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REFRESHER COURSE

Guide for the Broker National Part
of the PSI & Pearson Vue Exams

Lee Institute School
of Real Estate

REAL ESTATE PRINCIPLES I

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FIRST EDITION STUDY GUIDE



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PERSON VUE SALESPERSON 8%; BROKERS 9%)**

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PERSON VUE SALESPERSON 3%; BROKERS 5%)**

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PERSON VUE SALESPERSON 5%; BROKERS 6%)

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PERSON VUE SALESPERSON 18%; BROKERS 18%)**

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PERSON VUE SALESPERSON 7%; BROKERS 6%)**

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PERSON VUE SALESPERSON 3%; BROKERS 4%)

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- b. Tenancy at Will
- c. Periodic Tenancy
- d. Tenancy at Sufferance

B. Types of Leases

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FOREWORD

The purpose of this book is two-fold: First, it will help to assist the reader in obtaining a real estate license, and secondly, it will provide the basic knowledge of real estate principles and practices necessary to become a successful real estate professional.

For the most part, the text covers the "general" practice of real estate such as the principles and practices which are applicable in all states. Customs and laws which differ from the "general" practice or may be peculiar to Massachusetts are appropriately indicated in each chapter. In addition, Chapter 14 is completely devoted to the Massachusetts real estate licensing laws and other topics relating to Massachusetts. While the information in the chapters are powerful tools in the field of study, all of it may not be necessarily found on the state exam. We do recommend that the students read all the chapters and become fluent with the subject matter.

Each chapter contains a list of key words and phrases and a self-evaluating quiz. The key words will assist the reader in organizing a study plan in preparation for the state license examination. The importance of doing the chapter quizzes cannot be over-emphasized. The quizzes not only gauge the reader's progress in understanding the subject matter, but they also expose the reader to the form and type of questions, which are likely to appear on the state examination. ***Also, we recommend as well to all our students to focus primarily on the (Note) alerts pointed out and illustrated in most chapters as a key study to knowing the material in preparation for the state exam.*** The Glossary and Index are the result of a great deal of effort and research. They provide the reader with a concise definition of the various terminologies used in this book as well as a page reference to where the material is located.

As with any text, this book is not intended to be the sole source of material in preparation for entering the real estate business. The reader is encouraged to consult other publications as well as professionals and experts in the field. The student should select a course of instruction, which stimulates a desire to learn and brings additional material into the classroom to supplement the text.

CONCEPTS OF REAL ESTATE

Real estate includes the definition of land as well as all natural and man-made improvements that are affixed (permanently attached) to the land. In practice, the term “real estate” is used synonymously with the term “realty” and “real property” to describe the land, improvements, rights, and incidents of ownership.

LAND

The basis of all wealth springs from the land. Land is the solid material of the Earth in whatever natural form it may be found. This includes the soil, rocks, and other substances permanently attached by nature (streams, ponds, plants, etc....). As an investment, land has both economic and physical characteristics which give value and enhance desirability. The economic characteristics are based upon scarcity, demand, utility, and transferability. Physical characteristics define land as immovable, permanent, and non-homogenous (no two parcels of land are alike). Although land is generally thought to be only the surface of the land; in modern practice, ownership includes the rights to the soil and mineral deposits below the surface, as well as the air space above the land.

CHARACTERISTICS OF LAND/REAL ESTATE

Real estate possesses seven basic characteristics that define its nature and affect its use. These seven characteristics fall into two broader categories-- economic and physical.

ECONOMIC CHARACTERISTICS: The four characteristics of land that affect its value as a product in the marketplace are **scarcity, improvements, permanence of investment, and area preference:**

- **SCARCITY:** Land as we know it is scarce, and its usability is determined by habitability and productiveness. Our planet is made up of, roughly, $\frac{3}{4}$ open water and $\frac{1}{4}$ dry land. While a considerable amount of land remains unused or uninhabited, the supply in a given location, or of a given quality, is generally considered to be finite (limited).
- **IMPROVEMENTS:** This aspect of real estate can explain how land can become valuable in any area on the Earth. Usually, the cost of building an improvement will be very expensive, and today most investors rely on this aspect of investment for real estate profits. However, as one builds improvements on a parcel of land, this can have a reverse effect on the value of a *different* parcel of land.

Helpful Hints: Improvements

The construction of a new shopping center or the selection of a site for a nuclear power plant can dramatically change the value of land in *any* area.

- **PERMANENCE OF INVESTMENT:** Investments can be structured in all areas of real estate. The capital and labor costs to build an improvement represent a large, fixed investment. Returns on these types of investments tend to be long term and relatively stable.

Helpful Hints: Area Preference

Many homes in the 1950s were built in close proximity to city airports. Common issues with locations near an airport are complaints about the noise of arriving and departing aircraft. Property values under the flight paths of the aircraft will have lost value.

- **AREA PREFERENCE:** This preference for location is a major aspect in the appraisal business and is commonly referred to as **situs** (meaning “site”). This economic aspect refers to natural geography as well as people’s preference for a specific area of real estate. Area preference is based on several factors such as convenience, reputation, and history.

PHYSICAL CHARACTERISTICS: The three physical characteristics of land are **immobility**, **indestructability**, and **non-homogeneity**:

- **IMMOBILITY:** Land is immovable and stationary, meaning the geographic location is rigidly fixed.
- **INDESTRUCTABILITY:** Land is durable and can potentially last forever. Despite natural or man-made changes that vary the land, the basic element will always be there and remains the same.
- **NON-HOMOGENEITY:** Land is unique, individual, and no two parcels are the same. A parcel of land purchased by a buyer could not be switched by the seller for a (seemingly) identical plot of land.

PERSONAL PROPERTY / CHATTELS

All property is classified as either real property or personal property. An important distinction between the two is that personal property is movable, and it includes all property that is not land or improvements. Real property can become personal property through the

process of **severance**. Personal property is transferred with a **bill of sale**, whereas real property is transferred by **deed**. Personal property may be **tangible (corporeal) or intangible (incorporeal)**:

Helpful Hints: Severance

A tree growing on the land is considered real property. When the tree is cut down and turned into lumber it is now considered personal property. If this lumber is later used to construct a house, then it will once again be considered real property, as it is affixed to the land.

- **TANGIBLE PERSONAL PROPERTY:** Has physical substance (furniture, cars, clothing, jewelry, etc....) and also known as a **chattel**.
- **INTANGIBLE PERSONAL PROPERTY:** No intrinsic value or material being, the value is derived from what it represents (stocks, bonds, checks, promissory notes, etc....).

FIXTURES

A fixture is a **chattel** which has become permanently attached to the real estate.

LAW OF AFFIXATION

(ANNEXATION): Ownership of real property includes everything that is permanently **affixed or annexed** to the land. An item is considered real property when it is permanently attached to the property. When title to real estate is conveyed; it includes all buildings, structures, and fixtures, even though they may not be specifically mentioned in the deed. Unless there is a written agreement to the contrary, all improvements automatically pass with title.

DETERMINING WHAT A FIXTURE IS:

Due to the fact that the distinction between real property and personal property is not always apparent, disagreements can arise as to whether an item should or should not be included in the sale as a fixture. Purchase and sale agreements should contain a list of items, included, or excluded from the sale, as a way to avoid such problems. That list would include such things as; carpeting, shades, venetian blinds, air conditioners, fireplace fixtures, TV antennas, heating appliances, electrical appliances, etc....

LEGAL TEST OF A FIXTURE: While parties can come to an agreement to determine whether an item will stay or may be removed, this is not a legal test of what defines a fixture (such as when a landlord allows the removal of light fixtures, installed by the tenant, which have become part of the real estate). When parties resort to litigation to determine whether a **chattel** has become a fixture, the court will apply these tests:

- **THE INTENTION OF THE PARTIES:** Did the installer intend the item to remain personal property or to become a part of the real estate?
- **THE MANNER OF ATTACHMENT:** How permanently is it attached? Has it become attached in such a way that it has lost its identity, such as brick & mortar? Would removal

Helpful Hints: Property Becoming a Fixture

A chandelier, when initially purchased, is personal property. Once it is permanently installed on the dining room ceiling it has become a fixture, and thus, it has become real property.

Helpful Hints:

Fixture Transfer with Title

A buyer and seller enter into a purchase agreement for the sale of the seller's home. Prior to closing, the seller removes a valuable chandelier and replaces it with another fixture. The buyer has a right to claim ownership of the original chandelier unless the purchase agreement specifically excluded it.

Helpful Hints: Intention of Fixture

A tenant who installs a window air conditioner would most likely be expected to remove it when vacating. A person who builds a picket fence around a parcel of land probably intends to make it a part of the property.

result in substantial damage to the property, such as the removal of a stained-glass window that may result in damage to the building in which it is installed?

Helpful Hints:

Type/Adaptability of the Fixture

A personal heater is used as personal property. An oil heating unit is used as, and is a part of, the real property.

- **THE RELATION OF THE PARTIES:** The relation between the parties may negate the ordinarily presumed intention of the installer. This circumstance may arise in such situations where a when a landlord installs window air conditioning units in each apartment of a building. A prospective buyer would expect these units to remain as part of the real estate as their purpose is to enhance rental income.

