance and *bounds* to direction
 - 2. Begin with a starting reference point—a *point of beginning* (POB)
 - 3. Monument—an object used to establish boundaries
 - 4. Earliest metes-and-bounds descriptions relied on natural monuments (trees, rivers, etc.)
 - 5. Today's monuments made of concrete, iron, or brass and placed by the U.S. Army Corps of Engineers or trained land surveyors
 - B. Building blocks of metes-and-bounds descriptions
 - 1. Based on a circle of 360 degrees divided into four equal parts (quadrants)
 - 2. The straight line connecting north and south regarded as the *primary reference line*; moves either east or west up to a maximum of 90 degrees
 - 3. Directions given in degrees, minutes, and seconds
- III. Description by Government Survey
 - A. Used in Florida and all other states except the original 13 states and Tennessee, Kentucky, West Virginia, and Texas
 - B. Based on survey lines drawn in a north-south direction and in an east-west direction
 - C. Principal meridian and base line
 - 1. Principal meridian—north-south reference in center of territory
 - 2. Base line—east-west reference
 - D. Range—the 6-mile-wide vertical (north-south) strips enclosed between range lines; numbered consecutively from 1 both east and west of the principal meridian

- E. Tier or township—a 6-mile-wide horizontal (east-west) strip of land enclosed between two township lines
 - 1. The square formed by the intersection of two range lines and two township lines is called a *township*.
 - 2. The east-west strips of land are also called *tiers*.
- IV. Sections
 - A. Each township contains 36 sections
 - 1. Each section is 1 mile square.
 - 2. Sections are numbered beginning in the northeast corner of the township with Section 1 and moving left to 6; number 7 is under number 6 and sequence moves back to right, and so forth (the pattern usually used to walk the aisles of a grocery store).
 - 3. A section contains 640 acres.
 - 4. To write a legal description—section number first, township tier designation next, then range, and finally the description (e.g., Section 36, Township 4 South, Range 2 East, etc.)
 - B. How to use the government survey system
 - 1. Locate sections—to locate property described by government survey system, always read the description backward.
- V. Subdividing Sections
 - A. Each section contains 640 acres (exact number of acres is used in math calculations)
 - 1. Divide sections by drawing straight vertical and horizontal lines through the section.
 - B. Two approaches to calculating size
 - 1. Work backward from the 640-acre section; divide 640 by the denominator of each fraction, calculating the number of acres resulting from each division.
 - 2. Multiply the denominators of each fraction together and then divide 640 by the result.
 - C. Procedure used when *and* appears in a legal description
 - D. Calculating square feet and cost per acre
- VI. Description by Lot and Block Numbers
 - A. Used when plat maps (plats) of a subdivision have been recorded
 - B. Plat maps recorded by title given to a subdivision
 - 1. Dimensions for lots
 - 2. Shows streets and public utilities
 - 3. Recorded under subdivision name by book and page number
 - 4. Recorded plat becomes the legal description for every lot in the subdivision
 - 5. Block—usually a parcel containing several lots and bounded by three or more streets

6. Lot—a smaller parcel fronting on a street or cul-de-sac, with boundary lines recorded on the subdivision plat map
 7. Entire subdivision tract probably described by government survey system
- C. Tax maps
1. Parcels of land within a tax district are assessed for tax purposes.
 2. Each parcel is assigned a parcel ID number (PID).
 3. Parcel numbers are used to prepare tax maps (scaled drawings based on recorded plat maps).
 4. Information is used to prepare the tax roll.
 5. Parcel ID numbers are sometimes used to identify a particular parcel.

MEASURES AND TERMS ASSOCIATED WITH THE GOVERNMENT SURVEY SYSTEM

- Check—a square 24 miles on each side (24 miles square) created by intersecting guide meridians and correction lines; used to adjust the grid pattern of squares because of the curvature of the earth (a check contains 16 townships)
- Township—a square 6 miles on each side (6 miles square) containing 36 square miles (36 sections); also a (east-west) strip of land north and south of a baseline (tier)
- Section—a square 1 mile on each side (1 mile square) containing 1 square mile (640 acres)
- Quarter—160 acres, measuring 2,640 feet by 2,640 feet. Historically, it was the area of land originally granted to a homesteader; today, the 160 acres is used to establish the limits of homesteaded property outside the boundaries of a municipality
- Government lot—fractional pieces of land located along banks of lakes and streams
- Acre—43,560 square feet (approximately 208.71 ft. × 208.71 ft.)
- Benchmark—A permanent reference mark affixed to an iron post or brass marker that is embedded in the sidewalk or street, used to establish elevations and altitudes above sea level on surveyed parcels

DISCUSSION QUESTIONS

1. Where do the principal meridian and the base line intersect in Florida? What purpose do the principal meridian and the base line serve?
2. Why does the method of numbering townships start first from east to west and then move west to east?
3. What effect does the word *and* produce when inserted into a government survey system?

CLASSROOM EXERCISES

1. Prepare or reproduce worksheets showing the outside boundaries of a section to give students several legal descriptions to copy, then sketch, within those boundaries.
2. Reproduce portions of county maps. Read from local newspapers the legal descriptions appearing in the legal notice sections. Ask students to locate tracts dealt with in the newspapers.
3. Show the class a plat map of a local subdivision that is familiar to your students. Let them see, digest, and ask questions about this approach to locating and describing property.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Download information concerning the government survey system from the Bureau of Land Management, General Land Office Records, at www.glorerecords.blm.gov. Select “Reference Center” from the home page.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 10 QUIZ

- An acre of land contains how many square feet?
 - 160
 - 640
 - 34,650
 - 43,560
- What term describes a fractional piece of land located along the banks of a river and contains less than 160 acres?
 - Check
 - Government lot
 - Quarter section
 - Township
- How many acres are contained in the following legal description? NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of SW $\frac{1}{4}$ and S $\frac{1}{2}$ of SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 22, T5N, R3W
 - .3125
 - .625
 - 20
 - 30
- Which statement accurately describes the size of a section?
 - A section is 6 miles square.
 - A section contains 36 square miles.
 - A section contains 43,560 square feet.
 - A section contains 640 acres.
- What is the designation of the horizontal strip of land that begins at the base line and extends 6 miles to the north along the entire length of the base line?
 - R1E
 - R1N
 - T1N
 - T1W
- What term is used to denote the exact starting point of a metes-and-bounds legal description?
 - Patent
 - Point of beginning (POB)
 - Principal meridian
 - Township point
- A square 24 miles on each side is called a
 - check.
 - township.
 - quarter section.
 - government lot.
- In Florida, where does the principal meridian intersect with the base line?
 - Jacksonville
 - Miami
 - Orlando
 - Tallahassee
- Which lot contains exactly one-half acre of land?
 - 110 feet by 198 feet
 - 120 feet by 180 feet
 - 125 feet by 175 feet
 - 130 feet by 150 feet
- Which term describes a square that is six miles wide and six miles long?
 - Check
 - Quarter section
 - Section
 - Township

SPECIAL UNIT 10 QUIZ

ANSWER KEY

1. d An acre contains 43,560 square feet. (Hint: to help you remember this number, think of the convenience market “7-11” and the number sequence: 3, 4, 5, 6 [3 + 4 = 7; 5 + 6 = 11]).
2. b A government lot is a fractional piece of land of less than a quarter section, resulting from geographical features (e.g., lakes, streams) interfering with land surveying.
3. d $640 \text{ acres per section} \div 4 \div 4 \div 4 = 10 \text{ acres}$. $640 \text{ acres per section} \div 2 \div 4 \div 4 = 20 \text{ acres}$. $10 \text{ acres} + 20 \text{ acres} = 30 \text{ total acres}$.
4. d A section is one of the primary units of measurement in the government survey system of land description. A section is one mile square and contains 640 acres.
5. c Each tier is numbered beginning at the base line. The first horizontal (east-west) strip of land above (north of) the base line is numbered Township 1 North, or more concisely, T1N.
6. b Metes-and-bounds descriptions begin and end with a starting point called a point of beginning (POB).
7. a A check is a square 24 miles on each side created by intersecting guide meridians and correction lines, used to adjust the grid pattern of squares because of the curvature of the earth.
8. d The Tallahassee Principal Meridian and base line are the reference lines used in surveys in Florida.
9. a $110 \text{ ft.} \times 198 \text{ ft.} = 21,780 \text{ sq. ft.}$ $21,780 \text{ sq. ft.} \div 43,560 \text{ sq. ft. in an acre} = .5 \text{ acre}$.
10. d The grid pattern created by the intersection of two range lines and two township lines forms a 6-mile square called a township. A township contains 36 square miles ($6 \text{ miles} \times 6 \text{ miles} = 36 \text{ square miles}$).

UNIT 10 EXAM QUESTIONS

EXPLANATIONS

1. c $640 \text{ acres per section} \div 4 \div 4 \div 4 = 10 \text{ acres}$.
2. d SW $\frac{1}{4}$ of the S $\frac{1}{2}$ and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$.
3. b The metes-and-bound method describes land by specifying the exterior boundaries of a parcel using compass directions, monuments, or landmarks where directions change and linear measurement of distances between points. *Metes* refers to distance and *bounds* refers to direction.
4. c The government survey system is simple and accurate and allows the land to be described in concise symbols and words, resulting in a kind of land description shorthand.
5. b T3S indicates the third tier of townships south of the base line. R5E indicates the fifth column of ranges east of the principal meridian.
6. c A check is a square measuring 24 miles on each side.
7. d The grid pattern created by the intersection of two range lines and two township lines forms a 6-mile square called a township. A township contains 36 square miles (6 miles \times 6 miles = 36 square miles).
8. a The six-mile-wide vertical (north-south) strips enclosed between range lines are numbered consecutively from 1 both east and west of the principal meridian. A particular range is located by counting to the east or west of the principal meridian. Range 1 East is the first range east of the principal meridian.
9. c The township due north of T1N is T2N, indicating it is located in the tier of townships just north of tier 1. Because we did not move east or west, the range number did not change.
10. d There are 36 sections in a township. A township is a square 6 miles by 6 miles, containing an area of 36 square miles (not 36 acres).
11. b In writing a legal description of a section, it is customary to show the section number first, then the township tier number and direction, and lastly the range number and direction.
12. d Each section measures one mile on each side. There are six sections from the north boundary of a township to the south boundary of a township; however, the question asked for the north boundary of Section 36 (not the south boundary).
13. d $640 \text{ acres per section} \div 4 \div 4 \div 2 = 20 \text{ acres}$.
14. b NW $\frac{1}{4}$ equals: $640 \text{ acres} \div 4 = 160 \text{ acres}$; $160 \div \frac{1}{2} = 80 \text{ acres}$.
15. b A plat map is an engineer's plan for land use superimposed on a map of the land. It shows the lot divisions and street locations, and it may provide for dedication of streets, parks, and school sites to the county or community. Actual dimensions for lots, streets, and other planned improvements are shown.



REAL ESTATE CONTRACTS

UNIT OVERVIEW

Success in the real estate business is not possible until contracts have been prepared, executed, and performed. Brokers and sales associates must understand the content and uses of contracts well enough to explain them to buyers and sellers. Common to all contracts is the *promise*: in a real estate contract, the seller promises to convey title to the real estate and the buyer promises to pay the purchase price.

This unit explains the legal aspects of contracts and defines the various types of contracts used by the real estate industry. The form of a contract has nothing to do with making the instrument valid. Validity is assured by including all the essential elements of a real estate contract. Methods of terminating contracts and obligations created by contractual arrangements are also described.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- List and describe the essentials of a contract, list the four types of contracts with which licensees may assist buyers and sellers, and describe the effect of the statute of frauds and the statute of limitations.
- Distinguish among formal, informal, bilateral, unilateral, implied, express, executory, and executed contracts.
- Describe the various ways an offer is terminated.
- Describe the various methods of terminating a contract and explain the remedies for breach of contract.
- Differentiate among the various types of listings.
- Describe the elements of an option contract.
- List and describe the information contained in a sale contract.
- Explain and describe the various disclosures required in a real estate sale contract.
- Recognize what constitutes fraud, misrepresentation, and culpable negligence.

KEY TERMS

assignment	homeowners association (HOA)	procuring cause
attorney-in-fact	liquidated damages	statute of frauds
bilateral contract	meeting of the minds	statute of limitations
competent	misrepresentation	unenforceable contract
contract	net listing	unilateral contract
enforceable contract	novation	valid contract
exclusive-agency listing	open listing	void contract
exclusive-right-of-sale listing	option contract	voidable contract
fraud		

TEACHING OUTLINE

- I. Contracts in General
 - A. Defines the parties' legal relationship and spells out each party's rights and duties
 1. Voluntary agreement between legally competent parties
 2. Underlying every contract is the promise
- II. Preparation of Contracts
 - A. The drafting of legal documents for others is practicing law.
 - B. Real estate licensees are allowed to draw four types of contracts:
 1. Listing agreements
 2. Buyer brokerage agreements
 3. Sale and purchase contracts (if the licensee acts as an agent or facilitator for one or both of the contracting parties)
 4. Option contracts
 - C. Real estate licensee may not draft the following:
 1. Deeds
 2. Mortgages
 3. Promissory notes
 4. Leases
 - a) Licensees may fill in the blanks on Florida Supreme Court preapproved residential lease instruments for lease periods not to exceed one year.
- III. Essential Elements of a Contract
 - A. A valid contract is one that complies with the provisions of contract law and contains four essential elements:
 1. Contractual capacity of the parties (competent parties)
 - a) Not all persons have the ability or capacity to make a valid contract.

- b) A person who is legally insane, intoxicated, suffering from dementia, or legally a minor may only have limited contractual capacity.
 - c) A minor's contract is voidable.
2. Offer and acceptance (meeting of the minds)
- a) One party (the offeror) makes an offer, and the other party (the offeree) accepts that offer.
 - b) A contract is formed the moment the acceptance of the offer is communicated to the offeror.
3. Agreements of a contract must be for a legal purpose.
4. Consideration
- a) Consideration is something of value given in exchange for some other item of value.
 - b) Mutual promises to perform or forgo some specific act are sufficient consideration, even if the benefit or sacrifice may not be equal.
 - c) *Valuable consideration* is the money or a promise of something that can be measured in terms of money (used to support an arms-length transaction).
 - d) *Good consideration* is a promise that cannot be measured in terms of money, such as love and affection (used to support a gift).
 - e) Misconception is that the good-faith deposit in a contract is the consideration.
 - f) A good-faith deposit (earnest money) is made by a buyer to assure the seller that the buyer is serious about the transaction.
- IV. Statute of Frauds (Chapter 725, F.S.)
- A. Contracts conveying an interest in real property and all contracts that are not performed within one year from the date they become effective must be in writing and signed to be enforceable.
 - B. An *enforceable contract* is a contract that courts will recognize as legally binding.
 - C. Statute of frauds applies to the following:
 - 1. Purchase and sale contracts
 - 2. Option contracts
 - 3. Deeds and mortgage instruments
 - 4. Lease agreements for a term longer than one year
 - 5. Listing agreements for a term longer than one year
 - a) Failure to comply with the statute of frauds may not be illegal, but usually makes the contract unenforceable (i.e., it cannot be proved or will not be recognized by a court).
 - 6. Buyer representation agreements for a term longer than one year

- V. Statute of Limitations
 - A. The period of time, set by statute, during which the terms of a contract may be enforced
 - 1. Written contracts—five years
 - 2. Oral contracts—four years
 - 3. Partly written and partly oral—five years for the written portion and four years for the oral portion
- VI. Transfer of Real Property
 - A. Real estate sale and purchase contracts—must be in writing and signed by all parties who are bound by the agreement to be enforceable
 - 1. Real estate purchase contracts are not required to be witnessed or notarized, and they are not recorded.
 - 2. A contract for the purchase and sale of real estate that is oral does not automatically make the contract unenforceable.
 - 3. An oral real estate contract that contains all of the essential elements of a valid contract is valid and may be enforceable under certain circumstances.
 - B. Elements of a valid and enforceable real estate sale contract (COLIC)
 - 1. Competent parties
 - 2. Offer and acceptance (meeting of the minds)
 - 3. Legal purpose
 - 4. In writing and signed (statute of frauds applies to real estate contracts)
 - 5. Consideration (valuable or good)
 - C. Void, voidable, and unenforceable contracts
 - 1. Void contracts lack one or more of the required elements of a valid contract.
 - 2. Voidable contracts are contracts in which one of the parties is permitted to avoid contractual duties (minor's contract).
 - 3. Unenforceable contracts appear to have all the essential elements, but cannot be enforced in court (statute of frauds, statute of limitations, etc.).
- VII. Contract Classifications
 - A. Formal and informal contracts
 - 1. Formal contracts—historically, in writing and under seal; today, seal *not* required to make valid. A fill-in-the-blank contract on a preprinted form is considered a formal contract.
 - 2. Informal contracts—not in writing; oral (parol contracts)
 - B. Bilateral and unilateral contracts
 - 1. *Bilateral contract* obligates both parties to perform (e.g., sale contract).
 - 2. *Unilateral contract* obligates only one party (e.g., option contract).

- C. Express and implied contracts
 - 1. *Express contract* exists when the parties state the terms of the agreement.
 - 2. *Implied contract* exists when some obligations or conditions are not expressly stated, but may be reasonably implied by actions.
- D. Executory and executed contracts
 - 1. An agreement between parties that involves promises to be completed at a future date is an *executory contract*
 - 2. When both parties have performed their obligations, it is an *executed contract*.

VIII. Contract Negotiation

- A. Sequence—begins with one party (*offeror*) making an offer, followed by the second party (*offeree*) changing the terms or conditions with a counteroffer, et cetera.
- B. Counteroffer—terminates first offer; does not modify or change the first offer
- C. Eight ways to terminate an offer (WILD CARD)
 - 1. Withdrawal by offeror
 - 2. Insanity
 - 3. Lapse of time
 - 4. Death
 - 5. Counteroffer
 - 6. Acceptance
 - 7. Rejection
 - 8. Destruction of the property

IX. Termination of Contracts

- A. A contract is terminated when any of the following happens (BLIMP):
 - 1. Breach—when one of the parties fails to perform a valid obligation
 - 2. Lapse of time—the phrase time is of the essence in a contract means that dates and time limits in the contract must be complied with to avoid breach
 - 3. Impossibility of performance—an impossibility beyond the control of the parties
 - 4. Mutual rescission—agreement between the parties to terminate the contract
 - 5. Performance—most desirable; when all contract terms and conditions have been performed
- B. Remedies for breach are imposed by the court that considers the lawsuit.
 - 1. Specific performance (relief in equity)—court orders the other party to perform according to the terms of the contract
 - 2. Liquidated damages—the amount of damages (usually the earnest money deposit) specified in the contract

3. Rescission—cancellation of the contract and restoration of the parties to their original positions
 4. Compensatory damages—involves a lawsuit to recover the actual amount of the monetary loss to either party—also called unliquidated damages
- C. Assignment and novation
1. Assignment—transfer of rights and/or duties under a contract
 2. Assignor—person who transfers legal rights in a contract to another
 3. Assignee—person to whom legal rights are transferred
 4. Novation—substitution of a new party for the original party
- X. Contracts Important to Real Estate
- A. Listing agreements
1. Employment contract between principal and broker
 2. May be written, oral, or implied
 3. Necessary elements of written listing agreement:
 - a) Definite expiration date with no automatic renewal
 - b) Description of the property
 - c) Listing price and terms
 - d) Broker's compensation (fee or commission)
 - e) Signature(s) of all owner(s) of record
- B. Types of listings
1. Open listing—owner reserves the right to sell and pays the broker who sells the property
 2. Exclusive-agency listing—one broker handles the transaction, and the seller reserves the right to sell the property without paying a commission
 3. Exclusive-right-of-sale listing—listing broker gets paid a commission no matter who sells
 4. Net listing—seller agrees to sell a property for a stated acceptable minimum amount and broker retains the proceeds in excess of the seller's net as commission
- C. Multiple listing service
- D. Buyer brokerage agreements include the following:
1. Parties to and term of agreement
 2. General property characteristics desired by buyer
 3. Broker's obligations
 4. Buyer's obligations
 5. Retainer and compensation
 6. Protection period

7. Early termination and dispute resolution
8. Authorized brokerage relationship
- E. Broker's compensation
 1. The broker's compensation is specified in the listing or buyer brokerage agreement.
 - a) Finding a purchaser requires licensee to find a buyer who is ready, willing, and able to buy at a price and terms acceptable to the seller.
 - b) Effecting a sale requires a title closing for the broker to earn the commission.
 2. The broker earns the commission and then splits the commission with a cooperating broker (if applicable).
 3. The sales associate is paid a split of the employing broker's commission.
 4. To be paid a commission, the broker must do the following:
 - a) Hold a current, active real estate license at the time the listing is entered into and the real estate services are conducted
 - b) Be employed by the seller or buyer through a listing agreement or buyer broker agreement
 - c) Be the procuring cause
 5. To be the procuring cause, the broker must have started the chain of events that resulted in the sale.

XI. Option Contracts

- A. Written agreement between owner and prospective buyer
 1. Must be signed by the seller (owner/optionor)
- B. Unilateral contract
 1. Optionor
 2. Optionee
- C. Consideration—optionee pays a fee for the right to purchase the property for a specified price within a specified period
- D. Information required
 1. Complete terms of the transaction
 2. Exact length of time the option is effective
 3. Price of the property
 4. Complete legal description
- E. Options assignable
- F. Licensee requirements

XII. Sale and Purchase Contracts

- A. Parties to the contract—the *vendor* (seller) and *vendee* (buyer)
- B. Bilateral contract because it contains promises to perform by both parties
- C. Information contained in sale contracts
 - 1. Names of the vendor (seller) and vendee (buyer)
 - 2. Legal description or street address
 - 3. Consideration
 - 4. Purchase price
 - 5. Financing or cash terms
 - 6. Type of deed the seller will deliver
 - 7. Title evidence to be provided
 - 8. Terms of expenses and any prorations to be paid
 - 9. Personal property to be included with the real property
 - 10. Date, time, and place of closing
 - 11. When possession of the property will occur
- D. Spouse's signature
- E. Power to bind the seller or the buyer
 - 1. Broker does not have authority or power to sign a contract for the buyer or seller or to bind the buyer or seller to a contract unless power to do so is specifically granted
 - a) Attorney-in-fact
 - b) General power of attorney
 - c) Special power of attorney
- F. Disclosures
 - 1. Material defects disclosure
 - a) The *Johnson v. Davis* Supreme Court decision requires sellers to disclose all known material defects of residential property.
 - b) The second case (*Rayner v. Wise Realty Co. of Tallahassee*) extends the duty to disclose to licensees.
 - c) An "As Is" provision in a contract does not circumvent the duty to disclose all known material defects.
 - 2. Radon gas disclosure
 - a) Notification shall be provided on at least one form, document, or application executed at the time of, or prior to, contract for sale or rental of any building.
 - b) Specific language is required on the notification as set forth in Section 404.056(5), F.S.
 - c) Disclosure consists only of what radon is; it does not require testing to disclose radon gas levels before sale or lease.

3. Lead-based paint disclosure
 - a) Sellers and landlords must disclose to buyers and tenants the presence of known lead-based paint in residential property built before 1978.
 - b) Sale contracts and leases must include a disclosure about lead-based paint.
 - c) The EPA pamphlet regarding the danger of lead-based paint must be given to buyers and tenants before the sale or lease of residential property built before 1978.
 - d) Sellers must allow homebuyers a 10-day period during which to conduct an inspection for the presence of lead-based paint.
 - e) Contractors who disturb paint in renovations and demolitions of properties built before 1978 must be certified and follow specific work practices.
 - f) If a seller or landlord does not comply with the requirements of the lead-based paint law, a buyer or tenant who is harmed by the presence of lead-based paint may sue the seller or landlord.
4. Energy efficiency disclosure
 - a) The Florida Building Energy-Efficiency Rating Act provides for a state-wide uniform system for rating the energy efficiency of new and existing buildings.
 - b) The rating system applies to all public, commercial, and residential buildings.
 - c) It requires that buyers, at the time of or before signing a sale contract, receive an information brochure notifying the purchasers of the option for an energy-efficiency rating on the building.
 - d) The brochure contains a notice to residential purchasers that the energy-efficiency rating may qualify the purchaser for an energy-efficient mortgage from a lending institution.
5. Homeowners association disclosure
 - a) Florida law requirement that sellers of property subject to a mandatory homeowners association provide buyers with a disclosure summary
 - b) Required language in sale contract warning buyer not to sign the contract until buyer has received and read the homeowners' disclosure
6. Property tax disclosure
 - a) Buyers should not rely on the seller's current property taxes as the amount of property taxes the buyers may be obligated to pay in the year subsequent to purchase.
 - b) A change of ownership or property improvements triggers reassessments of the property that could result in higher property taxes.
 - c) Licensees should direct their buyers to contact the county property appraiser's office with any questions for information.

