REAL vs. PERSONAL PROPERTY

A. Characteristics of Land/Real Estate
   a. Land
   b. Economic Characteristics
      i. scarcity
      ii. improvements
   c. Physical Characteristics
      i. immobility
      ii. indestructability
      iii. non-homogeneity (Uniqueness)

B. Personal Property / Chattels
   a. Tangible Personal Property
   b. Intangible Personal Property/Severance; Bill of sale

C. Fixtures
   a. Law of Affixation (Annexation)
   b. Determining What a Fixture Is
   c. Legal Test of a Fixture
      i. intention
      ii. manner
      iii. relation
      iv. adaptability

D. Trade Fixtures
   a. Accession

E. Trees and Crops
   a. Emblements
      i. annual crops

F. Manufactured Housing

G. Concept of Ownership
   a. Feudal System
   b. Allodial System

H. Property Rights – Tenements, Appurtenances, and Hereditaments
   a. Identification of the Bundle of Rights
      i. possession
      ii. control
      iii. quiet Enjoyment
      iv. exclusion
      v. disposition

I. Physical Rights of Ownership of Land
   a. Surface
      i. right of lateral support
b. Subsurface
   i. mineral rights
   ii. law of capture

c. Air rights

1-7
d. Water rights
   i. riparian rights
   ii. littoral rights

J. Limitations on Ownership
a. Public Control & Governmental Powers
   i. taxation
   ii. escheat
   iii. eminent Domain
   iv. police Power

K. Private or Contractual
   a. Lease
   b. Mortgage
   c. Easement
   d. License

1-8

L. Key Words and Phrases

M. Related Web Sites

N. Chapter 1 Quiz

1-9

CHAPTER 2
TRANSFER OF TITLE TO REAL ESTATE

2-1

(DEED, TITLE, AND RECORDING OF TITLE) - PSI SALESPERSON 8%; BROKERS 7%
     PERSON VUE SALESPERSON 7%; BROKERS 8%)

LAND DESCRIPTIONS – VOLUNTARY vs. INVOLUNTARY

A. Involuntary Transfer of Property
   a. Eminent Domain
   b. Court Action
      i. bankruptcy
      ii. partition
      iii. foreclosure
      iv. execution sale
      v. escheat
   c. Adverse Possession
      i. prescriptive right
      ii. tacking

2-2

B. Voluntary Transfer of Property
   a. Public grant (patent)
   b. Public dedication
   c. Transfer by Will
      i. testator
      ii. codicil
      iii. bequeath
      iv. devise
      v. bequest (legacy)
   d. Transfer of Property by Inheritance (Succession)
      i. intestate
      ii. law of Descent and Distribution
   e. Transfer of Property by Accession
      i. annexation (affixation)
      ii. accretion
   f. Voluntary Transfer of Property by Deed

2-3

iii
C. Deed Types, Details, and Legal Conveyance
   a. Deed Covenants
      i. seisin
      ii. against encumbrances
      iii. quiet enjoyment
      iv. warranty of title
      v. further assurance
   b. Types of Deeds
      i. general Warranty Deed
      ii. special Warranty or limited warranty deed
      iii. bargain and sale deed
      iv. quitclaim deed
      v. Massachusetts statutory quitclaim deed

D. Special Purpose Deeds
   a. Sheriff’s Deed
   b. Fiduciary’s Deed
   c. Timber Deed
   d. Crops and Farm Produce

E. Essential Elements of a Valid Conveyance by Deed
   a. Written Instrument
   b. Legally Competent Grantor
   c. Grantee
   d. Consideration
   e. Granting Clause
   f. Habendum Clause
   g. Legal Description of the Property
   h. Signature
   i. Notarization
   j. Acknowledgement
   k. Delivery and Acceptance

F. Deed Tax Stamps

G. Recording Interest in Real Estate
   a. Constructive Notice or Actual Notice
   b. Title Search
      i. abstract of title
   c. Title Insurance
      i. owner’s title insurance
      ii. mortgagee’s title insurance
   d. Escrow or Closing
      i. tax aspects of transferring title to real property