- **TYPE/ADAPTABILITY TO THE REAL ESTATE:** Is it being used as real or personal property?

Helpful Hints: Trade Fixtures

A supermarket may remove frozen food freezers and counters upon termination of the lease.

TRADE FIXTURES: Trade fixtures are items of personal property that are necessary to carry on a business and can be removed by the tenant upon termination of the tenancy. Trade fixtures that are not removed within a reasonable amount of time after the premises has been vacated are considered abandoned. These become property of the landlord through **accession**.

TREES AND CROPS

Trees, perennial shrubs, and grasses, which are permanently rooted in the ground, are considered real property, and pass with transfer of title. **Emblements are annual crops that require cultivation and seasonal planting (wheat, corn, vegetables, etc....) and are treated as personal property, even while growing.** A previous tenant who planted the crops has the right to re-enter the property to harvest them.

MANUFACTURED HOUSING

Manufactured housing defines dwellings that are not constructed on the property but are built off-site and then shipped to the location for installation and/or assembly. The other terms used synonymously with manufactured housing include “modular,” “panelized,” and “precut.” When we refer to mobile homes, we refer to personal property as it is not permanently attached (affixed) to the land. In all cases before 1976, the term mobile home was used to describe factory constructed or housing constructed property. Most states have agencies that administer and enforce federal regulations on manufactured housing, and licensees should always be aware and familiar with local laws before attempting to sell manufactured housing.

CONCEPTS OF OWNERSHIP

FEUDAL SYSTEM AND ALLODIAL SYSTEM

Under early English law, absolute ownership of all land was vested in the king or sovereign, with the subjects having only a right to use the land in return for services provided. This was known as the **feudal system** and was abolished in favor of the **allodial system**, which recognizes the right of individuals to own land subject to no proprietary control of the government. The **allodial** system is used in the United States of America.

PROPERTY RIGHTS - TENEMENTS, APPURTENANCES, AND HEREDITAMENTS

Real property is defined as the ownership of the land as well as interest, benefits, and rights which are related to the property. **Tenements** are property rights of a permanent nature which are related to the land and pass with conveyance of the title. These rights may be tangible (building, fixtures) or intangible (an easement over a neighbor's land). **Appurtenances** are rights and privileges that belong to, and pass with, the title of the property (water rights, easements, improvements). **Hereditaments** are property, real and personal, which are conveyed to heirs upon the death of the owner.

BUNDLE OF LEGAL RIGHTS THEORY: The inherent rights of owning land are referred to as **the bundle of legal rights**. According to the bundle of legal rights theory, ownership of real estate is compared to a bundle of sticks (individual yet still tied-together), with each stick representing an individual right. These rights are **possession, control, quiet enjoyment, exclusion, and disposition**:

1. **POSSESSION:** The owner may live on the land, move away, or come and go as they please.
2. **CONTROL:** The owner may control the way in which the land is used. They may build on the land, leave it vacant, farm it, mine it for minerals, or lease it to others.
3. **QUIET ENJOYMENT:** The owner's right to use and enjoy the property without interference from other parties.
4. **EXCLUSION:** The owner has the right to keep others from entering or using the property.
5. **DISPOSITION:** The owner has the right to sell, will, give away, dedicate, or otherwise dispose of the land in any way they choose.

PHYSICAL RIGHTS OF OWNERSHIP OF LAND

Ownership of land includes separately defined groups of physical rights (Figure 1.1). The various rights of the land may be owned and controlled by more than one individual. One person may own the surface rights, while another individual owns the air rights, and a third owns mineral rights to mine deposits. These groups consist of **surface rights**, **subsurface rights**, **air rights**, and **water rights**.

Helpful Hints: Separate Owners for One Property's Rights

The airspace above a highway could be purchased by a developer who plans to utilize the space for a hotel, retail store, or restaurant.

Helpful Hints: Lateral Support

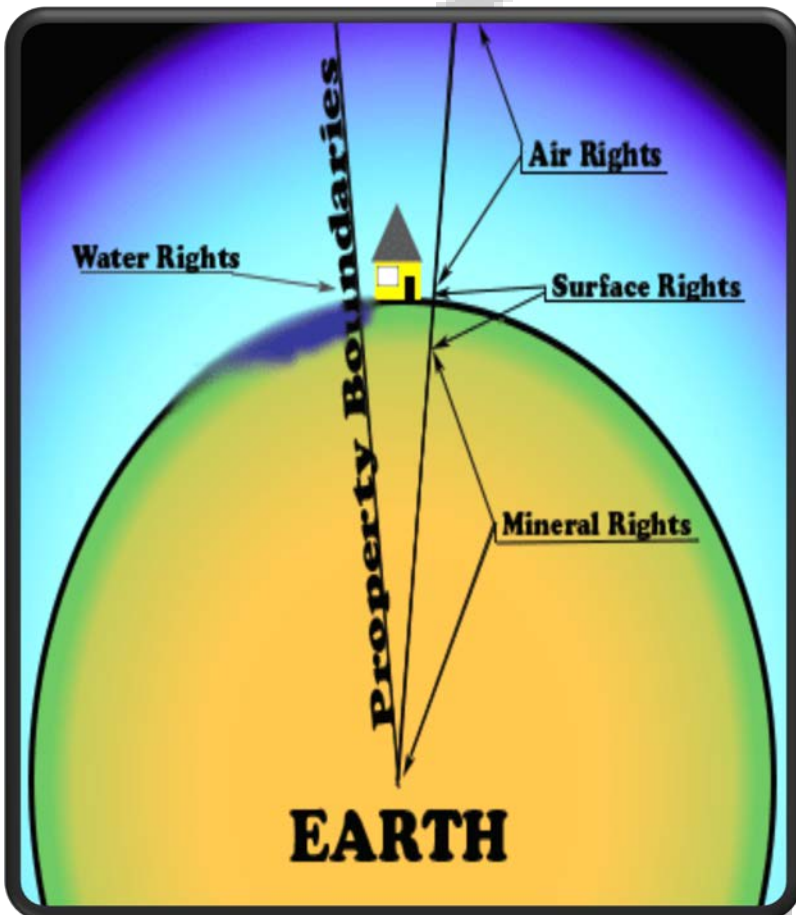
If the excavation for a building's foundation removes land support from a neighbor's property, then the neighboring owner has a claim due to their right of lateral support.

SURFACE RIGHTS: This group refers to the use of the surface of the land. This includes the crust and underlying soil which provide substance for vegetation and support for structures. This group also includes the **right of lateral support** which ensures that the stability received from an adjacent property will not be removed or destroyed.

SUB-SURFACE RIGHTS: The rights of this group are also referred to as "**mineral rights**." They describe the rights to natural resources below the surface of the

Helpful Hints: Air Rights

An owner would be prohibited from building a patio with a roof that extended over their neighbor's air space. -or- A new, tall building that blocks sunlight from a smaller building may be held accountable for interfering with the small building's right to sunlight—particularly if the smaller building incorporates solar-powered systems.



(Figure 1.1): The physical rights of owning property.

land. Mineral rights pass to the grantee (buyer) with the sale of land unless otherwise specified in the contract. These rights allow an owner to mine for various ores, drill for oil or tap natural gas, as well as entitling them to enjoy any profits that may be produced. Associated with this group of rights is the

law of capture which allows for the siphoning of a natural resource from a deposit which extends beyond the boundary of one's own property.

AIR RIGHTS: This group defines the rights of an owner to use and enjoy the air space above the land to infinity. An owner can lease or sell this space independently, provided the rights have not been preempted by law. Air rights protect an owner from unreasonable obstruction of their property from above. With solar power development today, air rights, and more specifically solar/light rights, are being closely examined by the courts.

WATER RIGHTS: Owners who have property that borders a body of water have **riparian rights** or **littoral rights**:

- **RIPARIAN RIGHTS:** Riparian land is property which borders a natural watercourse such as a lake, stream, or river. Owning property of this nature provides the owner with riparian rights, which exist as a natural and inherent incident of ownership. These generally include the right to use the water for irrigation, swimming, boating, fishing, and for the construction of piers and boathouses.
 - Where the body of water is *navigable*; land rights extend to the water's edge and use of the water must not interfere with public rights.
 - Where the body of water is *non-navigable*; land rights extend to the exact center of the waterway.
- **LITTORAL RIGHTS:** Littoral land is property which exists on the bank or shore of a sea, ocean, or large lake. Owning property of this nature provides the owner with littoral rights. Littoral rights are similar to riparian rights except that they extend only to the mean high-water mark.

LIMITATIONS ON OWNERSHIP

GOVERNMENT POWERS: An individual's right, to use and enjoy a property they own, is limited by certain government powers to protect the common good of the community. These powers include **taxation**, **escheat**, **eminent domain**, and **police power**:

- **TAXATION:** The government has the right to tax property to receive revenue to finance necessary public expenditures (schools, fire stations, hospitals, public employees, etc....).
- **ESCHEAT:** The government has the right to take title to property of a deceased person who dies intestate (without will) and has no heirs. This is to prevent property from becoming ownerless.
- **EMINENT DOMAIN:** The government has the right to take property from an owner, upon just compensation, for public purposes. The procedure for taking property through **eminent domain** is called **condemnation**.
- **POLICE POWER:** The government has the inherent right to restrict the use of the land to preserve order and to protect the public health and safety (rent control, zoning laws, building codes, environmental protection laws, etc....).

