

# INTRO TO REAL ESTATE

## National Application

### REAL PROPERTY

- The most comprehensive form of realty
- Combines all land, real estate, and all legal rights and benefits that attach to the ownership
- **Land**: starts from the core of the earth upward in the shape of a cone including the subsurface, surface, and airspace
- **Fructus Naturales**: any **permanent, naturally** grown structures attached to land
  - Trees, minerals, water
- When a buyer purchases **Real Property** they incur the **Bundle of Rights**
  - Right of Possession
  - Right of Control
  - Right of Enjoyment or Use
  - Right to Exclude
  - Right of Disposal (mortgage, sell, or lease)
- Includes **Incorporeal Appurtenance** (adding greater enjoyment for the owner)
  - Right of way, water rights, easements
- **Fixtures**: also known as **improvements** are articles that were once personal property but have been attached to real property in a **permanent** way
- It is not required that an item be immovable to qualify as realty \*house keys are Realty\*
- Ownership of Realty is transferred through a **Deed**: a written document by which a *grantor* conveys and transfers an ownership interest to a *grantee*, the deed is only valid when in writing

### ENCUMBRANCES Public/Private Land Use Controls

- **Encumbrances**: legal rights or interest to property that belong to someone other than the property owner
  - Can affect property value as it can impair the use or impose restrictions on use
- All liens are encumbrances, but not vice versa
- An **easement** is a physical encumbrance as it allows legal right to use the land of another
  - Benefit to easement holder and restriction on servient property owner by necessity or prescription

### PERSONAL PROPERTY

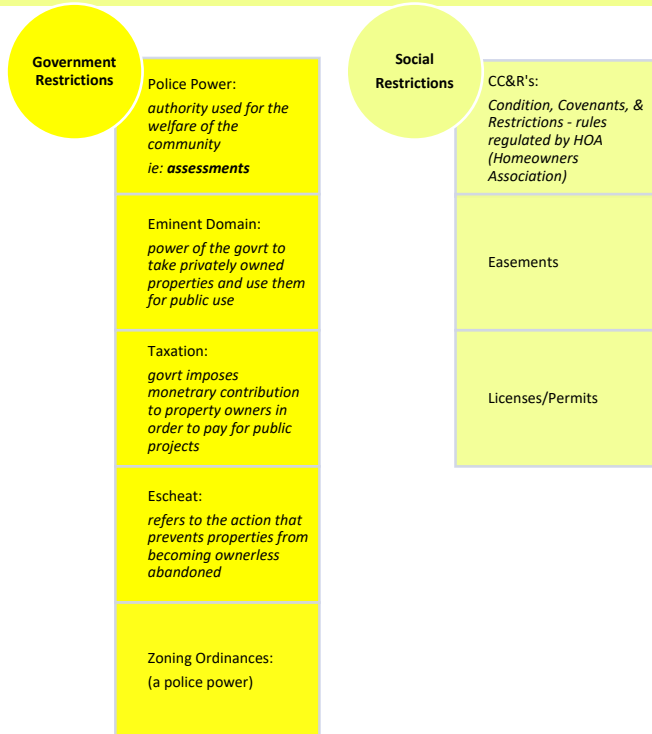
- Any tangible or intangible objects that are **movable** from one location to another (also known as **chattel**)
- Transferred with a **Bill of Sale**
- **Emblements**: Any crop that is planted and grown by humans

### LEGAL DESCRIPTIONS

1. **LOTS & BLOCKS** (Recorded Plat Survey System)
    - a. Topographical map – aerial view showing elevation
    - b. Plat map
    - c. Metropolitan and Suburban areas
  2. **RECTANGULAR GOVRT SURVEY SYSTEM**
    - a. Based on the principal meridian line that runs N & S, and a baseline that runs E & W
    - b. Further divided by units of **township** of 36 sq miles (36 sections of 1 sq mile)
    - c. Section 16 is typically reserved for schools
    - d. Section = 640 acres
    - e. Acre = 43,560 sq ft
    - f. Mile = 5,280 lineal ft
  3. **METES & BOUNDS**
    - a. Describes direction
    - b. Based on physical features and local geography
    - c. Used for farm lands or political subdivisions
- Licenses are permits for another to use land for a specific use and does not run with the land
  - Failure to remove trade fixtures is called **accession**