H. Cloud on Title, Color or Title, Action to Quiet Title (BROKER ONLY)
   a. attorney title opinion, quiet title lawsuit
   i. incompetent grantor
   ii. undischarged mortgage or liens
   iii. boundary lines
   iv. cloud on title
   v. color of title
   vi. action to quiet title

I. Title Defects
   a. Incompetent Grantor
   b. Undischarged Mortgage or Liens
   c. Boundary Lines

J. Torrens System – Registered Land
   a. Conveyance of Registered Land
      i. registry of deeds
   b. Fraudulent Conveyance or Conveyance Transfer

K. Land Descriptions
CHAPTER 3
ESTATES IN LAND

(ENCUMBRANCES & INTEREST IN PROPERTY - PSI SALESPERSON 4%; BROKERS 5%; PERSON VUE SALESPERSON 3%; BROKERS 5%)

COMMON LAW vs. STATUTORY LAW

A. Freehold Estate
   a. Fee Simple Absolute
      i. inheritance
   b. Fee Simple Defeasible
      i. qualified estate
      ii. fee Simple subject to a condition subsequent
      iii. fee simple determinable

B. Life Estate
   a. Legal Life Estate
      i. dower & curtesy
      ii. divorce
   b. Homestead
   c. Non-Freehold Estate
      i. leasehold
      ii. tenancy for years
      iii. periodic tenancy
      iv. tenancy at will
      v. tenancy at sufferance
      vi. demise

C. License to Use Real Estate
D. Easements
   a. Appurtenant Tenement
   b. Gross
   c. Light / Air

E. Creation of Easements
   a. Express grant
   b. Prescription (Adverse Use)
   c. Necessity (Implied)
   d. Termination
   e. Prevention
   f. Description

F. Party Wall
G. Encroachments
H. Key Words and Phrases
I. Related Web Sites
J. Chapter 3 Quiz
CHAPTER 4
FORMS OF OWNERSHIP

(TYPES OF OWNERSHIP, EFFECTS ON PROPERTY - PSI SALESPERSON 4%; BROKERS 5%; PERSON VUE SALESPERSON 5%; BROKERS 6%)

CONDOMINIUMS vs. COOPERATIVES

A. Severalty vs. Concurrent
   a. Severalty
      i. severed
   b. Concurrent
      i. Joint Tenancy
         1. equal rights of possession
         2. right of survivorship
         3. four unities
            a. time
            b. title
            c. interest
            d. possession
   c. Tenancy in Common
      i. no right of survivorship
   d. Tenancy by the Entirety
      ii. petition to partition
   e. Terminating Co-Ownership

B. Ownership of Real Estate by Business Organizations
   a. Corporation Ownership
      i. advantages
      ii. disadvantages
   b. Partnership
      i. general
      ii. limited
   c. Trust – Property Ownership held in Trust (BROKER ONLY)
      i. agreement
      ii. beneficiaries
      iii. business
      iv. estate planning
   d. Syndication
      i. (REITS)

C. Home Ownership and Investment

D. House Types and Styles
   a. List of Various House Types and Styles
      i. American colonial
      ii. cape cod
      iii. contemporary
      iv. gable front
      v. gambrel
      vi. garrison (New England)
      vii. manufactured
      viii. modular
      ix. ranch
x. split level
xi. Victorian
xii. yankee classic

E. Condominiums, Cooperatives and Time-Shares

a. Condominium
b. Cooperative Ownership
   i. financing
   ii. selling
   iii. disadvantage

c. Condominium Ownership
   i. fee simple
   ii. undivided interest
   iii. common property

d. Formation of a Condominium
   i. master deed (declaration)
   ii. association
   iii. bylaws
   iv. unit deeds
   v. real estate taxes
   vi. insurance
   vii. governing (association meetings)
   viii. condominium Fees
   ix. special Assessments

e. Purchasing a Condominium
f. Financing

g. Conversions Comparison Chart
h. Time Sharing
   i. interval ownership

F. Keywords and Phrases

G. Related Web Sites

H. Chapter 4 Quiz

CHAPTER 5
LIENS & ENCUMBRANCES

(LIEN PRIORITY & EFFECTS ON OWNERSHIP - PSI SALESPERSON 6%; BROKERS 6%
PERSON VUE SALESPERSON 5%; BROKERS 7%)

