

Concepts of Home ownership

Land – earth's surface, including below and above & anything permanently attached to it

Situs – Personal preference for one area over another

Real property / Real Estate - interest, rights, and benefits inherent in real estate ownership

Appurtenant – right, privilege, or improvement belonging to and passing with property

Tangible – physical – the property

Intangible – Non –physical – rights that go with property

Appurtenant Easement – easement that attaches to one property that allows use by adjacent landowner

Annexation – Process of converting personal property to real property (planting a tree)

Severance - Process of converting real property to personal property (cutting down a tree)

Fixture - Personal property (chattel) that has become real property Ceiling Fan

Improvement – any structure erected on a site to enhance the value of the property

Trade fixture - Personal property that does not become real property Restaurant equipment

Chattel – personal property – personalty

Fructus Industriales – Emblements - Fruits of Industry / agricultural crops – personal property

Fructus Naturales – Trees & bushes – real property

Mineral Rights – Subsurface rights may be sold separately

Water rights – Adjacent lands have rights that water not be restricted or contaminated

Littoral rights – non-flowing – Lunar – to high water mark

Riparian rights – flowing water – River – right to access and use water

Title - Right to ownership of land, Evidence of ownership of land – Not a piece of paper

Eminent domain – Government right to take private property

Condemnation – process of taking private property for public use through eminent domain

Dedication – voluntary transfer of private property to public use

Inverse Condemnation – Action taken by adjacent property owner for damages (airport expansion)

Manufactured Housing – Wheel Estate – Built offsite and trucked in on wheels Only 5% moved again

Modular Housing – Built offsite and trucked in, then placed with cranes (Legos)

Equity = Current market value minus mortgage

Demand – Amount of goods people are willing and able to buy at a given price

Supply – Amount of goods producers are willing to offer at a given price

Absorption Rate - # of homes sold in 1 year divided by # of homes sold in previous month

Demographics – Density & Distribution of people

Capital gain – profit earned from the sale of an asset

Short Term – held for less than 1 year & taxed at ordinary income rates

Long Term - held for more than 1 year & taxed at capital gains rates (lower tax)

Monetary policy- government regulation of the amount of money in circulation (Federal Reserve)

Tax policy – government policy to support its goals

Contracts- Consideration, Offer and Acceptance, Legal purpose & capacity, Agreement

Contract- legally enforceable set of promises that must be performed or breach occurs

Addendum – Something added to printed contract – Page listing other things buyer wants

Option contract – Agreement to allow a buyer to purchase or not, at a future date

Lease/ Purchase – two contracts – lease for a period and option or sale contract

Consideration – something for something - promise to give money for title

Contingency – Provision in contract that requires a certain act be done before contract becomes binding

Offer – One party offers to do something for something in return

Counteroffer – response to offer with another offer

Unilateral – one sided – offer

Bilateral – Promises made by two parties - two sided - sales contract

Duress- contract signed under threat

Express contract – Contract in writing

Implied contract – an agreement based on the actions of the parties

Executory contract – contract in which something remains to be done (closing)

Executed contract – closed

Execute – Sign contract

Listing agreement – between broker and principle to pay commission if broker sells property

Assignment- transferring interest in instrument to another

Mortgages are assigned to secondary market

Conveyance – Transference or refers to any document that transfers title to real property

Acknowledgement – Notorized for recording

Offer and acceptance – “meeting of the minds”

Void contract- one that did not meet the requirements of a valid contract (forged name)

Voidable contract – one that appears to be valid , but may be voided (minor signed)

Minor – Alabama must be 19 or 18 and married to sign contract

Rescission – canceling of contract

Novation – substituting another contract

Breach of Contract – violation of contract without excuse

Earnest Money – good faith money to prove intention - not required for valid contract

Liquidated damages – an amount predetermined as the total damages for breach of contract (earnest)

Specific performance – legal action to compel a party to carry out terms of contract

Statute of Frauds –law that requires instruments involving real estate to be in writing to be enforceable

Statute of Limitation – law that puts time limits on bringing action in court

Time is of the essence – clause in contract that requires performance within a certain time

Laches- Loss of rights due to delay in asserting claim (property inspection)

Building permit – written government permission to construct or alter a structure

Certificate of Occupancy – government permission to use structure – all inspections passed

Conditional Use Permit- Permission to allow use that conflicts with zoning (day care in residential)

Nonconforming Use – use of property may continue after zoning ordinance change (residential changes)

Zoning – Power given to local governments by state police power to regulate use of land

PETE - government powers – Police, Eminent Domain, Taxation, Escheat

Density Zoning – Restriction on maximum number of housing units per acre

Bulk zoning – establishes restrictions in bulk – downtown Birmingham buildings are < 34 floors (airport)

Setback line – bulk zoning that establishes distance from structure to property lines