7. Building code violation disclosure
 - a) Sellers who have been cited or have pending enforcement for building code violations are required to disclose in writing to the buyer
 - b) Seller must give the buyer a copy of all documents related to the violation or enforcement actions
8. Community development district (CDD)
 - a) CDDs construct, operate, and maintain communitywide infrastructure and services for the benefit of its residents.
 - b) CDDs provide an alternative way to fund and construct capital infrastructure to service projected growth without overburdening other governments and their taxpayers.
 - c) Initial contracts for sale of a parcel of real property and initial contracts for residential units within the CDD are required by law to include a disclosure to purchasers.

XIII. Misrepresentation and Fraud

- A. Misrepresentation is the misstatement of fact or the omission or concealment of a factual matter.
- B. The elements of fraud are the following:
 1. Licensee made a misstatement or failed to disclose a material fact.
 2. Licensee either knew or should have known that the statement was not accurate or that the undisclosed information should have been disclosed.
 3. The party to whom the statement was made relied on the misstatement.
 4. The party to whom the statement was made was damaged.

DISCUSSION QUESTIONS

1. Considering one's daily activities, what examples of implied contracts may be found in your everyday transactions?
2. What does the phrase *time is of the essence* mean?
3. Which legal instruments may be prepared by real estate licensees without violating state laws? Why?

CLASSROOM EXERCISES

1. Ask the class to create an imaginary situation involving an implied listing.
2. Have the class use information in the textbook to prepare both the listing contract and the sale contract. Encourage students to ask questions about the information and contracts to promote accuracy and to increase learning.
3. Distribute blank copies of both contract forms that you use in the business. Discuss with your students the highlights of the standards printed on the back of the purchase and sale contract. (For enhanced teaching/learning, obtain a sample two-page copy of the standards that is available from FAR with larger, easier-to-read print.)

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Download a copy of the information booklet *Home Buyer's and Seller's Guide to Radon* at <https://www.epa.gov/radon> click on link labeled "home-buyers-and-sellers-guide-radon."

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

1. What type of listing is given to one broker and promises commission to the listing broker provided the owner does NOT find the buyer?
 - a. Exclusive-agency listing
 - b. Exclusive-right-to-sell listing
 - c. Open listing
 - d. Implied listing
2. When all parties to a contract have completely performed all obligations and promises contained in the contract, it is
 - a. a unilateral contract.
 - b. an executed contract.
 - c. an executory contract.
 - d. an express contract.
3. A remedy for breach of contract that asks the courts to force the other party to proceed as the contract states is called
 - a. rescission on breach of contract.
 - b. compensatory damages.
 - c. specific performance.
 - d. liquidated damages.
4. The lead-based paint disclosure must be given to
 - a. buyers of all single-family homes.
 - b. tenants and buyers of all residential property.
 - c. tenants and buyers of all residential property built before 1978.
 - d. tenants and buyers of all rental property if a family member is under the age of two.
5. What is the statute of limitations for oral contracts?
 - a. Two years
 - b. Three years
 - c. Four years
 - d. Five years
6. What does Florida's homeowners association law require of sellers who own property subject to a mandatory homeowners association?
 - a. The seller must provide the buyer with a disclosure summary regarding the association.
 - b. The seller must inform the buyer that he will be required to escrow the association dues.
 - c. The seller is not required to provide any disclosures to the buyer provided the information is available in the public records.
 - d. The seller must provide the buyer with information regarding how to register the new owner's membership in the association with the DBPR.
7. The following are required essential elements of a valid real estate contract EXCEPT
 - a. offer and acceptance.
 - b. legality of object.
 - c. acknowledgment.
 - d. consideration.
8. The Florida statute of limitations defines
 - a. requirements for enforceable contracts exclusively for the sale of land.
 - b. prescribed penalties for violations of F.S. 475.
 - c. the time that a written contract is legally enforceable.
 - d. the technical terms of advertisements regarded as deceptive.
9. A buyer has breached a real estate sale contract. The seller wants to recover damages in excess of the earnest money deposit. Which remedy for breach should the seller use?
 - a. Specific performance
 - b. Compensatory damages
 - c. Liquidated damages
 - d. Rescission on breach of contract

10. Which statement is TRUE regarding the Florida Energy Efficiency Rating Act?
- a. If requested in writing, sellers must furnish buyers with an energy-efficiency rating for the structure.
 - b. Sellers are required to pay the cost of an energy-efficiency rating on all homes built before 1978.
 - c. Most lenders require that an energy-efficiency rating be conducted before approving a mortgage loan.
 - d. Sellers must furnish buyers an information brochure notifying the buyer of the right to conduct an energy-efficiency rating on the structure.

SPECIAL UNIT 11 QUIZ

ANSWER KEY

1. a A seller gives an exclusive-agency listing to one broker who handles the transaction. The seller reserves the right to sell the property without paying a commission, unless the buyer was introduced to the property by the broker or others acting under the broker.
2. b An executed contract exists when both parties have completed their obligations. All of the parties to the contract have performed the promises stated in the contract.
3. c If awards of money damages do not afford sufficient relief, the wronged party may sue for specific performance to have the courts force the other party to perform as the contract specifically states.
4. c When a real estate licensee lists pre-1978 property for sale, it becomes the responsibility of the licensee to make certain sellers comply with the law. The federal law does not require the testing or removal of lead-based paint. The focus of the law is disclosure of lead-based paint dangers and its presence.
5. c Oral (parol) contracts are enforceable for four years.
6. a Florida law requires sellers of property subject to a mandatory homeowners association to provide buyers with a disclosure summary regarding the association, the existence of restrictive covenants, and any assessments that the association imposes.
7. c A valid contract is one that complies with the provisions of contract law and contains four essential elements: (1) contractual capacity of the parties, (2) offer and acceptance, (3) legality of object, and (4) consideration.
8. c The statute of limitations designates the period during which the terms of a contract may be enforced. It protects people from being compelled to perform or otherwise be sued after a period of time has expired. The times vary depending on whether it is an oral contract or a written contract.
9. b Compensatory damages involve a lawsuit to recover the actual amount of the monetary loss to either party (also called *unliquidated* damages).
10. d The Florida Building Energy-Efficiency Rating Act requires that buyers, at the time of or before signing a sale contract, receive an information brochure notifying the purchaser of the option for an energy-efficiency rating on the building. The brochure contains a notice to residential purchasers that the energy-efficiency rating may qualify the purchaser for an energy-efficient mortgage from a lending institution.

UNIT 11 EXAM QUESTIONS

EXPLANATIONS

1. c There are four types of contracts that licensees may assist buyers and sellers with completing. They are listing agreements, buyer brokerage agreements, sale contracts, and option contracts.
2. b The statute of frauds requires that certain real estate instruments and contracts affecting title to real property be in writing to be enforceable.
3. a Lease agreements are not covered in the statute of frauds unless they are for more than one year.
4. a Something is valid when it is sufficient to be legally binding and enforceable. Real estate contracts must be in writing to be enforceable (with two exceptions).
5. d One of the essentials of a contract is the contractual capacity of the parties. The parties to a contract are competent if they have the legal capacity to contract, meaning they have no mental defects or insanity and are of legal age to contract.
6. a Good consideration is a promise that cannot be measured in terms of money, such as love and affection.
7. b An oral agreement is also called a parol contract. Informal or parol contracts are verbal agreements as opposed to written or formal contracts.
8. c An executory contract is an agreement containing some act or condition that remains to be completed. A purchase and sale real estate contract, between the time of signing the contract and the time that the title is conveyed from the grantor to the grantee, is an executory contract because the parties have not fully performed.
9. d When a counteroffer is made, it kills the original offer and substitutes a new offer in its place. In this manner, the offeree who received the original offer has become the offeror by creating a different set of terms or conditions and offering them back to the original offeror, who now becomes the offeree.
10. d An extension will continue (not terminate) an offer.
11. d The commission check may be made payable to the sales associate, provided the broker has given the closing agent written authorization and instructions regarding the specific amount of commission the associate is to be paid for a particular transaction.

12. c If the listing contract authorizes single agency, the property owner is the principal of the broker, and the broker acts as the principal's agent in handling the transaction. Although the broker does operate, to a limited degree, as the principal's agent, the broker does not have the authority or power to sign a contract for the principal or to bind the principal to a contract unless the power to do so is specifically granted.
13. b Assignment is a transfer of rights and duties under a contract.
14. d The broker is due a commission regardless of who finds the buyer when the parties have entered into an exclusive-right-of-sale listing. The listing broker offering cooperation to other brokerage firms may submit the listing to the MLS. A listing agreement is a contract of employment, and the seller must consent (agree) to the terms of the agreement.
15. d A radon disclosure on real estate sale and lease contracts is required before or at the time of executing a sale contract or a rental agreement. The disclosure explains what radon is.
16. c The broker is obligated to disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer. Personal information concerning the seller, previous occupants of the property, or the demographics of the area are not material to the physical real estate.
17. b Frequently, the parties will stipulate that the earnest money deposit is to be paid to the seller in the event of default by the buyer.
18. c The exclusive-right-of-sale listing is the most advantageous listing from the broker's viewpoint. An exclusive-right-of-sale listing ensures one broker a commission, regardless of who sells the property.
19. a The statute does not address the liability of the seller regarding the costs associated with the code violation. Liability costs should be addressed and negotiated in the contract for sale and purchase.
20. c The real estate sale contract for homes built before 1978 must include a disclosure concerning lead-based paint. Sellers are required to disclose the presence of any known lead-based paint in the home, and buyers and renters must be given an EPA pamphlet regarding lead-based paint.

12

RESIDENTIAL MORTGAGES

UNIT OVERVIEW

Almost every real estate transaction involves some type of financing. In fact, the key to most transactions, large or small, is the ability to obtain acceptable financing. It is, therefore, very important that prospective licensees become acquainted with and develop a working knowledge of the basics of real estate finance. Real estate finance is a rapidly changing area of the real estate business in which newer financing techniques must be understood, along with the fundamentals.

This unit explains the basics of residential mortgages.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Describe the mortgage instrument and the promissory note.
- Distinguish between title theory and lien theory.
- Describe the essential elements of the mortgage instrument.
- Describe the various features of a mortgage, including down payment, loan-to-value ratio, equity, interest, loan servicing, escrow account, PITI, discount points, and loan origination fee.
- Calculate the loan-to-value ratio, explain the use of discount points, and calculate the approximate yield on a loan.
- Explain assignment of mortgage and the purpose of an estoppel certificate.
- Distinguish among the various methods of purchasing mortgaged property.
- Explain the foreclosure process, distinguish between judicial and nonjudicial foreclosure, and describe the mortgagor's and mortgagee's rights in a foreclosure.

KEY TERMS

acceleration clause	estoppel certificate	novation agreement
assignment of mortgage	first mortgage	partial release clause
assumption	foreclosure	PITI
blanket mortgage	hypothecation	prepayment clause
buydown	interest	prepayment penalty
contract for deed (land contract)	land development loan	promissory note
deed in lieu of foreclosure	lien theory	receivership clause
default	lis pendens	right to reinstate
defeasance clause	loan origination fee	satisfaction of mortgage
discount points	loan servicing	short sale
due-on-sale clause	loan-to-value ratio (LTV)	subject to
equity	mortgage	subordination agreement
equity of redemption	mortgagee	takeout commitment
escrow	mortgagor	title theory

TEACHING OUTLINE

- I. Loan Instruments
 - A. Mortgage
 1. An instrument that pledges the property as security (collateral) for the debt
 2. The legal document that, when recorded, creates a lien on the real estate that secures the debt
 3. Hypothecation—the pledging of property as security for payment of the loan without surrendering possession of the property
 4. Parties to a mortgage
 - a) Mortgagor—borrower, debtor—gives mortgage
 - b) Mortgagee—lender, creditor—receives mortgage
 - B. Promissory note
 1. A note is evidence of a debt and a promise to repay that makes the borrower personally liable for the obligation.
 2. The note is a separate legal instrument that must be signed by the borrower.
 3. A note must accompany all mortgages in Florida.
 - C. Mortgage lien priority
 1. First mortgage to be recorded is the first mortgage.
 2. The priority of a lien is determined by its recording date, with a few exceptions.
 3. Mortgage lien priority may change if the lienholders agree to a subordination agreement.
 - D. Satisfaction of mortgage
 1. When the debt is paid in full, the mortgagee executes and records a satisfaction of mortgage (or a release of mortgage).

- II. Mortgage Law
 - A. Lien theory
 - 1. The borrower retains title to the property.
 - 2. The lender places a lien (claim) on the title to the property. (If the borrower defaults, the lender will foreclose to recover the money owed.)
 - 3. Most states, including Florida, are lien theory states.
 - B. Title theory
 - 1. Conveyance of the legal title to property to the lender is through a mortgage deed or deed of trust.
 - 2. The borrower retains equitable title to the property.
 - 3. Once the debt is paid in full, the lender conveys legal title to the borrower.
- III. Essential Elements of a Mortgage
 - A. Borrower's covenants and agreements
 - 1. Promise to repay
 - 2. Taxes and liens
 - 3. Property insurance
 - a) Extended coverage policy
 - b) Flood insurance coverage, if applicable
 - 4. Occupancy
 - 5. Maintenance and covenant of good repair
 - B. Important mortgage provisions
 - 1. Prepayment clause—in Florida, borrower has right to prepay unless mortgage instrument states otherwise
 - 2. Prepayment penalty clause—allows extra charge if any amount of loan is paid off early
 - 3. Acceleration clause—allows due date to be advanced
 - 4. Right to reinstate—borrower's right to reinstate the original repayment terms in the note after the mortgagee has initiated the acceleration clause (equity of redemption)
 - 5. Due-on-sale clause—prevents assumption
 - 6. Defeasance clause
 - a) Defeats the prior action when the borrower-mortgagor has made the final payment on the loan
 - b) In title theory states, defeats the conveyance of legal title and returns legal title to the borrower-mortgagor
 - c) In lien theory states, defeats the mortgage lien and the property is no longer pledged as collateral

- IV. Mortgage Features
 - A. Down payment—the amount of cash the buyer will pay for the purchase
 - B. Loan-to-value ratio—the loan as a percentage of the purchase price
 - C. Equity—the difference between the value of the property and the mortgage debt
 - D. Interest—the cost of using borrowed funds
 - E. Loan servicing—when a lender handles the payment collection and recordkeeping for a loan sold to an investor
 - F. Escrow (impound) account—a monthly payment the lender collects to pay property taxes and hazard insurance
 - G. PITI—consists of monthly principal, interest, taxes, and insurance payment
 - H. Discount points—prepaid interest charged by the lender to increase the real yield
 - I. Loan origination fee—a charge by the lender to make the loan; typically 1–2% of the loan amount
- V. Loan-to-Value Ratio Calculation
 - A. Calculated by dividing the mortgage loan amount by the property's sale price or appraised value
 - B. Discount point calculations
 - 1. Discounting results in increased yield to lender without an increase in the contract interest rate.
 - 2. Discount points are up-front charges paid at closing (prepaid interest) to increase the lender's yield.
 - 3. Each discount point is used as though it were 1% of the mortgage amount.
 - 4. Each discount point is equivalent to $\frac{1}{8}$ of 1% increase in the interest rate (yield).
 - a) $\frac{1}{8}$ is the same as taking $1 \div 8 = .125$.
 - b) Multiply the number of discount points by .125 to determine the increase in yield.
 - 5. When a lender says loans are at 95, it means 5 discount points are charged.
- VI. Assignment of Mortgage
 - A. Ownership of a mortgage is transferred from one company or individual to another.
 - 1. Legal instrument stating mortgagee assigns the mortgage and promissory note to the purchaser
 - 2. The assignment of mortgage is signed by the assignor (mortgagee) and delivered to the assignee (investor)
 - B. Purpose of an estoppel certificate
 - 1. To stop a claim that the amount owed is different from the actual unpaid balance or the interest rate is different from the contracted rate
 - 2. Used when the property sale involves a condo association or a homeowners association, a mortgage lien on the property, or a tenant-occupied property

- VII. Methods of Purchasing Mortgaged Property Encumbered by an Existing Mortgage Loan
- A. Methods
1. Assumption of an existing mortgage
 - a) The buyer agrees to assume the seller's debt.
 - b) The buyer executes a promissory note and becomes primarily liable for the debt.
 - c) The seller is still liable for the debt on the original promissory note.
 - d) If the seller wants to be completely free of the original mortgage obligation, the seller, buyer, and lender must execute a novation agreement.
 - (1) The novation makes the buyer solely responsible for any default on the mortgage loan.
 - (2) An assumption with novation allows the buyer to assume the mortgage and assign to the buyer alone the personal liability for the balance of the loan.
 - (3) A due-on-sale clause prevents assumption.
 2. Subject to the mortgage
 - a) The buyer makes payments on mortgage in order to retain possession; the buyer assumes no obligation for the note or the mortgage.
 - b) If buyer defaults and property is foreclosed, and if mortgage debt is not satisfied from proceeds of sale, proceedings are directed against the original mortgagor.
- B. Contract for deed (land contract)
1. Generally used to purchase vacant or unimproved land but may be used to acquire almost any type of real property
 2. Used when the buyer does not have enough money for the required down payment
 3. Buyer—contracts to pay designated amount periodically until agreed amount is paid; seller—contracts to deliver deed only when agreed amount is paid
 4. Title—kept by seller (vendor) until designated amount of equity is paid over the period of time; buyer (vendee) is granted equitable title and takes possession of the property
 5. When buyer's equity reaches designated amount, buyer can assume existing mortgage or obtain a new mortgage and receive the deed
 6. In case of default, foreclosure proceedings same as for conventional mortgage
 7. Contract for deed—should be drawn by competent attorney to protect interests of both parties

- VIII. Land Development Loans and Construction Loans
 - A. Land development loans
 - B. Construction loans
 - C. Blanket mortgage loans
 - D. Takeout commitment
 - E. Buydown
- IX. Default
 - A. Foreclosure—enforcement of the mortgage lien
 - 1. Mortgagee's two types of remedies:
 - a) Initiate a suit on the promissory note
 - b) Initiate a foreclosure proceeding
 - B. Equity of redemption—allows the mortgagor to prevent foreclosure from occurring by paying the mortgagee the principal and interest due plus any expenses
 - 1. Right of equity of redemption ends once the property has been sold at foreclosure sale
 - 2. Statutory redemption period (not in Florida)—allows the mortgagor to redeem a foreclosed property for a specified period after the foreclosure sale
 - C. Short sale—all lienholders agree to permit property to be sold for less money than will pay the debt
 - D. Deed in lieu of foreclosure (friendly foreclosure)
 - 1. A nonjudicial procedure (does not involve a lawsuit) is called deed in lieu of foreclosure.
 - 2. A borrower who is in default under the terms of the agreement gives title (deed) to the lender to avoid judicial foreclosure.
 - E. Income property
 - 1. Receivership clause allows a receiver to be appointed to collect income from the property and use the income to make mortgage payments in the event of default
 - F. Lis pendens
 - 1. A lis pendens is a notice recorded in the public records (constructive notice) of a pending legal action that involves real estate.
 - 2. The notice states the names of the parties, the object of the action, and a legal description of the property.
 - 3. A lender initiating a lawsuit to foreclosure on a mortgage will file a lis pendens in the county records where the property is located.

DISCUSSION QUESTIONS

1. Who is the mortgagee in a home loan situation?
2. Why would a lender commit to lend \$40,000 to a builder who only had a \$10,000 lot for security?
3. What is the purpose of the note in real estate financing?
4. How does a lender get repaid if foreclosure does not produce an adequate amount to pay the mortgage debt?
5. What is the difference between a prepayment clause and a prepayment penalty clause in a mortgage instrument?

CLASSROOM EXERCISES

1. Ask students to search for current news items related to local, state, or federal activity affecting mortgages or mortgage interest rates.
2. Invite a local mortgage loan representative to speak to the class about loan processing or current market conditions.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 12 QUIZ

1. A local lender charged 7% interest plus 4 points on a conventional mortgage loan. What was the approximate yield on the loan?
 - a. 7.25%
 - b. 7.375%
 - c. 7.5%
 - d. 7.75%
2. Which pair does NOT belong together?
 - a. Equity of redemption—remedy for borrower to prevent foreclosure
 - b. Mortgagee—borrower
 - c. Mortgagor—gives the mortgage as security for the debt
 - d. Due-on-sale clause—assumption not allowed
3. A buyer pays \$198,000 for a home and secures a mortgage for 80% of the purchase price. The mortgage is for 6% plus 2 points. How much did the buyer pay in discount points?
 - a. \$792
 - b. \$2,810
 - c. \$3,168
 - d. \$3,960
4. Florida law requires the lender to execute a release of mortgage within 60 days, also called a
 - a. due-on-sale clause.
 - b. hypothecation.
 - c. right to reinstate.
 - d. satisfaction of mortgage.
5. Lenders sometimes handle the loan payment collection and recordkeeping associated with mortgage loans called
 - a. open-market operations.
 - b. leverage.
 - c. loan origination fees.
 - d. loan servicing.
6. If a foreclosed property fails to bring sufficient proceeds at the foreclosure sale to pay the debt, the lender
 - a. must absorb the loss as a bad investment.
 - b. may seek recovery of the loss from the Real Estate Recovery Fund.
 - c. may obtain an interpleader judgment for the amount of deficit.
 - d. may obtain a deficiency judgment for the amount of deficit.
7. In a title theory state, which clause requires the lender to return legal title to the mortgagor when the debt is satisfied?
 - a. Acceleration
 - b. Covenant against removal
 - c. Defeasance
 - d. Prepayment
8. What document transfers ownership of a mortgage and note from the original mortgagee to an investor?
 - a. Assignment of mortgage
 - b. Deed in lieu of foreclosure
 - c. Estoppel certificate
 - d. Satisfaction of mortgage
9. A contract that allows another mortgage created at a later date to take priority is called a
 - a. subordination agreement.
 - b. takeout agreement.
 - c. partial release contract.
 - d. loan servicing agreement.
10. A buyer agrees to purchase a house for \$262,500 and will receive a mortgage loan for \$210,000. How much is the buyer's down payment?
 - a. \$21,000
 - b. \$42,500
 - c. \$45,000
 - d. \$52,500

SPECIAL UNIT 12 QUIZ

ANSWER KEY

1. c $4 \text{ points} \times .125\% = .5\%$. $7 + .5 = 7.5\%$ yield.
2. b There are two parties to a mortgage: (1) the mortgagor or borrower (debtor), and (2) the mortgagee or lender (creditor).
3. c $\$198,000 \text{ purchase price} \times .80 \text{ rate} = \$158,400 \text{ mortgage}$. $\$158,400 \times .02 \text{ rate} = \$3,168 \text{ points}$.
4. d A satisfaction of mortgage is also called a release of mortgage. Florida statute requires that the mortgagee cancel the mortgage and send the recorded satisfaction to the mortgagor within 60 days. This document returns to the mortgagor all interest in the real property that had been conveyed to the mortgagee.
5. d Some lenders handle the loan payment collection and recordkeeping for the mortgages they originate. Loan servicing is an additional source of income for lenders.
6. d If the proceeds are not sufficient to satisfy the outstanding debt, the mortgagee may request that the court issue a deficiency judgment against the person(s) who signed the note.
7. c The defeasance clause, in title theory states, requires the lender to convey legal title to the borrower once the debt is repaid.
8. a Assignment of mortgage transfers ownership of a mortgage and note from one company or individual to another.
9. a The priority of liens may be changed by a written agreement called a subordination agreement. Under a subordination agreement, the holder of a prior lien (lien with an earlier recording date) agrees to allow a junior lienholder's interest to move ahead of the prior lien.
10. d $\$262,500 - \$210,000 = \$52,500$.

UNIT 12 EXAM QUESTIONS

EXPLANATIONS

1. b A note is a promise to repay that makes the borrower personally liable for the obligation.
2. c A contract for deed is a financing technique wherein the seller agrees to deliver the deed at some future date and the buyer takes possession while paying the agreed amount.
3. c The defeasance clause is a provision in a mortgage that specifies the terms and conditions to be met to avoid default and thereby defeat the mortgage.
4. d $\$200,000 \text{ loan} \div \$250,000 \text{ purchase price} = .80$ or 80% LTV.
5. c The equity of redemption is the right of a mortgagor, before a foreclosure sale, to reclaim forfeited property by paying the entire indebtedness.
6. a The acceleration clause is a stipulation in a mortgage that the entire unpaid balance of the debt may become due and payable if a default should occur.
7. d A mortgage is a contract between the mortgagor (borrower) and the mortgagee (lender).
8. d A buyer (or vendee) makes regular periodic payments on the mortgage, but does not assume responsibility for the mortgage. The seller (or vendor) remains liable for the mortgage.
9. c Filing the satisfaction of mortgage in the public records shows that the mortgage lien has been removed.
10. a A prepayment penalty provides for a penalty for early repayment of the debt.
11. c In an assumption with novation, the buyer signs a new note and the lender releases the original borrower from liability.
12. b $\$116,000 \text{ purchase price} \times .80 \text{ LTV} = \$92,800 \text{ loan amount}$. $\$116,000 - \$92,800 = \$23,200 \text{ down payment}$.
13. c The purpose of an estoppel certificate is to stop a claim that the amount owed is different from the actual unpaid balance or that the interest rate is an amount other than the contracted rate.
14. c A lis pendens (Latin for *action pending*) is a notice recorded in the public records (constructive notice) of a pending legal action that involves real estate.
15. c $\$125,000 \text{ purchase price} \times .80 \text{ rate} = \$100,000 \text{ mortgage}$. $\$100,000 \times .025 \text{ rate} = \$2,500 \text{ points}$.
16. a A receiver is an independent party appointed by a court to impartially preserve and manage property that is involved in litigation, pending final disposition of the matter before the court.