LIENS AND REAL ESTATE TAXES

A. Liens
   a. General
   b. Special
B. Private Creditors' Liens
   a. mortgages
   b. attachments
   c. judgments
   d. mechanic's
      i. recording
   e. Municipal
   f. Government
   g. Discharge
   h. Satisfaction
   i. Filing
   j. Agreement
   k. dissolution

C. Priority of Liens
D. Real Estate Taxation
   a. “Certificate of Liens”
   b. Ad Valorem
   c. Abatements
   d. Special Assessments for Improvements
   e. Payments
   f. Enforcement
   g. Right of Redemption

E. Key Words and Phrases

F. Related Web Sites

Chapter 5 Quiz

CHAPTER 6
CONTRAETS

(REAL ESTATE CONTRACTS & GENERAL LAW - PSI SALESPERSON 17%; BROKERS 18%
PERSON VUE SALESPERSON 16%; BROKERS 16%)

CONTRACTS – ESSENTIALS OF A VALID CONTRACT

A. Contracts
   a. Meeting of the Minds
   b. Offer and Acceptance
   c. Consideration
      i. value
      ii. earnest money
   d. Competency
      i. incompetent’s ability
      ii. transfer of title.
      iii. ratification
   e. Legal Objective (Lawful)
   f. Reality of Consent (requirement of validity)
   g. Electronic Signatures Act (ESA)

B. Legal Status of Contracts
   a. Valid
   b. Void
   c. Voidable
   d. Unenforceable

C. Misrepresentation (factors affecting enforceability of contracts)
   a. False Statement
   b. Expression of an Opinion
   c. Fraud
   d. Undue Influence
   e. Duress
   f. Realty of Consent

D. Status of Contracts
   a. Executory
   b. Executed

E. Types of Contracts
   a. Bilateral
   b. Unilateral
   c. Implied
   d. Oral

F. Defenses for Non-Performance of a Contract
   a. Destruction
   b. Death
   c. Statue of Frauds
G. Remedies for Breach of Contract
   a. Default
   b. Buyer’s Remedies
   c. Seller’s Remedies

H. Essentials Terms of a Real Estate Purchase and Sale Agreement
   a. Date Signed
   b. Description of the Buyer and Seller
   c. Description of the Real Estate
   d. Consideration

I. Standard Printed Clauses in P&S
   a. Number of Copies
   b. Changes in the Terms
   c. Earnest Money Deposit
   d. Escrow Account (Escrow or Closing)

J. Other Forms of Contracts
   a. Offer to Buy (Meeting of the Minds)
   b. Counteroffer
   c. Termination of Offer
      i. withdrawal or revocation
      ii. rejection
      iii. death
      iv. lapse of time.
      v. destruction
   d. Binder
   e. Option
   f. Financing Agreements

K. Miscellaneous Terminology
   a. Assignment of a Contract
   b. Rescission
   c. Waiver
   d. Parole Evidence Rule
   e. “Time is of the Essence”
   f. Novation

L. Agreement for G.I. Mortgage

M. Offer to Purchase Real Estate

N. Standard Condominium P&S Agreement

O. Purchase & Sale Agreement

P. Key Words and Phrases

Q. Related Web Sites

R. Chapter 7 Quiz

THE LISTING CONTRACT – EARNING A COMMISSION

A. Types of Listing
   a. Open
   b. Exclusive
      i. exclusive agency
      ii. exclusive right to sell.
c. Multiple

d. Net

e. Termination of Listings
   i. mutual agreement
   ii. abandonment
   iii. expiration of the time period
   iv. death, insanity
   v. transfer of title.
   vi. destruction of the property
   vii. performance by the broker
   viii. revocation or cancellation of the listing