Variance – permission to build a structure that is prohibited by zoning

Restrictive covenants – Private restriction on land use

Clustering – Grouping housing on smaller lots with larger common areas

Gridiron – Placing housing in rows on a grid

Subdivider – improving land by dividing into lots then putting in streets and utilities

Subdivision – planned community of similar homes

Developer- improving land (building structures)

Master Plan – Long term plan for land use

PUD – Planned Unit Development (Riverchase)

MUD – Multi Use Development – High rise with retail on street floor, offices above, residence above that

Brokerage – Bringing together sellers and buyers for a fee

Agent – person employed to act on behalf of another

Antitrust - Price fixing, Group boycotting, Allocation of Customers, Allocation of markets, Tie-in agreements

Broker- Qualifying Broker- Responsible for all acts of all agents

Primary business, supervision of all agents, signor on escrow accounts, place of business

Transaction Broker – Relationship begins as TB, assisting parties until agency agreement is signed

Single agent – agent working for one party in a transaction – must be in writing

Dual agent – agent working for both sides of transaction – must be in writing and signed by all

Branch office- different locations must have a qualifying broker

Independent contractor- responsible for end results, not subject to employee controls

Procuring cause –person who's efforts acquire a ready, willing and able buyer

RECAD – Real Estate Consumer Agency Disclosure –

Must be given to consumer at first contact before confidential information is disclosed to another

Escrow Accounts

Commingling – placing other's money (held in trust) into account other than escrow (trust) account

Conversion – using other's money held in trust for any reason

Money must be held in FDIC bank with branch in Alabama

Risk management – ACT Avoid, Control, Transfer

Property Disclosure – required for Health & Safety – known structural defects, Lead Paint

Caveat Emptor – “Let the buyer beware” does not apply to:

Health and safety issues, Assumption of Duty, New Construction, Direct question

Latent defect – Hidden structural defect that could not be discovered by ordinary inspection

Concealment – illegal failure to disclose a material fact

Fraud - When agent conceals Knowledge of , duty to disclose, harm comes to party

Real Estate Taxes and other liens

Ad Valorem tax – tax according to value (tax assessed)

Different zoning classifications have different rates residential is lower than commercial, ect.

Mill - one- thousandths 1/1000 tax rate of 6 mills is \$6 per \$1000 of taxable value

Millage rate – tax rate applied to tax assessed value to compute tax owed for year October 1st

Special assessment – tax charge applied for improvements (adding sidewalks)

Involuntary Lien – Placed on property without consent of owner (Tax)

Voluntary Lien – Placed on property with owners consent (Mortgage)

Statutory Lien – lien imposed by statute (law) (tax lien)

Equitable Lien – From common law – mechanics or material man

General Lien – lien on all creditor's property both personal and real (judgment)

Specific Lien – Lien on one property (mortgage)

Judgment – court order to attach lien on property of defendant

First Lien – First recorded lien against property gets first funds from foreclosure

Junior lien – second recorded or later in line to collect money in foreclosure

Subordination – giving right to be first in line to collect to a junior position holder

Property taxes are unrecorded liens that are paid before first lien in a foreclosure sale

Mechanics or Material man lien – filed by creditor for nonpayment of debt for services or material

Mortgage lien – Death Note paid until note dies Voluntary, Specific

Tax lien – Charge against property for ad valorem taxes

Tax certificate sale – sale of tax debt on a property for non a payment of valorem taxes

Foreclosure – sale of property for non payment of debt

Equitable right of redemption – pay off debt before sale

Statutory right of redemption - Alabama - redeem property up to one year after foreclosure sale

1031 - Tax deferred exchange of like property

Forms of ownership

Severalty – sole ownership – one unit in condominium community

Tenants in common- undivided interest – everyone in the swimming pool at condominium

Joint Tenants (with right of survivorship) - Normally husband and wife - Must have PITT

Condominium – absolute ownership of the airspace in one unit & tenant in common of common areas

Co-ownership – title held by two or more

Cooperative – multi unit building where owners hold a proprietary lease to their individual apartment

Townhouse – separate ownership of individual units including the land and roof, but shared walls

Tenant – holder of lease

Fair Housing Civil rights act 1866 – no excuse for discriminating based on race

Blockbusting – practice of enticing homeowners to sell due to a protected class moving into neighborhood

Steering – practice of channeling home seekers to a certain area

FRESH CORN

Listing property

Listing agreement – personal service agreement with definite expiration date, no automatic extension

CMA – comparative market analysis – not an appraisal

Market value – most probable price property will bring under normal conditions

Price- What the check was written for

Cost – what it cost to create asset – not likely related to market value except for new construction

Net listing – Illegal – states broker will receive as commission all money above a certain amount

Open Listing – FSBO will offer any broker that brings a buyer the selling commission