UNIT 12 Residential Mortgages

17. a Discount points are an up-front charge paid at closing to increase the lender's yield. One discount point is equal to 1% of the loan amount. Each discount point charged increases the lender's yield by approximately $\frac{1}{8}$ of 1%.
18. b $3 \text{ points } (3\%) \times .125 = .375\%$. $7\% + .375 = 7.375\%$.
19. d $\$2,840 \div 12 = \236.67 . $\$1,570 \div 12 = \130.83 . $\$236.67 + \$130.83 = \$367.50$. $\$846.21 + \$367.50 = \$1,213.71$.
20. a $\$350,000 \text{ market value} - \$300,000 \text{ leverage amount} = \$50,000 \text{ equity}$.

13

TYPES OF MORTGAGES
AND SOURCES OF
FINANCING**UNIT OVERVIEW**

The various types of mortgages are presented in this unit, including adjustable rate, amortized, and FHA and VA mortgage loan programs. The process of qualifying for a mortgage and calculating qualifying ratios is also explained. The unit also describes the role of the secondary mortgage market and the major provisions of federal laws regarding fair credit and lending procedures.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Explain the process of qualifying for a loan and calculate the qualifying ratios for different types of mortgage loan programs.
- Describe the features of conventional mortgages.
- Describe the features of an amortized mortgage and an adjustable-rate mortgage, including the components of an adjustable-rate mortgage.
- Describe the characteristics of FHA-insured mortgages and common FHA loan programs.
- Identify the guarantee feature of VA mortgage loans and the characteristics of VA loan programs.
- Distinguish among the various types of purpose-specific mortgage products.
- Distinguish among the primary sources of home financing.
- Describe the role of the secondary mortgage market and know the features of the major agencies active in the secondary market.
- Recognize and avoid mortgage fraud.
- Describe the major provisions of the federal laws regarding fair credit and lending.

KEY TERMS

adjustable-rate mortgage (ARM)	index	payment cap
amortized mortgage	intermediation	periodic cap
annual percentage rate (APR)	level-payment plan	primary mortgage market
balloon payment	lifetime cap	principal
biweekly mortgage	Loan Estimate	private mortgage insurance (PMI)
Closing Disclosure	margin	purchase money mortgage (PMM)
conforming loan	mortgage broker	reverse mortgage
conventional loan	mortgage fraud	secondary mortgage market
demand deposit	mortgage insurance premium (MIP)	teaser rate
disintermediation	mortgage lender	total obligations ratio (TOR)
entitlement	mortgage loan originator (MLO)	triggering terms
home equity conversion mortgage (HECM)	negative amortization	up-front mortgage insurance premium (UFMIP)
home equity loan	nonconforming loan	
housing expense ratio (HER)	package mortgage	
	partially amortized mortgage	

TEACHING OUTLINE

- I. Qualifying for a Loan
 - A. Loan application process
 1. Uniform Residential Loan Application (URLA) form used to qualify borrowers applying for one-family to four-family property
 2. Credit report is ordered to determine the applicant's debt and credit score
 - a) A credit score is a number that is calculated based upon the borrower's repayment history and the amount and types of debit.
 - b) Lenders use credit scores to measure potential risk of making a loan.
 3. Qualifying ratios analyze the applicant's total monthly expenses in relation to the applicant's monthly gross income
 4. Qualifying the property accomplished with a property appraisal
 5. Preapproval and prequalification
 - a) Prequalifying does not involve a credit report.
 - b) A preapproval letter defines the loan amount the buyer is approved to receive.
- II. Conventional vs. Nonconventional Mortgage Loans
 - A. Two general categories of mortgage loans
 1. Conventional—carry no government guarantee or government insurance
 2. Nonconventional—backed by the federal government and include FHA-insured and VA-guaranteed loans

- B. Conventional mortgage loan features
 - 1. Interest rate
 - a) Private lenders make conventional mortgage loans.
 - b) Interest rate for conventional mortgages reflect market conditions.
 - 2. Fixed-rate conventional loans include a due-on-sale clause (not assumable)
 - 3. Prepayment clause is contained in a fixed-rate conventional mortgage
 - 4. Down payment and private mortgage insurance
 - a) Conventional loans require the borrower to make a larger down payment (equity) compared with nonconventional loans.
 - b) Private mortgage insurance (PMI) is required for conventional loans that finance more than 80% of the purchase price.
 - c) PMI protects lenders in case the borrower defaults.
 - 5. Loan-to-value ratio
 - a) A financial term to describe the ratio between the loan amount and the property value.
 - b) Review formula to calculate the LTV ratio.
 - c) LTV used to determine whether the borrower will have to purchase PMI.
- C. Qualifying for a conventional mortgage loan
 - 1. Conventional loans have more stringent qualifying requirements compared with nonconventional loans.
 - a) Qualifying requirements are established by Fannie Mae and Freddie Mac guidelines.
 - 2. Lenders—use two qualifying ratios
 - a) Housing expense ratio (HER) is calculated by taking monthly housing expenses (PITI) and dividing by monthly gross income (review calculation).
 - b) The recommended HER for a conventional mortgage loan is up to 28%.
 - c) Total obligations ratio (TOR) is a measure of a borrower's total installment obligations divided by monthly gross income (review calculation).
 - d) The recommended TOR for a conventional mortgage is 36%.

III. Common Types of Mortgages

A. Amortized mortgage

- 1. A fixed-rate amortized mortgage consists of a series of fixed, equal monthly payments over the loan term.
- 2. At end of the loan term, loan is completely paid off.
- 3. Principal and interest included in each payment.

UNIT 13 Types of Mortgages and Sources of Financing

4. Monthly payments are constant (same) each month.
 - a) Also called level-payment plan mortgage because the borrower pays the same mortgage payment each month.
 - b) As loan is repaid, principal amount increases and interest amount decreases.
 5. 30-year and 15-year terms
 6. Mortgage amortization table
 - a) Outstanding amount of debt (principal)
 - b) Interest rate
 - c) Amortization allocates each monthly payment into two components:
 - (1) Interest paid
 - (2) Principal paid
 - d) Three figures must be inserted into formula to create an amortization table
 - (1) Loan amount
 - (2) Interest rate
 - (3) Loan term
- B. Adjustable-rate mortgage
1. An adjustable-rate mortgage (ARM) is a loan that has an interest rate that can change at preset intervals, based on a predetermined index
 - a) ARM loans do not have a due-on-sale clause (assumable)
 2. Components of adjustable-rate mortgages
 - a) Index is an economic indicator used to adjust the interest rate
 - b) Margin (spread) is the percentage added to the index and represents the lender's cost of doing business plus profit.
 3. Calculated interest rate: index plus margin = calculated interest rate
 4. Adjustment interval is how often the interest rate adjusts
 5. Interest rate caps
 - a) Periodic cap limits the amount the interest rate may increase at any one time.
 - b) Lifetime cap limits the total amount the interest rate may increase over the life of the loan.
 6. Payment cap—limits monthly payment increase; unpaid interest added to loan balance (negative amortization)
 7. Teaser rate is a below-market interest rate
- IV. Government-Insured FHA Program
- A. Purpose of the FHA is to stimulate homeownership
1. A government agency within HUD

2. FHA loans are fully insured by the government
 3. Less stringent credit score requirements and other qualifying criteria compared with conventional loans
 4. Most popular loan program is Section 203(b) loan (fixed-rate mortgage loan)
- B. FHA mortgage loan features
1. Interest rate
 - a) Interest rate is negotiable between the lender and the borrower
 - b) Interest rate is not set by the FHA or HUD
 2. Discount points
 - a) Lenders may charge discount points.
 - b) Discount points may be paid by either the seller or the buyer.
 3. Assumption
 - a) FHA mortgage loans do not have a due-on-sale clause in the mortgage
 - b) FHA requires complete qualification of the buyer assuming the loan.
 4. Down payment
 - a) Borrower must make minimum cash investment of at least 3.5%.
 - b) FHA refers to the down payment as the minimum cash investment.
 5. Loan limit
 - a) FHA sets limit on the amount that can be borrowed.
 - b) Loan limits are based on the average cost of housing in different regions of the country.
 6. Loan insurance premium
 - a) An up-front premium (UFMIP)
 - b) Annual mortgage insurance premium (MIP) that is added to monthly payment
 7. Qualifying ratios
 - a) Housing expense ratio (up to 31%)
 - b) Total obligations ratio (up to 43%)
 8. Appraisal
 - a) Must be appraised by an FHA-approved appraiser.
 - b) Appraiser must confirm that the property meets HUD's minimum property standards.
 9. Insured commitment
- V. VA Loan Guarantee Program
- A. Introduction to the program

UNIT 13 Types of Mortgages and Sources of Financing

1. Loan program established by the Department of Veterans Affairs (VA)
 2. VA does not require a down payment.
 3. Partial guarantee covers the top portion of the loan.
 4. Loans are provided by private lenders.
- B. VA mortgage loan features
1. Qualifications for program
 - a) Only veterans, unremarried surviving spouses of veterans, and active military personnel may apply.
 2. Eligibility requirements
 - a) Based on the period of active duty or the period of continuous service
 3. Lending source and eligible property
 - a) Loans are made by VA-approved lenders.
 - b) VA can make direct loans where not available.
 - c) Lenders (not the VA) set the interest rate, discount points, and closing costs.
 4. Loan guarantee and entitlement
 - a) VA Entitlement is the maximum amount the government guarantees the lender will be paid in the event the borrower defaults.
 - b) Certificate of eligibility states amount of entitlement available to the veteran borrower.
 5. Reusing entitlement
 6. Loan limits
 - a) VA previously used Fannie Mae and Freddie Mac loan limits as the maximum guaranteed loan amount without a down payment.
 - b) VA loan limits have been eliminated for borrowers who have their full entitlement.
 7. Loan origination fee
 - a) VA borrower pays a 1% loan origination fee to the lender
 8. VA funding fee
 - a) Veteran borrower pays a funding fee to the VA.
 - b) Sliding scale with lowest fees charged to first-time VA borrowers.
 - c) May be added to the loan amount and financed over the life of the loan.
 9. Qualifying ratio
 - a) Total obligations ratio (TOR) cannot exceed 41%.
 10. Closing costs
 - a) Commission, brokerage fees, and buyer-broker fees may not be charged to veteran borrower.

11. Assumption
 - a) No due-on-sale clause
 - b) Assumable even by nonveterans
 - c) The VA must approve the assumption agreement
 12. Prepayment (no prepayment penalty clause)
- VI. Purpose-Specific Mortgage Products
- A. Biweekly mortgage loan—borrower makes a payment every two weeks.
 1. Amount paid is equal to one-half the normal monthly payment.
 2. Borrower makes 26 biweekly payments (equivalent to 13 full-month payments).
 - B. Partially amortized mortgage loan—regular payments smaller than required to completely pay off the loan by date of termination (final balloon payment)
 - C. Purchase money mortgage (PMM)—a mortgage given as part of the buyer's consideration for the purchase of real property
 1. Delivered when the deed is transferred as a simultaneous part of the transaction
 2. Creates a vendor's lien
 3. Used to fill a gap between the buyer's down payment and a new first mortgage or an assumed mortgage
 - D. Home equity loans are secured by the borrower's primary residence
 1. Used to finance consumer purchases, consolidate credit card debt, or home improvements.
 2. If loan is used to make home improvements, the interest is tax deductible (limits exist).
 3. Home equity loan is a lump sum one-time equity draw (fixed rate).
 4. A HELOC is a line of credit against the equity in the home; borrower accesses money from the line of credit as needed (adjustable rate).
 - E. Home equity conversion mortgage (HECM) or reverse mortgage loan
 1. Designed for homeowners age 62 or older
 2. Monthly income provided in exchange for acquired equity
 3. Only reverse mortgage insured by the federal government is the Home Equity Conversion Mortgage (HECM) which is available through FHA-approved lenders.
 - F. Package mortgage loan
 1. Definition—loan agreement that includes real property and personal property as security for the debt
- VII. Primary Mortgage Market
- A. Depository lenders
 1. Primary mortgage market consists of lenders that originate new mortgage loans.

UNIT 13 Types of Mortgages and Sources of Financing

2. Three major depository lenders originate mortgages
 - a) Savings associations prefer conventional residential mortgages and home equity loans.
 - b) Commercial banks specialize in construction loans for residential and commercial projects.
 - c) Credit unions offer residential financing and home improvement loans to members.
 - B. Demand deposits and savings deposit accounts provide depository lenders with a funding source.
 1. Depository lenders are also called portfolio lenders because they can hold mortgage loans permanently in their portfolios.
 2. Financial intermediaries are lenders who accept deposits and make loans with the deposited funds.
 3. Intermediation is the flow of funds into deposits, increasing mortgage money supply.
 - C. Nondepository primary lenders
 1. Mortgage lenders are full-service mortgage companies
 2. Process, close, and sell the loans they originate
 3. Fund the loans with either their own funds or borrowed capital
 - a) Package loans they originate and sell them to institutional investors and to secondary-market
 4. Non-depository mortgage lenders because they do not accept savings deposits and demand deposits
 5. Primarily make VA and FHA loans
 6. Mortgage loan originator (MLO) is a person who holds a state MLO license
- VIII. Secondary Mortgage Market
- A. Investor market that buys and sells existing mortgages
 - B. Two important objectives
 1. Circulate the mortgage money supply
 2. Standardize loan requirements
 - C. Fannie Mae and Freddie Mac are government-sponsored enterprises
 1. Set guidelines for the types of loans they will purchase (conforming loans)
 2. Conforming loans meet, or conform to, loan amount limits set by FHFA
 3. Buy conforming loans from lenders and package them into mortgage-backed securities (MBS)
 4. Limit the size of individual mortgage loans they will purchase called the loan limit

- D. Fannie Mae
 - 1. Largest government supervised enterprise (GSE) in secondary market
 - 2. Purchases FHA, VA, and conventional mortgages
 - 3. Prefers conforming conventional mortgages from large commercial banks
 - E. Freddie Mac
 - 1. Purchases conforming conventional mortgage loans from smaller banks, credit unions, and savings associations
 - 2. Packages loans into mortgage-backed securities and sells them to investors
 - F. Ginnie Mae
 - 1. Unlike Fannie and Freddie, Ginnie is a government corporation housed within HUD
 - 2. Does not buy loans from lenders; instead, lenders obtain a guarantee from Ginnie Mae
 - 3. Secondary market exclusively for government-insured and government-guaranteed loans
 - 4. Backed by the full faith and credit guarantee of the federal government
- IX. Federal Regulatory Bodies and Mortgage Fraud
- A. Federal reserve system
 - 1. Central bank of the U.S.
 - 2. Provides a safer and more stable monetary system
 - 3. Duties include:
 - a) Conducting the nation's monetary policy
 - b) Supervising and regulating banking institutions and protecting credit rights of consumers
 - c) Maintaining the stability of the financial system
 - B. Using a straw buyer
 - 1. Straw buyers never intend to live on the property and only lend their credit information for a fee.
 - 2. Straw buyers may also be victims of identity theft. The victim's credit profile is stolen and used as a straw buyer.
 - C. No documentation loans
 - 1. This type of loan program allows borrowers with a certain minimum credit score to qualify for a mortgage without disclosing employment information, income, and assets.
 - 2. The lender approves the loan application without verifying the borrower's financial information.

- D. Red flags
 - 1. This is a type of mortgage fraud involving inflating the appraised value of property for the purpose of obtaining more financing.
 - 2. Unscrupulous appraisers altered or fabricated information and/or used inappropriate comparable sales.
- E. Ethical practices
- X. Consumer Credit Protection Act
 - A. Encompassing law that contains several acts
 - 1. Equal Credit Opportunity Act
 - 2. Truth in Lending Act
 - B. Equal Credit Opportunity Act (ECOA)
 - 1. Financial institutions must make credit available without discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or receipt of income from public assistance programs.
 - 2. Marital status—a lender cannot require an applicant’s spouse to join in a loan application
 - 3. Source of income—prohibits discriminatory treatment of income from alimony, child support, public assistance, or part-time employment
 - 4. Child bearing plans—cannot inquire about child-bearing plans or the potential for child bearing
 - C. Truth in Lending Act
 - 1. Truth in Lending Act (TILA) regulates what information lenders must make known to consumers about their products and services.
 - 2. TILA outlines rules that apply to:
 - a) Closed-end credit, such as home loans and auto loans.
 - b) Open-end credit, such as credit cards and home equity lines of credit (HELOCs).
 - 3. Federal Reserve Board’s Regulation Z implements the law.
 - 4. Required credit costs disclosures under TILA
 - a) Truth in lending disclosure
 - b) Annual percentage rate (APR)
 - c) Total payments
 - 5. Makes bait-and-switch advertising a federal offense.
 - 6. Triggering terms
 - a) Trigger terms in ads include:
 - (1) Amount or percentage of any down payment
 - (2) Number of payments

- (3) Period (term) of repayment
 - (4) Amount of any payment
 - (5) Amount of any finance charge
 - b) Advertisements containing a trigger term must disclose:
 - (1) Amount or percentage of down payment
 - (2) Terms of repayment
 - (3) Annual percentage rate
 7. Three-business-day right of rescission can apply.
 - a) Right of rescission—applies to most consumer loans, but does not apply to acquisition loans to purchase or construct a home
 - b) Applies to the following:
 - (1) Home equity lines of credit
 - (2) Second mortgages
 - (3) Refinance loans
- D. Real Estate Settlement Procedures Act (RESPA)
1. RESPA—consumer protection law administered by the Consumer Financial Protection Bureau
 2. Affiliated business relationships
 - a) Referring party must give the borrower an Affiliated Business Arrangement (AfBA) Disclosure.
 - b) AfBA must include an estimate of the affiliated business provider's charges.
 3. Purchase of title insurance
 - a) RESPA prohibits sellers from requiring the homebuyer to use a particular title insurance company, but the seller is not prohibited from selecting the title company in a purchase sale transaction.
 - b) A lender will require the homebuyer to have title insurance, and the policy is generally paid for by the seller at closing.
 4. Escrow for taxes and insurance
 - a) RESPA limits the amount lenders can require borrowers to place in escrow to pay property taxes and hazard insurance.
 - b) An excess of \$50 or more must be returned to the borrower
 5. Kickbacks, fee-splitting, and unearned fees
- E. TILA-RESPA Integrated Disclosure Rule (TRID)
1. The TILA and RESPA disclosure requirements were condensed into two disclosure forms
 - a) Loan Estimate form must be delivered or placed in the mail no later than the third business day after receipt of loan application.

- b) Closing Disclosure form must be provided to consumer at least three business days before loan closing.
2. TRID applies to the following types of loans:
 - a) Consumer loans secured by real property
 - b) Mortgage loans
 - c) Refinance loans
 - d) Construction loans
 - e) Vacant land loans
 - f) Loans secured by 25 or more acres
 3. TRID replaced RESPA's consumer booklet with a smaller consumer-friendly booklet, *Your Home Loan Toolkit*

DISCUSSION QUESTIONS

1. What would need to occur to turn a “tight money market” into an “easy money market?”
2. What is the difference between the terms *intermediation* and *disintermediation*?
3. If discounting originated as an attempt to make FHA and VA mortgage loans competitive with conventional mortgage loans, why is discounting of all mortgage loans so common today?

CLASSROOM EXERCISES

1. Ask students to search for reports of HUD, FHA, Fannie Mae, Ginnie Mae, or Freddie Mac activities. Ask each student to report on and explain a recent action by the agency in question.
2. Find local business websites with the lowest interest rate offering in current display ads. Ask the class to explain how that particular offering can be lower than others advertised in the same zip code.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

HUD issues mortgagee letters to inform lenders of changes in FHA operations, policies, and procedures. You can view and download the mortgagee letters at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee.

You can subscribe to the FHA's Single Family Housing Industry email list at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/FHA_INFO_subscribe to receive updates regarding mortgagee letters, notices, and important announcements and information about HUD events and training.

Fannie Mae maintains the <https://www.homepath.com> consumer site, which features information regarding the mortgage market.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 13 QUIZ

1. Which federal regulation originated the requirement to disclose the annual percentage rate?
 - a. TILA
 - b. TRID
 - c. RESPA
 - d. HUD
2. Which federal regulation made bait-and-switch advertising a federal offense?
 - a. TRID
 - b. TILA
 - c. FHA
 - d. RESPA
3. Which type of mortgage loan pledges both real and personal property as collateral?
 - a. Home equity loan
 - b. Package mortgage
 - c. Reverse mortgage
 - d. Partially amortized loan
4. The flow of funds into deposits held by primary lenders, increasing the mortgage money supply, is called
 - a. disintermediation.
 - b. loan origination.
 - c. intermediation.
 - d. discounting.
5. Which primary lender does NOT accept savings deposits?
 - a. Credit unions
 - b. Mortgage lenders
 - c. Commercial banks
 - d. Savings associations
6. Which secondary market entity is a government-owned corporation?
 - a. Fannie Mae
 - b. Freddie Mac
 - c. Ginnie Mae
 - d. Sallie Mae
7. Fannie Mae
 - a. insures loans made to qualified borrowers.
 - b. insures loans originated by savings associations.
 - c. is a guarantor of pools of FHA and VA mortgage loans.
 - d. purchases conventional, FHA, and VA loans from primary lenders.
8. The interest rate on an adjustable-rate mortgage loan is calculated by adding the index rate to the
 - a. margin.
 - b. cap.
 - c. index.
 - d. ceiling.
9. What charge does the VA impose on veteran borrowers to help the government defray the costs of foreclosures?
 - a. Up-front mortgage insurance
 - b. Funding fee
 - c. Discount points
 - d. Mortgage insurance premiums
10. A borrower of a conventional mortgage loan with more than 80% loan-to-value is charged which expense?
 - a. User fee
 - b. Mortgage insurance premium
 - c. Private mortgage insurance
 - d. Up-front mortgage insurance premium

SPECIAL UNIT 13 QUIZ

ANSWER KEY

1. a The Truth in Lending Act (TILA) required a truth in lending disclosure that included the annual percentage rate (APR).
2. b The Truth in Lending Act (TILA) makes bait-and-switch advertising a federal offense.
3. b A package mortgage loan includes both real and personal property as security for the debt.
4. c Intermediation is the process of consumers depositing funds into savings accounts at financial institutions.
5. b Mortgage lenders are non-depository primary lenders because they do not accept savings deposits and demand deposits.
6. c Ginnie Mae is part of the Department of Housing and Urban Development (HUD). Ginnie Mae provides a secondary market for VA and FHA loans.
7. d Fannie Mae purchases FHA, VA, and conventional mortgages from lenders and holds the mortgages in its portfolio.
8. a The margin is the percentage added to the index to cover the lender's costs plus profit. The index plus the margin equals the calculated interest rate.
9. b The veteran borrower pays a funding fee to the VA. The funding fee is a percentage of the loan amount.
10. c Conventional mortgage loan borrowers must pay for private mortgage insurance (PMI) for the portion of the loan above 80% LTV.

UNIT 13 EXAM QUESTIONS

EXPLANATIONS

1. c Mortgage loan originators who are not employed by agency-regulated institutions (banks, savings associations, and credit unions) must register with the NMLS and hold a state-issued mortgage loan originator license.
2. b Secondary market activity involves the sale of existing mortgage instruments.
3. d Fannie Mae is not a government agency. Fannie is a government-sponsored enterprise.
4. a A primary market is a source for the purchase of a mortgage loan by a borrower.
5. c Home equity conversion mortgage loans (HECMs) are also called reverse mortgages.
6. c Disintermediation is a disengagement process whereby depositors withdraw money from savings for direct investment in stocks, money market funds, and other securities.
7. c VA mortgage loans require a total obligations ratio (TOR) not to exceed 41%.
8. a The FHA functions as an insurance company to insure mortgage loans made by approved lenders.
9. a $\$504 \text{ monthly housing expense} \div \$1,800 \text{ total monthly obligations} = .28 \text{ monthly housing expense ratio.}$
10. b Each monthly payment includes both interest and principal. Although the same amount is paid each month, on a fixed-rate amortized mortgage, the portion used to pay interest decreases each month, while the portion used to repay principal increases each month.
11. a FHA and VA mortgage loans are assumable.
12. d The VA charges a funding fee.
13. b A package mortgage covers both real and personal property.
14. d A purchase-money mortgage is any new mortgage taken as part of the purchase price of real property by the seller.
15. d Marital status is a protected class under the Equal Credit Opportunity Act. Disability status and familial status are protected classes under the Fair Housing Act. Occupation is not a protected class.