B. Requirements for Earning a Commission
   a. Requirements
      i. must be hired.
      ii. procuring cause
      iii. ready, willing, and able
   b. The Hiring
   c. Performance by the Broker
   d. Procuring Cause
   e. Time for Performance
   f. Two or More Brokers in the Same Transaction
   g. Earning a Commission / Tristram Case
   h. Broker’s License Required to Sue for Commission
   i. Commission Rates

C. Principal and Agency
   a. Anti-Trust Laws
   b. Sherman Anti-Trust Act
      i. price fixing
      ii. group boycotting
      iii. tying arrangements
      iv. allocation schemes
      v. conspiratorial behavior detection

D. Principal and Agency
   a. Agency
      i. scope of authority
      ii. implied authority
      iii. “respondent superior”
      iv. apparent authority (ostensible)
      v. general or special
   b. Duties Imposed Upon Fiduciaries (C.O.A.L)
      i. care
      ii. obedience
      iii. accounting
      iv. loyalty

E. Brokers Obligation to Third Parties
   a. Substantial Misrepresentations
   b. Unfair and Deceptive Act
      i. consumer protection laws
      ii. “caveat emptor” (let the buyer beware)
   c. Dual Agency
      i. seller’s agent
      ii. buyer’s agent
   d. Relationship between Brokers and Salespersons

F. Exclusive Right to Sell Listing

G. Anti-Trust Laws
   a. Price Fixing
   b. Group Boycotting
c. Tying Arrangement
d. Allocation Schemes 7-11
e. Conspiratorial Behavior Detection
f. The National Do Not Call Registry

H. Key Words and Phrases 7-12

Chapter 6 Quiz 7-13

CHAPTER 8
MORTGAGES 8-1

(LENDING CLAUSES & TYPES OF INSTRUMENTS - PSI SALESPERSON 6%; BROKERS 6%; PERSON VUE SALESPERSON 7%; BROKERS 6%)

MORTGAGE INSTRUMENTS – FINANCING INSTRUMENT PROVISIONS

A. Mortgage
   a. Conveyance of an Interest
   b. Mortgagor
   c. Mortgagee
   d. Hypothecation

B. Federal Government 8-2
   a. Federal Housing Administration (FHA)
   b. Veteran Administration (VA)
   c. Rural Development Loans

C. Promissory Note (4 Notes Used) 8-3
   a. Straight
   b. Installment
   c. Partially Amortizing Installment
   d. Fully Amortizing Installment

D. Security Instruments
   a. Trust Deeds
   b. Mortgages

E. Deeds of Trust 8-3
   a. Trustor
   b. Trustee
   c. Beneficiary
   d. Equity

F. Title Theory vs. Lien Theory 8-4
   a. Lien Theory
   b. Title Theory
   c. Defeasance Clause

G. Recording a Mortgage
   a. Constructive Notice

H. Rights of the Mortgagee 8-5
   a. Assignment

I. Rights of the Mortgagor
   a. Possession & Enjoyment
   b. Release of Mortgage Upon Performance
   c. Right of Redemption after Default

J. Obligations of the Mortgagor
   a. Covenants
      i. repay the loan.
      ii. maintain proper insurance.
      iii. prevent waste.
      iv. maintain the improvements.
v. pay all taxes and assessments.
b. Release of a Mortgage

a. Acceleration Clause
b. Alienation (Due-on-Sale Clause)
   i. nonrecourse loan
   ii. late charge penalties
   iii. tax & insurance escrow

c. Subordination Clause
d. Prepayment Penalty Clause
e. Assignment Clause
f. Estoppel Clause
g. Partial Release Clause
h. Other Clauses
   i. interest
   ii. usury laws
   iii. balloon payment

L. Default & Foreclosure
a. Default
   i. lis pendens
b. Equitable Right of Redemption
c. Statutory Right of Redemption
d. Voluntary Conveyance (Deed in Lieu)
e. Foreclosure
   i. judicial
   ii. statutory
f. Power of Sale Foreclosure
   i. soldiers & Sailors Civil Relief Act
g. Mortgagor’s Equitable Right of Redemption
   i. Deed in Lieu (Friendly Foreclosure)
h. Bankruptcy