Exclusive Right to Sell – Seller promises to pay a broker no matter who sells property, including owner

Buyer Agency Agreement – Agent works for buyer as single agent

Transfer of title – When valid deed is delivered and accepted

Deed – Written instrument that conveys title to property

Deed restriction – clause in deed that limits future use of property

Deed Clauses

Premises Clause – Granting Clause words on deed that state grantor's intention to convey property

Habendum Clause – “to have and to hold” states type of ownership conveyed

Tenendum Clause – “together with “ stating improvement that convey with property

Redendum Clause – private limitations and restrictions placed on property

Cloud on title –encumbrance on title that may impair title

Quitclaim Deed – no express or implied warranty, used to quiet cloud on title

General Warranty Deed – all warranties to clear title

Special Warranty Deed – warrants that grantor received title, and property was not encumbered

Grantor – Person transferring title – must sign deed – deed must be delivered during grantor's lifetime

Grantee- Person receiving conveyance of real property

Covenant – agreement of parties to do or not to do something

Adverse Possession – PANCHO taking of another's property

Devise- gift of real property by will

Bequest – gift of personal property by will

Decedent – person that died

Codicil – supplement to a will

Heir – Person who may inherit interest in land when owner dies without will

Intestate – Person who dies without a will

Will – written instrument that provides for the transfer of property owned by the deceased (testator)

Probate – Court process to determine who will inherit decedent's property

Power of Attorney – written, recorded instrument to give a person power to act on behalf of another

Mortgage – Death Note - Amortized Loan includes principle and interest with level payments

Alienation Clause – Loan is due upon sale

Acceleration Clause – Loan is all due when it goes into default (about 3 months missed payments)

Collateral – asset pledged to secure debt

Principle – amount of loan

Promissory note – primary evidence of debt

Debit – on the mortgage closing statement an amount owed

Credit – on the mortgage closing statement an amount entered in a party's favor

Uniform Settlement Statement – HUD1 – List all debits and credits for each party to sale

Escrow Account –Impound Account - Set up to collect taxes and hazard insurance each month in payment

Prepaid Items – at closing some items have to be prepaid – hazard insurance

Proration – items split between buyer and seller such as pre-paid taxes as of date of sale

RESPA – Real Estate Settlement Procedures Act – law that prohibits kickbacks, and requires disclosure

Recording fees – tax for recording deed & mortgage

Margin – difference in what mortgage provider pays for funds and what is charged to borrower

Legal Description – allows surveyor to kind boundaries of property

Meets & Bounds – has Point Of Beginning (POB) and gives directions and distance back to POB

Monuments mark points in M&B

Rectangular Survey – government survey method creating Townships & Ranges

Township lines run east – west line every 6 miles, starting at a base and intersect with range lines

Range lines – meridian -run north- south every six miles

Township 6 miles by 6 miles – created by the intersecting of range lines

Government check – corrects for curvature of earth 4 townships by 4 townships

Townships contain 36 sections, each one mile square

Sections- contain 640 acres - 1 mile square – 5,280 feet by 5,280 feet

Acre – 43,560 square feet 208.71 X208.71 (about the size of a football field 45,000 sf)

Plat – recorded map showing lots and blocks of planned subdivision

Survey – Sketch shows location of all structures, encroachments and property lines

Benchmarks- used by surveyors to measure distance and elevation (datum)

Leases

Estate for years – lease for an exact time – eg. One year

Estate from period to period – continues from period to period eg. Month to month – one period notification

Estate at will – indefinite period until terminated by either party

Actual eviction – legal process to remove tenant for cause (not paying rent)

Constructive Eviction – Tenant may leave due to landlord not performing (won't fix heat in winter)

Holdover tenancy – Tenant had legal possession, but lease ended and tenant stayed on

Subletting – tenant renting to a third party

Gross lease – Landlord pays ownership cost such as Taxes, Insurance, Maintenance (residential)

Net Lease – TIM Tenant pays above expenses plus rent (commercial)

Percentage Lease Tenant pays rent plus a percentage of sales (retail)

Ground Lease – landlord owns land, tenant builds structure (industrial)

Agency – Fiduciary (Position of trust) relationship between broker and principle

Principal – Client -person employing broker (usually property owner)

Fiduciary - OLD CAR Obedience, Loyalty, Disclosure, Confidentiality, Accounting, Reasonable Care

Customer – non client working with a s a transaction broker

Customer gets HARD? Answered - Honesty, Accounting, Reasonable Care, Disclosure, Truthful answers

Appraisal – Opinion of market value based on detailed accurate information

Anticipation – Principle that states Increase or decrease in value is based future benefit or detriment

Assemblage – Combining two or more adjoining lots into one larger tract to increase total value