UNIT 13 Types of Mortgages and Sources of Financing

16. c The overall purpose of the Truth in Lending Act is to inform consumers of exact credit costs. The law requires that lenders disclose the annual percentage rate of interest and finance charges imposed on consumers.
17. c The Truth in Lending Act (TILA), not RESPA, made bait-and-switch advertising a federal offense.
18. a The TILA-RESPA Integrated Disclosure Rule requires lenders to provide borrowers with a written Closing Disclosure at least three business days before closing.
19. c No person or business may give or accept any fee, kickback, or thing of value in exchange for business referrals relating to a real estate transaction. Real estate licensees must be sure that any fees collected other than commissions are for specific services performed.
20. b The TILA right of rescission applies to refinance loans on a primary residence, second mortgages, and HELOCs.

14

REAL ESTATE–RELATED COMPUTATIONS AND CLOSING OF TRANSACTIONS

UNIT OVERVIEW

This unit places emphasis on the arithmetic computations necessary to settle applicable expenses between the seller and the buyer as well as between the seller and the broker. Several methods for prorating expenses are described. A work organizer for computing Closing Disclosure items is provided, along with a sample Closing Disclosure.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Compute the sale commission.
- Calculate the percent of profit or loss, given the original cost of the investment, the sale price, and the dollar amount of profit or loss.
- Define settlement and title closing and list the preliminary steps to a closing;
- Prorate the buyer's and seller's expenses.
- Calculate the dollar amount of transfer taxes on deeds, mortgages, and notes and compute individual costs, allocating the transfer taxes and costs to the proper parties.
- Explain the rules of thumb for Closing Disclosure entries.

KEY TERMS

arrears
credit

debit
preclosing inspection

profit
proration

TEACHING OUTLINE

- I. Working with Numbers Review
 - A. Fractions, decimals, and percentages
 1. Parts of a fraction
 2. Changing fractions to decimals

3. Changing decimals to percentages
 4. Changing percentages to decimals
 5. Decimal place values
 6. Working with decimals
- II. Sale Commissions
- A. Calculating commission
 - B. Calculating commission when two brokerages are involved
 - C. Calculating problems that include percentages using the following formulas:
 1. $\text{Part} \div \text{total} = \text{rate}$
 2. $\text{Part} \div \text{rate} = \text{total}$
 3. $\text{Total} \times \text{rate} = \text{part}$
- III. Percentage Applied to Selling Price, Cost, and Profit
- A. Profit is how much you make over and above your cost.
 1. $\text{Amount made on sale} \div \text{amount paid} = \text{percentage of profit}$
 2. $\text{Amount lost on sale} \div \text{total cost} = \text{percentage of loss}$
- IV. Preliminary Steps to Closing
- A. Steps include the following:
 1. Earnest money deposited
 2. Additional deposit, if required
 3. Loan application
 4. Contingencies
 5. Appraisal
 6. Loan approval
 7. Survey ordered
 8. Title insurance
 9. Termite inspection
 10. Required repairs ordered
 11. Home inspection
 12. Buyer hazard insurance
 13. Closing documents reviewed
 14. Preclosing inspection conducted
 15. Buyer informed of the amount of funds needed to close
 16. Earnest money transferred to the closing agent

V. Closing Disclosures

- A. Prorations are entered on the closing disclosure as double entries (one party is debited and the other party is credited).
1. Two methods of calculating prorations:
 - a) 365-day method is the most common and most accurate method
 - b) 360-day method allocates 30 days to every month; not normally used for calculating prorations for closing disclosures
 2. County and/or city property taxes
 - a) For property taxes (items paid in arrears), “seller days” are used to calculate the proration.
 - b) Unpaid property taxes appear as a *credit* to the buyer and as a *debit* to the seller.
 - c) Prorations always have the same dollar amount entered for the debit and the credit.
 3. Prepaid rent
 - a) Belongs to the new owner (buyer) as of the date of closing, and any unused portion of advance rent belongs to the buyer.
 - b) When a prorated item is paid *in advance*, as is the case with rent, the “buyer days” are used to calculate the proration.
 - c) Prepaid rent is entered as a *credit* to the buyer and a *debit* to the seller.
 - d) If the rental property is a duplex, it has two units; a triplex has three units; and a fourplex has four units. For example, if the rent proration states the income property is a duplex, multiply the monthly rent per unit by 2.
 4. Mortgage interest on assumed mortgages
 - a) Interest on mortgage loans is paid *in arrears*.
 - b) When prorating an item paid in arrears, use “seller days” to calculate the proration.
 - c) Enter interest on an assumed mortgage as a *debit* to the seller and as a *credit* to the buyer.

VI. State Transfer Taxes

- A. Documentary stamp tax on deeds
1. The documentary stamp tax on deeds is charged at a rate of \$.70 (\$.60 in Miami-Dade County) for each \$100 of the full purchase price.
 2. The documentary tax is an expense. It is entered as a debit to the person paying the expense. Unlike a proration, there is no credit to the other party (expenses are single entries).
 3. On normal sales or exchanges, the documentary tax is shown as a debit to the seller on the Closing Disclosure.

- B. Documentary stamp tax on promissory notes
 - 1. The documentary stamp tax on notes is charged at a rate of \$.35 for each \$100 of the promissory note.
 - 2. The documentary stamp tax is an *expense*. It is entered as a debit to the buyer (a buyer expense unless agreed to otherwise).
 - C. State intangible tax on new mortgages (\$.002 per dollar on new note only; debit to buyer)
 - D. Other charges
 - 1. Preparation of documents
 - 2. Recording fees
 - 3. Broker's commission
 - 4. Title insurance
- VII. Rules of Thumb
- A. Purchase price is entered as a *credit to the seller* and a *debit to the buyer*
 - B. New purchase money mortgage given to the seller is entered as a *credit to the buyer* and a *debit to the seller*
 - C. Mortgage assumed by the buyer is entered as a *credit to the buyer* and a *debit to the seller*
 - D. Items *credited to seller*
 - 1. Total purchase price
 - 2. Prepaid items
 - E. Items *debited to seller*
 - 1. Mortgages paid off
 - 2. Prorated property taxes (paid in arrears; debit seller days)
 - 3. Mortgage loan interest on an assumed mortgage (paid in arrears; debit seller days)
 - 4. Prepaid rent (paid in advance; debit days owed buyer)
 - 5. Tenant's security deposits (transferred to the new owner)
 - 6. State documentary stamp tax on the deed
 - 7. Broker's commission (if employed by the seller)
 - 8. Preparation of deed
 - 9. Seller's attorney's fees (if applicable)
 - F. Items *credited to buyer*
 - 1. Earnest money deposit (credited toward purchase price)
 - 2. Mortgages newly created (credited toward purchase price)
 - 3. Prorated property taxes (seller days are credited to buyer)

4. Prorated assumed mortgage interest (seller days are credited to buyer)
 5. Prorated advance rent (buyer days are credited to buyer)
 6. Security deposits (total security deposits are transferred [credited] to buyer)
- G. Items *debited to buyer*
1. Purchase price
 2. Title insurance (mortgagee's/lender's policy)
 3. State intangible tax on new mortgages
 4. State documentary stamp tax on new and assumed notes
 5. Recording of the deed
 6. Recording of the mortgage
 7. Buyer's attorney's fees (if applicable)
 8. Preparation of mortgage and note

DISCUSSION QUESTIONS

1. How is a broker's escrow account related to the disbursement of funds at a closing?
2. What method of prorating expense items is most commonly used in your local area?
3. Why is a state intangible tax paid on all mortgages when recorded, but not on mortgages that are assumed? Under what circumstances must the state documentary stamp tax on notes be paid on new and assumed mortgages?

CLASSROOM EXERCISES

1. Have the class collectively work the sample Closing Disclosure problem provided in the textbook.
2. Give the class sample problems that you have prepared showing purchase prices, existing mortgage amounts, and down payment amounts with various amounts of first mortgages. Have the class compute the state taxes (documentary and intangible) for deeds, notes, and mortgages.
3. Prepare practice problems involving the proration of prepaid rent and mortgage interest. Have a member of the class go to the board and write what the class determines is the proper approach to solving each item to be prorated.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 14 QUIZ

ANSWER KEY

1. $\$211,450$ sale price \div $\$100$ increments = 2,114.5 rounded up to 2,115 increments \times $\$.70$ rate = $\$1,480.50$ doc stamps on the deed.
2. Doc stamps on the note: $\$190,000$ mortgage \div $\$100$ increments = 1,900 increments. $1,900 \times \$.35$ rate = $\$665$ doc stamps on note. Intangible tax on new mortgage: $\$190,000 \times \$.002$ rate = $\$380$ intangible tax. $\$665 + \$380 = \$1,045$ state taxes associated with new financing.
3. Taxes are paid in arrears. Days belonging to seller = Jan + Feb + Mar + Apr + May + June + July + Aug + 9 days in September = $31 + 28 + 31 + 30 + 31 + 30 + 31 + 31 + 9 = 252$ days. $\$2,300$ property taxes \div 365 days = $\$6.3013699$ per day. $\$6.3013699 \times 252$ days = $\$1,587.95$ debit seller; $\$1,587.95$ credit buyer.
4. $\$211,450$ sale price \times $.06 = \$12,687$ total commission. $\$12,687 \times .50 = \$6,343.50$ selling office split. $\$6,343.50 \times .40 = \$2,537.40$ retained by selling office.
5. Rent for month = $\$1,550$. Seller received rent on the first of the month and is entitled to rent for first 9 days of the month. Calculate the amount due the buyer. $\$1,550$ rent \div 30 days in September = $\$51.666667$ per day. $\$51.666667 \times 21$ days = $\$1,085$ credit buyer; $\$1,085$ debit seller.

PRACTICE CLOSING DISCLOSURE PROBLEM

A couple sold their home, described as Lot 12, Block A, Pine Scent Subdivision, to a man for \$82,800. The closing date is scheduled for January 15, 20XX. The buyer paid an earnest money deposit of \$4,000, which you, the real estate sales associate, promptly gave to your broker to be held in escrow. The buyer will sign a new note to assume a recorded mortgage with a remaining balance of \$59,640 and an interest rate of 10%. Monthly payments for principal and interest are \$544.10. The mortgage interest for January is \$496. The sellers have agreed to take back a \$15,000 purchase-money second mortgage. City property taxes are estimated to be \$684; county and school board taxes are estimated to be \$973.

The sellers' attorney's fees will be \$120, and the buyer's attorney's fees will be \$150 for the preparation of the new financing instruments. The recording fee for the deed will be \$8, and the recording fee for the new mortgage and notes will be \$24. The buyer has agreed to pay all costs related to financing the purchase. The sellers have agreed to pay \$75 of the total title insurance costs, and the buyer will pay \$430 for the balance of the title insurance costs. An appraisal fee of \$120 is to be paid by the sellers. All proration are to be computed using a 365-day year and will be effective at midnight before the date of closing, with the day of closing to be charged to the buyer. The brokerage sale commission is 7% of the purchase price. All costs are to be paid by cashier's check at closing.

1. How much will the sellers pay for the required tax on the deed?
 - a. \$165.60
 - b. \$289.80
 - c. \$455.40
 - d. \$579.60
2. If interest on the mortgage is paid in arrears each month, how much will be owed and to whom for interest in January?
 - a. Sellers will owe buyer \$224.
 - b. Buyer will owe sellers \$224.
 - c. Sellers will owe buyer \$272.
 - d. Buyer will owe sellers \$272.
3. How much will the buyer be required to pay for taxes related to the new second mortgage?
 - a. \$52.50
 - b. \$82.50
 - c. \$105.00
 - d. \$291.45
4. How much will the sellers need to credit the buyer for property taxes?
 - a. \$37.32
 - b. \$63.56
 - c. \$1,588.90
 - d. \$1,593.44

P R A C T I C E C L O S I N G
D I S C L O S U R E P R O B L E M A N S W E R
K E Y

1. d $\$82,800$ sale price \div $\$100$ increments = 828 taxable increments. $828 \times \$0.70$ rate = $\$579.60$ doc stamps on deed.
2. a 496 mortgage interest \div 31 days = $\$16$ per day. $\$16 \times 14$ days seller owes = $\$224$ debit seller; $\$224$ credit buyer.
3. b $\$15,000$ new purchase-money mortgage \div $\$100$ increments = 150 taxable increments. $150 \times \$0.35$ rate = $\$52.50$ doc stamps on mortgage note. $\$15,000$ mortgage amount \times $\$0.002$ rate = $\$30.00$ intangible tax. $\$52.50 + \$30.00 =$ $\$82.50$ state taxes on new second mortgage.
4. b $\$1,657$ annual property taxes \div 365 days = $\$4.539726$ per day. $\$4.539726 \times$ 14 days seller owes = $\$63.56$ debit seller; $\$63.56$ credit buyer.

UNIT 14 EXAM QUESTIONS

EXPLANATIONS

1. The answer is (a) .395, (b) .02, (c) .75, and (d) 1.45. To change any percentage to an equivalent decimal, place a decimal point two places to the left of the number and drop the percent sign. (This is the same as dividing the percentage figure by 100.) If necessary, add a zero to the left to allow moving the decimal point two places to the left.
2. The answer is (a) $\frac{1}{2}$, (b) $\frac{1}{5}$, (c) $\frac{1}{4}$, and (d) $\frac{2}{5}$. This exercise is designed to give practice converting percentages to fractions.
3. The answer is (a) .125, (b) .6, (c) .0625, and (d) .05. To change a fraction to a decimal, divide the top number in the fraction (numerator) by the bottom number (denominator).
4. The answer is (a) 25,600, (b) 823, (c) 736, and (d) 45,500. This exercise is designed to give practice dividing numbers by decimal numbers.
5. b \$1,450,000 sale price: $\$600,000 \times .065$ rate = \$39,000 first increment.
 $\$800,000 \times .07$ rate = \$56,000 second increment. $\$50,000 \times .08$ rate = \$4,000 third increment. $\$39,000 + \$56,000 + \$4,000 = \$99,000$ total commission. $\$99,000 \times .55$ share = \$54,450 sales associate's split.
6. b $\$42,000 + \$178,000 = \$220,000$ total cost. $\$220,000 - \$187,000 = \$33,000$ loss. $\$33,000$ loss \div $\$220,000$ cost = 15% loss on the sale.
7. d Doc stamps on deed: $\$130,000$ purchase price \div $\$100$ increments = 1,300 taxable increments. $1,300 \times \$.70$ rate = \$910 doc stamps on deed. Doc stamps on assumed mortgage note: $\$90,520$ rounded up to $\$90,600 \div$ $\$100$ increments = 906 taxable increments. $906 \times \$.35$ rate = \$317.10 doc stamps on assumed mortgage note. Doc stamps on new mortgage note: $\$20,000 \div$ $\$100$ increments = 200 taxable increments. $200 \times \$.35$ rate = \$70 doc stamps on new mortgage note. Intangible tax on new mortgage: $\$20,000$ new mortgage \times $\$.002 = \40 . $\$910 + \$317.10 + \$70 + \$40 = \$1,337.10$.
8. d $\$160,000$ sale price \times $.07$ rate = \$11,200 total sale commission. $\$11,200$ commission \times $.55$ rate = \$6,160 commission to selling office. $\$6,160 \times .60$ rate = \$3,696 selling salesperson's split.
9. d Part \div rate = whole (the total sale price). $\$45,000$ part \div $.375$ rate = \$120,000 total sale price.
10. c $\$31,000$ mortgage \div $\$100$ increments = 310 taxable increments. $310 \times \$.35$ rate = \$108.50 doc stamps on mortgage note. $\$31,000 \times \$.002$ rate = \$62 intangible tax. $\$108.50 + \$62 = \$170.50$.
11. c Seller has 111 days (Jan: 31, Feb: 28, Mar: 31, Apr: 21). $\$2,652 \div 365$ days = $\$7.26575$ per day \times 111 days = \$806.50. Credit buyer \$806.50, debit seller \$806.50.

12. b $3 \text{ lots} \times 200 \text{ ft.} = 600 \text{ front ft.}$ $600 \text{ front ft.} \times \$500 \text{ per front ft.} = \$300,000$
cost of lots. $\$62,500 \text{ lot sale price} \times 6 \text{ lots} = \$375,000 \text{ sale price.}$ $\$75,000$
profit \div $\$300,000 \text{ cost} = .25$ or 25% profit.
13. b $720 \text{ ft.} \times 500 \text{ ft.} = 360,000 \text{ sq. ft.}$ $\$118,000 \text{ rent} \div \$360,000 \text{ sq. ft.} = .3277778$
or \$.33 per sq. ft.
14. b Tract A: $100\% - 20\% = 80\%$ sale price. $80\% = \$100,000.$ $\$100,000 \div$
 $.80 = \$125,000$ cost. Tract B: $\$200,000 \text{ cost} + 20\% \text{ profit} = \$200,000 \times 1.20$
 $= \$240,000$ sale price. $\$240,000 \text{ sale price to make a } 20\% \text{ profit} + \$25,000$
loss from Tract A = $\$265,000$ target sale price for Tract B.
15. c $\$815 \text{ rent} \times 5 \text{ apartments} = \$4,075$ total monthly rent. $\$4,075 \div 30 \text{ days} \times$
 $15 \text{ days due buyer} = \$2,037.50$ credit buyer.
16. d $28.5 \text{ acres} \times \$4,100 \text{ per acre} = \$116,850$ purchase price. $\$116,850 \div \100
increments = 1,168.5 rounded up to 1,169 increments. $1,169 \times \$0.70 \text{ rate} =$
 $\$818.30$ documentary stamp tax on deed.
17. b The earnest money (binder) deposit is credited to the buyer.
18. c The total purchase price is entered as a credit to the seller and as a debit to
the buyer.
19. d Unpaid property taxes appear as a credit to the buyer and as a debit to the
seller (prorations have the same dollar amount in each entry).
20. d The interest on an assumed mortgage is paid in arrears: $\$242,500 \text{ mortgage}$
loan $\times .04 = \$9,700.00$ annual interest.
 $\$9,700.00 \div 365 = \26.575342 daily rate of interest. $\$26.575342 \times 26 \text{ days} =$
 $\$690.96$ debit seller; $\$690.96$ credit buyer.

15

THE REAL ESTATE MARKET
AND ANALYSIS**UNIT OVERVIEW**

The word *market* has many meanings, depending on usage. It can mean a place where farmers and tradespeople display their produce and products for buyers. It can mean a place where securities are exchanged, such as the commodities market or the stock market. Regardless of difference in form, the basic principles of market operation hold true for all. A market can function only when sellers and buyers interact. Many markets use intermediaries to facilitate activity between seller and buyer, and the real estate market is one such market.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Describe the physical and economic characteristics of real estate.
- Identify the factors that influence supply and demand for real estate.
- Distinguish among ways of interpreting market conditions and demonstrate understanding of the different market indicators.

KEY TERMS

buyer's market
demand
household

seller's market
situs
supply

vacancy rate

TEACHING OUTLINE

- I. Physical and Economic Characteristics of Real Estate
 - A. Physical characteristics of real estate
 1. Real estate is immobile.
 - a) Geographic location is fixed.
 - b) Land and improvements are immovable.
 - c) Surrounding area largely influences the value of real estate.
 2. Land is indestructible.
 - a) Land is permanent.
 - b) Physical structures (improvements) are durable; however, they deteriorate and become obsolete over time.
 3. Real estate is unique.
 - a) No two tracts of land are identical.
 - b) There is no standard product.
 - c) *Nonhomogeneous* refers to the uniqueness of land.
 - B. Economic characteristics of real estate
 1. Government controls influence the market
 2. Relationship between supply, demand, and price
 3. The market is slow to respond to change in supply and demand
 4. Area preference
 - a) *Situs* refers to prospective buyers' preference for a certain area.
 - b) A property's location is considered the most important economic characteristic of real estate.
- II. Supply and Demand Factors
 - A. Supply
 1. Availability of skilled labor
 2. Availability of construction loans and financing
 3. Availability of land
 4. Availability of materials
 - B. Demand is the desire and ability to purchase or rent goods and services
 1. Price of real estate—an *inverse* relationship between price and the demand for real estate; when prices rise, demand goes down; when prices decrease, demand goes up
 2. Population numbers and household composition
 - a) Numbers and composition

- b) Household unit—basis for population analysis
 - c) In-migration to state
 - 3. Income of consumers
 - 4. Availability of mortgage credit
 - 5. Consumer tastes and preferences
- III. Interpreting Market Conditions
- A. Price levels
 - 1. Changes in price levels and home sales are an indicator of new housing supply and demand for certain price ranges.
 - 2. Price and supply are inversely (oppositely) related—when supply goes down, prices go up (more buyers competing for fewer homes), and a seller's market develops.
 - 3. When supply goes up, prices go down; the supply and demand equilibrium is upset by excess supply, and a buyer's market develops.
 - B. Market indicators
 - 1. Price levels and building permits
 - 2. Vacancy rates
 - a) Occupancy/vacancy ratios of rental properties
 - b) Calculating occupancy and vacancy rates
 - C. Sales volume
 - D. Calculating occupancy and vacancy rates

DISCUSSION QUESTIONS

1. In our price or free enterprise system, how are the decisions made as to what will be produced and who will do the producing?
2. How do each of us participate in both the supply side and the demand side of the factor market?
3. Do the five major submarkets of real estate adequately cover the real estate spectrum of real properties?
4. In relation to the classical characteristics of real estate markets, is government influence increasing or decreasing?
5. How may real estate licensees collect information on the number, prices, and location of homes sold in the local area?

CLASSROOM EXERCISES

1. From a local source that supplies information on real estate transactions, extract the sales for one week. Explain to the class how this information can be transferred to a card file and/or wall map to show sales and location of activity.
2. Ask the class to name instances where an oversupply of one category of real property has developed. Why?
3. Related to the permanence of improvements, have the students name as many uses as they can think of for converting closed gas stations to other uses. Have one student write every idea on the board. If one student cannot write fast enough, use two students.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

The Economic Data website for the Federal Reserve Bank of Chicago is <https://www.chicagofed.org/research/data/index>.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 15 QUIZ

- Relationships and preferences created by location that affect value are called
 - supply.
 - demand.
 - situs.
 - buyer's market.
- What happens when the supply of homes for sale increases relative to demand?
 - A seller's market is created.
 - Prices go down.
 - Prices go up.
 - Interest rates increase.
- Which characteristic does NOT describe the real estate market?
 - Land and improvements are immovable.
 - Real estate is slow to respond to changes in supply and demand.
 - Real estate is heterogeneous.
 - The real estate market is liquid in nature.
- What is a building's vacancy rate if 350 units are rented in a 400-unit apartment building?
 - 10%
 - 12.5%
 - 15%
 - 20%
- Any person or group of persons occupying a separate housing space is defined by the Census Bureau as a
 - household.
 - tenant.
 - housing space.
 - family.
- An increase in price results in a decrease in demand. What type of relationship is this?
 - Indirect
 - Inverse
 - Parallel
 - Uncorrelated
- The availability of which variable influences demand?
 - Skilled labor
 - Building materials
 - Land
 - Mortgage credit
- The availability of which variable influences supply?
 - Construction loans and financing
 - Price
 - Population numbers
 - Consumer income
- The closing of a major automobile assembly plant in Detroit, Michigan, will likely cause which result in Detroit?
 - Seller's market
 - Shortage in available housing stock
 - Buyer's market
 - Decrease in millage rate
- The percentage of unoccupied rental units is called
 - occupancy rate.
 - vacancy rate.
 - sales volume.
 - tenant volume.

SPECIAL UNIT 15 QUIZ

ANSWER KEY

1. c Situs refers to prospective buyers' preference for certain areas. Area preference, and therefore the property's location, is considered the most important economic characteristic of real estate.
2. b When supply goes up, prices go down (fewer buyers are competing for a bigger supply of homes for sale).
3. d Real estate is not liquid. Liquidity refers to the ability to sell an investment quickly without a loss in the investment.
4. b $400 \text{ total units} - 350 \text{ rented units} = 50 \text{ vacant units}$; $50 / 400 = 0.125$ or 12.5%
5. a A household, as defined by the U.S. Census Bureau, is any person or group of persons occupying a separate housing space.
6. b 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.
7. d The availability and cost of mortgage credit has been called the barometer of the real estate market.
8. a Variables that influence supply are availability of skilled labor, availability of construction loans and financing, availability of land, and availability of materials.
9. c When supply goes up, prices go down (fewer buyers are competing for a bigger supply of homes for sale). The supply and demand equilibrium is upset by excess supply (more houses for sale than potential buyers), and a buyer's market develops.
10. b A vacancy rate is the percentage of rental units that are not occupied. Vacancy rates are one indicator of demand for housing in a certain market area.

UNIT 15 EXAM QUESTIONS

EXPLANATIONS

1. d Situs refers to the relationships and influences created by a property's location that affects value.
2. b The market is slow (not quick) to respond to change in supply and demand.
3. d An increase in price causes a decrease (not an increase) in demand.
4. c $280 \div 350 = .80$.
5. d The availability of building materials has to do with supply (not demand).
6. c A buyer's market occurs when the number of excess units in that particular market allows a potential buyer to shop among anxious owner-sellers to obtain better prices and terms.
7. b The Census Bureau defines a household as any person or group of persons occupying a separate housing space.
8. b Real estate is unique. Uniqueness can be described as heterogeneous or nonhomogeneous.
9. c Land is durable or indestructible.
10. d Variables that influence supply are the availability of (1) skilled labor, (2) construction loans and financing, (3) land, and (4) materials. Mortgage credit affects demand for real estate (not supply).