PRIVATE OR CONTRACTUAL: Owners may enter into contracts or arrangements which restrict the use of the land or limit their bundle of rights. These limitations include **leases, mortgages, easements, and licenses:**

1. **LEASE:** The owner gives up possession of the property for a temporary time period.
2. **MORTGAGE:** Title to the property is pledged as security for a loan.
3. **EASEMENT:** A right of way given to another to use the land for a specific purpose.
4. **LICENSE:** A privilege to use the land without exclusive control (lease, tenancy-at-will, etc...).

KEYWORDS AND PHRASES

ACCESSION	CAPTURE	FEUDAL SYSTEM	LITTORAL	SEVERANCE
AFFIXATION	CHATTEL	FIXTURES	MANUFACTURED HOUSING	SUBSURFACE RIGHTS
AIR RIGHTS	CONDEMNATION	HEREDITAMENTS	PERENNIAL	SURFACE RIGHTS
ALLODIAL SYSTEM	CORPOREAL	IMPROVEMENTS	PERSONAL PROPERTY	TANGIBLE
ANNEXATION	DISPOSITION	INCORPOREAL	POLICE POWER	TENEMENTS
ANNUAL CROPS	EMBLEMENTS	INTANGIBLE	QUIET ENJOYMENT	TRADE FIXTURES
APPURTENANCES	EMINENT DOMAIN	LAND	REAL PROPERTY	WATER RIGHTS
BUNDLE OF RIGHTS	ESCHEAT	LATERAL SUPPORT	RIPARIAN	

RELATED WEB SITES

CONNECTICUT DEPARTMENT OF CONSUMER PROTECTION:

www.state.ct.us.dcp/

MASSACHUSETTS DIVISION OF REGISTRATION:

www.state.ma/reg/

MAINE OFFICE OF PROFESSIONAL OCCUPATIONAL REGULATION:

www.state.me.us

NEW HAMPSHIRE REAL ESTATE COMISSION:

www.nh.gov/nhrec

EMINENT DOMAIN:

www.realtor.org/topics/eminent-domain-and-private-property-rights

INTEREST IN REAL ESTATE:

topics.law.cornell.edu/wex/real_property/

Multiple Choice Questions

- 1) Items which are considered by law to be permanently attached to the earth are called:
- A. Fixtures.
 - B. Emblements.
 - C. Surface rights.
 - D. Personality.
- 2) Property which is not considered to be a part of the real estate is called:
- A. Personal.
 - B. Fixtures.
 - C. Littoral.
 - D. Appropriated.
- 3) In determining whether an article of personal property has become a fixture; which of the following tests would not be applied?
- A. The manner of attachment.
 - B. The relationship of the parties.
 - C. The adaption to the land.
 - D. The cost of the article.
- 4) All of the following would be considered fixtures EXCEPT:
- A. Stock-designed removable storm windows.
 - B. Built-in kitchen stove.
 - C. Built-in dishwasher.
 - D. Custom fitted wall-to-wall carpeting.
- 5) Which of the following would be considered a part of the real estate?
- A. Perennials planted in a tub.
 - B. House plants.
 - C. Annual crops (corn, wheat).
 - D. Perennial shrubs in the ground.
- 6) Cultivated annual crops are normally classified as:
- A. Personal property.
 - B. Fixtures.
 - C. Real property.
 - D. Fructus.
- 7) Which of the following would not be a part of the real estate?
- A. A birdbath sitting on the lawn.
 - B. A disposal installed by a tenant.
 - C. Perennial shrubs.
 - D. Suspended-tile kitchen ceiling.
- 8) Which of the following is not a physical characteristic of land?
- A. Immobility.
 - B. Non-homogeneity.
 - C. Indestructibility.
 - D. Fungibility.
- 9) The system of private land ownership is known as:
- A. Feudal.
 - B. Allodial.
 - C. Domain.
 - D. Escheat.
- 10) Real property was deeded with no mention of buildings or improvements; would they be included in the conveyance?
- A. Yes, because they are not removable.
 - B. Yes, because they are a part of the land.
 - C. No, because they are personal.
 - D. No, because they were not mentioned in the deed.
- 11) George rented space for a machine shop. He fastened shelves to the wall and bolted machinery to the floor. Are these now the property of the landlord?
- A. Yes, because they are permanent.
 - B. Yes, because their removal will cause damage to the property.
 - C. No, because they are not fixtures.
 - D. No, provided the tenant removes them before the termination of the lease.

12) Prior to showing the property and signing a sales agreement, the seller removed all the bathroom toilets. Is this legal?

- A. Yes, because it was done before the sale.
- B. Yes, because they were personal property.
- C. No, because they were adapted to the property.
- D. No, because they are a part of the realty.

13) Which of the following items is not classified as real estate?

- A. Easement.
- B. Mobile home on a foundation.
- C. Furniture.
- D. Fence.

14) Easements, right-of-way, and condominium parking stalls are examples of:

- A. Emblements.
- B. Trade fixtures.
- C. Riparian rights.
- D. Appurtenances.

15) The government's right to reasonably restrict private use of land is known as:

- A. Eminent domain.
- B. Escheat.
- C. Condemnation.
- D. Police Power.

16) Which of the following is not an example of the exercise of police power?

- A. Rent control.
- B. Building codes.
- C. Zoning laws.
- D. Deed restrictions.

17) A neighbor's tree is overhanging your property. You can legally:

- A. Cut the tree down.
- B. Do nothing about it.

- C. Remove the overhanging branches.
- D. Charge the neighbor damages.

18) Bill moved into a home, before taking title, and installed new kitchen cabinets. The sale fell through and Bill moved out. What is the status of the cabinets?

- A. They are trade fixtures.
- B. Bill may remove them provided he does not damage the property.
- C. Bill cannot get them back.
- D. The cabinets must remain, but Bill is entitled to the value of the cabinets.

19) Since one parcel of land cannot be exactly substituted, it is said to be:

- A. Non-homogeneous.
- B. Immobility.
- C. Fungible.
- D. Mobile.

20) Real property includes:

- A. Leasehold interests.
- B. Fixtures.
- C. Mortgages.
- D. Cultivated annual crops.

21) A landowner who takes water from a river flowing through his or her property is exercising what kind of right?

- A. Littoral.
- B. Prescriptive.
- C. Riparian.
- D. Avulsion.

22) All of the following interests in real estate are considered real property interests EXCEPT:

- A. Water rights.
- B. Fences.
- C. Leases.
- D. Trees.

23) The police power of the state can be used for all of the following EXCEPT:

- A. Controlling land use.
- B. Collecting taxes.
- C. Controlling rents.
- D. Condemning as unfit for occupancy.

24) All of the following are personal property EXCEPT:

- A. Appurtenances.
- B. Chattels.
- C. Trade fixtures.
- D. Mortgages.

25) All of the following are appurtenances EXCEPT:

- A. Trade fixtures.
- B. Water rights.
- C. Mineral rights.
- D. Buildings

26) A property which has littoral rights:

- A. Is subject to restrictive zoning.
- B. Borders a sea or an ocean.
- C. Has ownership restrictions spelled out in the deed.
- D. Includes all mineral, oil, and water rights to the center of the earth.

27) Ownership of land bordering a stream includes certain rights that are known as:

- A. Littoral.
- B. Riparian.
- C. Accretion.
- D. Avulsion.

ESTATES IN LAND

An estate in land is the degree, quantity, nature and extent of interest a person holds in land. Estates in land are classified as either freehold or non-freehold. A person having a freehold estate has title to the land for an indeterminate length of time. Anything less than a freehold is called a non-freehold or leasehold and concerns lessees and tenants.

COMMON LAW VS. STATUTORY LAW: Common Law developed from usage and custom over long periods of time. The idea of **Freehold and Non-Freehold** estates developed from common law which grew out of usage over hundreds of years in England and the United States. Common Law may also be modified by individual court decisions known as **Case Law**. **Statutory Law** is enacted by legislation. Common law may be modified or may become the basis for **Statutory Law**.

Helpful Hints: Statutory Law
Derived from Common Law

Almost all statutory laws pertaining to estates in land, transfer of title, mortgages and rights and obligations of landlords and tenants have come directly from common law.

FREEHOLD ESTATES

FEE SIMPLE ABSOLUTE: In most real estate transactions the grantee receives a freehold estate with no limitations or conditions imposed upon the use or enjoyment of the land. This estate is called **Fee Simple Absolute or Fee Simple**, and lasts, for an unlimited duration, potentially forever. A **Fee Simple** is an estate of inheritance. Upon the death of the owner, title passes to his or her legal heirs, unless the property is disposed by will. All deeds or instruments of conveyance automatically convey a fee simple estate unless the instrument contains words to the contrary.

FEE SIMPLE DEFEASIBLE: A **Fee Simple Defeasible Estate** is one that is subject to certain limitations imposed by the grantor. Referred to as a qualified estate, a fee simple defeasible is also an estate of inheritance. Title may be lost upon the happening or no happening of a specified event. There are two kinds of defeasible fees: (1) Fee Simple Subject to a Condition Subsequent and (2) Fee Simple Determinable.