## ENCUMBRANCES CONTINUED

### Public/Private Land Use Controls



**Assessments:** type of restriction imposed through police power; provide funding for special projects or amenities

Compensation is made to the property owner for **Eminent Domain**

**Actual Condemnation:** the process of actually taking property from a private owner through eminent domain

**Inverse Condemnation:** property owner may bring legal action and force the govt to take the property and compensate the owner

**Down Zoning:** the action where properties are rezoned to put into lesser use (decreases value)

**Buffer Zone:** setting aside areas of land between different zones to separate and create distance (example: park or wall)

**Non-Conforming Use:** a grandfather clause that allows the original use of a property to continue after a zoning law has changed; the structure and **original** use of the property may continue

**Variance:** allows the usage of a property to be in a manner strictly prohibited by current law (an exception to zoning rules), to be granted a variance you have to prove **hardship**. A variance will go forward with a sale

**Spot zoning:** allows a small spot in a neighborhood to be used differently than allowed (special use/school or church)

## FORMS OF OWNERSHIP

### Transfer & Recording of Title

**TITLE:** the ownership or the rights of ownership to real property  
*\*incorporates the Bundle of Rights\* - how the buyer takes title is called **vesting***

Form of Ownership	Individual/Group	Survivorship	Additions
Title in Severalty	Individual	N/A	Owner enjoys sole ownership and control of the property
Joint Tenancy	2+	Yes (cannot will)	<ul style="list-style-type: none"> <li>Co-owners must meet "4 Unities" (PITT) (possession/interest/title/time)</li> </ul>

			<ul style="list-style-type: none"> <li>• If one joint tenant sells, new owner becomes tenant in common with remaining</li> <li>• Each owner can convey title without the others permission</li> </ul>
Tenancy in Common	2+	No (can will)	<ul style="list-style-type: none"> <li>• Interest can be divided in any size</li> <li>• PITT can occur any time</li> <li>• Can convey title without the others permission</li> </ul>
Tenancy in Entirety	2 (married couples only)	Yes (cannot will)	<ul style="list-style-type: none"> <li>• Cannot convey without both signatures</li> <li>• In the event of a divorce, the parties become tenants in common</li> </ul>
Community Property	2 (married couples only)	No (can will)	<ul style="list-style-type: none"> <li>• Equal percentage of interest</li> <li>• Any properties acquired after marriage are divided in equal percentages</li> <li>• Any properties acquired before marriage can be kept separate</li> </ul>
Trust (legal entity)	Any size		<ul style="list-style-type: none"> <li>• An individual or legal entity the holds or manages title for the benefit of another</li> <li>• Takes over the property of the owner upon death</li> <li>• Benefit: upon death, realty passes without probate</li> </ul>
Partnership (legal entity)	2+		<ul style="list-style-type: none"> <li>• Any gains and profit may be shared between the owners</li> <li>• Losses shared jointly as well</li> <li>• Advantage over corporation is tax benefits</li> <li>• Disadvantage is upon loss, partners are personally liable</li> <li>• General Partnership: all partners engage in activities, all partners are liable</li> <li>• Limited Partnership: one or more general partners, and one or more limited partners and are only liable up to their original investment</li> </ul>
Corporation (legal entity)	2+		<ul style="list-style-type: none"> <li>• Owners are called stockholders</li> <li>• Upon loss or debt, owners are only liable up to the investment they made</li> <li>• Owners do not have direct ownership of the property</li> <li>• Holds title in severalty</li> <li>• Percentage of ownership is determined by shares of stocks</li> </ul>

## FREEHOLD ESTATE

*an estate with an uncertain termination dates of ownership*

1. Fee simple absolute
  - a. Highest level of interest in real property
  - b. Grants the title holder the most complete Bundle of Rights
  - c. Sets the least amount of limitations
  - d. Term of duration in unlimited
  - e. Only restrictions are ones set by gov't
  - f. **Can** will
2. Fee Simple Defeasible
  - a. Grantee must follow certain conditions
  - b. (2) Forms:
    - i. Determinable
      1. Contains phrases "so Long as"
    - ii. Defeasible w/ Condition Sub
      1. Grantor attaches Conditions that realty must not be used for a specific activity
      2. "on the condition"
3. Life Estate
  - a. Duration of possession is limited to the life of the specified person (can be the grantor, grantee, or 3<sup>rd</sup> party)
  - b. Can be bought, sold, or leased
  - c. Life tenant pays any taxes
  - d. Cannot will
  - e. Life Estate Revisionary Interest
    - i. Reverts back to grantor upon death of life tenant
  - f. Life Estate Pur Autre Vie Interest
    - i. "for the life of another"
  - g. Life Estate Remainder Interest
    - i. Upon death of life tenant, the property transfers to a 3<sup>rd</sup> party named by Grantor
    - ii. The 3<sup>rd</sup> party is referred to as a **Remainderman**
  - h. Life estate owner may be an owner occupant