M. Second Mortgage
a. Junior Mortgage
   i. subordination
b. Purchase Money
c. Equity

N. Mortgage Take-Over
a. Assumable Mortgage
b. Effect of Mortgage Take-Over

O. Special Purpose Financing (Mortgages)
a. Blanket
b. Bridge
c. Chattel
d. Construction
e. End Loan
f. Equity Participation
g. Graduated Payment
h. Open End
   i. Package
   j. Permanent Construction
   k. Reverse Annuity
   l. Wrap-Around

P. Fixed Disbursement Plan
a. Voucher System
b. Warrant System
c. Advance Financing Techniques
CHAPTER 9
THE FINANCING PROCESS

(FINANCING CONCEPTS & TERMINOLOGY - PSI SALESPERSON 10%; BROKERS 8%
PERSON VUE SALESPERSON 10%; BROKERS 9%)

REAL ESTATE FINANCE – FINANCING TECHNIQUES

A. The Importance of Financing
   a. The Broker’s Role
B. Procedure for Applying for a Mortgage
   a. Credit Report
   b. Letter of Commitment
   c. Loan-to-Value Ratio
C. Loan Fees –Discount Points
   a. Points
   b. Effective Yield
D. Ratio Comparisons
   a. Front-End
   b. Back-End
E. Sources of Financing
   a. Primary Mortgage Market
   b. Savings & Loan Associations (S&Ls)
   c. Mutual Savings Bank
   d. Cooperative Banks
   e. Commercial Banks
   f. Credit Unions
F. Finance Companies (Financial Institutions)
   a. Portfolio Lenders
   b. Insurance
   c. Mortgage Banking
   d. Mortgage Bankers
   e. Mortgage Brokers
   f. Private, Individual Lenders
   g. Pension & Retirement Funds
   h. Farmer’s Home Administration (FMHA)
G. Government Regulation of Mortgage Lending
   a. The Federal Home Loan Bank Act of 1932
   b. The Banking Act of 1933
   c. Federal Home Loan Bank System
   d. Federal Reserve System
   e. Deposit Insurance
      i. reform, recovery, and enforcement act (FIRRES)
      ii. office of thrift supervision (OTS)
      iii. federal deposit insurance corporation (FDIC)
      iv. resolution trust corporation (RTC)
H. Types of Mortgages
   a. Conventional
      i. PMI
b. Privately Backed
   i. MGIC
c. Government-Backed
   i. FHA
   ii. VA
d. The National Housing Act of 1934
   i. department of housing and urban development (HUD)

I. FHA Requirements and Regulations
   a. Interest Rates
   b. Insurance
   c. Appraisal
   d. Minimum Property Standards
   e. Statement of Occupancy
   f. Loan Prepayment Privileges
   g. Discount Points (Origination Fee)
   h. Secondary Financing
   i. Maximum Loan Amounts
   j. Assumption Rules
   k. Other FHA Programs

J. VA Requirements and Regulations
   a. Interest Rates
   b. Loan Terms
   c. Appraisal (CRV)
   d. Eligibility
   e. Certificate of Eligibility
   f. Amount of Loan Guaranteed by the VA
   g. Down Payment Required
   h. Prepayment Penalties
   i. Assumption Regulations
   j. Points and Origination Fee
   k. Buyer’s Funding Fee
   l. Comparisons with VA and FHA

K. Mortgage Loan Repayment Techniques
   a. Straight Loan
      i. term loan
      ii. balloon
   b. Installments Note
   c. Amortized Loan