16

REAL ESTATE APPRAISAL

UNIT OVERVIEW

This unit provides the terminology used in property valuation and some of the key concepts that are accepted almost universally. It also explains what value is and how it differs from price and cost. Consumer price index information is included to understand gain or loss in purchasing power for buyers and sellers.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Describe federal and state regulations pertaining to appraising, the appraiser's fiduciary relationship, and the *Uniform Standards of Professional Appraisal Practice (USPAP)*.
- Distinguish among value, price and cost; distinguish among the various types of value; define market value and describe its underlying assumptions; and describe the four characteristics of value.
- Distinguish among the principles of value.
- Differentiate among the three approaches to estimating the value of real property.
- Estimate the value of a subject property using the sales comparison approach.
- Estimate the value of a subject property using the cost approach.
- Estimate the value of a subject property using the income approach.
- Reconcile the three approaches to establish the final value estimate.
- Calculate value using gross multiplier analysis.
- Explain how to prepare a comparative market analysis (CMA), comparing and contrasting with the sales comparison approach.

KEY TERMS

appraisal	gross income multiplier	price
assemblage	(GIM)	principle of substitution
automated valuation model (AVM)	gross rent multiplier (GRM)	progression
cost	highest and best use	reconciliation
cost approach	income approach	regression
curable	incurable	replacement cost
depreciation	investment value	reproduction cost
economic life	market value	sales comparison approach
effective age	net operating income	subject property
effective gross income (EGI)	(NOI)	<i>Uniform Standards of Professional Appraisal Practice (USPAP)</i>
federally related transaction	over-improvement	vacancy and collection losses
	plottage	value
	potential gross income (PGI)	

TEACHING OUTLINE

- I. Appraisal Regulation (FIRREA)
 - A. The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) recognizes The Appraisal Foundation as the source for the promotion of professional standards and appraiser qualification.
 - B. There are two independent boards:
 1. Appraiser Qualifications Board (AQB) establishes minimum criteria for state-certified appraisers.
 2. Appraiser Standards Board (ASB) sets minimum standards for appraisals and publishes the *Uniform Standards of Professional Appraisal Practice (USPAP)*.
 - C. The Appraisal Subcommittee (ASC) maintains a national registry of state-certified and licensed appraisers who are eligible to perform appraisal in federally related transactions.
 - D. State-certified appraisers are the following.
 1. Certified residential appraisers may appraise residential real property of one to four units.
 2. Certified general appraisers may issue appraisal reports for any type of real property.
 - E. *Federally related transaction* is any real estate-related financial transaction that a federal financial institution's regulatory agency has either contracted for, or regulates, and requires the services of an appraiser.
 - F. Just because a transaction is not a federally related transaction does not mean that real estate licensees are allowed to provide appraisal services.
 1. FHA and VA transactions and appraisals for loans sold to Fannie Mae and Freddie Mac are not federally related transactions.
 2. Fannie Mae, Freddie Mac, HUD, and the VA require the use of state-certified or licensed appraisers for all loans involving these entities.

- G. *Uniform Standards of Professional Appraisal Practice (USPAP)* is a set of guidelines (standards of practice) for appraisers.
 - 1. It is unethical for an appraiser to accept compensation that is contingent on the value of the property.
 - H. Part I, Chapter 475, F.S., and appraisal services of real estate includes the following.
 - 1. Appraising is included in the definition of real estate services.
 - 2. Real estate licensees may perform appraisal for compensation; however, the appraisal service must not involve a federally related transaction.
 - 3. Real estate licensees may not represent themselves as certified or licensed appraisers.
 - 4. Real estate licensees, when performing appraisal services, must abide by *USPAP*.
 - I. Comparative market analyses (CMAs) are not required to comply with *USPAP*.
 - J. Broker's price opinions (BPOs) may not be labeled as an appraisal and are not required to comply with *USPAP*.
- II. Concept of Value
- A. Cost, price, and value
 - 1. *Cost* is the expenditure required to bring a new improvement into existence.
 - 2. *Price* is the amount of money paid in a transaction.
 - 3. *Value* is the worth of something between many market participants (what it is worth to the consumer.).
 - B. Types of Value
 - 1. Assessed value—the value used as a basis for property taxation (Sometimes buyers confuse assessed value with market value.)
 - 2. Insurance value—an estimate of the amount of money required to replace a structure in the event of some catastrophic event such as fire
 - 3. Investment value—the price an investor would pay, given the investor's own financing requirements and income tax situation
 - 4. Liquidation value—amount a property most likely will bring at a forced or rapid sale
 - 5. Going-concern value—the value of an income-producing property or business characterized by a significant operating history; the type of value estimated when the business will continue in operation, however ownership is being transferred
 - 6. Salvage value—the estimated amount for which improvements can be sold at the end of a structure's useful life
 - C. Market value
 - 1. Most probable price that a property should bring in an open market under conditions requisite to a fair sale under conditions published by Fannie Mae and Freddie Mac
 - a) Buyer and the seller are typically motivated.

- b) Both parties are well-informed, and each party is acting in their own best interest.
 - c) Property is exposed on the open market for a reasonable time.
 - d) Payment is in terms of cash or in terms of comparable financial arrangements.
 - e) Price is unaffected by creative financing or sales concessions.
- D. Characteristics of value (DUST)
- 1. Demand—desire plus means equals effective demand
 - 2. Utility—must fill a need
 - 3. Scarcity—low supply of units
 - 4. Transferability—title and possession
- III. Principles of Value
- A. Principle of substitution
- 1. The maximum value of a property tends to be set by the cost of acquiring an equally desirable substitute property
 - 2. Sets an upper limit of value
- B. Highest and best use is the most profitable use
- 1. Use must be:
 - a) legally permissible (zoning),
 - b) physically possible (soil type, site's shape, size, and slope), and
 - c) financially feasible (income generated considering cost of improvements)
 - 2. Highest and best use of land as though vacant
 - 3. Highest and best use as improved
- C. Increasing and decreasing returns
- 1. The relationship between the cost of an improvement and the value it adds to the property
 - 2. Overimprovement occurs when an owner invests more money in a structure than can be recaptured
- D. Conformity
- 1. Conformity is the concept that the more a property is in harmony with surrounding properties, the greater the contributory value.
- E. Assemblage and plottage
- 1. Assemblage is the combining of two or more adjoining properties into one tract (consolidating properties).
 - 2. Plottage is the added value as a result of assembling two or more properties into one large parcel.

- F. Progression and regression
 - 1. Progression—the principle that the value of an inferior property is enhanced by its association with superior properties of the same type
 - 2. Regression—the principle that the value of a superior property is adversely affected by its association with an inferior property of the same type
- IV. Introduction to the Three Approaches to Value
 - A. Three approaches
 - 1. Sales comparison approach (comparable sales method)
 - 2. Cost approach (cost method)
 - 3. Income approach (income method)
 - B. In an imperfect world—appraisers must reconcile varying results from the different results of each approach
 - C. Relevance of the three approaches to value
 - 1. Sales comparison approach best for vacant lots in established neighborhoods
 - 2. Sales comparison approach is most relevant for valuing single-family homes
 - 3. Income approach best for income-producing property
 - 4. Cost approach best for newly constructed homes
 - 5. Cost approach is most relevant approach for appraising special-purpose property
- V. Sales Comparison Approach
 - A. Based on today's sale price for comparable properties
 - B. Most widely used method and also the simplest
 - C. Comparable sales must:
 - 1. have occurred recently,
 - 2. be in the same market area as the subject property, and
 - 3. be similar to property being appraised
 - D. Adjustments always made to comparable properties, not to subject property
 - 1. If comparable property is inferior to subject property, make an upward adjustment (add) to the comparable (note to help students remember: CIA).
 - 2. If comparable is superior to subject, make a downward adjustment (subtract) to the comparable (note to help students remember: CBS).
 - E. Adjustment process
 - 1. Financing terms
 - 2. Conditions of sale
 - 3. Market conditions
 - 4. Square footage
 - 5. Landscaping

- F. Reconciliation—the process of analyzing and weighing the various comps (a matter of judgment)
 - G. Principle of substitution at work
 - H. Valuing vacant property
 - 1. The sales comparison approach is effective for valuing vacant residential lots.
- VI. Cost Approach
- A. Value of property determined by what it will cost to duplicate the property, less value used
 - B. Steps involved—four
 - 1. Estimate the current reproduction (or replacement) cost of the improvements as of the appraisal date.
 - 2. Estimate the amount of depreciation from all causes and deduct it from the reproduction (or replacement) cost—land is not depreciated.
 - a) Physical deterioration
 - (1) Curable (e.g., outside paint)
 - (2) Incurable (e.g., substandard foundation)
 - b) Functional obsolescence
 - (1) Curable (e.g., outmoded kitchen)
 - (2) Incurable (e.g., traffic pattern)
 - c) External (economic or locational) obsolescence
 - (1) Incurable only (e.g., expressway across the street)
 - 3. Estimate the value of the site and nonstructural site improvements, assuming the site is vacant and will be put to its highest and best use.
 - 4. To derive the property's estimated value, add the estimated value of the site, including site improvements, to the depreciated cost of the structural improvements. Formulas are the following:
 - a) $\text{Reproduction cost} - \text{accrued depreciation} = \text{indicated value of building}$
 - b) $\text{Indicated value of building} + \text{site value and nonstructural improvements} = \text{indicated value of the property}$
 - C. Age-life method
 - 1. Based on a ratio of a property's effective age to its economic life
 - 2. Effective age—the age indicated by a structure's condition and utility
 - 3. $\text{Effective age} \div \text{total economic life} \times \text{reproduction cost new} = \text{accrued depreciation}$
 - D. Alternate formula to calculate accrued depreciation
 - 1. $\text{Reproduction cost new} \div \text{total economic life} = \text{annual depreciation}$
 - 2. $\text{Annual depreciation} \times \text{effective age} = \text{accrued depreciation}$

- VII. Income Approach
- A. Estimates the present worth of a future income stream
 - B. Primary approach for appraising income-producing properties
 - C. Types of income
 - 1. Potential gross income (PGI)—annual income a property would produce if fully rented and no collection losses
 - 2. Effective gross income (EGI)
 - a) $PGI - \text{vacancy and collection loss} + \text{miscellaneous income} = EGI$
 - 3. Net operating income—income remaining after subtracting operating expenses
 - a) Fixed expenses
 - b) Variable expenses
 - c) Reserve for replacements
 - D. Pro forma statement projections
 - E. $\text{Net operating income (NOI)} \div \text{value (sale price)} = \text{overall capitalization rate (OAR)}$
 - F. $I \div R = V$ (IRV)
 - G. Capitalization rate—can be determined by market-driven or investment-driven approaches
 - H. Relationship of capitalization rate and expenses on value
 - 1. Value decreases when rate increases and NOI is unchanged.
 - 2. Value decreases when expenses increase (NOI goes down) and rate is unchanged.
 - 3. Value increases when expenses decrease (NOI goes up) and rate is unchanged.
 - 4. Value increases when rate decreases and expenses are unchanged (NOI is unchanged).
- VIII. Reconciling the Value Indications Into a Final Value Estimate
- A. Appraiser uses weighted average to reconcile the three indicated values
 - 1. The indicated value that best applies to the specific assignment is given the greatest percentage; the next best is given the next highest percentage; and so on.
 - 2. Total assigned percentages in the weighted averages equal 100%.
- IX. Gross Rent Multiplier (GRM)
- A. Relates sale price to monthly rental income
 - 1. Simple substitute for the income approach for one- to four-unit residential rental properties
 - 2. Applies to rental income only
 - 3. Use comparable sales (prices and rental figures)
 - 4. $\text{Sale price} \div \text{gross monthly rent} = \text{gross rent multiplier (GRM)}$
 - 5. $\text{Monthly rent} \times \text{market GRM} = \text{market value}$

- B. Gross income multiplier (GIM)
 - 1. Used with small income-producing properties
 - 2. GIM refers to all income a property produces
 - 3. Uses annual income
 - 4. $\text{Sale price} \div \text{gross annual income} = \text{gross income multiplier (GIM)}$
 - 5. $\text{Gross annual income} \times \text{market GIM} = \text{market value}$
- X. Comparative Market Analysis (CMA)
 - A. Categories of comparables
 - 1. Recently sold
 - 2. Currently on the market
 - 3. Recently expired listings
 - B. Common elements of comparison
 - C. Computer-generated CMAs
 - D. Automated valuation models (AVMs)

DISCUSSION QUESTIONS

1. Aside from the sale or purchase of real property, when is a real estate estimate of value necessary?
2. Why is appraising one of the most specialized facets of the real estate business?
3. In addition to knowledge about the cost of money, in what other fields should a competent individual be knowledgeable to produce a valid estimate of value?
4. What types of firms and institutions regularly hire real estate appraisers as permanent employees?

CLASSROOM EXERCISES

1. Invite a professional appraiser who is qualified to do FHA/VA, Fannie Mae, and Freddie Mac appraisals to visit the class and explain appraisal work.
2. Ask an appraiser to visit and explain the procedure for acquiring that professional designation.
3. Obtain a copy of a form appraisal, black out names and localities, then allow students to examine and discuss form-type appraisals.
4. Provide students with various net income amounts along with selected capitalization rates. Have them determine market value.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Visit the Appraisal Foundation's website at <http://www.appraisalfoundation.org>.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

1. What is the estimated market value of a subject lot that is 110 feet wide by 130 feet deep?

Comparable sales data collected:

- Sale 1: A lot 107 feet wide by 125 feet deep located across the street from the subject sold six weeks ago for \$38,000.
- Sale 2: A lot 110 feet wide by 132 feet deep in the same neighborhood as the subject lot sold 12 weeks ago for \$37,800.
- Sale 3: A lot 100 feet wide by 120 feet deep in the same neighborhood but in a less attractive location within the neighborhood sold four months ago for \$35,000.

Weighted average reconciliation:

- Sale 1: This is the most recent sale and is located on the same street as the subject. It is influenced by the same locational factors as the subject; therefore, a weight to 60% is considered appropriate.
- Sale 2: This sale occurred recently and is in a similar location. The lot size is comparable to the subject lot; therefore, a 30% weighting is appropriate.
- Sale 3: This lot is smaller than the subject lot and is located on a less desirable street in the subject neighborhood. The sale occurred four months ago; however, market conditions have been stable during the last six months. A weight of 10% is considered appropriate.

2. A comparable property sold six months ago for \$215,900. It has a living area of 2,035 square feet. The comp is a four-bedroom, two-bath home with a screen lanai.

The subject property has a living area of 2,250 square feet and is a four-bedroom, two-bath home. It features a fireplace and a sprinkler system.

The appraiser uses the following data for applying the sales comparison approach:

- Market conditions adjustment: +4% annual appreciation
- Square footage adjustment: \$63 per square foot
- Lanai: \$4,000 based on market data
- Fireplace: \$2,000 based on market data
- Automatic sprinkler system: \$1,000 based on market data

Calculate the adjusted sale price of the comparable property using the information presented.

Use the following information to answer questions 3 through 5:

- Square footage:
 - Main living area: 1,941 square feet @ \$70
 - Garage: 450 square feet @ \$42
 - Open porch: 150 square feet @ \$18
- Lot information:
 - Size of lot: 95 feet wide by 110 feet deep
 - Value per square foot: \$2.80 based on comparable sales analysis

3. What is the estimated reproduction cost new of the structure?
4. The structure is 3 years old and has a useful economic life of 60 years. Calculate the accrued depreciation.
5. What is the estimated value of the residential property using the cost approach?

Use the following information to answer questions 6 through 9:

- Income: Rent \$660 per month for 20 two-bedroom apartments
- Vacancy and collection loss: 5%
- Annual expenses:
 - Property taxes: \$19,800
 - Hazard insurance: \$3,200 (exterior coverage, no contents)
 - Common area utilities: \$5,500
 - Management expense: \$21,750
 - Mortgage interest: \$18,467
 - Maintenance: \$6,000
 - Depreciation allowance: \$22,300
 - Reserve for replacements: \$4,200

6. Calculate the effective gross income (EGI).
7. Which expenses are classified as fixed operating expenses?
8. Calculate the net operating income (NOI). Remember to include only operating expenses.
9. Assuming a market derived cap rate of .12, estimate the value of the subject property using the income capitalization approach (IRV formula).
10. Use the following information to estimate the value of a rental property. The market rent for the subject property is estimated at \$725 per month.

<u>Comparable</u>	<u>Price</u>	<u>Monthly Rent</u>
A	\$82,000	\$675
B	\$90,000	\$725
C	\$84,000	\$710

S P E C I A L U N I T 1 6 Q U I Z

A N S W E R K E Y

1. Sale 1: $\$38,000 \text{ sale price} \div 13,375 \text{ sq. ft.} = \$2.84 \times .60 \text{ weight} = \1.70 . Sale 2: $\$37,800 \text{ sale price} \div 14,520 \text{ sq. ft.} = \$2.60 \times .30 \text{ weight} = \$.78$. Sale 3: $\$35,000 \text{ sale price} \div 12,000 \text{ sq. ft.} = \$2.92 \times .10 \text{ weight} = \$.29$. $\$1.70 + .78 + .29 = \2.77 weighted average. Subject: $110 \times 130 = 14,300 \text{ sq. ft.} \times \$2.77 = \$39,611$ estimated market value.
2. $\$215,900 \text{ sale price} \times .02 \text{ market conditions} = \$4,318$ market conditions adjustment. $\$215,900 + \$4,318 = \$220,218$ market conditions adjusted sale price. $2,250 \text{ sq. ft.} - 2,035 \text{ sq. ft.} = 215 \text{ sq. ft.}$ difference. $215 \times \$63 = (\text{plus})$ $\$13,545 \text{ sq. ft.}$ adjustment. $\$220,218 + \$13,545$ (sq. ft. adjustment) $- \$4,000$ (lanai) $+ \$2,000$ (fireplace). $+ \$1,000$ (sprinkler system) = $\$232,763$ adjusted sale price of comparable property.
3. $1941 \text{ sq. ft.} \times \$70 = \$135,870$; $450 \text{ sq. ft.} \times \$42 = \$18,900$. $150 \text{ sq. ft.} \times \$18 = \$2,700$. $\$135,870 + \$18,900 + \$2,700 = \$157,470$ reproduction cost new.
4. $\$157,470$ reproduction cost new $\div 60$ years useful life = $\$2,624.50$ annual depreciation. $\$2,624.50 \times 3$ years old = $\$7,873.50$ accrued depreciation.
5. Lot value: $95 \text{ front ft.} \times 110 \text{ ft. deep} = 10,450 \text{ sq. ft.}$ $10,450 \text{ sq. ft.} \times \2.80 per sq. ft. = $\$29,260$ value. $\$157,470$ reproduction cost new $- \$7,874$ depreciation $+ \$29,260$ lot value = $\$178,856$ value of the residential property using the cost-depreciation approach.
6. $\$660 \times 20 \text{ units} \times 12 \text{ months} = \$158,400$ potential gross income (PGI). $\$158,400 \times .05$ rate = $\$7,920$ vacancy and collection loss. $\$158,400 - \$7,920 = \$150,480$ effective gross income (EGI).
7. Fixed expenses include operating expenses that do not vary with occupancy/usage. Fixed expenses = property taxes = $\$19,800$ and hazard insurance = $\$3,200$.
8. $\$158,400$ PGI $- \$7,920$ vacancy and collection loss = $\$150,480$ EGI.
 Fixed operating expenses: $\$19,800$ taxes $+ \$3,200$ insurance = $\$23,000$. Variable operating expenses: $\$5,500$ utilities $+ \$21,750$ management $+ \$6,000$ maintenance = $\$33,250$. Reserve for replacements: $\$4,200$. $\$23,000$ fixed expenses $+ \$33,250$ variable expenses $+ \$4,200$ RR = $\$60,450$ operating expenses. (Note: Mortgage expense and depreciation are business related expenses. They are not operating expenses.) $\$150,480$ EGI $- \$60,450$ operating expenses = $\$90,030$ net operating income (NOI).
9. $\text{NOI} \div \text{rate} = \text{value}$. $\$90,030 \text{ NOI} \div .12 \text{ rate} = \$750,250$ value using income approach.
10. Comp A: $\$82,000 \div \$675 = 121.48$. Comp B: $\$90,000 \div \$725 = 124.14$. Comp C: $\$84,000 \div \$710 = 118.31$. $121.48 + 124.14 + 118.31 = 363.93 \div 3 = 121.31$ market derived GRM. $\$725$ market rent $\times 121.31$ GRM = $87,949.75$ or $\$87,950$ market value.

UNIT 16 EXAM QUESTIONS

EXPLANATIONS

1. a Cost is the amount to produce or acquire something.
2. c The following assumptions are inherent in the definition of market value: payment is made in cash or its equivalent, neither the buyer nor the seller is under any compulsion to act quickly, and market value is the most probable price (not the median price) a property will bring.
3. c The sales comparison approach is based on the premise that the value of a property can be estimated accurately by reviewing recent sales of properties similar to the subject property and comparing those properties with the subject property.
4. b Overimprovement occurs when owners invest more money in a structure than they may reasonably expect to recapture.
5. c Depreciation is loss in value for any reason. There are three main types of depreciation: physical deterioration, functional obsolescence, and external obsolescence.
6. b Recall DUST to remember the characteristics of value: demand, utility, scarcity (not supply), and transferability.
7. b The cost approach is considered to be the most relevant approach when appraising special-purpose properties such as hospitals, schools, or government buildings.
8. d The subject property is smaller than the comparable. Adjustments are made to the comparable. Subtract \$20,000 from the comparable's sale price.
9. d If the property being appraised is a vacant lot in an established neighborhood, the sales comparison approach is considered the most relevant approach to value.
10. d External obsolescence is any loss of value due to influences originating outside the boundaries of the property such as proximity to an industrial area.
11. b Functional obsolescence is anything that is inferior due to operational inadequacies, poor design, or changing tastes and preferences.
12. b Economic life (useful life) is the total estimated time in years that an improvement can be profitably useful.
13. a There is a definite relationship between present value, net income, and the capitalization rate. If the capitalization rate is increased and the net income remains constant, the present value will be less.

14. d $1,800 \text{ sq. ft.} \times \$48 = \$86,400$ living area. $200 \text{ sq. ft.} \times \$28 = \$5,600$ garage area. $\$86,400 + \$5,600 = \$92,000$ reproduction cost new. $\$92,000 \div 50$ years economic life $\times 10$ years = $\$18,400$ accrued depreciation. $\$92,000 - \$18,400 = \$73,600$ depreciated structure. $75 \text{ ft. wide} \times 110 \text{ ft. deep} = 8,250 \text{ sq. ft. of lot}$. $8,250 \times \$3$ per sq. ft. = $\$24,750$ land value. $\$73,600 + \$24,750 = \$98,350$ property value.
15. d $\$4,000$ monthly net income $\times 12$ months = $\$48,000$ annual NOI. $\text{Income} \div \text{rate} = \text{value}$. $\$48,000 \div .12$ rate of return = $\$400,000$ target price.
16. a $\$81,420$ PGI $\times .10$ rate = $\$8,142$ vacancy and collection loss. $\$81,420 - \$8,142 = \$73,278$ EGI. $\$73,278 - \$40,000 = \$33,278$ NOI. $\text{NOI} \div \text{value} = \text{rate}$. $\$33,278 \div \$250,000$ value = $.1331$ cap rate or 13.31% .
17. b When vacancy and collection losses are deducted from annual PGI and any income from other sources is added, the result is annual effective gross income.
18. a The comparable does not have a garage. Adjustments are made to the comparable. Add $\$18,000$ to the comparable.
19. c $\$150,000$ value $\times .08$ cap rate = $\$12,000$ NOI. $\$12,000$ NOI $\div .40$ rate = $\$30,000$ EGI.
20. c $\$40,000$ PGI $\times .05$ rate = $\$2,000$ vacancy and collection loss. $\$40,000 - \$2,000 = \$38,000$ EGI. $\$38,000 - \$12,920$ operating expenses = $\$25,080$ NOI. $\$25,080 \div .12$ cap rate = $\$209,000$ value.

17

REAL ESTATE INVESTMENTS AND BUSINESS OPPORTUNITY BROKERAGE

UNIT OVERVIEW

There are limitless opportunities within the realm of investments in general. Every investor wishes for a formula for instant wealth that will require little outlay and no risk, though such a formula simply will not materialize. Nevertheless, in one form or another, to one degree or another, everyone is an investor. Those who choose to invest in real estate or work in the field of real estate investment quickly find how complex the real estate market is. So why the attraction? Probably because so many of the fortunes made from investments have come from investing in real estate.

This unit begins by looking at factors that investors consider in attempting to achieve their investment objectives. The various types of investment properties and the ways to analyze them are described.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Define key investment terms and distinguish among the different types of real estate investments.
- Identify the advantages and disadvantages of investing in real estate.
- Distinguish among the various types of risk.
- Describe the similarities and differences between real estate brokerage and business brokerage.
- Describe the types of expertise business brokerage requires and distinguish among the methods of appraising businesses.
- Describe the steps in the sale of a business.

