

REAL ESTATE BASICS

Lesson 1

FUNDAMENTALS OF PROPERTY AND ESTATES

Buying real estate involves much more than the acquisition of the physical improvements on the land, whether it is a 3 bedroom home or an apartment building. You need to understand the different classes of property as well as the various estates in property so that you maximize your investment - you will want to know what limitations there are on your ownership of the property BEFORE you buy.

Property describes the rights or interests a person has in the thing owned - commonly called the "bundle of rights" which includes the right to possess, to use, to encumber, to transfer and to exclude. Property is either personal or real.

PERSONAL PROPERTY (movable) -- Even though your focus is on buying real property, it is important to identify personal property issues to avoid disputes. Personal property includes things that are tangible and movable --- anything that is not classified as real property is deemed to be personal property; also called "chattel."

- Examples: money; stock; notes; paintings; automobile
- Transfer of personal property is by way of a "bill of sale" or insertion in the deed.
- Trade fixtures installed by a tenant in a business may be removed by the tenant at end of lease.

- In some cases, what was once real property can be transformed to personal property: growing crops; mineral, oil and gas when extracted; even a house that is jacked up and moved off the property.
- Can be sold, used as collateral, assessed for tax purposes.

REAL PROPERTY (Immovable) -- Includes the bundle of ownership rights, as well as the physical improvements, the land and even the air rights. It is important to distinguish between real property and personal property because the law treats them differently for purposes of transferring ownership, taxes, probate, enforcement of liens, etc.

- When you buy a house, you are really buying "land" which includes the earth's surface, air rights, water (riparian) rights, and those things attached to it such as improvements.
- Real estate is unique. Even identical houses in a subdivision involve different rights to possess, to use, to enjoy and to transfer. Each property may have restrictions placed on its full enjoyment by governmental police power or privately by restrictions.
- Includes items of personal property permanently affixed such as buildings or natural growth attached by roots (trees, shrubs).
- Fixtures are articles that were once personal property but have been affixed to the land or building and thus become a part of the real property. Fixtures, since they are real property, automatically pass with the land whereas personal property must be mentioned in the deed or sold by way of a bill of sale in order to pass with the sale of the property.

- There are five tests of a fixture (MARIA): Method of attachment; Adaptability; Relationship of parties; Intention of parties; Agreement of parties
- It is very important to specify in the sales contract what items of personal property are included or excluded in the sale, especially where there may be doubt whether an item is a fixture (wall coverings, custom screens, washer/dryer, solar devices, mirrors).

ESTATES - The interest you acquire in real property is called an estate, reflecting your "status" of ownership -- it describes the degree, nature, quantity, and extent of a person's interest in property. There are "freehold" and "leasehold" estates.

- Not all interests in land are estates - mortgages and easements give rights in land but do not vest in possession.
- The greatest possible estate one can possess in real property is fee simple absolute. Check out the title report to see if there are any limitations on the control and use of the fee that are founded on public or private restrictions and conditions, including voluntary (mortgage) or involuntary (tax lien) encumbrances. If so, review a copy of any limitation.
- A fee simple defeasible title is subject to being divested upon the happening of a specified event; for example, A grants title to B as long as the property is used for church purposes. If B tried to convert the property into a nightclub, title would return to A ("reversion") or pass to remaindermen chosen by A.
- A life estate is limited in duration to the life of its owner or another. The life tenant may sell, lease or mortgage but the transferee receives no greater interest than the life tenant had. Often created in a will as an estate planning tool.
- A leasehold is a less than freehold estate involving the transfer of the exclusive right to possession. Upon the

termination of the lease, the property reverts to the landlord. The four types are Estate for years; Periodic tenancy; Estate at will; and Estate at sufferance.

SUMMARY - You must do your homework before you decide to buy a particular property, even though the location is perfect and the income stream is positive. Put on your Detective hat. Will the seller try to remove or substitute anything before closing? Are there any limitations on what I can do with the property? Could my seller be honestly mistaken and only own a life estate rather than the full fee simple title the seller believes? Keep asking questions --- and be sure to review the title report before committing to buy the property.