L. Variations of Direct Reduction Loans
   a. Adjustable Rate
   b. Rollover
   c. Graduated Payment

M. Creative Financing
   a. Deferred Purchase Money Mortgage
   b. Mortgage Take-Over
   c. Buy-Down or Subsidized Mortgage
   d. Equity Sharing
   e. Wrap-Around Mortgage
   f. Types of Contracts
      i. installment
      ii. land sales
      iii. deed
      iv. conditional sale
      v. equitable Title
      vi. buyer default
   g. Land Contracts
      i. advantages
1. buyer & seller
   
ii. disadvantages
   
1. buyer & seller

N. Secondary Mortgage Market
   
   a. Differences between Primary and Secondary Markets
   
   b. Money Flow in Home Mortgage Financing
      
      i. Federal National Mortgage Association (FNMA)
         
         1. securitization
      
      ii. Government National Mortgage Association (GNMA)
      
      iii. Federal Home Loan Mortgage Corporation (FHLMC)

O. Federal Consumer Credit Protection Act of 1968
   
   a. Truth-in-Lending Law (TIL)
      
      i. regulation Z
   
   b. Loan Transactions Subject to TIL
      
      i. real estate mortgage lenders
      
      ii. not secured by a lien on real estate
         
         1. personal
         
         2. agricultural
         
         3. household
         
         4. less than $25,000 loan
   
   c. Loan Transactions Not Subject to TIL
      
      i. lenders transactions (business or commercial)
      
      ii. Individual lenders

   d. Written disclosure
   
   e. Three day right of rescission
   
   f. Advertising

   g. Enforcement & Penalties

P. Real Estate Settlement & Procedures Act of 1974 (RESPA)
   
   a. Real Estate Settlement Procedures Act
      
      i. 1-4 families
      
      ii. residential properties
   
   b. Loan Application
   
   c. “Good Faith Estimate” (TRID)

   d. Homeowners Protection Act of 1998
      
      i. fixed Rate Mortgages
      
      ii. adjustable-Rate Mortgages (ARMs)
   
   e. Regulation V the Fair Credit Reporting Act (FCRA)
      
      i. copy of consumer credit file.

   f. Fair & Accurate Credit Transaction Act of 2003 (FACT)

   g. Enforcement & Penalties

Q. Provisions of the Fact Act
   
   a. Access to Credit Reports

   b. Fraud Alerts

   c. Truncation of Credit & Debit Card Numbers
      
      i. security & disposal

R. Gramm-Leach-Bliley Act (GLB Act)

   a. Provisions in Title V

   b. Pretexting

   c. Nonpublic Personal Information

S. U.S Patriot Act in 2001

T. Equal Credit Opportunity Act (ECOA)

U. Community Reinvestment Act

V. Home Ownership and Equity Protection Act (HOEPA)

W. Housing & Economic Recovery Act of 2008 (HERA)

X. Secure & Fair Enforcement (Safe Act)

Y. Flipping

   a. Illegal flipping

Z. Key Words and Phrases
CHAPTER 10
THE NATURE OF LEASES AND TENANCIES

(LEASING & PROPERTY MANAGEMENT - PSI SALESPERSON 3%; BROKERS 5%
PERSON VUE SALESPERSON 3%; BROKERS 4%)

THE LEASEHOLD INTEREST

A. Leasehold Interest
   a. Tenancy for Years
   b. Tenancy at Will
   c. Periodic Tenancy
   d. Tenancy at Sufferance

B. Types of Leases
   a. Straight
   b. Gross
   c. Net
   d. Percentage
   e. Step-up or Graduated.
   f. Reappraisal

C. Special Leases
   a. Sale and Leaseback
   b. Ground

D. Property Management
   a. Goals of the Property Manager
      i. Fiduciary Responsibilities
   b. Functions
   c. License Requirements

E. Essentials of a Valid Lease
   a. Writing
   b. Description
   c. Terms of the lease
   d. Rent
   e. Demise Clause
   f. Signatures
   g. Delivery and Acceptance
   h. Recording

F. Covenants in Leases
   a. Expressed (Duties Imposed upon Fiduciaries see pages 3-7)
      i. e.g., security deposits
   b. Implied
      i. quiet enjoyment
      ii. prevention of waste