KEY TERMS

appreciation
asset
basis
capital gain (or loss)
cash flow

equity
going-concern value
goodwill
leverage
liquidation analysis

liquidity
real estate investment
trust (REIT)
risk
tax shelter

TEACHING OUTLINE

- I. Need for Real Estate Investment Analysis
 - A. Real estate licensee permitted to sell investment property
 1. Dealing in investment property creates more liabilities for licensees who give bad advice or who do not properly analyze an investment.
 2. *Investment analysis* is the process determining the extent to which real estate investments achieve an investor's objectives.
 - B. Investors turn to real estate specialists for help and guidance
 - C. Nature of real estate investment analysis
 1. Investment is the outlay of money in anticipation of income and profit.
 2. Real estate investment analysis is the process of determining the extent to which real estate investments will achieve an investor's objectives.
 3. Investors use some of their own money called *equity* and borrowed funds.
- II. Investment Terminology and Types of Real Estate Investments
 - A. Appreciation—increase in property value over a period of time due to economic causes
 - B. Assets—the resources of a business
 - C. Cash flow—the total amount of spendable income generated
 - D. Equity—a property's value minus mortgage debt
 - E. Leverage—use of borrowed funds to finance an investment
 - F. Liquidity—ability to sell quickly without a loss of capital
 - G. Basis—an investor's initial cost of the property
 - H. Capital gain (or loss)—difference between the adjusted basis of property and net selling price
 - I. Tax shelter—the advantages of owning real estate investments
 - J. Real estate investment trusts (REITs)—offer diversification and liquidity
 - K. Risk—chance of losing all or part of an investment
 - L. Types of real estate investments
 1. Residential
 - a) Includes single-family homes, condominiums, apartments, and other multi-family complexes
 - b) Criteria for evaluation—location, effective gross income, operating expenses, and property taxes
 - c) Lack of proper maintenance is *deferred maintenance*
 2. Commercial
 - a) Includes retail and office properties

- b) Economic characteristics that depend on the nature of existing leases and on operating expenses
 - c) Main attraction—long-term leases and the tendency for tenants to renew leases
 - 3. Industrial
 - a) Involves manufacturing, assembly, and/or distribution
 - b) Should be located near transportation facilities
 - 4. Agricultural
 - a) Desire for large tracts that lie in the path of foreseeable urban growth
 - 5. Business opportunities
 - a) Includes the sale or lease of a business and goodwill of an existing business, including business assets such as stock of a corporation
- III. Real Estate as an Investment
 - A. Advantages of real estate as an investment
 - 1. Above-average rate of return
 - 2. Tax advantages
 - 3. Hedge against inflation
 - 4. Leverage of borrowed money
 - 5. Equity buildup
 - B. Disadvantages of investing in real estate
 - 1. Lack of liquidity (illiquid)
 - 2. More localized market
 - 3. Expenses associated with expertise
 - 4. Need for active management
 - 5. Relatively high degree of risk
- IV. Assessment of Risks
 - A. Risks associated with general business conditions
 - 1. Business risk—difference between projected and actual income
 - 2. Financial risk—ability of a property to pay operating expenses from funds from operations
 - 3. Purchasing-power risk—possible loss due to inflation
 - 4. Interest rate risk—interest rates rise and affect expenses and property value
 - B. Risks that affect return
 - 1. Liquidity risk is the possible loss that may be incurred if the investment has to be converted quickly into cash.

2. Safety risk is composed of the following:
 - a) Market risk—possible loss of invested capital (return of investment)
 - b) Risk of default—possible loss of expected earnings (return on investment)
- V. Business Brokerage
- A. Similarities to real estate brokerage
 1. Sale of real property or assignment of long-term lease
 2. Active real estate license is required
 - B. Differences from real estate brokerage
 1. Assets include personal property and goodwill
 2. Going-concern value may differ from real estate value
 3. Wider geographic market
- VI. Expertise Required in Business Brokerage
- A. Expertise required in business brokerage includes the following:
 1. Corporate finance
 2. Business accounting
 3. Valuation of businesses
 - B. Corporate finance
 1. The classes and characteristics of corporate stock
 - a) Preferred stock
 - b) Common stock (required of all corporations)
 2. Securities analysis and valuation
 3. The management of working capital (the difference between total current assets and total current liabilities)
 4. Budgeting (an estimate of anticipated income and expenditures over a definite future period)
 - C. Business accounting
 1. Income statement—a concise summary of all income and expenses of a business for a stated period
 2. Balance sheet—shows the company's financial position at a stated moment in time
 3. Cash flow—the total amount of money generated from an investment after expenses have been paid
 4. Asset depreciation—separated into real property and personal property
 5. Taxation—know when to recommend that clients seek expert tax advice

- D. Valuation of businesses
 - 1. Methods of appraising businesses
 - a) Comparable sales analysis—similar businesses recently sold
 - b) Cost approach
 - (1) Reproduction cost—cost to duplicate exactly the business or building being appraised
 - (2) Replacement cost—cost that results in a business (or building) having same use and capabilities, but not identical to subject
 - c) Income analysis—present value of future benefits (best approach for valuing a business)
 - d) Liquidation analysis—estimated value from the sale of assets
- VII. Steps in the Sale of a Business
 - A. List the business for sale
 - B. Identify assets belonging to the business and separate them from all personal assets
 - C. Establish a value of the business
 - D. Subtract liabilities from value of the business
 - E. Determine value of outstanding common stock if organized as a corporation (most small businesses are sold as an asset sale even if the business is held as a corporation)
 - F. Check all relevant laws for compliance
 - G. Market (advertise) the business
 - H. Secure a buyer and have the buyer sign a confidentiality/nondisclosure agreement before releasing financial information regarding the business
 - I. Enter into a contract with both parties
 - J. Establish a due diligence period
 - K. Prepare assignment of the lease, new lease, and title work, as applicable (closing preparation)
 - L. Schedule closing

DISCUSSION QUESTIONS

1. What are some of the reasons an investor would choose to invest in a commercial property rather than a single-family residential property?
2. What are the differences between a speculative investment and a conservative investment?
3. What are the significant differences between appraising real property and appraising businesses?
4. How does the market for business enterprises/opportunities compare with the market for real estate?

CLASSROOM EXERCISES

1. Develop from student input an acceptable list of real estate investor objectives. Priority is not important.
2. Ask each student to list in order of priority the investor objectives developed and explain rationale. Ask whether the priorities change from one type of investment to another, from one point in time to another.
3. Select one of your own investment property listings or recent sales. Highlight the key elements from this chapter as reflected in that specific and current investment possibility (e.g., investor objectives, risk, leverage, income taxes, etc.).
4. Give each student \$100,000 to hypothetically invest in real estate. What criteria did they choose to help them select their investment(s)? What is their rationale for their choice(s)? (You may want to form teams of three to five students for this exercise.)
5. Distribute blank copies of a business lease and have students fill in appropriate spaces for a hypothetical situation involving the leasing of premises for either a restaurant or a retail store.
6. Obtain blank copies of a sale contract used in your area for the sale/purchase of a business opportunity. Have the class complete the form to reflect a situation you create for practice purposes.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Download information concerning demographics, economic data, and economic indicators at the United States Census Bureau's website, <https://www.census.gov/topics/housing.html>. Select "Browse by topics."

Download information regarding Florida's 2060 Transportation Plan at the Florida Department of Transportation website at www.dot.state.fl.us/planning/ftp.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

1. A business broker is estimating the value of a business that is going out of business due to the business failing. Which appraisal method is MOST appropriate?
 - a. Comparable sales analysis
 - b. Reproduction or replacement cost less depreciation analysis
 - c. Income analysis
 - d. Liquidation analysis
2. What is the total amount of spendable income generated from an investment after all operating expenses and financing costs have been deducted?
 - a. Cash flow
 - b. Effective gross income
 - c. Equity
 - d. Net operating income
3. A financial statement that summarizes all the income and expenses of a business for a stated period is the
 - a. balance sheet.
 - b. cash flow analysis.
 - c. income statement.
 - d. leverage statement.
4. Which term describes an investment in which the investor is able to convert noncash assets into cash quickly?
 - a. Illiquidity
 - b. Liquidity
 - c. Leverage
 - d. Marketability
5. If an investment produces an overall rate of return that is less than the interest rate on the mortgage, the investor has
 - a. goodwill.
 - b. liquidity.
 - c. negative leverage.
 - d. positive leverage.
6. The increase in property value over a period due to economic causes is called
 - a. equity.
 - b. inflation.
 - c. appreciation.
 - d. capital gain.
7. Which is considered an advantage of investing in real estate?
 - a. Hedge against inflation
 - b. Liquidity
 - c. Management
 - d. Risk
8. Which characteristic is similar for both real estate brokerage and business brokerage?
 - a. Assignment of a long-term lease
 - b. Goodwill
 - c. May have a wider geographic market
 - d. Going-concern value may differ from real estate value
9. All corporations must have what class of stock?
 - a. Common
 - b. Guaranteed
 - c. Preferred
 - d. Secured
10. What term describes all the debts of the business, including long-term debts and short-term obligations?
 - a. Leverage
 - b. Liabilities
 - c. Mortgage
 - d. Securities

SPECIAL UNIT 17 QUIZ

ANSWER KEY

1. d In a liquidation analysis, business brokers and financial experts must consider such factors as the ability of the firm to pay off short-term obligations, the value of the inventory on hand, and the liquidation value of preferred stock.
2. a Cash flow is the total amount of spendable income generated from an investment. It is the total amount of money remaining after all expenditures have been paid. Operating expenses include reserves for replacement and payment of mortgage principal and interest. Cash flow disregards depreciation because depreciation does not involve an outlay of cash.
3. c An income statement is a concise summary of all income and expenses of a business for a stated period. It is designed to show the results of business operations over a specific period and to provide the basic data for analyzing the reasons for a firm's profits or losses.
4. b Liquidity refers to the ability to sell an investment very quickly without loss of capital.
5. c Negative leverage occurs if the borrowed funds cost more than they are producing.
6. c Appreciation is the increase in property value over a period due to economic causes.
7. a Historically, real estate prices have increased (property appreciation) at a faster pace than inflation.
8. a Two similarities between business brokerage and real estate brokerage are: (1) sale of real property or assignment of a long-term lease, and (2) an active real estate license is required.
9. a Common stock is required of all corporations.
10. b Liabilities of a business is the value of all short-term and long-term liabilities (including the value of preferred stock).

UNIT 17 EXAM QUESTIONS

EXPLANATIONS

1. a REITs offer diversification and liquidity, they are similar to mutual funds, and they offer the advantages of skilled centralized management and continuity of operation.
2. b If the interest paid for borrowed funds is less than the overall rate of return from a property, the investor's real yield is increased, resulting in positive leverage.
3. a Business risk reflects the possible unsuccessful operation of a particular project. It is the probability that projected income will not be achieved or will not be adequate to meet operating expenses. This category of risk is associated with the degree of variance between projected income and expenses and actual income and expenses.
4. d An intangible asset is something of value lacking physical substance, existing only in connection with something else, such as the goodwill of a business.
5. a Capital is the net worth of a business. It is the amount by which the assets exceed the liabilities.
6. c Both business brokerage and real property brokerage involve the need for an appraisal and require a real estate license. Both involve an interest in real property. Business brokerage differs from real property brokerage in that intangible assets such as goodwill may be included.
7. b The balance sheet shows the company's financial position at a stated moment in time, the close of business on the date of the balance sheet.
8. a Going-concern value is the value of an established business property compared with the value of just the physical assets of a business that is not yet established.
9. d The need for active management is a disadvantage of real estate investments (not an advantage). Real estate requires active management. Properties must be cared for, rents collected, and so forth.
10. b The income statement is a concise summary of all income and expenses of a business for a stated period.
11. d Assets are the entire resources of a business, including tangibles and intangibles, such as accounts and notes receivable, cash, inventory, equipment, real estate, and goodwill.
12. c $\$975,900 - \$731,925 = \$243,975$ equity.

18

TAXES AFFECTING REAL ESTATE

UNIT OVERVIEW

People traditionally view taxes from a negative standpoint. However, the benefits and services of police protection, schools, fire protection, and so forth provided by property taxes outweigh the objections in most people's minds. Students of real estate should be informed as to the relationship between services provided and property values acclaimed. Without the services afforded by property taxes, the value of property would certainly decrease.

This unit describes the three levels of governmental involvement in taxes related to real property. *Just value* is explained so students do not confuse it with *market value*. Protest procedures and exemptions from taxation are discussed, and simple arithmetic involved in calculating property tax rates, property taxes, and special assessments is illustrated. The federal tax advantages of owning real property are touched on so that prospective licensees may be better prepared to point out such benefits to their future customers.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Discuss the city and county property taxation process and list the steps involved in the tax appeal procedure.
- Distinguish among immune, exempt, and partially exempt property and describe the various personal exemptions available to qualified owners of homestead property.
- Compute the property tax on a specific parcel, given the current tax rates, assessed value, eligible exemptions, and transfer of assessment limitation difference (save our homes portability) if applicable, and describe the purpose of Florida's Green Belt Law.
- Calculate the cost of a special assessment, given the conditions and amounts involved.
- Describe the tax advantages of home ownership.
- Explain how to determine taxable income of investment real estate and distinguish between installment sales and like-kind exchange.

KEY TERMS

adjusted basis	debt service	like-kind exchange
ad valorem	depreciation	mill
assessed value	exempt properties	special assessment
assessment limitation (SOH benefit)	Green Belt Law	tax rate
boot	immune properties	taxable income
capital gain	installment sale	taxable value
	just value	

TEACHING OUTLINE

- I. City and County Property Taxes
 - A. Provide the bulk of local government revenues in Florida
 - B. The real property taxation process
 1. Levy of property taxes on ad valorem basis (according to value)
 2. Properties assessed on calendar-year basis
 3. Property tax schedule
 - a) January 1—tax year begins, property is assessed, lien attached, tax exemption period begins
 - b) March 1—tax exemption filing period ends
 - c) April 1—property taxes for previous year become delinquent
 - d) November 1—property taxes payable for current year
 - e) December 31—current tax year ends
 - C. Determining *just value*
 1. Just value is the fair and reasonable value based on objective valuation methods.
 2. Just value is interpreted by the courts to represent market value.
 3. Present cash value of the property
 4. Present use compared with legal highest and best use
 5. Location of the property
 6. Quantity or size of the property
 7. Cost of the property and replacement value of improvements
 8. Condition of the property
 9. Income from the property
 10. Net proceeds from sale of the property
 11. All three approaches to estimating value (sales comparison, cost, and income) are represented in above criteria for finding just value

12. Methods of assessment
 - a) County property appraisers make field trips, but normally do not examine every lot.
 - b) Field trip information is processed into a computer for objective assessment.
 13. Owner must be informed of assessed value with a TRIM (truth in millage) notice
- D. Protest procedure (objecting to assessed value)
1. Property owner is allowed 25 days after the TRIM notice is mailed to protest.
 2. Step 1: Property owner appeals to county property appraiser.
 3. Step 2: If rejected, property owner files appeal with the value adjustment board, which is composed of five elected officials:
 - a) Two county commissioners
 - b) One county school board member
 - c) Two citizen members
 4. Step 3: If first two steps fail, property owner can litigate assessment in a court of law.
 - a) Suit must be filed within the statutory period (Chapter 194, F.S.).
 - b) Court may specify the methods and procedures that the county property appraiser should use in reassessing the subject property.
 5. Remember the steps as ABC—**A**ppraise, **B**oard, **C**ourt
- II. Tax Districts: Budgets and Tax Rate Levy
- A. Tax rate set by tax district (may be city, county, school board, or special tax district), not by county property appraiser
1. Each taxing authority prepares next year's budget to determine the revenue needed from property taxes
 2. Tax base—total assessment of taxable property within a tax district
- B. Exemptions from property taxes
1. *Immune* properties
 - a) City, county, state, and federal government properties
 - b) Examples include county courthouses and military facilities
 - c) Special categories (e.g., municipal airport)
 - d) Immune properties are not subject to taxation
 2. *Exempt* properties
 - a) Property belonging to eligible not-for-profit organizations that own and operate real estate for religious and charitable purposes
 - b) Exempt properties subject to taxation but the owner is released from obligation

- C. Homestead tax exemption
 - 1. Florida residents who hold title to a home in Florida and use the home as their permanent residence may establish the residence as a homestead
 - 2. Applicants—must reside in the home and have legal title as of January 1
 - 3. First-time applicants—must file application on or before March 1
- D. Calculating Taxable Value
 - 1. If the assessed value is up to \$50,000, the owner's homestead exemption on city, county, and school board taxes is base \$25,000.
 - 2. If the assessed value is greater than \$50,000, the owner's exemption is base \$25,000 exemption from city, county, and school board taxes and \$50,000 additional exemption from city and county taxes
- E. Additional homestead tax exemptions
 - 1. Surviving spouse who has not remarried—\$5,000
 - 2. Legally blind person—\$5,000
 - 3. Nonveterans who are totally and permanently disabled—\$5,000
 - 4. Totally and permanently disabled quadriplegic—100% tax exempt
 - 5. Totally and permanently disabled first responder (and surviving spouse)—100% tax exempt
- F. Additional homestead tax exemptions for veterans
 - 1. Veterans who are at least 10% disabled by military-service-connected misfortune are entitled to an additional \$5,000 exemption on their homestead.
 - 2. Veterans who are totally and permanently disabled due to military service are 100% tax exempt.
- G. Tax rates
 - 1. Tax rate is expressed in mills.
 - a) Millage is 1/100th of a dollar (\$.001). There are 10 mills in one penny.
 - (1) Florida has legislated a “cap” (ceiling) that limits cities, counties, and school boards to no more than 10 mills each (equivalent to one cent per dollar of taxable value), except for voted levies.
 - (2) Tax rates expressed in mills must be converted to decimal value before calculating property taxes.
 - (3) The decimal point moves three places (1,000th) to the left.
 - 2. Calculation of annual property taxes
 - a) Assessed value – exemption(s) = taxable value
 - b) Taxable value × tax rate = annual property taxes due

- H. Facts about calculating property taxes
 - 1. Homestead exemptions are deducted from assessed value to find taxable value.
 - 2. For homesteaded property, subtract only the base exemption to calculate school board taxes.
 - 3. If not homesteaded, assessed value equals the taxable value.
 - 4. Taxable value is multiplied by the tax rate, in mills, to determine property taxes.
- III. Florida Statutes Affecting Real Property
 - A. Save Our Home (SOH)
 - 1. SOH caps how much the assessed value of homesteaded property can increase in a given year to the lesser of:
 - a) 3% annually, or
 - b) a percentage change of the CPI for preceding year.
 - 2. SOH benefit is portable.
 - a) A homesteaded property owner can transfer up to \$500,000 of SOH benefit to a new homestead.
 - b) A homeowner must establish a homestead exemption for the new home within three tax years of January 1 of the last qualified homestead exemption (not three years after the sale).
 - 3. Prospective purchasers of residential property must be given a disclosure summary regarding property taxes.
 - a) The disclosure informs purchasers that they cannot rely on the seller's current property taxes as the amount of property taxes the purchaser may be obligated to pay in the year after purchase of the property.
 - B. Florida's Green Belt Law
 - 1. Designed to protect farmers and agricultural lands from urban growth and development
 - 2. Tax more favorable and based on the land's current character and use
- IV. Special Assessments
 - A. A tax usually levied on property to help pay for a public improvement that benefits the property
 - 1. Must enhance the value of the affected property or the courts will disallow
 - 2. Specific lien because the lien attaches to a specific property and not all of the assets of the owner
 - 3. Superior lien because it takes priority over all other liens, except for property tax liens
 - 4. Street paving assessment
 - a) Assessments are calculated on a front-foot basis (measurement along the street).
 - b) Local government typically bears a portion of the cost of the improvements.

- c) Owners are charged only to the middle of the street (or half of the total property owner's share).
 - d) The assessment is not affected by the dimensions of neighboring properties or how property across the street is zoned.
 - B. Nonpayment of real property taxes
 - 1. Delinquent real estate taxes
 - 2. Property tax certificates are sold to bidders at auction by county tax collector
 - a) Certificates pay interest up to 18%.
 - b) After two years, the certificate holder may request a tax deed be issued.
 - c) Tax certificate expires seven years from date of issue.
 - d) Property is sold at auction to the highest bidder.
 - e) If not the successful bidder on the property, the certificate holder is paid the amount invested plus interest from proceeds of auction.
 - 3. Tax deed process
- V. Federal Income Taxes
 - A. Principal residence
 - 1. Homeowner deductions
 - a) Mortgage interest
 - b) Property taxes (up to \$10,000)
 - c) IRA withdrawals are penalty-free (but not tax-free) for first-time homebuyers (up to \$10,000)
 - d) Exclusion of gain from the sale of a principal residence
 - 2. Additional tax benefits
 - a) Interest on home equity loans is deductible if used for improvements on the home.
 - b) Mortgage loan origination fees (points) are deductible in the year paid in the year paid.
 - 3. Sale of real property
 - a) Capital gain—profit from the sale of a principal residence or an investment property
 - (1) Gain is the amount realized from the sale less the adjusted basis.
 - (2) Sale price – expenses of sale = amount realized.
 - (3) Original purchase price + purchase expenses + capital improvements = adjusted basis.
 - b) Taxpayer/seller's capital gain (or loss)
 - (1) Amount realized – adjusted basis = capital gain (loss) from sale.

- (2) Taxpayer may *not* deduct a capital loss from the sale of a principal residence.
 - (3) Any gain above the exclusion is taxed at the applicable capital gains rate.
4. Exclusion of gain from the sale of a principal residence
 - a) \$250,000 of gain excluded for single filers
 - b) \$500,000 exclusion for married couples filing a joint return
 5. Disposition of real property from foreign sellers
 - a) The buyer of property owned by a foreign investor must withhold 15% the amount realized on the sale to cover income taxes owed to the IRS.
 - b) Licensees should encourage their buyers and sellers to consult a tax specialist regarding application of this rule.

VI. Investment Property

A. Types of income

1. Effective gross income (EGI)
2. Net operating income (NOI)

B. Determining taxable income

1. Operating expense—cash outlays necessary for running and maintaining the property
2. Replacement expenses—the money held in a reserve (savings) account until it is needed
 - a) Money held in reserve is not tax deductible until it is actually paid out in a tax year.
3. Depreciation
 - a) Initial cost + acquisition costs – land = depreciable basis.
4. Straight-line method
 - a) Equal amount of depreciation is taken annually over the useful life of the asset
 - b) Depreciable basis \div 27.5 years (or 39 years) = annual depreciation
 - c) Based on total cost of improvements, including that portion paid with borrowed funds (the leveraged portion)

C. Capital gains and capital losses

1. Total realized gain is the difference between the net sale price (selling price less selling expenses) and the depreciated basis of the property.
2. In the installment sale method, gain is received over a number of years and the seller recognizes the gain for tax purposes over the same period.
3. Like-kind exchanges allow taxpayers to defer tax on the gain.

- D. Tax shelter
 - 1. An investment that shields income or gain from payment of income taxes
 - 2. Depreciation—a key feature

DISCUSSION QUESTIONS

1. Why do property tax rates differ from one community to another?
2. What would you logically conclude are the most common special assessment taxes levied in your local area?
3. What factors might cause real property taxes to go up or down?
4. Why are some properties *immune* from taxation?
5. Why are some properties *exempt* from taxation?

CLASSROOM EXERCISES

1. Invite a representative from the county tax appraiser's office to speak to the class about how property values are established.
2. If possible, obtain a copy of your city's budget. Review revenue sources and expenditures with the class. Explain how the property tax income is allocated.
3. Obtain standard forms used by your county property appraiser and review the items on the forms with the class.
4. Give the students several practice problems: provide the assessed value, exemptions to be considered, and applicable tax rates. Have the students calculate the annual property tax cost.
5. Give the students some practice problems to improve their understanding and familiarity with the tax advantages of owning real property.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

Instructor's handout, *Change to Additional Homestead Exemptions for the 2023 Ad Valorem Tax Year*, available at www.dearborn-fla.com instructor's resources page.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

1. Draw a time line for the period January 1 through December 31. Indicate what events occur on January 1, March 1, April 1, November 1, and December 31.

Use the following information to answer questions 2 through 4:

A property has an assessed value of \$210,000. The homeowner qualifies for homestead exemption. The applicable millage rates are 10 city, 10 county, and 9.8 school mills.