KEY WORDS

AIR RIGHTS - The rights to the use of the open space or vertical plane above a property. Ownership of the land includes the right to all air above the property.

BUNDLE OF RIGHTS - An ownership concept describing all those legal rights which attach to the ownership of real property, including the right to sell, lease, encumber, use, enjoy, exclude, will, etc.

BILL OF SALE - A written agreement by which one person sells, assigns or transfers his right to, or interest in, personal property to another.

CHATTEL - Personal property which is tangible and moveable.

FEE SIMPLE - The largest estate one can possess in real property. A fee simple estate is the least limited interest and the most complete and absolute ownership in land: it is of indefinite

duration, freely transferable and inheritable. Fee simple title is sometimes referred to as "the fee."

FIXTURE - An article that was once personal property but has been so affixed to the real estate that it has become real property (e.g. stoves, bookcases, plumbing, etc.). If determined to be a fixture, then the article passes with the property even though it is not mentioned in the deed.

FREEHOLD - An ownership estate in real property, the exact termination date of which is unknown.

IMPROVEMENTS - Valuable additions made to property, amounting to more than repairs, costing labor and capital and intended to enhance the value of the property. Improvements of land would include grading, sidewalks, sewers, streets, utilities, etc. Improvements on land would include buildings, fences, and the like.

INVENTORY - An itemized list of property. Many brokers recommend that their clients attach to the sales contract an inventory of property to be included in the sale of a residential property, including a condominium dwelling.

LAND - The surface of the earth extending down to the center and upward to the sky, including all natural things thereon such as trees, crops, or water; plus the minerals below the surface and the air rights above.

LATERAL AND SUBJACENT SUPPORT - The support received by a parcel of real property from the land adjoining it is called lateral support. Subjacent support is that support which the surface of the earth receives from its underlying strata.

LEASEHOLD - A less-than-freehold estate which a tenant possesses in real property.

LESS-THAN-FREEHOLD ESTATE - An estate held by one who rents or leases property. This classification includes an estate for years, periodic tenancy, estate at will, and estate at sufferance.

LIFE ESTATE - Any estate in real or personal property which is limited in duration to the life of its owner or the life of some other designated person.

MINERAL RIGHTS - Rights to subsurface land and profits. Normally, when real property is conveyed, the grantee receives all right and title to the land including everything above and below the surface, unless excepted by the grantor.

PERSONAL PROPERTY - Things which are tangible and moveable; property which is not classified as real property; chattels; personalty.

QUALIFIED FEE - An estate in fee that is subject to certain limitations imposed by the owner.

REAL ESTATE - The physical land and appurtenances, including any structures; for all practical purposes synonymous with real property.

REAL PROPERTY - All land and appurtenances to land, including buildings, structures, fixtures, fences, and improvements erected upon or affixed to the same; excluding, however, growing crops.

REMAINDER ESTATE - A future interest in real estate created at the same time and by the same instrument as another estate, and limited to arise immediately upon the termination of the prior estate.

REVERSION - A future estate in real property created by operation of law when a grantor conveys a lesser estate than he has. The residue left in the grantor is called a reversion that commences in possession in the future upon the end of a particular estate granted or devised, whether it be freehold or less-than-freehold.

RIPARIAN - Those rights and obligations which are incidental to ownership of land adjacent to or abutting on watercourses such as streams and lakes.

TENANCY FOR YEARS - A less-than-freehold estate in which the property is leased for a definite, fixed period of time, be it for 60 days or any fraction of a year, a year, ten years, etc.

TENANCY AT SUFFERANCE - A tenancy which exists when a tenant wrongfully holds over after the expiration of a lease, without the landlord's consent, as where the tenant fails to surrender possession after termination of the lease.

TENANCY AT WILL - A tenancy in which a person is in possession of real estate with the permission of the owner, for a term of unspecified or uncertain duration, as when an owner permits a tenant to occupy a property until it is sold.

TRADE FIXTURES - Articles of personal property annexed to leased premises by the tenant, as a necessary part of the tenant's trade or business.

WASTE - An improper use or abuse of property by one in possession of land, who holds less than the fee ownership, such as a tenant, life tenant, mortgagor, or vendee.