G. Termination of Leases and Tenancies
   a. Termination Notice
      i. Massachusetts 30 day
      ii. Massachusetts 14 day to quit
   b. Constructive Eviction
   c. Eviction
   d. Eviction Proceedings

H. Landlord & Tenant Rights
   a. Landlord Responsibilities
   b. Tenants Responsibilities
   c. Permissible Late Fees
d. Abandoned Property 10-7
   e. Tenant Protection Laws
      i. abandoned property.
      ii. removal of or locking out of a tenant.
   f. Safe & Sanitary Housing
      i. safe sanitary code

I. Key Words and Phrases
J. Chapter 10 Quiz 10-8

CHAPTER 11
ENVIRONMENTAL POLICIES & HAZARDOUS MATERIALS 11-1

(DISCLOSURE & ENVIRONMENTAL ISSUES - PSI SALESPERSON 6%; BROKERS 7%
PERSON VUE SALESPERSON 6%; BROKERS 5%)

POLLUTION & HAZARDOUS SUBSTANCES vs. EFFECTS ON REAL ESTATE TRANSACTION

A. Lead Paint
   a. General Responsibilities
      i. owners
      ii. responsibilities
      iii. financial
   b. De-Leading
      i. abatement
      ii. interim
   c. Duties of New Owners
      i. compliance letter
      ii. enforcement and penalties
      iii. fair housing
      iv. liability or secured lenders

B. Other Hazardous Materials
   a. Radon Gas
   b. Asbestos 11-3
   c. Onsite Sewage Disposal Systems
   d. Underground Storage Tanks

C. Disclosure Requirements and Legal Implications 11-4
   a. Lead Paint Disclosure
      i. verbal
      ii. prospective purchasers 10 day right
      iii. enforcement & penalties
      iv. license surcharge
      v. failure to disclose.
   b. Title V
   c. Buyer’s Right to an Inspection

D. Property Transfer Notification Certification
E. Seller’s Disclosure
F. Key Words and Phrases 11-7
G. Chapter 11 Quiz 11-8

CHAPTER 12
FAIR HOUSING LAWS 12-1

(FEDERAL LAWS & THE ADA - PSI SALESPERSON 11%; BROKERS 10%
PERSON VUE SALESPERSON 9%; BROKERS 9%)
FEDERAL FAIR HOUSING LAWS

A. Federal Fair Housing Laws
   a. The Civil Rights Act of 1866
   c. The Civil Rights Act of 1964
   d. The Civil Rights Act of 1968, Title VIII
   e. The 1988 Amendment to the Civil Rights Act
   f. Practices Prohibited by the Federal Fair Housing Law
   g. Housing Transactions Exempted from the Federal Fair Housing Law

B. Housing Transactions Exempted from the Federal Fair Housing Law
   a. Sale or Rental
   b. Owner-Occupied Two, Three or Four Family

C. Organizations Exempted from the Federal Fair Housing Law
   a. Religious Organizations
   b. Private Clubs

D. Discrimination Against Handicapped
   a. Physical
   b. Mental Impairment
   c. Persons Not Considered Handicapped
      i. current drug addicts
      ii. persons convicted of a drug related crime.
      iii. transvestites
      iv. any person whose tenancy would constitute a direct threat.
   d. Persons Considered Handicapped
      i. alcoholics
      ii. AIDS
   e. Construction requirements

E. Discrimination Against Families with Children (Familial Status)
   a. Exemptions for Elderly Housing Projects

F. Enforcement of the Federal Civil Rights Acts
   a. Enforcement of the Civil Rights Act of 1866
      i. Administrative Enforcement and Penalties for Violation of the 1968 (FFHL)

G. Violations of Fair Housing Law by Brokers and Salespersons
   a. Overall View of Fair Housing Act
   b. The Declaration of Independence
   c. Housing & Community Development Act

H. History of Residential Segregation
   a. Housing Segregation List
   b. Racial Zoning
   c. Restrictive Covenants
   d. Discriminatory Sales, Rental and Financing practices
      i. exemptions