2. Calculate the property taxes due.
3. Assume the property is located outside the city limits. Calculate the applicable property taxes.
4. Assume the property owner is a legally blind widower. The owner lives within the city limits. Calculate the applicable property taxes.
5. A homesteaded property was assessed in the previous year for \$199,500. The rate of inflation based on the most recent CPI index is 1.5%. The Save Our Home amendment caps the increase in assessed value at 3%. What is the maximum assessed value in the current for this homesteaded property?
6. A neighborhood is being connected to the city sewer system at a cost of \$2,600 per lot. The city is covering 40% of the installation cost. Calculate the homeowner's special assessment.
7. A homeowner originally purchased a new home for \$290,000. During the period of ownership, the homeowner spent \$25,000 in capital improvements. The homeowner sold the home 10 years later for \$393,000. The homeowners paid a brokerage fee of \$23,580 and closing costs of \$1,135. What is the capital gain from the sale?
8. The homeowners paid \$211,000 for a home in the previous tax year. They financed \$145,000 of the purchase price and paid 1.5 points at closing. The homeowners paid the following expenses in the current tax year: mortgage interest of \$13,224, property taxes of \$3,600, lawn maintenance of \$1,380, and installed gutters and downspouts costing \$903. Calculate the homeowners' adjusted basis.
9. A standalone commercial property was purchased for \$289,000. According to the property tax rolls for the year of purchase, the ratio of land to total value is 25%. Calculate the depreciable basis of this property and the annual depreciation allowance.
10. In 2019, a duplex classified as an investment property was purchased for \$325,000, with a land value of \$65,000. What is the amount of the annual IRS deduction for depreciation? (Round to the nearest dollar.)
 - a. \$6,667.00
 - b. \$8,333.00
 - c. \$9,455.00
 - d. \$11,818.00

SPECIAL UNIT 18 QUIZ ANSWER KEY

1. November 1: Property taxes are due for the current year; December 31: Current tax year ends; January 1: New tax year begins, property is assessed, a lien is attached for current year, and tax exemption filing period begins; March 1: Tax exemption filing period ends; and April 1: Property taxes for the previous year become delinquent.
2. $210,000$ assessed value $-$ $\$25,000$ base homestead exemption = $\$185,000$ taxable value for school taxes. $\$210,000$ assessed value $-$ $\$50,000$ homestead exemption = $\$160,000$ taxable value for city and county taxes. $\$185,000 \times .0098 = \$1,813$ school taxes. 10 city mills + 10 county mills = 20 mills or $.020$. $\$160,000$ taxable value $\times .020 = \$3,200$ city and county taxes. $\$1,813 + \$3,200 = \$5,013$ total taxes due.
3. $\$210,000$ assessed value $-$ $\$25,000$ base homestead exemption = $\$185,000$ taxable value for school taxes. $\$210,000$ assessed value $-$ $\$50,000$ homestead exemption = $\$160,000$ taxable value for county taxes. $\$185,000 \times .0098 = \$1,813$ school taxes. 10 county mills = $.010$. $\$160,000$ taxable value $\times .010$ rate = $\$1,600$ county taxes. $\$1,813 + \$1,600 = \$3,413$ total taxes due.
4. $\$210,000$ assessed value $-$ $\$25,000$ base homestead exemption $-$ $\$5,000$ blind exemption $-$ $\$5,000$ widower exemption = $\$175,000$ taxable value for school taxes. $\$210,000$ assessed value $-$ $\$50,000$ homestead exemption $-$ $\$5,000$ blind exemption $-$ $\$5,000$ widower exemption = $\$150,000$ taxable value for city and county taxes. $\$175,000 \times .0098 = \$1,715$ school taxes. $\$150,000$ taxable value $\times .020 = \$3,000$ city and county taxes. $\$1,715 + \$3,000 = \$4,715$ total taxes due.
5. $\$199,500$ previous year assessed value $\times .015$ rate = $\$2,992.50$ maximum increase. $\$199,500 + \$2,992.50 = \$202,492.50$ maximum assessed value.
6. $\$2,600$ per lot cost $\times .40$ city share = $\$1,040$ city cost per lot. $\$2,600 - \$1,040 = \$1,560$ homeowner's special assessment.
7. $\$290,000$ original purchase price + $\$25,000$ capital improvements = $\$315,000$ adjusted basis; $\$393,000$ sale price $-$ $\$23,580$ commission $-$ $\$1,135$ closing costs = $\$368,285$ amount realized; $\$368,285$ amount realized from sale $-$ $\$315,000$ adjusted basis = $\$53,285$ capital gain from the sale.
8. $\$145,000$ amount financed $\times .015$ rate = $\$2,175$ points. $\$211,000$ purchase price + $\$2,175$ points + $\$903$ capital improvements (gutters and downspouts) = $\$214,078$ adjusted basis.
9. $\$289,000 \times .25$ rate = $\$72,250$ land value. $\$289,000 - \$72,250 = \$216,750$ depreciable basis of structure. $\$216,750 \div 39$ years = $\$5,557.69$ annual depreciation.
10. $\$325,000 - \$65,000 = \$260,000$ depreciable basis. $\$260,000 \div 27.5$ years = $\$9,455.00$ annual IRS depreciation deduction.

UNIT 18 EXAM QUESTIONS

EXPLANATIONS

1. b $\$975,000$ purchase price $\times .90 = \$877,500$ depreciable basis
 $\$877,500 \div 27.5$ years = $\$31,909.09$ rounded to $\$31,909$ annual depreciation
2. b Property taxes for the previous year become delinquent on April 1.
3. a The first step is to seek an adjustment by contacting the county property appraiser or a representative of that office.
4. c The board consists of five elected officials: one school board member, two county commissioners, and two citizen members.
5. c $\$50,000$ homestead exemption + $\$5,000$ service-connected disability = $\$55,000$ total property tax exemption.
6. d The Florida Green Belt Law is legislation that authorizes county property appraisers to assess land used for agricultural purposes according to its current value as agricultural land. The law protects farmers' lands from excessive taxation.
7. b 100 ft. $\times \$40 = \$4,000$. $\$4,000 \times .25$ city rate = $\$1,000$. $\$4,000 - \$1,000 = \$3,000$ property owners' shares. $\$3,000 \div 2$ sides of street = $\$1,500$ assessment.
8. b $\$178,000$ assessed value $- \$25,000$ base homestead exemption $- \$5,000$ widow exemption = $\$148,000$ taxable value for school taxes. $\$178,000$ assessed value $- \$50,000$ homestead exemption $- \$5,000$ widow exemption = $\$123,000$ taxable value for city and county taxes. $\$148,000$ taxable value $\times .006 = \$888$ school taxes. 9.3 mills city + 9.7 mills county = 19 mills = $.019$. $\$123,000$ taxable value $\times .019 = \$2,337$ city and county taxes. $\$888 + \$2,337 = \$3,225$ total taxes due.
9. b Instead of bidding in dollars, investors of tax certificates bid interest rates at the auction, starting at 18% and going down.
10. c Gain is not taxed up to $\$500,000$ for a married couple and $\$250,000$ for an individual owner.
11. c The maximum amount of profit that may be excluded from taxation on the sale of a principal residence for a qualifying couple, filing separately, is $\$250,000$.
12. d Homeowners may not deduct hazard insurance.
13. a The installment sale method relieves the seller of paying tax on gain not yet collected.
14. b Reserve for replacements is not a cash expense and, therefore, not deductible.
15. d If a property depreciates in value in an amount equal to or greater than the depreciation allowable for tax purposes, the property is not a tax shelter.

19

PLANNING, ZONING, AND ENVIRONMENTAL HAZARDS

UNIT OVERVIEW

Planning and zoning are assuming increasingly important roles in cities and counties. The federal government insists on planning and zoning as prerequisites for participation in programs intended to assist local governments. Real estate licensees are expected to furnish buyers and sellers with valid information on zoning as it affects properties with which they are involved. Real estate licensees may be required to appear before planning commissions or zoning boards of adjustment on behalf of their principals. Thus, licensees should clearly understand the planning process and procedures for controlling land use.

This unit explains the composition, responsibilities, and goals of planning commissions and their staffs. It describes six basic background studies necessary for adequate planning and growth management and the role of the public at large in accomplishing the goals of the planning community. The composition and responsibilities of zoning boards of adjustment are examined, and developments of regional impact are described.

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- Describe the composition and authority of the local planning agency and the purpose of land-use controls and the role of zoning ordinances.
- Calculate the number of lots available for development, given the total number of acres contained in a parcel, the percentage of land reserved for streets and other facilities, and the minimum number of square feet per lot.
- Distinguish among the five general zoning classifications, zoning ordinances, building codes, and health ordinances.
- Explain the purpose of a variance, a special exception, and a nonconforming use and describe the characteristics of planned unit developments.
- Understand the basic provisions of the national flood insurance program.
- Explain the various environmental hazards associated with real estate.

KEY TERMS

asbestos	environmental impact statement (EIS)	special flood hazard area (SFHA)
buffer zone	health ordinance	special purpose property variance
building codes	nonconforming use	zoning ordinance
building inspection	planned unit development (PUD)	
building permit	special exception	
certificate of occupancy		
concurrency		

TEACHING OUTLINE

- I. History of Planning and Zoning
 - A. Philosophy of *laissez-faire* (let alone)
 - B. Florida's growth policy and community planning act
 1. Concurrency provision mandates infrastructure for sanitary sewers, potable (drinking) water, and waste treatment facilities are in place before new development is allowed
 2. Community Planning Act (CPA) placed growth decisions in the hands of local government
 3. Comprehensive plan not a regulatory document but a guide to anticipate changing needs within the community
 - C. Planning goals
 1. Save tax money by preventing sprawl
 2. Provide adequate provision of services
 3. Provide for road right-of-ways and setbacks
 4. Protect against costly drainage, flooding, and environmental problems
 5. Reduce problems associated with political and equity issues caused by existing landfills, prisons, and so forth
- II. Local Planning Agency
 - A. Composition
 1. Usually a cross-section of the community, an appointed advisory to elected officials (not final authority), voluntary (not paid)
 2. Have a staff of full-time, professional employees
 - B. Authority
 1. Subdivision plat approval
 2. Site plan approval
 3. Sign control

- C. Support staff
 - 1. Composed of full-time, salaried professional planners
 - 2. Collects raw data and refines it into studies under guidance of planning commission
- III. Calculating Lots per Acre
 - A. Particular residential zones have restrictions on lot sizes.
 - 1. Every acre of land contains 43,560 square feet.
 - 2. 20% to 25% of the land in a subdivision is commonly used for streets and open space.
 - 3. Calculations for buildable lots in a tract of land include the following:
 - a) $43,560 \text{ sq. ft. per acre} \times \% \text{ available for lots} = \text{sq. ft. available for lots per acre}$
 - b) $\text{Sq. ft. available for lots per acre} \times \text{number of acres in tract} = \text{total available sq. ft.}$
 - c) $\text{Total available sq. ft.} \div \text{minimum sq. ft. per lot} = \text{number of buildable lots in tract}$
- IV. Zoning, Land Use Restrictions, and Building Codes
 - A. Enacted to ensure adherence to the planned types of land uses and to protect the integrity of the comprehensive plan
 - B. Zoning ordinances are local laws that implement the comprehensive plan
 - 1. Exercise of police power
 - 2. Each zone assigned specific land-use classification
 - C. Zoning classifications
 - 1. Residential—controls density, or number of homes per acre
 - 2. Commercial—regulates intensity of use (parking requirements, building height, and size limitations)
 - 3. Industrial—controls emissions and effluents
 - 4. Agricultural—all-inclusive category
 - 5. Special use—property owned by all levels of government (city parks, county courthouses, and federal post office buildings) exempt from local zoning regulations
 - D. Building codes—protect public health and safety from inferior construction practices
 - 1. Set minimum standards for materials and quality of workmanship
 - 2. Florida Building Code includes energy code and wind-speed maps
 - 3. Cities and counties—may enforce more (but not less) stringent building codes
 - 4. Building permit issued and building inspections at various phases of construction
 - 5. Certificate of occupancy at completion
 - E. Health ordinances control maintenance and sanitation of public spaces

- V. Appeals and Exceptions
 - A. Zoning board of adjustment
 - 1. The primary function of the zoning board is to provide property owners some degree of relief from rigid zoning codes.
 - 2. The board must render objective, unbiased decisions (quasi-judicial powers).
 - B. Variances
 - 1. A *hardship* exists or will be created (and *not* self-created)
 - 2. Same standards used by board of adjustment to judge all requests
 - C. Special exceptions
 - 1. Used to control the location of unique land uses (e.g., cemetery)
 - 2. Special purpose property has only one economically feasible use, such as a place of worship, nursing home, school, post office, or hospital.
 - D. Legally nonconforming uses
 - 1. Definition—continued use of land in same manner as previously used even though surrounding land now zoned for different purposes
 - 2. Methods to correct nonconforming land use
 - 3. Restrictions placed on nonconforming land use
 - E. Developments of regional impact (DRI)
 - 1. Any development, because of its character, size, or location, will have a substantial effect on the health, safety, or welfare of citizens of more than one county.
 - 2. Statewide guidelines and standards determine whether particular developments must undergo DRI review.
 - 3. Guidelines and standards include the following:
 - a) To what extent the development will create or alleviate environmental problems, including air and water pollution or noise
 - b) Amount of pedestrian or vehicular traffic
 - c) Number of potential residents and/or employees
 - d) Size of the site
 - e) Likelihood additional or subsidiary development will be generated
 - f) Potential additional demand for energy usage
 - g) Unique qualities of particular areas of the state
 - F. Planned unit development (PUD)—type of special land use with unique characteristics
 - 1. Clustered homes
 - 2. Mixed land use
 - 3. Planned open spaces

- a) Zero lot line—describes the positioning of a structure on a lot so that one side rests directly on the lot's boundary
- b) No side setback requirement

VI. Environmental Requirements and Legislation

- A. Environmental impact statement—summarizes into one document the effect the proposed project will have on surroundings
- B. National Flood Insurance Program (NFIP)
 - 1. National Flood Insurance Program (NFIP) provides property owners with coverage against losses due to flooding.
 - 2. Flood insurance is purchased through insurance agencies.
 - 3. Communities agree to adopt and enforce ordinances that meet or exceed Federal Emergency Management Agency (FEMA) requirements.
 - 4. FEMA administers the flood program.
 - 5. Flood insurance rate maps (FIRMs)
 - a) Zones are categorized as low risk, moderate risk, and high risk
 - 6. Special flood hazard areas
 - a) Areas identified on FIRMs as high-risk A zones
 - 7. High-risk coastal areas
 - a) Coastal land located in SFHAs identified on FIRMs in V zones
 - 8. Mortgage loan requirements
 - a) Flood insurance is required in special flood hazard areas (SFHAs) that are financed with mortgage loans from federally regulated or insured lenders.
 - b) Flood insurance is not mandatory for property located in low- and moderate-risk areas in communities that participate in the NFIP.

VII. Environmental Hazards Associated With Real Estate

- A. Asbestos—a mineral fiber in common use until 1978 in a variety of building construction materials for insulation and as a fire retardant
 - 1. Fibers become dangerous when they are disturbed or removed improperly.
 - 2. An owner who is considering renovating or remodeling a structure containing asbestos materials should consult an asbestos specialist.
- B. Radon
 - 1. Radon disclosure at the time or before a person enters into a sale contract
 - 2. Testing not required
- C. Lead-based paint (pre-1978)

- D. Mold
 - 1. Molds reproduce by means of tiny spores, invisible to the naked eye and float through outdoor and indoor air.
 - 2. The DBPR licenses mold assessors and remediators.
 - 3. Licensees should remind sellers to disclose any insurance claims regarding mold or other water issues.
- E. Water supply
- F. Wood-destroying organisms
 - 1. Licensees should recommend that buyers have a WDO inspection done prior to purchasing a property.
 - 2. The inspection must be made in accordance with standards established by rule and must include an inspection for all wood-destroying organisms (WDOs).
 - 3. The inspection report must contain the following:
 - a) Date of inspection
 - b) Any visible accessible areas that were not inspected and why they were not inspected
 - c) Any visible evidence of previous treatments for, or infestations of, WDOs
 - d) Identity of any WDOs present and any visible damage caused
 - e) Disclosure of any treatment performed at the time of inspection
 - f) The name of each WDO that was found and if treatment was provided at time of inspection
 - g) Certification statement must be included in the report, stating inspector has no financial interest in the property and is not associated with the property in any way
 - h) Inspection notice must be posted by the inspector adjacent to the access to the attic or crawl area or other readily accessible area of the property inspected
 - i) Inspection report must be maintained for three years by pest control company that performed the inspection

DISCUSSION QUESTIONS

1. What city or county comprehensive plans are you personally aware of that are either being prepared or are already in existence?
2. How can prediction of approximate income levels of future households benefit the zoning activities of a planning commission and its staff?
3. How might an existing land-use study be coordinated with a population study to develop a land-use plan for the future?
4. What is the logic in using density as a criterion in regulating residential and commercial use of land?
5. What is the difference between a variance and a special exception regarding adjustments allowed in the zoning process?

CLASSROOM EXERCISES

1. Obtain from a local county commission or planning commission a map or maps showing current land uses or public lands owned by federal, state, county, and/or city governments.
2. Have students bring to class any articles related to land use, planning, growth management, and zoning.
3. Develop practice problems for the class to solve in predicting the number of acres to be zoned residential to accommodate new residents. Give students the number of anticipated new households per year, present number of households, and current number of acres used for residential purposes.

INSTRUCTOR RESOURCES AVAILABLE ONLINE

To get the latest information concerning the Florida Building Code, visit <https://www.floridabuilding.org>.

Crossword puzzles and PowerPoint slides are available at www.dearborn-fla.com.

SPECIAL UNIT 19 QUIZ

- Which is part of the city's and county's infrastructure?
 - Residential construction
 - Commercial buildings
 - Sewer systems
 - Zoning ordinance
- Which group BEST describes the composition of local planning commissions?
 - Elected officials
 - Appointed by local city or county officials
 - Trained professional planners
 - Salaried county employees
- Sign control authority is typically delegated to the
 - mayor of the city or the county.
 - planning commission.
 - zoning department.
 - county commission.
- What must developers submit to the local planning commission when creating a new subdivision?
 - Blueprints
 - Building permits
 - Subdivision plat
 - Subdivision deed restrictions
- A developer is planning to develop 120 acres. The zoning classification requires 9,000 square feet of land per lot. The developer sets aside 25% of the total acreage for streets, sidewalks, and a playground. How many lots for homesites are available to develop?
 - 390
 - 392
 - 435
 - 580
- A city park is classified as which type of zoning?
 - Agricultural
 - Green space
 - Special use
 - Exempt
- The distance from a property's lot line to the building line is called
 - the setback.
 - density.
 - the zero lot line.
 - variance.
- A strip of land separating one land use from another is called a
 - nonconforming use.
 - barrier.
 - boundary.
 - buffer zone.
- Which request will be granted only if the homeowner can establish that a hardship will be created by complying with the zoning ordinance?
 - Special exception
 - Nonconforming use
 - Variance
 - Zoning change
- Which method is used to control the quality and safety of construction materials and methods?
 - Building code
 - Zoning ordinance
 - Health ordinance
 - Zoning code

SPECIAL UNIT 19 QUIZ

ANSWER KEY

1. c Infrastructure includes sanitary sewers, potable (drinking) water, and waste treatment facilities.
2. b Planning commissions are most effective when composed of members who represent all walks of life. Members most often are not trained professional planners. The overriding goal is to have representatives from a cross section of interests.

Members of the planning commission are usually appointed (not elected) and serve in a voluntary, unpaid capacity.
3. b Three areas of responsibility for which city planning commissions are commonly delegated final authority are: (1) subdivision plat approval, (2) site plan approval, and (3) sign control.
4. c A developer planning to create a subdivision must submit a subdivision plat to the planning commission for approval.
5. c $43,560$ square feet per acre $\times .75$ available for lots = $32,670$ square feet available for lots per acre; $32,670 \times 120$ acres in tract = $3,920,400$ total available square feet; $3,920,400 \div 9,000$ minimum square feet per lot = 435 buildable lots
6. c Most zoning authorities consider all property owned by all levels of government as a type of special use property. Special use zoning includes, for example, city parks, county courthouses, and federal post office buildings.
7. a Zoning regulations control types of structures allowed, lot sizes, building heights, setbacks (distance from the lot line to the building line), and density.
8. d A buffer zone is a strip of land separating one land use from another.
9. c A variance allows a property owner to *vary* from strict compliance with all or part of a zoning code because to comply would force an undue hardship on the property owner.
10. a Building codes protect the public health and safety from inferior construction practices. The Florida Building Code is a statewide building code.

UNIT 19 EXAM QUESTIONS

EXPLANATIONS

1. b Laissez-faire is a philosophy of noninterference by government in private business affairs and allows the owners of land and businesses to fix the rules of competition.
2. c The concurrency provision in Florida's Growth Management Act mandates that the infrastructure needed to support additional population exists before new development begins.
3. c Members of the planning commission usually are appointed and serve in a voluntary, unpaid capacity. Planning commissioners are usually appointed for terms longer than the term of the appointing authority to reduce the commissioners' obligation to any single political body. This minimizes political influence within the planning body.
4. d Planning commissions are most effective when composed of members who represent all walks of life.
5. a A radon disclosure statement consists of what radon is and is required on real estate sale and lease contracts.
6. a The planning commission's primary function is to make recommendations to the elected government body. The Commission is not the final authority in matters related to planning.
7. c A buffer zone is a strip of land separating one land use from another.
8. a Building codes protect the public health and safety from inferior construction practices.
9. b A variance is permission to build or use to relieve a hardship not caused by the owner.
10. c Residential zoning regulates density (number of homes per acre). It also regulates minimum lot size, setback requirements (distance from the lot line to the building line), and lot coverage.
11. a Commercial zoning regulates intensity of use. It also regulates parking requirements and building height and size limitations.
12. d If a property's use was lawfully established, but no longer conforms to current zoning, the use is allowed to continue as a nonconforming use.
13. a The legal right to enact zoning laws and building codes is derived from governmental rights called police powers.
14. b Zoning laws regulate the purposes for which structures can be used, setback requirements, minimum square footage requirements for buildings, and maximum building height.

15. c $43,560$ square feet per acre $\times .75$ available for lots = $32,670$ square feet available for lots per acre.

$32,670 \times 75$ acres in tract = $2,450,250$ total available square feet.

$2,450,250 \div 9,500$ minimum square feet per lot = 257.92 , or 257 buildable lots.

PAIRS-OR-BETTER QUIZ

The same or similar terms in real estate often have very different meanings. Define and/or explain the difference between the two terms in each pair.

1. adverse interests _____
adverse possession _____
2. capital asset _____
capital gain _____
3. executed contract _____
executory contract _____
4. legal title _____
equitable title _____
5. land contract _____
land description _____
6. MIP _____
PMI _____
7. opinion of title _____
opinion of value _____
8. principal _____
principal _____
9. probable cause _____
procuring cause _____
10. quiet enjoyment _____
quiet title _____
11. revocation _____
revoke without prejudice _____

SIX SPECIAL QUIZZES

12. sole proprietorship _____
corporation sole _____
13. special assessment _____
special exception _____
14. taxable income _____
taxable value _____

KINDRED TERMS QUIZ

- | | |
|---|----------------------------------|
| _____ 1. Gift | a. Township |
| _____ 2. Binder | b. Nonflowing water |
| _____ 3. Void | c. Riparian |
| _____ 4. Fiduciary | d. General warranty deed |
| _____ 5. Principal | e. Trust and confidence |
| _____ 6. Trust account | f. Cloud on title |
| _____ 7. Littoral rights | g. Freehold estate |
| _____ 8. Chattel | h. Preferred location |
| _____ 9. Defect in title | i. Land contract |
| _____ 10. Estate for years | j. Dedication |
| _____ 11. Fee simple estate | k. Mixing of funds |
| _____ 12. Granting clause | l. Escrow account |
| _____ 13. Proprietary lease | m. Cooperative |
| _____ 14. Mutual assent | n. Meeting of the minds |
| _____ 15. Water rights along a flowing waterway | o. Net income ÷ cap rate |
| _____ 16. Principal meridian | p. Mortgage lender |
| _____ 17. Tier | q. Leasehold estate |
| _____ 18. Quiet enjoyment | r. Single agency buyer or seller |
| _____ 19. Present value | s. Revoked |
| _____ 20. Situs | t. Deposit |
| _____ 21. Contract for deed | u. Equity |
| _____ 22. Commingle | v. Personal property |
| _____ 23. Non-depository primary lender | w. Government survey system |
| _____ 24. Capital invested | x. Premises section |

ACRONYMS QUIZ

- | | |
|---|----------------|
| _____ 1. Procedure when owner disagrees with assessed value | a. DEEP "C" |
| _____ 2. Services of real estate | b. DUST |
| _____ 3. Legal test for fixtures | c. A BAR SALE |
| _____ 4. Bundle of legal rights | d. PITT |
| _____ 5. Four unities of a joint tenancy | e. IRV |
| _____ 6. Government restrictions | f. DELL |
| _____ 7. Duties in all brokerage relationships | g. ADD |
| _____ 8. Private restrictions on ownership | h. COLIC |
| _____ 9. Elements of a valid real estate contract | i. PET |
| _____ 10. Characteristics of value | j. IRMA |
| _____ 11. Income capitalization formula | k. CBS vs. CIA |
| _____ 12. Ways an offer is terminated | l. MALE |
| _____ 13. Alienation by adverse possession | m. WILD CARD |
| _____ 14. Four settlement procedures | n. HOT CAN |
| _____ 15. Appraisal adjustment guide | o. COLD |
| _____ 16. Unique duties of a single agent | p. BLIMP |
| _____ 17. Termination of Contracts | q. ABC |

Can you also name *and* explain all the terms?