LESSON 2

HOW TO HOLD TITLE

The method of taking title to real property has serious tax and legal consequences. It is also important to ascertain how the seller holds title because all sellers will have to sign the contract of sale and deed. Review the alternatives discussed here with your expert tax or legal advisors.

SOLE OWNERSHIP -- When one person owns property it is known as tenancy in severalty - it could be a legal person like a corporation or association, or a human being.

CO-OWNERSHIP - Co-owners having an undivided interest and equal rights of possession. Alternatives are the Tenancy in Common, Joint Tenancy, and Tenancy by the Entirety. Once created, a tenancy can later be changed if certain legal formalities are met.

Tenancy in Common - two or more persons without the right of survivorship.

- Each has an undivided interest in the whole property; does not have to be equal shares.
- Any co-tenant can sell without other's consent.
- Can leave by will - subject to probate; does not pass to surviving co-tenants.
- No one co-tenant can claim possession to any specific physical portion of the property.

Joint Tenancy - two or more natural persons with the right of survivorship.

- Can sell, encumber, lease but cannot leave by will - a sale by one tenant will convert the joint tenancy into a tenancy in common.
- Upon death of joint tenant, the interest vests in the surviving tenants, without probate.
- Requires the four unities of Time, Title, Interest, and Possession.
- Corporation cannot be a joint tenant because it has perpetual existence.

Tenancy by Entirety - similar to a joint tenancy with right of survivorship but must be husband and wife.

- In essence, the marriage owns the property - thus one spouse cannot sell or partition the property, nor can a creditor of one spouse force a sale.
- Upon divorce, the parties become tenants in common.

Corporation - A separate, artificial entity created and regulated by state law, that has perpetual existence, and the right to sell.

- One disadvantage is double taxation of income.
- Important to obtain a corporate resolution showing proper authority to bind the corporation.
- The Limited Liability Company is becoming a more popular form of real property ownership because of the single tax feature and limited liability.

Partnerships - an association of two or more persons to carry on a business and share in profits and loss.

- In a general partnership each partner is liable for all the firm's debts. Realty may be taken in the name of the individual partners or the partnership.
- Death of a partner usually dissolves the partnership.
 - In a limited partnership, the limited partners are not liable for the firm's debts - however, the management and operation of the business is under the exclusive control of the general partners.
 - Partnership files but does not pay income tax—each partner pays the tax.

SUMMARY - There are lots of choices for holding title. If undecided, you can indicate on the contract that title to be determined prior to closing...then obtain input from your tax or legal advisor. With the consent of other tenants, you may be able to change the tenancy at a later time.

KEY WORDS -

GENERAL PARTNER - A co-owner of a partnership who is empowered to enter into contracts on behalf of the partnership and who is fully liable for all partnership debts.

LIMITED PARTNERSHIP - A partnership formed by two or more persons having as members one or more general partners and one or more limited partners

PARTITION - The dividing of common interests in real property owned jointly by two or more persons.

PARTNERSHIP - "An association of two or more persons to carry on as co-owners a business for profit," as defined in the Uniform Partnership Act, which is in force in a majority of the states.

SURVIVORSHIP - The right of survivorship is that special feature of a joint tenancy whereby all title, right and interest of a decedent joint tenant in certain property passes to the surviving joint tenants by operation of law, free from claims of heirs and creditors of the decedent.

TENANCY BY THE ENTIRETY - A special joint tenancy between a lawfully married husband and wife, which places all title to the property into the marital unit, with both spouses having an equal, undivided interest in the whole property.

TENANCY IN COMMON - A form of concurrent ownership of property between two or more persons, in which each has an undivided interest in the whole property; frequently found when the parties acquire title by descent or by will.

TENANCY IN SEVERALTY - Ownership of property vested in one person alone, and not held jointly with another; also called Several Tenancy or Sole Tenancy.

LESSON 3

WAYS TO ACQUIRE PROPERTY

The most common way to acquire real property is voluntary alienation - transfer by way of a deed following the signing of a contract to purchase. Another way to transfer property is by will or by involuntary alienation such as tax sale or government condemnation.