Helpful Hints: Fee Simple Subject to
a Condition Subsequent

Land conveyed, "on the condition that it never is used for a bar," is a fee simple on condition subsequent. The grantor or the grantor's heirs have the option of reclaiming title if the condition is broken.

- **Fee Simple Subject to a Condition Subsequent:** This is a conveyance of title upon the condition that a particular use or activity will not occur. The former owner retains an optional right to regain title if the prohibited activity occurs.
- **Fee Simple Determinable:** This is also called a base fee or fee simple on condition precedent. A fee simple determinable ends automatically if the owner fails to maintain the condition or limitation. Title automatically reverts back to the grantor or to the grantor's heirs. It is created by the use of the words "so long as."

Helpful Hints: Fee Simple Determinable

Property which is granted to a church "so long as" it is used exclusively as the site of a church is a Fee Simple Determinable. If the property is converted to a different use, whether by the original grantee or subsequent owners, title automatically reverts back to the original grantor.

LIFE ESTATE: A non-inheritable, freehold interest in real estate for an unpredictable duration, limited to the life of the grantee (life tenant) or to the life of another (per autre vie). Life Estates are used in cases where the grantor wishes to prevent the grantee from selling the property or using it as collateral for debts.

The grantee may exercise all rights of ownership, but upon the death of the person designated by the grantor the property reverts back to the grantor or to a third person (remainder person). Any conveyance, mortgage or lease executed by the life tenant is nullified at the termination of the life estate.

Upon termination of the Life Estate, the property passes to a remainder person described in the deed or instrument of title. Able deeds property to Baker, "for life, and upon Baker's death, to Able's daughter Ellen." When Baker dies, Ellen, the remainder person, automatically receives title in fee simple.

A Life Estate may also be set up so that when the life tenant dies, title will revert back to the original grantor or to the grantor's estate. This is known as a **Reversionary Life Estate**.

LEGAL LIFE ESTATES - DOWER AND CURTESY, HOMESTEAD

Legal Life Estates were created by common law and statutory law to prevent a deceased property owner's survivor from losing their home to creditors of the deceased or to persons claiming title through actions of the deceased. They consist of dower, curtesy, and homestead.

DOWER and CURTESY: By common law, a married person was given an expectant or contingent one-third life estate in the land held by his or her spouse at any time during their marriage. Dower and Curtesy are inchoate (expectant) rights, which take effect only upon the death of the owning spouse. The wife's right is known as dower, the husband's right, curtesy. The purpose of Dower and Curtesy was to prevent married persons from leaving their spouses penniless at their death. Under common law, the expectant right of Dower and Curtesy could only be terminated by a signed release of the non-owning spouse. Thus, a husband who owned property in severalty could not convey good title unless his wife signed the deed releasing her dower right. If she failed to sign the deed, she would acquire a one-third life estate in the grantee's property when her husband died.

Helpful Hints: Dower and Curtesy

A married couple's home is owned solely by the husband who wills the property to his nephew. When the husband dies, his wife may claim a one third life estate in the property regardless of the terms of the will.

By statute many states have modified the law changing the time when a Dower or Curtesy right is obtained. In these states, the right is acquired only in the real estate owned by the deceased at the time of death. Property transferred by the deceased prior to death is not subject to a claim of Dower or Curtesy, thus eliminating the necessity of requiring the non-owning spouse to sign the deed.

Helpful Hints: Legal Separation vs. Divorce

A wife who owned property in severalty became legally separated from her husband. When she died thirty years later, her husband had a right to a one-third life estate in the property even though she left a will leaving her property to her children.

Divorce terminates Dower and Curtesy rights. A decree of legal separation does not terminate dower and curtesy rights.

Dower and Curtesy rights are very rarely asserted, since the surviving spouse may be entitled to a better interest under the law of descent. By law, a surviving spouse is entitled to one-half of the real estate owned by the deceased spouse at the time of death. Thus, if a man dies leaving a will divesting his wife of all interest in his real estate, she can ignore the will and claim her

rights of descent as though her husband had died intestate.

HOMESTEAD: The Homestead Law allows a portion of a family's home to be protected against claims of creditors. Many states allow a homeowner to protect up to \$500,000 of the net market value of a principal residence from the claims of certain creditors. Any homeowner may create a homestead exemption by recording, in the county registry of deeds, a one-page sworn statement declaring a homestead on the property. For example, a homeowner who is sixty-two or over or who is permanently disabled may declare up to \$500,000 in homestead exemption.

The homeowner's creditors may attach the property but may not hold a Sheriff's Sale to satisfy the debt until the homeowner or his or her survivors vacate the residence. When the residence is sold the attaching creditors may assert their claims, subject to the \$500,000 exemption.

Helpful Hints: Homestead

A homeowner, with a \$500,000 homestead exemption, dies, leaving his property to his widow who sells the house for \$525,000. Only \$25,000 is subject to the claims of the deceased's creditors.

Exception to Homestead Exemption: Homestead does not exempt property from claims for taxes, for debts contracted prior to the homestead declaration, for a mortgage to finance the purchase of a home, and for court ordered alimony payments and child support.

NON-FREEHOLD ESTATES

The giving of possession or use of real estate without title creates a **Non-Freehold** or **Leasehold Estate**. Such an interest may either be in writing, in which case it is referred to as a Lease or it may be oral, in which case it is referred to, as a **Tenancy at Will**. In describing leases and tenancies, the words "landlord" and "lessor" have the same meaning, as do the words "tenant" and "lessee". Demise is the conveyance of the use of property by lease. **Leasehold Estates** consist of **tenancy for years**, **periodic tenancy**, **tenancy at will** and **tenancy at sufferance**. **Note:** If an owner of a condominium leases it for one year this type of estate is referred to as a **Leasehold Estate**.

TENANCY FOR YEARS: Created by a written contract (lease) in which the lessor (owner) grants to a lessee (tenant) the right to use a parcel of real estate for a specified period of time, for which the lessee agrees to pay a stipulated rent. The lessee may use and enjoy the leased premises subject to the covenants (conditions) of the lease and must surrender possession to the landlord at the expiration of the lease. A lease can be for any period of time from one day to ninety-nine years.

Helpful Hints: Periodic Tenancy

A landlord and tenant agree to an annual (reserved) rent of \$6,000, which the tenant pays in twelve monthly payments of \$500 each. Even though the rent is paid monthly, either party must give one year's notice to terminate. If it were a tenancy at will, the tenancy could be terminated with one month's notice.

PERIODIC TENANCY (Tenancy from Year to Year):

Continues for an uncertain length of time at an agreed rent which is payable at definite intervals, either monthly or yearly. If the yearly rent is reserved, the tenancy extends from year to year regardless of whether the rent is paid monthly or quarterly. This reservation of rent distinguishes a **Periodic Tenancy** from a **Tenancy at Will**.

TENANCY AT WILL: The transfer of possession by the oral or written consent of the landlord for an

agreed rent, but without agreement for a fixed term. A Tenancy at Will may also be created by operation of law. A Tenancy at Will is established when the landlord accepts rent and gives the tenant a key to an apartment. A Tenancy at Will may be terminated by legal notice from either party. Generally, the notification time must be equal to one rental period. In most states a minimum of a **thirty-day notice** is required, regardless of the rental period. A **Tenancy at Will** is terminated by death of the tenant and by death of the landlord.

TENANCY AT SUFFERANCE: Arises when a tenant, having come into possession of real estate lawfully, remains in possession after the tenancy has been legally terminated. A **Tenant at Sufferance** is liable to the owner for use and occupation of the premises. **Note:** An **Estate of Sufferance** is an estate created when a tenant holds over at the end of a lease term without the landlord's permission. The landlord has the right to recover payment for such use only after the period of use has ended. If payment is accepted in advance, a Tenancy at Will is created. A tenant who remains in possession of an apartment after termination of a lease is known as a **Holdover Tenant** and has the same rights as a Tenant at Sufferance.

LICENSE TO USE REAL ESTATE: A license is a privilege granted to one to use the land of another but without exclusive control or possession. A license to use real estate is a contractual arrangement and not a leasehold interest. Examples include rooming houses, hotel rooms, and a permit to erect a sign on a building or land or a license to use real estate may be terminated at any time regardless of the oral or written agreement between the parties. Most states require a thirty-day notice to terminate if the licensee has been in possession of the premises for a period of three consecutive months or more.

EASEMENTS

An **easement** or **right of way** is a non-possessory right to use the land of another for a specific purpose. An easement is an encumbrance since it burdens the land and diminishes its use and value. While an easement does not prevent transfer of title, failure to disclose the existence of an unrecorded easement may excuse a buyer from performance because of the seller's inability to convey "**good and marketable**" title. Easements do not include title or the right to remove anything from the land.

Note: An "easement" provides legal use, but not ownership.