I. Discriminatory Housing Practices

J. HUD Regulations
   a. Discrimination in Terms, Conditions & Privileges in Service Facilities
   b. Other Prohibited Sale and Rental Conduct
   c. Discriminatory Representations on the Availability of Dwellings
   d. Blockbusting
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PERSON VUE SALESPERSON 3%; BROKERS 5%)

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PERSON VUE SALESPERSON 7%; BROKERS 7%)

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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.
Chapter 1 – The Nature of Real Property

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 is usability is determined by habitability and productiveness. Our planet is made up of, roughly, ¾ open water and ¼ 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.
Chapter 1 – The Nature of Real Property

- **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.

- **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.

**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.

**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):

- **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...).
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...
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?

- **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?

**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.
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.

**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 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 right of lateral support which ensures that the stability received from an adjacent property will not be removed or destroyed.

**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.

**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.
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.

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**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

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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 COMMISSION: 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.

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. Immobile.
   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.
Chapter 3 – Estates in Land

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.

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.

• 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.
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.

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.

**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 "lessee" 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.
Chapter 3 – Estates in Land

**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.

**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.
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.

**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.
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 undiscovered encroachment may render a title unmarketable. A land survey will disclose most encroachments and is usually required by lenders and buyers.
### KEYWORDS AND PHRASES

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### RELATED WEB SITES:

EMINENT DOMAIN:  
WWW.REALTOR.ORG/REALTOR.ORG/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. 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. Tackling.

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 (LBPHRA) 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 state 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.

<table>
<thead>
<tr>
<th>Seller</th>
<th>Date</th>
<th>Seller</th>
<th>Date</th>
</tr>
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<tr>
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<td>Date</td>
<td>Purchaser</td>
<td>Date</td>
</tr>
<tr>
<td>Agent</td>
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**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

Chapter 2

Chapter 3

Chapter 4

Chapter 5

Chapter 6

Chapter 7

Chapter 8

Chapter 9
Appendix A-2 Quiz Answers

Chapter 10

Chapter 11

Chapter 12

Chapter 13

Chapter 14
Length to Area to Volume

Customary Units of Length

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

1 Acre

4,047 m²
4,840 yds²
43,560 ft²

Area

<table>
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<tr>
<th>Figure</th>
<th>Name</th>
<th>Perimeter/Circumference</th>
<th>Area</th>
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<tr>
<td>(a)</td>
<td>square</td>
<td>4a</td>
<td>a²</td>
</tr>
<tr>
<td>(b)</td>
<td>rectangle</td>
<td>2l + 2w or 2(a + b)</td>
<td>lw</td>
</tr>
<tr>
<td>(c)</td>
<td>parallelogram</td>
<td>2a + 2b or 2(a + b)</td>
<td>bh</td>
</tr>
<tr>
<td>(d)</td>
<td>triangle</td>
<td>a + b + c</td>
<td>1/2bh</td>
</tr>
<tr>
<td>(e)</td>
<td>trapezoid</td>
<td>a + b₁ + c + b₂</td>
<td>1/2(b₁ + b₂)h</td>
</tr>
</tbody>
</table>
| (f)    | regular polygon | n = number of sides | p = perimeter
|        |          |                          | a = apothem |
| (g)    | circle    | πd or 2πr                | πr²    |

Volume

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<th>Figure</th>
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<tbody>
<tr>
<td>Cube</td>
<td>a³</td>
<td>a = length of edge</td>
</tr>
<tr>
<td>Rectangular prism</td>
<td>l × w × h</td>
<td>l = length, w = width, h = height</td>
</tr>
<tr>
<td>Cylinder</td>
<td>π × r² × h</td>
<td>r = radius of circular face, h = height</td>
</tr>
<tr>
<td>Cone</td>
<td>1/3 × π × r² × h</td>
<td>r = radius of circular base, h = height from tip to base</td>
</tr>
<tr>
<td>Sphere</td>
<td>4/3 × π × r³</td>
<td>r = radius</td>
</tr>
</tbody>
</table>

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