The major types of Deeds are the Warranty Deed, the Grant Deed, and the Quitclaim Deed.

- The Grantor of a Warranty Deed guarantees the title against defects existing at any time.
- The Grantor of a Grant Deed warrants that the grantor has not done anything to adversely affect the title.
- The Grantor in a Quitclaim Deed releases whatever interest he may have in the property, "if any." Often used between close relatives or in distress sales or when it is not clear whether the Grantor has any interest in the property.
- Other types of Deeds are the Gift Deed, the Tax Deed, the Commissioner's Deed, and the Sheriff's Deed.
- In any case, it is a good idea to obtain title insurance because the warranties are only as good as the assets of the Grantor.

For a Deed to effectively convey valid title to the Grantee, certain elements are required:

- Written - the Statute of Frauds requires deeds to be in writing and signed by a legally competent Grantor (not a minor), although no special form is needed.
- Contain a granting clause showing an intent to transfer.

- Name a living Grantee - if a corporation, it must be in legal existence. Cannot be a fictitious person. Could be a minor or incompetent, but will later have problems conveying out title.
- Contain an adequate description of the property, something more than a street address.
- Delivery - a Deed designed to take effect upon the death of the Grantor would not be valid; it must be delivered during the Grantor's lifetime -- refers to the intention of the Grantor, not the act of manual delivery. Acceptance is presumed. Recordation is preferred, but not required.
- The Deed could convey all the property except a certain portion (an "exception") or reserve to the Grantor a life estate ("reservation").
- Deeds often will not state the actual price paid for the property; they will state a "nominal consideration."

Additional ways to transfer title to property:

- Patent - An instrument by which the State or Federal government conveys title to public land.
- Dedication - Transfer of private land to the public for free with the intent the land will be accepted and used and maintained for public purposes such as parks and streets; sometimes made a prerequisite to a zoning request
- Accession: The acquiring of property by its joining with other property as with "accretion" - the gradual increase of land on a riverbank; or attaching personal property to the land of another such as building a fence on neighbor's property.

Key Words

BARGAIN AND SALE DEED - A deed which recites a consideration and conveys all of the grantor's interest in the property to the grantee.

CONDEMNATION - Either a judicial or administrative proceeding to exercise the power of eminent domain, i.e., the power of the government to take private property for public use.

CONVEYANCE - The transfer of title to real property by means of a written instrument such as a deed or an assignment of lease.

DEED - A written instrument by which a property owner "grantor" transfers to a "grantee" an ownership in real property.

GRANTEE - The person who receives from the grantor a grant of real property.

GRANTOR - The person transferring title to, or an interest in, real property. A grantor must be competent to convey; thus, for example, an insane person cannot convey title to real property.

HABENDUM CLAUSE - That part of the deed beginning with the words "to have and to hold," following the granting clause and reaffirming the extent of ownership that the grantor is transferring.

QUITCLAIM DEED - A deed of conveyance which operates, in effect, as a release of whatever interest the grantor has in the property; sometimes called a release deed.

SPECIAL WARRANTY DEED - A deed in which the grantor warrants or guarantees the title only against defects arising during the period of his tenure and ownership of the property and not against defects existing before the time of his ownership.

WARRANTY DEED - A deed in which the grantor fully warrants good clear title to the premises. Also called a general warranty deed.

LESSON 4

Title Protection and Recording -

The fact that a seller can produce a deed to the property is not always adequate proof of ownership and it definitely would not be enough to satisfy a lender. The best practice is to require a preliminary title policy to ascertain the degree of ownership and the existence of any encumbrances in the recorded chain of title. At closing, the buyer should acquire a title insurance policy.

- An Abstract of Title is a condensed history that discloses those items about the property that are of public record in the chain of title - it does not ensure the validity of the title.
- The title company will perform a title search to determine what, if any, defects are affecting the title to the property. The preliminary report is made before a title insurance policy is issued or when escrow is opened.
- Title insurance is made as of a specific date with a one-time premium. Unlike hazard insurance, it covers past defects - it does not run with the land.
- Lenders require the buyer obtain an extended lender's policy. For a slight premium, the buyer can purchase their own owner's policy protection as well. The owner's policy is not assignable.
- The standard Owner's coverage insures against matters of record; forgery and fraud; lack of capacity or improper delivery.
- The extended Lender's coverage insures against all in the standard coverage plus unrecorded tax and mechanic's liens, rights of parties in possession, and matters of survey.