Easements are categorized as being either **appurtenant** or **in gross**. An appurtenant easement is a type of easement that exists between two parties in which the owner (**dominant tenement**, the property that benefits from the easement) has of a parcel of land that in another parcel of land known as the (**servient tenement**, the property that gives the easement). Two parcels of land are necessary for an appurtenant easement. Examples of appurtenant easements are:

- **Appurtenant easements** automatically pass with title to the land. If the owner of lot A has a right of way to cross the adjoining lot B to reach a public road, lot A is the dominant owner and lot B is the servient owner. The transfer of title to either of the lots does not affect the easement.
- **Easement in gross** is a limited right given to a person or business organization to use the land of a servient owner. There is no dominant owner since the right does not benefit another parcel of real estate. An easement in gross terminates with the user's death or discontinuance in the case of a corporation or other business entity. Examples of easements in gross are the rights of way for utilities, such as power, telephone service, cable TV, water, and sewerage. A railroad right of way or the right granted to a person to cross another's land to reach a lake are also examples of easements in gross.

Helpful Hints: Types of appurtenant easements

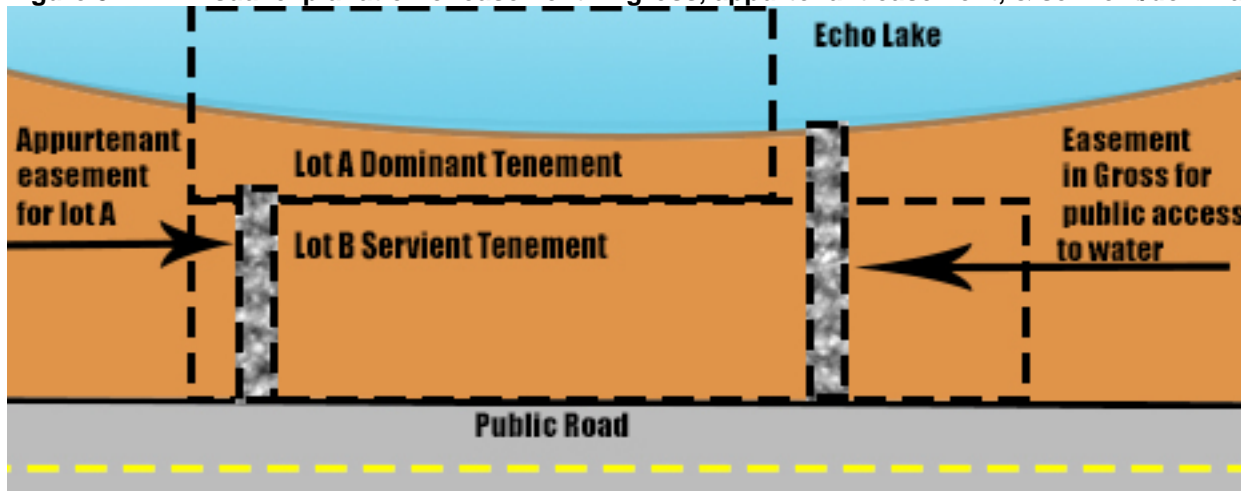
Common driveways, underground pipes, the right to use water from an adjoining parcel of land, and a right of way to cross another's land for access to a public way.

Helpful Hints: Types of Easements in Gross

Rights of way for utilities, such as power, telephone service, cable TV, water, and sewerage. A railroad right of way or the right granted to a person to cross another's land to reach a lake are also examples of easements in gross.

EASEMENT OF LIGHT AND AIR: There is no natural right to have light or air come to a particular part of a person's land. For example, Mr. Brown owns land with a beautiful view of the ocean. The owner of the adjoining lot cannot be barred from building a house, which obstructs Mr. Brown's view even though Mr. Brown has enjoyed the view for over 20 years. Such a right may be acquired, however, by express grant, which is clearly stated in a contract, deed, or will, creating an easement for light and air.

Figure 3:1 – A visual explanation of easement-in-gross, appurtenant easement, & servient/dominant tenements



CREATION OF EASEMENTS

Easements may be created by: (1) **Express grant or Reservation**, (2) **Prescription (Adverse Use)** and (3) **Necessity (Implied)**.

1. **Express Grant or Reservation:** A deed may contain a clause granting an easement in favor of the property conveyed or reserving an easement for the benefit of the land retained. Since easements represent an interest in real estate, they must be in writing in order to be enforceable. Thus, if the owner of lot A orally agrees to permit the owner of lot B to use a portion of lot A for a driveway, the agreement will not be binding upon a third person who subsequently buys lot A without actual knowledge of the agreement.
2. **Prescription (Adverse Use):** A prescriptive easement arises when a person adversely uses the land of another over a period of time established by statute. The use must be continuous, open, and notorious and in such a manner that the owner of the land has an opportunity to prevent it from occurring. The combining of successive periods of users is known as tacking. By tacking, a person who has not been a continuous user for the entire statutory period may combine his or her use with that of a previous owner to establish a prescriptive easement.
3. **Necessity (Implied):** An easement by necessity will arise by implication of law to prevent a parcel of land from being landlocked. If a property owner sells a portion of a lot and leaves it without access to a street or public way, the law will impose an easement across the seller's remaining land as a means of access. A license to use another's real estate does not create an easement.

TERMINATION OF EASEMENTS: Easements may be terminated by the following events:

- The purpose for which an easement was established ceases to exist.
- Destruction of the servient tenement, as by condemnation for a public use.
- Abandonment or non-use by the owner of the easement.
- Merger of ownership of the dominant and servient tenements.
- Adverse possession or use of the dominant tenement by the servient tenement.

- Release of the dominant tenement to the servient tenement.
- A court decision in a suit to quiet title.
- Excessive use.

PREVENTION OF EASEMENTS BY STATUTORY NOTICE: In many states, a property owner may prevent an easement from being established by posting a notice for six consecutive days or by serving notice to users. A record of this must be recorded within months of its occurrence.

DISCOVERY OF EASEMENTS OR LEGAL DESCRIPTION OF PROPERTY: Not all easements are recorded and therefore will not be discovered through a title search. Only careful inspection of the land or an engineer's survey will reveal easements created by prescription.

Note: In order to verify that a legal description in a deed is accurate a buyer must order a survey. The physical discovery of an unrecorded easement after the execution of a purchase and sale agreement does not automatically permit the buyer to withdraw from the sale unless the seller misrepresented its presence. If there is any doubt regarding the existence of an easement, the broker or salesperson should advise the buyer to have an attorney investigate the matter before concluding the deal.

PARTY WALL: A party wall is located upon or at the division line of two adjoining landowners and is used by both for the construction and support of their respective buildings. If the property line runs to the center of the wall, then each person owns one-half of the wall and has an easement in the other half. Each owner is responsible for maintaining his or her half of the wall for the support of the adjoining buildings. Party walls can be established by use or can be created by grant as in the case of adjoining property owners who agree to share a common wall for the construction of their buildings.

ENCROACHMENTS: An encroachment results from the unlawful intrusion on or over the land of another by a building, structure, or roof overhang. Most encroachments occur by mistake as with the case of a driveway or a fence built without a survey. The encroacher can be ordered to remove the structure and may be subject to paying damages. Encroachments present a problem in selling property, since they are not revealed by a title search. An undisclosed encroachment may render a title unmarketable. A land survey will disclose most encroachments and is usually required by lenders and buyers.

KEYWORDS AND PHRASES

Appurtenant	Easement in Gross	Freehold Estate	License	Periodic Tenancy	Tenancy at Will
Curtesy	Encroachment	Holdover Tenant	Lien	Qualified Estate	Tenancy for Years
Dominant Tenement	Encumbrance	Homestead	Life Estate	Remainder Person	
Dower	Fee Simple Absolute	Implied Easement	Non-Freehold	Reversion	
Easements	Fee Simple Defeasible	Inchoate Right	Party Wall	Servient Tenement	
Easement by Necessity	Fee Simple Determinable	Leasehold Estate	Per Autre Vie	Tenancy at Sufferance	

RELATED WEB SITES:

EMINENT DOMAIN:

WWW.REALTOR.ORG/REALTORORG.NSFPAGES/EMINENTDOMAIN

INTEREST IN REAL ESTATE:

TOPICS.LAW.CORNELL.EDU/WEX/REAL_PROPERTY/

Multiple Choice Questions

1) The greatest estate in land is a:

- A. Fee simple determinable.
- B. Fee simple upon condition.
- C. Life estate in reversion.
- D. Fee simple absolute.

2) The rights of a holder of a life estate are derived from:

- A. The fee simple titleholder.
- B. The laws of inheritance.
- C. A leasehold estate.
- D. Governmental rights in land.

3) Which of the following is not classified as a freehold estate?

- A. An estate created by statute.
- B. A life estate.
- C. A fee simple.
- D. A leasehold estate.

4) Which of the following is an example of a license?

- A. Tenancy at sufferance.
- B. Encroachment.
- C. Theater ticket.
- D. Easement.

5) Marcia had a life estate to which her daughter was named remainder person. Marcia leased the property for five years and died three years later. Her daughter decided to cancel the lease. Which situation is true?

- A. The lease was totally void from the beginning.
- B. The terms of the lease prevailed.
- C. The lease was void upon the death of the life tenant.
- D. The lessee can sue for damages if evicted.

6) The future interest retained by a grantor of a life estate is a:

- A. Remainder interest.
- B. Reversionary interest.
- C. Defeasible interest.
- D. Mortgage.