NUMBERS QUIZ PART 1 (UNITS 1–10)

- | | |
|----------------------------------|--|
| _____ 1. Chapter 475, F.S. | One answer choice (letter) is not used. |
| _____ 2. Chapter 455, F.S. | a. Square feet in an acre |
| _____ 3. Chapter 120, F.S. | b. Check |
| _____ 4. 61J2, F.A.C. | c. Second-degree misdemeanor |
| _____ 5. March 31 & April 1 | d. Civil Rights Act |
| _____ 6. 2 years null and void | e. Change of address |
| _____ 7. \$50,000 | f. License expiration dates |
| _____ 8. 10 years | g. DBPR law |
| _____ 9. \$150,000 Recovery Fund | h. Maximum per transaction |
| _____ 10. \$5,000 | i. Time to implement settlement procedure |
| _____ 11. 1 year jailtime | j. Township |
| _____ 12. 24 miles square | k. Administrative Procedure Act defines disciplinary process |
| _____ 13. 6 miles square | l. Days for broker to deposit escrow |
| _____ 14. 1 mile square | m. Maximum fine Chapter 475, F.S. and Chapter 455, F.S. |
| _____ 15. 36 | n. Maximum balance Recovery Fund |
| _____ 16. 640 | o. Maximum suspension |
| _____ 17. 43,560 | p. Third-degree felony |
| _____ 18. 60 days jailtime | q. FREC rules |
| _____ 19. \$50 referral fee | r. First-degree misdemeanor |
| _____ 20. 30 business days | s. Finder's fee exemption |
| _____ 21. 5 years of jail time | t. Maximum involuntary inactive |
| _____ 22. 1866 | u. Claims paid against one licensee |
| _____ 23. \$1 million | v. Sections in township |
| _____ 24. 10 days to notify | w. Dimensions of a section |
| _____ 25. 3 business days | x. Minimum age of licensee |
| | y. Florida Real Estate License law |
| | z. Acres in a section |

NUMBERS QUIZ PART 2 (UNITS 11–19)

- | | |
|-------------------------------|--|
| _____ 1. April 1 | One answer choice (letter) is not used. |
| _____ 2. \$50,000 | a. Equivalent to .125 |
| _____ 3. \$5,000 | b. Statute of Limitations (written) |
| _____ 4. 360-day method | c. VA origination fee |
| _____ 5. 26 payments | d. Days to provide Loan Estimate |
| _____ 6. Less than 20% down | e. HER – FHA |
| _____ 7. 43% | f. TOR-VA |
| _____ 8. \$.70/\$100 | g. Disabled veteran exemption |
| _____ 9. 4 years | h. City, county, and schools millage caps |
| _____ 10. $\frac{1}{8}$ of 1% | i. Actual days method proration |
| _____ 11. 1% | j. Requires PMI |
| _____ 12. January 1 | k. Exemption for surviving spouse |
| _____ 13. 27.5 years | l. Doc stamp tax on notes |
| _____ 14. 365-day method | m. Lead-based paint inspection for homebuyers |
| _____ 15. \$.35/\$100 | n. Property taxes become delinquent |
| _____ 16. 2 mills | o. TOR – FHA |
| _____ 17. 5 years | p. Statute of Limitations (parol contract) |
| _____ 18. 3 business days | q. Homestead exemption assessed value above \$50,000 |
| _____ 19. 31% | r. Intangible tax |
| _____ 20. \$5,000 | s. Useful asset life residential rental |
| _____ 21. 10 days | t. Useful asset life nonresidential |
| _____ 22. 39 years | u. Base homestead exemption |
| _____ 23. 41% | v. Doc stamps on deed |
| _____ 24. 25,000 | w. Property taxes become a lien |
| _____ 25. 10 | x. Each month given 30 days |
| | y. Biweekly mortgage |

BUSINESS ENTITIES QUIZ

For each business form listed below, select as many lettered descriptions as correctly apply to that business entity.

- | | | |
|-------------------------------|-------|----|
| 1. Corporation | _____ | 1 |
| 2. Nonprofit corporation | _____ | 2 |
| 3. Corporation sole | _____ | 3 |
| 4. Cooperative association | _____ | 4 |
| 5. Partnership | _____ | 5 |
| 6. Limited partnership | _____ | 6 |
| 7. Joint venture | _____ | 7 |
| 8. Business trust | _____ | 8 |
| 9. Unincorporated association | _____ | 9 |
| 10. Sole proprietorship | _____ | 10 |
-
- a. May be registered as a real estate broker
 - b. An artificial person
 - c. Be cautious in dealings and seek legal advice
 - d. An ecclesiastical organization
 - e. Associated with a cooperative or co-op
 - f. Two or more persons agreeing to share profits and losses—does not have to be in writing
 - g. Individuals not qualified for licensure must be registered with the DBPR if business is registered as a real estate broker
 - h. Restricted to the business transaction(s) for which formed
 - i. Must file with the Florida Department of State
 - j. May not register as a real estate brokerage
 - k. Organized for a common, noncommercial purpose

WHO'S WHO QUIZ

Smith sells a duplex to Jones. Jones gives a purchase money mortgage to Smith. Smith leases back a unit from Jones.

1. Grantee _____
2. Lessor _____
3. Mortgagee _____
4. Vendee _____
5. Grantor _____
6. Lessee _____
7. Mortgagor _____
8. Vendor _____

SIX SPECIAL QUIZZES

ANSWER KEY

PAIRS-OR-BETTER QUIZ

1. adverse interests: *two opposing parties in a transaction*
adverse possession: *one method of obtaining title*
2. capital asset: *property held by a taxpayer*
capital gain: *profit from the sale or exchange of a capital asset*
3. executed contract: *a performed agreement*
executory contract: *an agreement with terms uncompleted*
4. legal title: *ownership of a freehold estate*
equitable title: *implies that an individual will receive legal title at a future date*
5. land contract: *contract for deed; installment contract*
land description: *written identification of a specific parcel*
6. MIP: *mortgage insurance premium on FHA mortgage*
PMI: *private mortgage insurance on low-down-payment conventional loan*
7. opinion of title: *formal statement by an attorney about a title*
opinion of value: *estimate of a property's value by a licensee*
8. principal: *face amount of a debt*
principal: *party employing a broker as a single agent*
9. probable cause: *grounds for prosecution*
procuring cause: *effort that brings about an executed sale contract*
10. quiet enjoyment: *provision in a deed guaranteeing peaceful possession*
quiet title: *suit or action to remove a defect or cloud on title*
11. revocation: *penalty; termination of a license*
revoke without prejudice: *canceled if issued by mistake*
12. sole proprietorship: *dealing as an individual in business*
corporation sole: *artificial person formed by an ecclesiastical body*

SIX SPECIAL QUIZZES ANSWER KEY

13. special assessment: *tax levied to pay for an improvement*
special exception: *ruling granting an owner the right to use otherwise contrary to law*
14. taxable income: *gross income minus tax deductions*
taxable value: *assessed value minus allowable exemptions*

KINDRED TERMS QUIZ

1. j
2. t
3. s
4. e
5. r
6. l
7. b
8. v
9. f
10. q
11. g
12. x
13. m
14. n
15. c
16. w
17. a
18. d
19. o
20. h
21. i
22. k
23. p
24. u

ACRONYMS QUIZ

See Appendix B: List of Acronyms in *Florida Real Estate Principles, Practices & Law 45th Edition*.

1. q (Unit 18)
2. c (Unit 2)
3. j (Unit 8)
4. a (Unit 8)
5. d (Unit 8)
6. i (Unit 9)
7. g (Unit 4)
8. f (Unit 9)
9. h (Unit 11)
10. b (Unit 16)
11. e (Unit 16)
12. m (Unit 11)
13. n (Unit 9)
14. l (Unit 5)
15. k (Unit 16)
16. o (Unit 4)
17. p (Unit 11)

NUMBERS QUIZ PART 1 (UNITS 1–10)

1. y
2. g
3. k
4. q
5. f
6. t
7. h
8. o
9. u
10. m
11. r
12. b
13. j
14. w
15. v
16. z
17. a
18. c
19. s
20. i
21. p
22. d
23. n
24. e
25. l

NUMBERS QUIZ PART 2 (UNITS 11–19)

1. n
2. q
3. k
4. x
5. y
6. j
7. o
8. v
9. p
10. a
11. c
12. w
13. s
14. i
15. l
16. r
17. b
18. d
19. e
20. g
21. m
22. t
23. f
24. u
25. h

BUSINESS ENTITIES QUIZ

1. a, b, g, i
2. a, b, c, g, i, j
3. b, c, d, k, j
4. e, i, j
5. a, f, g
6. a, g, i
7. f, h
8. j
9. c, k
10. a

WHO'S WHO QUIZ

1. Jones
2. Jones
3. Smith
4. Jones
5. Smith
6. Smith
7. Jones
8. Smith

PRACTICE END - OF - COURSE EXAM QUESTIONS EXPLANATIONS

1. (c) A state-certified or licensed appraiser must prepare appraisal reports for federally related transactions. (Unit 16)
2. (d) A condominium is created by recording the declaration of condominium, which is part of the condominium documents that must be given to all condominium purchasers. (Unit 8)
3. (d) Rental agents (or leasing agents) act as an intermediary between a potential tenant and the property owner seeking to acquire a tenant. (Unit 1)
4. (c) The statute of frauds is an act that requires that certain real estate instruments and contracts affecting title to real property be in writing to be enforceable. (Unit 11)
5. (b) Commercial property is not covered under the Fair Housing Act. (Unit 7)
6. (d) Brokers must deposit escrow funds no later than the end of the third business day following receipt of a deposit. The deposit was received on Tuesday, so the broker has Wednesday, Thursday, and until the end of business on Friday. (Unit 5)
7. (a) Vacancy and collection (V&C) losses are subtracted from PGI to derive EGI. V&C loss is one of the items deducted in a reconstructed operating statement to calculate NOI. (Unit 16)
8. (a) *Culpable negligence* is the term used to describe inadequate attention to duties and obligations. (Unit 6)
9. (c) The due-on-sale clause is a provision in a conventional mortgage that entitles the lender to require the entire loan balance to be paid in full if the property is sold. (Unit 12)
10. (d) Landlords of five or more units must give tenants written notice of the advance rent or security deposit within 30 days after receipt. The notice must indicate the name and address of the depository where the funds are held or that the landlord has posted a bond. (Unit 7)
11. (c) Licensees may not violate the law. For example, if a principal instructs a listing broker not to show the property or sell to a member of a particular minority or ethnic group, the broker cannot obey the principal's instructions because doing so would violate the law. (Units 4 and 7)
12. (d) Brokerage relationship disclosures are required for residential transactions except when a transaction brokerage relationship is chosen. Residential transactions do not include auctions, property with five or more residential units, or land zoned for five or more residential units. (Unit 4)
13. (c) \$50,000 homestead exemption + \$5,000 disability + \$5,000 legally blind = \$60,000. (Unit 18)
14. (b) Limited confidentiality is a duty associated with a transaction broker relationship. (Unit 4)
15. (b) Savings associations, commercial banks, and credit unions are depository lenders that accept savings deposits and demand deposits (checking accounts). (Unit 13)

16. (b) A group license is issued to a sales associate or broker associate to work various properties owned by affiliated entities under one owner-developer. (Unit 3)
17. (d) A net lease requires that the tenant (lessee) pay all property costs, including those usually regarded as owner expenses (taxes, insurance, mortgage interest, etc.). (Unit 9)
18. (c) A license may be revoked without prejudice if it was issued through the mistake or inadvertence of the Commission. (Unit 6)
19. (c) A license can only be reinstated (initial or reactivation) after going null and void if the licensee sends a request for reinstatement due to hardship to FREC within six months after the date the license becomes null and void. FREC has no legislative authority to extend the renewal requirement beyond the six-month period. The licensee was one month past the time FREC would have the authority to reinstate. (Unit 3)
20. (b) The sale of time-share periods for customers is a real estate activity that requires a real estate license. (Unit 2)
21. (c) The market is unorganized and without central control. (Unit 15)
22. (d) Adjustments are always made to the comparable (not to the subject). $-\$8,000$ bedroom and $-\$2,000$ for the larger lot equals a $-\$10,000$ adjustment. (Unit 16)
23. (b) A corporation sole is an artificial or fictitious person formed by an ecclesiastical body and may not register as a broker. (Unit 5)
24. (a) To calculate a cap rate, divide net operating income by value. (Unit 16)
25. (c) The statement is false. RESPA does not require the lender to give mortgage applicants a list of competing lenders. (Unit 13)
26. (d) A transaction broker has all of the duties listed except for full fiduciary duties. (Unit 4)
27. (b) The FREC must inform the Division of Florida Condominiums, Timeshares, and Mobile Homes when disciplinary action is taken by the Commission against one of their licensees. (Unit 3)
28. (c) The licensee is not required to give a disclosure notice at the model centers. (Unit 4)
29. (b) Title to real property is conveyed when the deed is voluntarily delivered to and accepted by the grantee. (Unit 9)
30. (b) Availability of construction loans influences supply. (Unit 15)
31. (c) The habendum clause states the type (or quality) of the estate (interest) the grantee is receiving. (Unit 9)
32. (a) The licensee has a fiduciary duty to present all offers to the principal. (Unit 4)
33. (c) A real estate license is required for selling businesses. (Unit 2)
34. (a) The maximum payment from the Recovery Fund for damages associated with a single judgment (the same real estate transaction) is $\$50,000$. (Unit 6)
35. (b) The TILA is a federal law that made bait-and-switch advertising a federal offense. The TILA-RESPA Integrated Disclosure Rule (TRID) further enhanced the prohibition of lenders from using bait-and-switch schemes by encouraging loan applicants to compare the Loan Estimate with the Closing Disclosure. (Unit 13)
36. (b) Local government, through its police powers, establishes many ordinances and regulations governing zoning, building codes, health standards, city planning, and rent controls. Property taxes provide the bulk of revenue for city and county governments. (Unit 9)
37. (c) Whether a person was murdered, infected with HIV, or is Hispanic is not a material fact that affects the value of real estate. The fact that the home is in a

- flood-prone area is a material fact that affects the value of the property and must be disclosed to prospective buyers. (Unit 11)
38. (c) The other three descriptions apply to planned unit developments. (Unit 19)
39. (b) A licensee-respondent may choose to avoid a disciplinary hearing and relinquish the real estate license in lieu of discipline. (Unit 6)
40. (b) All the elements of fraud are presented here. (Unit 6)
41. (a) The DRE Enforcement may issue a notice of noncompliance as a first response to a minor violation by a licensee. (Unit 6)
42. (d) The remainderman owns a remainder estate while the life estate exists. (Unit 8)
43. (d) Liquidation analysis is unique to business appraisal. (Unit 17)
44. (c) Police power is the authority of government to protect the property, life, health, and welfare of its citizens. (Unit 9)
45. (c) Although a binder deposit is desirable to protect the seller, it is not required to make a contract valid. (Unit 11)
46. (a) Equity of redemption is the right of a mortgagor, before a foreclosure sale, to reclaim forfeited property by paying the entire indebtedness. (Unit 12)
47. (d) The statute of limitations prescribes specific time restrictions for enforcement of rights by action of law. (Unit 11)
48. (c) When the parties state the terms and show their intentions in words, either orally or in writing, an express contract is created. (Unit 11)
49. (d) On the Closing Disclosure, the purchase price is entered as a credit to the seller and as a debit to the buyer. Prepaid rent and unpaid property taxes are prorations that are entered as a debit to the seller and as a credit to the buyer. The seller's mortgage paid off at closing is a single-entry debit to the seller. (Unit 14)
50. (d) A tenancy by the entirety is automatically created (without special wording) when title is taken in the names of the married couple. (Unit 8)
51. (a) Leverage is the use of borrowed funds to finance the purchase of an asset. (Unit 17)
52. (b) An adjustable-rate mortgage is a financing technique in which the lender can raise or lower the interest rate (which in turn adjusts the payment) to a set index. (Unit 13)
53. (c) Depreciation is a key deduction because it reduces taxable income without involving a cash outlay. (Unit 18)
54. (c) Constructive notice is accomplished by recording the document in the public records. (Unit 9)
55. (b) Quiet enjoyment is a provision in a deed guaranteeing that the buyer may enjoy possession of the property in peace and without disturbance by reason of other claims on the title by the seller or someone else. (Unit 9)
56. (c) The Truth in Lending Act requires that lenders disclose the annual percentage rate (APR) of interest and finance charges imposed on consumers. (Unit 13)
57. (d) Homeowners who have had the homestead exemption on their current home may establish a homestead exemption for the new home within three tax years of January 1 of the last qualified homestead exemption. A homesteaded property owner can transfer up to \$500,000 of SOH benefit to a new homestead. (Unit 18)

58. (c) A metes-and-bounds description begins at an exact reference point, called a point of beginning (POB). (Unit 10)
59. (d) A package mortgage includes real and personal property. (Unit 13)
60. (b) The bundle of legal rights associated with real property ownership includes disposition, enjoyment, exclusion, possession, and control (DEEP "C"). (Unit 8)
61. (a) Right of survivorship means that when one co-owner dies, the deceased's share goes to the surviving co-owners such as in a joint tenancy. (Unit 8)
62. (a) Title theory is a legal concept that vests title to mortgaged property in the name of the mortgagee (lender) or a third party. (Unit 12)
63. (c) Negative amortization is a financing arrangement whereby monthly mortgage payments are less than required to pay both interest and principal. The unpaid amount is added to the loan balance. (Unit 13)
64. (c) Payments during the first few years are used almost entirely to pay interest. (Unit 13)
65. (d) Ginnie Mae exists to solely guarantee the security of federally insured loans and federally guaranteed loans. (Unit 13)
66. (c) If a broker maintains sales escrow funds and property management escrow funds in a single escrow account, the amount of personal funds or brokerage funds in the account cannot exceed \$5,000. (Unit 5)
67. (b) *Ad valorem* means taxed according to value. Property taxes are calculated based on the just value of the property. (Unit 18)
68. (c) Active members in good standing with The Florida Bar are exempt from the continuing education requirements for real estate licensees. (Unit 2)
69. (a) A developer planning to create a subdivision must submit a subdivision plat to the planning commission for approval. (Unit 19)
70. (b) The cost approach is particularly applicable for appraising special purpose properties. (Unit 16)
71. (c) Liquidation value is the value associated with a rapid sale. The dollar amount a property should bring in a foreclosure sale or bankruptcy auction is an example of liquidation value. (Unit 16)
72. (d) Goodwill is an intangible asset (value) of a business. (Unit 17)
73. (b) Commingling is the mixing together of escrow funds with general business funds or personal funds. (Unit 5)
74. (b) Sales associates may not use trade names. (Unit 5)
75. (c) FREC rules only require that the name of the brokerage firm be included in all advertisements. There is no requirement to include the firm's address. (Unit 5)
76. (d) Stockholders are not required to register with the Commission. (Unit 5)
77. (b) The FREC requires that licensees notify the Commission in writing of any change in business address within 10 days after the change. The license ceases to be in force until the Commission receives proper notification. (Unit 3)
78. (d) Answering this question requires knowing how to number a township. (Unit 10)
79. (d) The Equal Credit Opportunity Act prohibits discrimination regarding credit on the basis of race, color, religion, national origin, sex, marital status, age, or receipt of income from public assistance. (Unit 13)

80. (d) A competent grantor (not grantee) must sign the deed. (Unit 9)
81. (a) The DBPR is required to waive the application fee, the initial license fee, and the unlicensed activity fee for military veterans and their spouses who apply for a real estate license within 60 months after honorable discharge from the armed forces. The fee waiver does not include the license exam fee and the fingerprint processing fee. Applicants are required to pay a real estate recovery fund fee, if applicable. (Unit 2)
82. (c) A mortgage loan originator is a person who solicits or offers to solicit mortgage loans, accepts or offers to accept applications for mortgage loans, negotiates the terms or conditions of new or existing mortgage loans on behalf of a borrower or lender, processes mortgage loan applications, or negotiates the sale of existing mortgage loans to noninstitutional investors for compensation. (Unit 13)
83. (d) Possible administrative penalties include denial of an application for a license, refusal to recertify a license for renewal, revocation of a license, suspension of a license, fine, probation, reprimand, citation, and notice of noncompliance. (Unit 6)
84. (b) When a buyer or seller refuses to pay a broker's commission after it is earned, the broker may take action to collect by filing a suit against the party for the amount due. (Unit 5)
85. (c) The township number changes when moving south. Because it is further south (away from the intersection of the principal meridian and base line), the number is larger. (Unit 10)
86. (a) Property taxes become a lien on all real estate on January 1 each year. (Unit 18)
87. (d) Florida real estate licensees are allowed to prepare broker's price opinions (BPOs). A BPO need not conform to USPAP standards. (Unit 1 and Unit 16)
88. (d) FREC rules define a Florida resident as a person who has resided in Florida continuously for a period of four calendar months or more within the preceding year, regardless of whether the person resided in a recreational vehicle, hotel, rental unit, or other temporary or permanent location. (Unit 2)
89. (b) Brokers may maintain their escrow accounts in a Florida commercial bank, credit union, or savings association. They cannot use institutions that are not established in Florida. (Unit 5)
90. (d) All racial discrimination, whether private or public in the sale or rental of property, is prohibited and illegal. (Unit 7)
91. (c) Number of days: 9 seller days in June. $\$227,500$ mortgage loan $\times .045 =$ $\$10,237.50$ annual interest. $\$10,237.50 \div 365 = \28.047945 daily rate of interest. $\$28.047945 \times 9$ days = $\$252.43$ debit seller and credit buyer. (Unit 13)
92. (b) Part \div rate = value. $\$1,540$ doc stamps on deed \div $\$.70$ rate = 22,000 tax increments. $22,000 \times \$100 = \$220,000$ purchase price. (Unit 14)
93. (b) $43,560$ sq. ft. per acre $\times .75$ land available for lots = $32,670$ sq. ft. available per acre. $32,670$ sq. ft. per acre $\times 175$ acres = $5,717,250$ sq. ft. available. $5,717,250$ sq. ft. available $\div 7,500$ minimum sq. ft. per lot = 762.3 or 762 total subdivision lots. (Unit 19)

94. (b) Determine total monthly obligations: $\text{PITI} + \text{PMI} + \text{LTO} = \$1,372 \text{ PITI} + \$150 \text{ MIP} + \$400 \text{ car} + \$390 \text{ loan} + \$250 \text{ credit} = \$2,562$ total monthly obligations. $\$2,562 \div \$6,500$ monthly gross income = .3941 or 39.4%. To qualify for a conventional mortgage loan, the borrower's TOR must not exceed 36%. The borrower's TOR is 39.4%, which is greater than the required threshold of 36% TOR for a conventional mortgage. (Unit 13)
95. (c) $60 \text{ ft.} \times 50 \text{ ft.} = 3,000 \text{ sq. ft. livable area. } 24 \text{ ft.} \times 20 \text{ ft.} = 480 \text{ sq. ft. garage area. } 3,000 \text{ sq. ft.} \times \$103 \text{ per sq. ft.} = \$309,000. 480 \text{ sq. ft.} \times \$92 \text{ per sq. ft.} = \$44,160. \$309,000 + \$44,160 = \$353,160$ reproduction cost new. (Unit 16)
96. (b) $\$329,900 \times .06 = \$19,794$ brokerage commission. $\$329,900 - \$19,794 - \$2,750$ closing costs = $\$307,356$ amount realized from sale. $\$244,900$ purchase price + $\$27,000$ capital improvements = $\$271,900$ adjusted basis. $\$307,356 - \$271,900 = \$35,456$ capital gain. (Unit 18)
97. (b) $\$185,000$ assessed value – $\$25,000$ homestead exemption – $\$5,000$ surviving spouse exemption = $\$155,000$ taxable value for school taxes. $\$185,000$ assessed value – $\$50,000$ homestead exemption – $\$5,000$ surviving spouse exemption = $\$130,000$ taxable value for city and county taxes. $\$155,000$ taxable value $\times .0065 = \$1,007.50$ school district taxes. 8.8 mills city + 9.3 mills county = 18.1 mills = $.0181$. $\$130,000$ taxable value $\times .0181 = \$2,353.00$ city and county taxes. $\$1,007.50 + \$2,353.00 = \$3,360.50$ total taxes due. (Unit 18)
98. (c) $75 \text{ ft.} \times 110 \text{ ft.} = 8,250 \text{ sq. ft. } 8,250 \times \$20 \text{ per sq. ft.} = \$165,000$ cost per lot. $\$200,000$ sale price – $\$165,000 = \$35,000$ amount made per lot. $\$35,000 \div \$165,000 = .2121212$ or 21%. (Unit 14)
99. (a) $\$200,000 \times .90 = \$180,000$ sale price. $\$180,000 \times .05$ rate = $\$9,000$ total commission. $\$9,000 \times .50 = \$4,500$ selling office commission. $\$4,500 \times .60 = \$2,700$ selling sales associate's commission. (Unit 14)
100. (d) $\$322,500 \times .40 = \$129,000. \$319,000 \times .35 = \$111,650. \$312,000 \times .25 = \$78,000. \$129,000 + \$111.650 + \$78,000 = \$318,650$ estimated market value. (Unit 16)