- A major benefit of title insurance is the fact the insurer will pay costs and attorney fees to defend any claims against the title.

RECORDING -

Recording is the act of entering into the book of public records of the county where the property is located the written instruments affecting the title to real property, such as deeds, mortgages, options and assignments. State recording laws give legal priority to those interests that are recorded first. Proper recordation gives constructive notice to the world of the existence of the recorded document and its contents.

- Recording permits rather than requires documents be recorded because "first to record is first in right." Priority of recordation will usually determine the rights of the parties involved.
- Recording protects innocent purchasers against unrecorded documents and it assumes that all who deal with real property do so with full knowledge of recorded instruments.
- Recording does not make valid an otherwise invalid document; nor does the failure to record make invalid an otherwise valid document.
- Possession also gives constructive notice, so it is important to inspect any property prior to purchase - check out whether a person is occupying under a lease or under some claim of ownership.
- Some people decide not to record a document to keep a transfer secret from a lender - this is not a good practice, so first check with an attorney.

KEY WORDS -

ABSTRACT OF TITLE - A concise, summarized history of the title to a specific parcel of real property, together with a statement of all liens and encumbrances affecting the property. The abstract of title does not guarantee or assure the validity of the title of the property. It merely discloses those items about the property which are of public record, and thus does not reveal such things as encroachments, forgeries, and the like.

CHAIN OF TITLE - The recorded history of matters which affect the title to a specific parcel of real property, such as ownership, encumbrances and liens, usually beginning with the original recorded source of the title.

CLEAR TITLE - Title to property that is free from liens, defects or other encumbrances, except those which the buyer has agreed to accept, such as a mortgage to be assumed, the ground lease of record, and the like; established title; title without clouds.

CLOUD ON TITLE - Any document, claim, unreleased lien or encumbrance which may impair or injure the title to property or make the title doubtful because of its apparent or possible validity.

CONSTRUCTIVE NOTICE - Notice of certain facts which are implied by law to a person because he could have discovered the facts by reasonable diligence or by inquiry into public records.

FREE AND CLEAR TITLE - Title to real property which is absolute and unencumbered by any liens, mortgages, clouds or other encumbrances.

MARKETABLE TITLE - Good or clear title reasonably free from risk of litigation over possible defects; also referred to as

merchantable title. Marketable title need not, however, be perfect title.

OPINION OF TITLE - An opinion by a person competent in examining titles, usually a title attorney, as to the status of the title of a property.

QUIET TITLE ACTION - A circuit court action intended to establish or settle the title to a particular property, especially where there is a cloud on the title.

RECORDING - The act of entering into the book of public records the written instruments affecting the title to real property, such as deeds, mortgages, contracts of sale, options, assignments, and the like. Proper recordation imparts constructive notice to all the world of the existence of the recorded document and its contents.

TITLE INSURANCE - A comprehensive contract of indemnity under which the title company agrees to reimburse the insured for any loss if title is not as represented in the policy.

TITLE SEARCH - An examination of the public records to determine what, if any, defects there are in the chain of title.

LESSON 5

ENCUMBRANCES (MONEY)

Before committing to buy a property, a buyer will want to ascertain if there are any "encumbrances" affecting the property. There are two general classifications of encumbrances: those that affect the title, such as judgments, mortgages, mechanics' liens; and those that affect the physical condition of the property such as restrictions, encroachments and easements. The preliminary title report and a good survey will reveal possible encumbrances, some that the seller can remove and others the buyer will take title subject to.

The first category of encumbrances are Voluntary Money Liens in which the real property is security for payment of money. Note that all liens are encumbrances but not all encumbrances are liens. Some liens are voluntary, some involuntary; some are specific, others are general.