7) Which of the following is an estate of definite duration?

- A. An estate at sufferance.
- B. A tenancy for years.
- C. A periodic estate.
- D. A tenancy at will.

8) All of the following are legal life estates EXCEPT:

- A. Curtesy.
- B. Dower.
- C. Leasehold.
- D. Homestead.

9) Alex's fence extends two feet onto his neighbor's land. This is a/an:

- A. Easement.
- B. Adverse right.
- C. Encroachment.
- D. Nuisance.

10) Bob owns a parcel of land, which is next to a private school. In his will he leaves the land to the school "so long as it is used for school purposes." When Bob dies the school owns a:

- A. Life estate.
- B. Fee simple absolute.
- C. Leasehold estate.
- D. Fee simple determinable.

11) Gary's neighbor has an easement over Gary's land for access to a lake. Gary's property is called:

- A. The servient tenement.
- B. The dominant tenement.
- C. An adverse right.
- D. Squatter's rights.

12) Property is conveyed to George for life and upon his death to his daughter, Ellen. Ellen has a:

- A. Reversionary interest.
- B. Leasehold.
- C. Fee simple conditional.
- D. Remainder interest.

13) The law which allows a homeowner certain protection from judgments of creditors is known as:

- A. Homestead.
- B. Curtesy.
- C. Dower.
- D. Tacking.

14) The easement of a utility company that prohibits one from building over a gas line would be:

- A. Personal.
- B. Affirmative.
- C. In gross.
- D. Appurtenant.

15) A sale of land would not affect:

- A. Restrictive covenants.
- B. Express easements.
- C. Rights of mechanic's lien holders
- D. Any of the above.

16) An easement may be extinguished by:

- A. Agreement.
- B. Prescription of servient tenement.
- C. Revocation of servient tenement.
- D. All of the above.

17) Charlie lives next door to John and uses a portion of John's land as a driveway. As much as John likes Charlie, he does not want to grant him the use of the land in perpetuity. Since John wants to retain the privilege of reviewing the situation on a regular basis, John should grant Charlie a/an:

- A. License.
- B. Easement.
- C. Appurtenant easement.
- D. Permit.

18) All of the following constitute an encumbrance to real property EXCEPT:

- A. A will conveying the property to the owner's heirs upon death of the owner.
- B. A restrictive covenant in the deed to the property.
- C. A mortgage.
- D. A lease.

19) If two adjoining office buildings are separated by a common wall that is located on the property line, all of the following statements would be true EXCEPT:

- A. The wall is a party wall.
- B. Either owner can demolish his half without liability to the owner of the adjoining property.
- C. Each owner owns that portion of the wall on his land.
- D. Each owner has an easement in the other half of the wall for physical support.

20) What is the statutory right a widow has in the estate of her deceased husband?

- A. Dower right.
- B. Curtesy right.
- C. Tenancy at sufferance.
- D. Remainder interest.

21) Which of the following is an example of an appurtenant easement?

- A. A shared driveway.
- B. A power line.
- C. A license.
- D. An encroachment.

22) Alex conveys a parcel of real estate to Barry. Unless specified otherwise, one can presume that the transfer conveyed a:

- A. Life estate.
- B. Non-freehold estate.
- C. Remainder.
- D. Fee simple absolute estate.

23) When the term of an estate is measured by the life of someone other than the life tenant, it is called a:

- A. Life estate per autre *vie*.
- B. Life estate in reversion.
- C. Life estate in remainder.
- D. Non-freehold.

24) Fran conveys a life interest in a property to John. When John dies, the property will return to Fran's possession. Fran is a:

- A. Remainder person.
- B. Life tenant.
- C. Tenant per autre *vie*.
- D. Holder of a reversionary interest.

25) An owner, Jake, transferred a life estate in a home to Kate for the life of Lou. Kate then leased the property to Mike under a five-year lease. Owner Jake retained a future interest known as a/an:

- A. Remainder interest.
- B. Estate for years.
- C. Defeasible estate.
- D. Reversionary interest.

26) A conveyance from Harry to Jim for life, and then to Steve if still alive, would give Steve a:

- A. Contingent remainder interest.
- B. Vested remainder interest.
- C. Life estate.
- D. Reversionary interest.

27) An owner, Lee, transferred a life estate in a home to Leon for the life of Gary. Leon then leased the property to Mark under a five-year lease. What would happen if Leon died?

- A. Mark's lease would terminate.
- B. Title would return to Lee.
- C. Gary would obtain title.
- D. Leon's heirs would be entitled to Leon's interest.

28) A utility company has the recorded right to erect poles on an owner's property and run electrical lines over it. The utility company has a/an:

- A. Negative easement.
- B. Prescriptive easement.
- C. Easement in gross.
- D. License.

29) An owner, Paul, transferred a life estate in a home to Sue for the life of Jane. Sue then leased the property to Steve under a five-year lease. The death of Jane would result in all of the following EXCEPT:

- A. Termination of Steve's lease.
- B. Termination of Sue's estate.
- C. *Reversion* to Paul.

- D. Jane's heirs taking Jane's interest in the property.

30) Life tenants may:

- A. Commit waste.
- B. Encumber the reversionary interest.
- C. Lease the property to others.
- D. Convey the estate by will.

31) A freehold estate:

- A. May last indefinitely.
- B. Is limited by a person's life.
- C. May not be encumbered.
- D. Is not inheritable.

32) An estate created when a tenant holds over at the end of a lease term without the landlord's permission is called:

- A. A periodic estate
- B. An estate at sufferance
- C. A tenancy at will
- D. An estate for years

33) An owner of a condominium leases it for one year. The type of estate the owner has created is a:

- A. Leasehold estate.
- B. Time-share.
- C. Tenancy by the entirety.
- D. Fee simple determinable.

Short-Answer Questions

- 1) Compare "Adverse possession" to "easement by prescription"
- 2) What is the difference between "reversionary interest" and "remainder interest"?
- 3) When a surviving equal-share partner becomes sole owner of a property upon his partner's death, how did the two partners originally hold title?

*Use your notebook for your description.

POLLUTION AND HAZARDOUS SUBSTANCES - EFFECT ON REAL ESTATE TRANSACTIONS

Most states, including, have enacted laws requiring the disclosure and or removal of certain hazardous materials found in buildings. Sales are contingent upon a satisfactory inspection of the property for hazardous substances and, in some cases, proof of their absence. Although disclosure is not required for other pollutants, such as radon gas, asbestos, underground fuel storage tanks, groundwater contamination and faulty septic systems, failure to disclose such hazards could result in a violation of the consumer protection laws, loss of license, or a suit for misrepresentation. A real estate salesperson has an affirmative obligation to disclose to a prospective buyer any facts that may affect the buyer's decision. It is considered unfair and deceptive practice for a real estate licensee to not inform a prospective buyer that a house being sold has termites only if the buyer asks about it.

Real estate brokers and salespersons must be particularly alert to the presence of hazardous substances in property they are listing or buying for clients. They should question owners about the possibility of hazardous substances associated with the property, to make proper disclosures and to advise prospects of their right to a building inspection. Licensees must be aware of their obligations regarding disclosure of hazardous materials in real estate transactions and of their potential liability for failing to comply with state requirements.

LEAD PAINT

Many states deal with lead paint poisoning, its prevention and control. In children, too much lead in the body can cause serious damage to the brain, kidneys, nervous system, and red blood cells. High levels of lead can cause retardation, confusion, coma, and death. Lead paint is found in many of the housing units built before 1978. Lead accumulates in the body and can damage the brain, nervous system, kidneys, and blood. The Lead-Based Paint Hazard Reduction Act of 1992 (LBPHERA) requires disclosure of known lead-based paint hazards to potential buyers or renters. The Lead Law requires the removal or covering of lead paint hazards in homes built before 1978 where any children under six years of age reside. Owners are responsible with complying with the law. This includes owners of rental property (excluding vacation property which has been properly exempted) as well as owners living in their own dwellings. Financial help is available through tax credits, grants, and loans. Owners of dwellings which will be rented to families with children under six years of age must have the units tested for the presence of lead. Landlords can be held liable for a lead-poisoned child. An owner cannot evict or refuse to rent to anyone because of lead paint, enforceable by the state laws on Commission against Discrimination.

De-Leading Requirement

The owner of any dwelling unit must remove ("abate") or cover ("contain") the lead paint

if the dwelling unit is occupied by a child under six. The term "owner" includes managing agents, executors, administrators, and trustees. Condominium or cooperative unit owners' associations are considered "owners" solely with respect to common areas and exterior surfaces and fixtures. However, de-leading is not required if a child under six resides in a dwelling unit on an **occasional** basis. The law allows owners to contain and control lead paint on an **interim** basis while full compliance with the law is delayed. After approving the interim plan the Department of Public Health issues, a letter of interim control, which expires one year after issuance. The plan may be renewed once for an additional one year if the inspector determines that the condition of the unit has not deteriorated. Landlords may delay the commencement of new tenancies for up to thirty days in instances where de-leading must first be completed.