Plottage – Increase in value resulting from assemblage

Capitalization = $\text{Income} / \text{Rate}$ Income Approach

Capitalization rate is the return on investment

Capital - money

Comparables – Substantially equivalent properties to subject

Comparison approach – comparing to recently sold comparable properties

Cost approach – process of adding value of land to cost to construct structure

Square foot method – estimating cost by multiplying square feet of structure times comparable cost

Depreciation – loss of value from any cause

Functional obsolescence – loss of value often caused by age or poor design (5 bedroom 1 bath)

Physical deterioration – decline in physical condition by ordinary wear and tear

Progression – principle that states lesser quality property will be favorably affected by better quality ones

Regression - principle that states higher quality property will be adversely affected by lower quality ones

Replacement cost – construction cost of similar property (adopt baby)

Reproduction cost – construction cost of exact duplicate (your DNA in baby)

Substitution – maximum value of property set by available substitutes

Financing

Alienation Clause – clause in mortgage that states mortgage must be paid off when property is sold

Acceleration Clause – clause in mortgage that states entire balance is due upon default

Deficiency Judgment – Personal judgment against borrower if foreclosure does not produce enough \$

Interest – rent on money expressed as APR (annual percentage rate)

Discount Point – 1 discount point is 1% of Loan, will increase lender yield about 1/8%

Origination fee – usually about 1% of loan amount – loan originator commission

Mortgage – Pledge of real estate as security for loan

Promissory note – promise to pay loan backed by mortgage

Balloon payment – final LARGE payment on loan that has not been amortized

Blanket loan – Quilt loan – releases part of loan in new home community for one parcel

Buy down – payment of money upfront on loan to reduce rate – like discount points

Certificate of Reasonable Value – VA appraisal

Conventional loan – 80% loan that does not require insurance or guarantee

Fannie Mae – quasi government secondary mortgage market loan buyer of primary loans

Freddie Mac – Corporation established to buy conventional mortgages from primary lenders

Ginnie Mae – gov. agency that buys mortgage backed securities backed by pools of FHA & VA loans

Loan to Value ratio- % relationship of loan to value 80%LTV = \$80,000 loan on \$100,000 property

Package loan – loan used to buy real and personal property in one loan (beach house with furniture)

Primary Mortgage market – lenders like local banks

Secondary Mortgage market – Fannie Mae, ect.

Regulation Z – Truth in Lending Act requiring disclosure of financing terms

Sale and Leaseback – Sell industrial building to investor and rent it back to free up capital

Subrogation – substituting ones position to assert claim for damages (insurance company pays claim)

Title theory – ownership retained by mortgagee (lender) with borrower having equitable title

Interest in Real Estate

Defeasible fee estate - Defeatable due to occurrence or nonoccurrence of some future event

Fee simple determinable – condition precedent – stated in deed

Condition Subsequent – Grantor's choice to take back

Dominant tenement – property that has right to use an easement over another property

Servient tenement – Property that serves dominant tenement

Easement by Necessity – right of ingress and egress over a grantor's land

Easement by Prescription – Easement acquired by adverse possession

Easement – right to use land of another for a specific purpose – utilities

Encroachment – Illegal intrusion of some structure on adjoining land

Encumbrance – any restriction on the use of land

Encumbrances – Physical 3 types – Restrictions, Easements, License

Escheat – Reversion of land to the state where decedent dies intestate

Estate in Land – Degree of interest in real property

Fee Simple – Highest estate recognized by the law in ownership – All rights

Freehold Estate – Indeterminate length of time

Homestead – land that is owned and occupied as the family home

Life estate – interest in property that is limited to the lifetime of its owner or some other person

Life tenant – person in possession of life estate

Pur autre vie – life estate measured on the life of a person other than the grantee

Remainder interest – estate remaining after life estate that goes to another person

Reversionary interest – interest that the grantor holds after granting a life estate to another

Waste – Improper abuse of a property by a possessor other than a fee interest

Title Records

Abstract of Title – History of all conveyances & encumbrances affecting title of a parcel of property

Actual Notice – direct knowledge of fact

Constructive Notice – recorded in court house records – Possession is also considered constructive notice

Inquiry Notice – law presumes a reasonable person would inquire

Marketable title – Good title

Priority – order of position or time

Quiet Title – court action to remove a cloud on title

Recording – Act of placing documents affecting interest in real estate in the recorder's office (Constructive)

Title Insurance – Policy insuring the owner or mortgagee (lender) against loss due to defects in title

Insurance CLUE – Comprehensive Loss Underwriting Exchange

Database of consumer claim history insurance companies use in rating process

Homeowners' Insurance – HO-2 broad coverage for financial loss due to common risk including:

Fire, smoke or lightning, Windstorm or hail, Explosion, Riot, Theft or vandalism, liability

Actual Cash Value = current value cost new - depreciation

Replacement Cost = replace with like kind Co-insurance clause 80% of value