## LEASEHOLD ESTATE

*grants the tenant a possession that expires on a specific date*

1. Estate for Years
    - a. Also known as Tenancy for Years
    - b. Term of lease is for a definite specified time length
    - c. No notice required when lease expires
  2. Estate for Period to Period
    - a. Lease with indefinite end date but must specify from what period to what period
    - b. Must give notice to terminate
    - c. Example: month to month, week to week
  3. Estate at Will
    - a. No specified end date or term
    - b. Either party may terminate at any time
  4. Estate at Sufferance
    - a. When lessee does not surrender possession at expiration
    - b. Wrongfully holds over the property without lessors permission
      - i. **Holdover tenant**
    - c. The landlord may choose to evict
- A tenant who sells wood is committing waste
    - Under the Bundle of Rights comes the ability to create waste by owner

**Dower**: the legal right created by the state for the widow of a deceased husband to claim an interest on any real property her husband may have owned or acquired during marriage

**Curtsey**: legal right created by the state for the surviving husband to claim an interest on any real property his deceased wife may have owned or acquired during marriage

**Homestead**: protects owner occupied primary homes from unsecured debt and liens

## DEED, TITLE TRANSFER & RECORDING

General Warranty Deed	<ul style="list-style-type: none"> <li>• Considered best type of Deed because it provides the most protection to the grantee</li> <li>• Grantor warrants to the grantee to include: <ul style="list-style-type: none"> <li>○ <b>Warrant Seisin</b>: that he/she owns the estate they intend to convey</li> <li>○ Warrants Against Encumbrance</li> </ul> </li> </ul>
Quitclaim Deed	<ul style="list-style-type: none"> <li>• Used to convey only the grantors rights or interest in real property</li> <li>• Offers the least protection to the grantee</li> <li>• Often used to remove a possible defect (or cloud) on title such as correcting a misspelling</li> <li>• Also used in divorce to eliminate an interest of a party</li> </ul>
Deed of Trust/Trust Deed	<ul style="list-style-type: none"> <li>• A legal document in which title to property is transferred to a 3<sup>rd</sup> party (trustee) such as a title company, as security for an obligation owed by the borrower (trustor) to a lender (beneficiary)</li> <li>• Similar to a mortgage</li> <li>• Once obligation is paid off, title is transferred to the borrower by a <b>Reconveyance Deed</b></li> </ul>
Sheriff's Deed	<ul style="list-style-type: none"> <li>• Given to the buyer by the court following a foreclosure</li> </ul>
<ul style="list-style-type: none"> <li>• Sheriff's Deed's &amp; Trustee's Deeds are of equal rights; neither deed is lesser</li> <li>• The word before or after deeds gives promise the deed warrants</li> <li>• Deeds are recorded to give <b>constructive</b> notice to the world, but it is <b>not</b> required to record</li> <li>• The Grantor's signature is the only required to validate a Deed</li> <li>• Two ways to acquire title are deed and adverse possession</li> <li>• File "<b>Quiet Title</b>" to go after adverse possession</li> <li>• Prescribed Period is the length of time required to go after adverse possession</li> <li>• Adding consecutive prescribed periods together is called tacking</li> <li>• Deed of Trust is a <b>non-negotiable</b> security instrument</li> <li>• <b>Voluntary Alienation</b>: transfer of ownership by sale or gift</li> <li>• <b>Involuntary Alienation</b>: transfer by court order during a foreclosure</li> <li>• <b>Title Insurance</b>: insurance policy protecting insured from financial loss caused by defect in title to real property <i>California Land Title Association: protects the grantee (buyer)</i> <i>American Land Title Association: protects the mortgagee (lender)</i> <i>****insurance is optional in real estate transactions****</i></li> <li>• <b>Root of Title</b>: beginning of ownership</li> </ul>	