DUTIES OF NEW OWNERS

If a home containing high levels of lead is sold to a family with a child under six, the new owner is responsible for the lead paint removal or containment. The owner has ninety days in which to complete the work either in full or pursuant to an interim plan. Generally, any surface containing lead paint, which is five feet or less from the ground must be de-leaded.

COMPLIANCE LETTER: A dwelling owner may obtain a written statement from the Department of Public Health Lead Poisoning Prevention Program, or other public or private testing service attesting that the dwelling unit has no lead paint violations and is in compliance with the state lead law. However, the compliance letter will become void if, subsequently, the paint begins to peel, chip or flake.

ENFORCEMENT AND PENALTIES: The owner of any residential property in which a child under six resides is strictly liable for all damages caused by failure to abate lead hazards. An owner who fails to comply with the lead law, after being notified of a dangerous level of lead on the premises, can be subject to treble damages.

FAIR HOUSING: The law prohibits owners and real estate licensees from refusing to sell or rent housing to families with children under six based solely on the presence of lead paint or the requirement to remove lead paint.

LIABILITY OF SECURED LENDERS: Mortgagees may not discriminate in the issuance of a mortgage based solely on the presence of lead on the premises. However, lenders are exempt from liability to victims of lead poisoning. Mortgagees who obtain title through foreclosure proceedings are subject to the lead paint removal law and have ninety days after acquiring title to remove the lead paint or obtain an interim control letter.

RADON GAS

Radon is a colorless, odorless gas, which enters a house through cracks in the foundation walls. In 1984 radon gas was determined to be a hazardous problem in homes, and unsafe levels were established by the U.S. Environmental Protection Agency. Radon gas is easily detected and eliminated by proper ventilation systems.

ASBESTOS

Due to its heat resistant quality, asbestos had been used for years as insulation on plumbing pipes and heat ducts and as general insulation. It was also used for shingles, and

floor and roof tiles. If left undisturbed, asbestos is relatively harmless. When the asbestos starts to disintegrate from age or is broken up during removal, the resulting dust is extremely hazardous to health. It should only be removed by professionals with proper knowledge and experience.

GUIDANCE FOR THE INSPECTION OF ON-SITE SEWAGE DISPOSAL SYSTEMS:

On-site sewage disposal systems are governed by Title 5 of the State Environmental Code 310 CMR 15.000. Experience has shown that when properly designed and sited, these systems provide an acceptable Level of wastewater treatment and are a legitimate treatment and disposal option in areas where centralized sewers are not available. However, given the traditional view that these systems are temporary solutions until sewers are provided, they are often neglected, and this can result in harm to the environment and threats to the public health. In order to address this problem and correct the prevailing attitude toward on-site systems, Title 5 requires that systems be inspected under certain circumstances. In this manner, system owners can be educated about the importance of properly maintaining their systems, and those systems that are an environmental or public health threat can be identified and upgraded.

This document is intended to provide guidance to both the system owner and the system inspector for evaluating the adequacy of existing on-site sewage disposal systems. Approved System Inspectors are charged with the responsibility of inspecting systems in accordance with 310 CMR 15.302, 15.303 and this guidance and reporting their findings to the approving authority.

The goal of the inspection is to provide sufficient information to decide as to whether or not the system is adequate to protect public health and the environment. If conditions exist that show the system is failing to protect public health or the environment, the system must be repaired, replaced or upgraded. The only grounds for failing a system or conditionally passing a system are if any of the criteria listed on the inspection form and specified in 310 CMR 15.303 are met.

The inspection must avoid disruption of the functioning of the system and should be conducted to minimize disruption of the site in general. However, at a minimum, all manholes, covers, and cleanouts must be exposed in order to achieve the goal of this inspection. Pumping of system components, when required, shall be done after an initial inspection of the entire disposal system to observe normal operating conditions. Each component requiring pumping can then be re-inspected after pumping has been completed.

UNDERGROUND STORAGE TANKS: Leaking underground oil or gas storage tanks, can allow toxic materials to pollute the soil and contaminate wells and groundwater. A federal program called Leaking Underground Storage Tanks (LUST) was established to regulate the installation, maintenance, monitoring, and failure of underground storage tanks. Generally, the law applies to commercial storage facilities and exempts residential heating oil tanks, which are located where the oil is consumed.

Note: In any federally related mortgage transaction, the lender is required to obtain a "21-E" affidavit, signed by the seller and buyer certifying that the premises have not been contaminated by the storage or dumping of hazardous wastes or substance, such as fuel oil.

In most states, a leaking, underground heating oil tank must be removed at the owner's expense, and the tank and polluted soil must be disposed of in a hazardous waste facility.

DISCLOSURE REQUIREMENTS AND LEGAL IMPLICATIONS

LEAD PAINT DISCLOSURE REQUIREMENTS

This disclosure requires that all prospective purchasers of homes constructed prior to 1978 be given a written and verbal notification regarding the hazards of lead paint, and lead in plaster, soil, and other material. The seller or broker prior to the signing of an offer on a state form called the “Department of Public Health Property Transfer Notification” must give notice to the prospective purchaser. The prospective purchaser must also receive a copy of the Department's information bulletin regarding lead poisoning.

VERBAL DISCLOSURE BY REAL ESTATE LICENSEES: Real estate brokers and salespersons are required to **verbally** inform prospective purchasers of the possible lead hazards, and to obtain certification that the prospective purchaser has been so notified.

PROSPECTIVE PURCHASER'S TEN-DAY RIGHT TO AN INSPECTION: The seller and real estate agent must inform the prospective purchaser of the right to a lead paint inspection, and the seller must allow the prospect **ten days** or more to complete the inspection, if the prospect chooses to have it performed.

ENFORCEMENT AND PENALTIES: Failure to comply with the disclosure requirements could result in a civil penalty of up to \$1,000. Also, a violation by a real estate agent is considered an unfair or deceptive act within the meaning of the Consumer Protection Law, (Chapter 93A), and could result in liability of treble damages.

LICENSE SURCHARGE: A \$25 surcharge will be imposed on license fees charged to certain professionals, including real estate brokers and salespersons. The money will be used for purposes, which include lead paint education and training.

LEGAL EFFECTS FOR FAILURE TO DISCLOSE HAZARDOUS MATERIALS: As indicated, state law determines the sanctions for failing to disclose the presence of lead paint. State law does not specifically require sellers and real estate licensees to disclose the presence of **radon gas, asbestos and leaking underground storage tanks**. However, failure to disclose such hazards to a prospective buyer is considered a misrepresentation, which could result in a rescission of the sale or a civil action for damages. Furthermore, a seller may be held negligently liable to a person whose health is damaged as the result of a deliberate or wanton misrepresentation.

WASTEWATER SYSTEMS AND ENVIRONMENTAL ISSUES

Most states are enacting new rules and policies concerning Environmental Protection regulations. The EPA regulations have concluded that improperly functioning private sewerage systems were a major cause of the pollution relating to coastal waters, rivers, and water supplies. Some communities do not have public sewerage systems and may be connected to its own “on-site” private sewerage system. That private sewerage system is either a septic system or a cesspool. Private sewerage systems are regulated by the state EPA and local boards of health. Local boards of health may have stricter regulations than the EPA that the homeowner must adhere to. Some inspection occurs when the homeowner sells or enlarges his home. In

most instances, a private sewerage system that fails the inspection are required to be repaired/replaced within two (2) years from the date of the inspection.

BUYER'S RIGHT TO AN INSPECTION: For the protection of all parties in a real estate transaction, the buyer should be given an opportunity, at his or her expense, to have the premises inspected by a professional prior to the purchase of the property. The usual inspection covers lead paint, structural and mechanical defects, and the presence of rodents and wood boring insects. However, the buyer may insist upon a complete environmental screening for radon gas, water quality, asbestos, sanitary system, and underground storage tanks. For the protection of the seller and broker, the prospective buyer should be asked to sign a written waiver of the right to inspect if the buyer chooses not to have an inspection.

PROPERTY TRANSFER NOTIFICATION CERTIFICATION

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

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

Seller's Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or(ii) below):
- (i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).
 - (ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the seller (check (i) or (ii) below):
- (i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (circle documents below). Lead Inspection Report; Risk Assessment Report; Letter of Interim Control; Letter of Compliance
 - (ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

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

- (c) _____ Purchaser or lessee purchaser has received copies of all documents circled above.
- (d) _____ Purchaser or lessee purchaser has received no documents.
- (e) _____ Purchaser or lessee purchaser has received the Property Transfer Lead Paint Notification.
- (f) _____ Purchaser or lessee purchaser has (check (i) or (ii) below):
 - (i) _____ received a 10-day opportunity (or mutually agreed upon period) to

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

Agent's Acknowledgment (initial)

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

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

Certification of Accuracy

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

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

KEY WORDS AND PHRASES

Asbestos
Buyer's right to inspect for lead paint
De-leading requirements
Disclosure requirement laws
Lead paint
Hazardous materials
Fuel oil contamination
Radon gas
Real estate licensees' duty to disclose all hazardous wastes
Sanctions for disclosure violations
Title V
Underground oil storage tank regulations - "21-E" affidavit
Property transfer notification certification

Multiple Choice Questions

- 1) A homeowner informs a listing salesperson that there is an underground oil storage tank, which is no longer in use. The listing salesperson should:
- A. Refuse the listing.
 - B. Ignore the information about the tank since it is no longer in use.
 - C. List the home "as is".
 - D. Note it on the listing for disclosure to prospective buyers.
- 2) A broker lists a home, which was constructed prior to 1978. The broker must comply with the lead paint disclosure requirements:
- A. Only if the buyer has a child under the age of six.
 - B. Only if the house has not been de-leaded.
 - C. For all prospective buyers.
 - D. Only if the buyer expects to obtain bank financing.
- 3) By law, a prospective buyer must be given a ten day right to inspect a home for the presence of:
- A. Lead.
 - B. UFFI.
 - C. Radon gas.
 - D. All of the above.
- 4) To avoid liability for damage to a person's health resulting from exposure to hazardous material, a mortgage lender must obtain a statement regarding the presence of hazardous material in a home from any of the following EXCEPT:
- A. Seller.
 - B. Mortgagor.
 - C. Buyer.
 - D. Broker.

- 5) A homeowner informs a listing broker that the house contains lead paint. The broker:
- A. Should refuse the listing.
 - B. May accept the listing only if the owner removes the lead paint.
 - C. May accept the listing but must obtain a statement from the owner that the owner has disclosed the presence of lead paint to prospective buyers prior to the closing.
 - D. May accept the listing only if the indoor lead paint level is below 0.10 parts per million.
- 6) At the signing of a purchase and sale agreement, the buyers say that they do not want to pay for a home inspection. The broker should:
- A. Ask the buyer to orally waive his right to inspect.
 - B. Withdraw from the sale.
 - C. Advise the seller to have the home inspected at his own expense.
 - D. Ask the buyers to sign a written waiver of their right to an inspection.
- 7) A broker lists a home containing lead paint. According to the lead paint disclosure/removal law:
- A. The owner may refuse to sell to a family with a child under six.
 - B. The seller is required to de-lead the premises if the house is sold to a family with a child under six.
 - C. The broker may refuse to show the property to a family with a child under six.
 - D. The buyer with a child under six must comply with the lead paint removal/containment requirement.

Appendix A

QUIZ ANSWERS

Chapter 1

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

Chapter 2

1. D	4.A	7.D	10.C	13.A	16.B	19.A	22.A	25.A	28.C	31.C
2. A	5.C	8.B	11.A	14.A	17.C	20.D	23.C	26.B	29.B	32.C
3. C	6.D	9.D	12.D	15.D	18.B	21.C	24.B	27.C	30.D	

Chapter 3

1. D	4.C	7.B	10.D	13.A	16.A	19.B	22.D	25.D	28.C	31.A
2. A	5.C	8.C	11.A	14.C	17.A	20.A	23.A	26.A	29.D	32.B
3. D	6.B	9.C	12.D	15.D	18.A	21.A	24.D	27.D	30.C	33.A

Chapter 4

1. C	4.B	7.B	10.C	13.D	16.A	19.A	22.A	25.B	28.D	31.B	34.A
2. B	5.B	8.D	11.A	14.C	17.A	20.D	23.C	26.C	29.B	32.A	35.A
3. D	6.B	9.D	12.D	15.B	18.C	21.C	24.A	27.B	30.A	33.B	36.D

Chapter 5

1. D	3.D	5.C	7.B	9.B	11.B	13.C	15.D	17.B	19.B
2. D	4.B	6.A	8.A	10.D	12.B	14.D	16.C	18.A	20.A

Chapter 6

1. D	4.D	7.B	10.C	13.D	16.C	19.D	22.D	25.B	28.C	31.B	34.B	37.B
2. D	5.B	8.C	11.A	14.B	17.C	20.A	23.D	26.D	29.C	32.D	35.D	
3. C	6.A	9.B	12.C	15.C	18.A	21.C	24.C	27.D	30.B	33.C	36.B	

Chapter 7

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

Chapter 8

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

Chapter 9

1. C	4.D	7.D	10.D	13.D	16.A	19.C	22.A	25.B	28.A	31.B	34.B
2. B	5.C	8.C	11.D	14.C	17.C	20.A	23.B	26.A	29.C	32.B	
3. D	6.B	9.C	12.C	15.A	18.D	21.B	24.D	27.C	30.B	33.C	

Appendix A-2 Quiz Answers

Chapter 10

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

Chapter 11

1. D	2.C	3.A	4.D	5.C	6.D	7.D
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Chapter 12

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

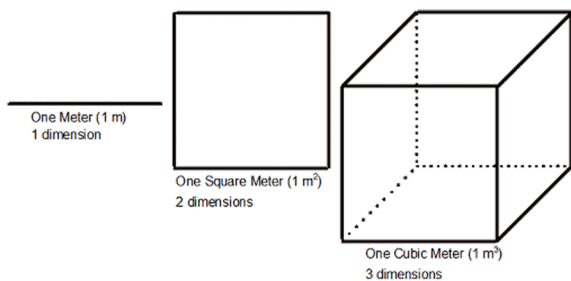
Chapter 13

1. D	4.B	7.D	10.C	13.D	16.B	19.D	22.C
2. B	5.B	8.A	11.C	14.D	17.C	20.B	23.C
3. B	6.D	9.D	12.D	15.D	18.B	21.B	

Chapter 14

1. C	4.A	7.B	10.D	13.A	16.C	19.B	22.C	25.A	28.A	31.B	34.D
2. B	5.A	8.A	11.C	14.B	17.D	20.B	23.B	26.C	29.D	32.B	35.B
3. A	6.B	9.C	12.A	15.C	18.A	21.D	24.D	27.A	30.B	33.B	

Length to Area to Volume



Customary Units of Length

1 foot (ft) = 12 inches (in)
 1 yard (yd) = 3 feet (ft)
 1 yard (yd) = 36 inches (in)
 1 mile (mi) = 1,760 yards (yd)
 1 mile (mi) = 5,280 feet (ft)

1 Acre

4,047m²
 4,840yds²
 43,560ft²

Area

Figure	Name	Perimeter/ Circumference	Area
 (a)	square	4a	a ²
 (b)	rectangle	2l + 2w or 2(l + w)	lw
 (c)	parallelogram	2a + 2b or 2(a + b)	bh
 (d)	triangle	a + b + c	1/2bh
 (e)	trapezoid	a + b ₁ + c + b ₂	1/2(b ₁ + b ₂)h
 (f)	regular polygon	ns n = number of sides	1/2ap p = perimeter a = apothem
 (g)	circle	πd or 2πr	πr ²

Volume

Figure	Formula	Variables
Cube 	a ³	a = length of edge
Rectangular prism 	l × w × h	l = length w = width h = height
Cylinder 	π × r ² × h	r = radius of circular face h = height
Cone 	1/3 × π × r ² × h	r = radius of circular base h = height from tip to base
Sphere 	4/3 × π × r ³	r = radius

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Real Estate Principles and Concepts

THE PROFESSION OF REALTY BROKERAGE

Success or failure in Real Estate is determined by **KNOW HOW**. What to do under given circumstances and what **NOT** to do usually must be learned the most difficult way — by experience. Unfortunately, mistakes in this field generally result in the loss of thousands to the broker, and he becomes discouraged by the failure. Just as success begets success, failure begets failure. As we will see, there are many after-successes which grow from primary successes, but rarely from failures.

We will treat the regular steps in the Real Estate transaction in order, as we develop each step, we will carefully point out and demonstrate each **NEGATIVE** danger point, for the broker's caution. Similarly, we will show which **POSITIVE** moves and methods will materially help insure success.

These Do's and Don'ts have been gathered from thousands of real estate transactions. They permit the sincere student to avoid the often fatal mistakes made by others, as well as the lesser errors that hinder their success. By observing the results of these errors in the practices of others, we see and feel the warning — and our own ultimate success is nearer for it.

In the same light, the thousands of helpful **METHODS** set out here will aid you to do the right thing at the right time in the right way. These, too, are the codification of years of results of methods tested in actual practice, The new broker should make a practice of rereading the chapter that relates to each realty process before beginning that process in each sale, during his first year in the field, He thus refreshes his memory of the things to avoid and **ALERTS** his mind to the many...

"In addition to a solid foundation in the basic skill of real estate salesmanship, you will also learn how to handle the tricky problems, that often throw experience brokers for a loss..."



**Lee Institute School
of Real Estate**

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* Robert Warren Kent, L.L.B.

There is only one man in the World who has been in so many Phases of Real Estate for over 30 Years, --- who has **LIVED** Real Estate, as a **BROKER, LAWYER, AUTHOR, TEACHER, COUNSELLOR, STATE OFFICER, INVESTOR, APPRAISAL EXPERT**, --- and, as head of the World's Largest **REAL ESTATE TRAINING** Institute, has been Able to gather, from all this Experience — **HUNDREDS of FINE POINTS** in **REAL ESTATE BROKERAGE** — that are **PROVEN METHODS** for making **MORE MONEY**. These will be your **KEYS** to opening the Door to **BIG SUCCESS** in this business...

The FINE POINTS of

**REAL ESTATE
BROKERAGE**

— all the **KNOW- HOW** that you need to move you up from “**Making a Good Living**,” To **MAKING BIG MONEY** by the Man **WHO DID!!!***