## PROPERTY VALUE AND APPRAISAL

### Market Value:

- An educated opinion formed by appraisers to use as a guide for what other people may and should pay (Market Data is used for appraisals)
- Theoretical in nature
- Often compared with “cost”
  - **Cost:** the total amount of money needed to build the improvement on a land including construction materials, labor and fees
- **(2) Types of Value:**
  - Objective: appraiser objectively looks at a parcel of realty (appraisal uses support systems to reflect)
  - Subjective: a buyer pays more than it's worth because of feeling
- **Characteristics of Value (4)**
  - **D** – Demand
  - **U** – Utility (usefulness like agricultural, residential, commercial)
  - **S** – Scarcity (supply and demand driven)
  - **T** – Transferability
- **Principles of Value**
  - Highest and Best Use
    - Most profitable use – first POV an appraiser must use; most money right now & future
  - Supply & Demand
    - Value will increase if demand is high and supply is low
  - Substitution
    - Says highest value of a property is no more than how much it would cost to purchase another property that shares similar characteristics *\*used during Market Data & Cost Approach*
  - Anticipation
    - Values will increase with a future benefit and decrease with a future detriment
  - Change
    - Nothing remains the same
  - Increasing and Decreasing Returns
    - When doing improvements there reaches a point of no increase in monetary returns
  - Conformity
    - Get maximum value if land use conforms, subdivisions have CC&R's to ensure future value
    - Similar is best
  - Regression & Progression
    - The most expensive with the least expensive homes around it & vice versa
  - Contribution
    - Value of any added components
  - Plottage
    - The end result of adding contiguous parcels together for a value greater than individually

### Market Price:

- Not interchangeable with Market *Value*
- Refers to the dollar amount a buyer actually paid
- Factual data

### Physical Characteristics of Land

*Immobile, Durable, Heterogeneous or non-homogenous (not fungible)*

## APPROACHES TO VALUE

### Market Approach to Value (Sales Comparison Approach)

- Most common method – Single family or vacant land
- Compare similar realty and make adjustments if needed on comparable properties (never on subject property)
  - Location: same subdivision or 12 block area
  - Amenities: square footage, swimming pool, etc.
  - Time of Sale: within 6 months of COE
  - Terms/Conditions of sold properties
    - Cash, owner will carry, or lender loans

### Cost Approach to Value (Replacement Cost Method)

- Best when there are no suitable comps
- Used for new homes and singular use buildings (post offices, schools, museums, etc.)

#### Steps:

1. Land: estimate value of land *separate* of all improvements
  - a. Ex: 4 acres @ \$100,000/acre +\$400,000
2. Substitute – new building (replacement method)
  - a. 3 types of “Finding Replacement”
    - i. Sq foot cost of similar buildings
    - ii. Quantity – same as above plus labor
    - iii. Index – adjust for inflation
  - b. Ex: 10,000 sq ft x \$100/sq ft +\$1,000,000
  - c. Estimate economic depreciation (loss of improvement value)
    - i. Physical (if its broken)/can be both incurable or curable
    - ii. Functional Obsolescence (outdated/poor design)
    - iii. Locational, external, economically (locational is always incurable)
  - d. Deduct **depreciation** from replacement cost, then add back the value

*difference between cost & market value (can be a tax write off)*

### Income Approach to Value

- Used for multi-family, office, warehouse and other income producing buildings
- The property is valued according to the income it generates

#### Steps:

1. Estimate potential annual **gross income**
2. Allow for vacancy and rent losses (bad debts)
3. Add any other misc. income = **Effective Gross Income**

**NOI:** net operating income

**CR:** Capitalization Rate

**GRM:** Gross Rent Multiplier (divide sales price by monthly income)

**GIM:** Gross Income Multiplier (5 or more units)

## REAL ESTATE CONTRACTS & AGENCY

### EXPRESSED

- Written or verbal & definitive by nature
- Ratification: client agrees to be bound by agents acts
- Agency coupled with an interest
  - Only agency that **cannot** be broken
  - Agent has an interest in the listed realty outside ownership

### IMPLIED

- Ostensible
  - *actions* create agency
- Estoppel
  - third party believes agent represents client
- Two things needed:
  - action
  - compensation

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### Classifications of Contracts:

- Expressed or Implied
- Unilateral or Bilateral
- Executory or Executed

### Duties Owed:

- Reasonable Skill & Care
- Confidentiality
- Obedience
- Accounting
- Loyalty
- Diligence
- Disclosure
- Agency

### Terminating a Sales Contract:

- Rescission:
  - Both parties cancel contract upon mutual agreement
- Liquidated Damages
  - a way to settle termination in court that involves monetary compensation to the damaged party
- Specific Performance
  - Injured party can sue through court to force other party to perform certain agreed upon actions
- Novation
  - Terminates contract but substituting it with another contract
- Completion
  - Expiry date

**Sherman Anti-Trust Act:** no set commission fees for brokerages on listings

**Puffing:** an opinion, not made as a representation of fact (legal)

**Parol Evidence Rule:** only written contract is valid

**Caveat Emptor:** buyer beware, no longer applies all material facts on realty must be disclosed

- destruction of property does NOT terminate an agreement
- condemnation automatically terminates a listing



## FAIR HOUSING LAWS AND FEDERAL REGULATIONS

### CIVIL RIGHTS ACT OF APRIL 1866

- prohibits discrimination based on race
- first U.S. enacted law that states all citizens are equally protected

### CIVIL RIGHTS ACT OF 1964

prohibits discrimination in *housing* with federal funds involved

### JONES VS. MAYER 1968

Supreme Court Case

- Jones attempted to purchase a house in Missouri; owner refused to sell because Jones was African American.
- Jones sued in Federal Court, Mayer refuted that the Civil Right Acts of 1866 could not be enforced in the sale with *private* parties

### FAIR HOUSING LAW OF 1968 (RESIDENTIAL ONLY)

prohibits discrimination in housing based on:

Race, Color, Religion, or National Origin

The following actions are prohibited under this law:

- blockbusting: inducing people to sell their realty by using a fear tactic
- steering: channeling people to certain areas for realty
- redlining: lending institutions denying loans because of the location of realty

### FEDERAL FAIR HOUSING LAW OF 1974

those dealing in Real Estate must display a Fair Housing poster which gives *prima facie* evidence that they do not discriminate

### FEDERAL FAIR HOUSING LAW OF 1988

prohibits discrimination based on *handicap* and *familial status*

- includes any mental/physical handicap including AIDS, alcoholism, etc.
- familial status includes the presence of children under 18

### AMERICANS W/ DISABILITIES ACT OF 1992

eliminated discrimination against individuals with disabilities

TITLE I: employers with 15 or more employees cannot discriminate against qualified applicants with disabilities

TITLE II: all government buildings and public transportation must be accessible for people with disabilities

TITLE III: After 1/26/1992, all private businesses must be accessible to handicap

TITLE IV: all telephone companies must provide hearing and speech impaired telecommunications 24 hrs a day

### COMPLIANCE RULES

have 3 years to file a complaint with HUD (housing and urban development)

hearing by an Administrative Law Judge

one penalty for first offense

## PROPERTY DISCLOSURES AND ENVIRONMENTAL ISSUES

### ASBESTOS

Naturally formed minerals that produce fiber-like crystals

Used as insulation

Found in popcorn ceilings, roof and drywall, floor tile, etc.

Fiber can become airborne and inhaled to cause respiratory diseases and cancer

### LEAD BASED PAINT

Can be found on any exterior or interior surface

EPA requires removal or renovation be done by certified person

Sellers are not required to test, but are required to disclose any known information

Buyers have 10 days post-disclosure to test

1978 and earlier/children most

### RADON

Naturally occurring gas that is produced underground from other decaying radioactive elements

Colorless and Odorless

Most prevalent in basements and attics where air ventilation is low

### UREA-FORMALDEHYDE

a synthetic chemical used in various building materials (foam insulation/glues/adhesives)

### CARBON MONOXIDE

a type of gas whenever fuel is burned

CO detectors are available for homes

**Environmental Impact Report:** a study of any possible effects a project may have on the social, natural, and economic nature of the community

**Environmental Protection Agency** (EPA)

**Occupational Safety and Health Administration** (OSHA)

**Encapsulating:** method used to spray asbestos with a sealant to keep fibers in place (method of mitigation)