- A contract for deed or land contract (also called installment contract, agreement of sale) is an agreement between the seller (vendor) and buyer (vendee) for the purchase of real property in which the payment of all or a portion of the selling price is deferred. The buyer receives possession and equitable title but the seller retains legal title as security until full payment of the purchase price or performance of stipulated conditions.
- A Mortgage is a very common specific lien in which property is "hypothecated" to secure payment of money. The borrower is the mortgagOR and the lender the mortgagEE. The promissory note is the primary evidence of the debt; the mortgage

contract is security for the note. The mortgage, not the note, is acknowledged by the mortgagor and recorded. The note is a negotiable instrument like a check, so do not sign extra copies.

- Default in paying mortgage installments, or improper maintenance, illegal use or nonpayment of taxes could lead to foreclosure in which a court can terminate the rights of the mortgagor in the property and force a sale. If the sale proceeds do not satisfy the mortgage debt, a Deficiency Judgment can create a lien on other property of the borrower. No Deficiency Judgment is allowed if the note is labeled a Non-Recourse Note.
- A Trust Deed is a security device in which the owner conveys legal title to a trustee with a "power of sale." The Trustor is the borrower; the Beneficiary is the holder of the note (lender); and the Trustee holds bare legal title.
- Upon complete satisfaction of the obligations under the note, the lender must execute and record a Release of Lien (and file a Reconveyance Deed under a Trust Deed).
- Sometimes a property is sold and the existing mortgage lien is "assumed" by the buyer in which case the buyer now becomes primarily liable for payment of the note and the seller remains secondarily liable. When a buyer purchases a property "subject to" the existing loan, liability for any deficiency judgment does not shift to the buyer.

The next category of encumbrances are Involuntary Money Liens.

- Mechanic's Liens are a state statutory right to file a lien for labor, material, or services (not for real estate broker's commission) - based on the theory that the work has enhanced the value of the property, thus the laborer should have a claim to the property as security for repayment.

- The lien will expire after a certain period, say 90 days, unless the laborer files a legal action. The effective date of the lien relates back to the time of visible commencement of work. A buyer can purchase an extended title policy to protect against unrecorded mechanic's liens.
- Real Property Tax Liens have priority over all other liens, as do liens for Special Assessments. Other types of tax liens, like income or estate tax liens, take priority only as of the date of their recordation.

KEY WORDS -

AGREEMENT OF SALE - An agreement between the seller (vendor) and buyer (vendee) for the purchase of real property.

ALIENATION CLAUSE - A clause in a promissory note or mortgage which provides that the balance of the secured debt becomes immediately due and payable at the option of the mortgagee upon the alienation of the property by the mortgagor.

ASSUMPTION OF MORTGAGE - The act of acquiring title to property which has an existing mortgage on it and agreeing to be personally liable for the terms and conditions of the mortgage, including payments.

ATTACHMENT - The legal process of seizing the real or personal property of a defendant in a lawsuit, by levy or judicial order, and holding it in the custody of the courts as security for satisfaction of the judgment which the plaintiff may recover in any action upon a contract, express or implied.

DEFICIENCY JUDGMENT - A judgment against a borrower, endorser, or guarantor for the balance of the debt issued when the security for a loan is insufficient to satisfy the debt.

DUE ON SALE CLAUSE - A form of acceleration clause found in some mortgages, especially savings and loan mortgages, requiring the mortgagor to pay off the mortgage debt when selling the secured property, thus resulting in automatic maturity of the note at the lender's option.

ENCUMBRANCE - Any claim, lien, charge or liability attached to and binding upon real property which may lessen the value of the property but will not necessarily prevent transfer of title.

FORECLOSURE - A legal procedure whereby property used as security for debt is sold to satisfy the debt in the event of default in payment of the mortgage note or default of other terms in the mortgage document.

HYPOTHECATE - To pledge specific real or personal property as security for an obligation, without surrendering possession of it.

JUDICIAL FORECLOSURE - A method of foreclosing upon real property by means of a court supervised sale. After an appraisal, the court determines an upset price below which no bids to purchase will be accepted.

JUDGMENT LIEN - A lien binding on all the real estate of a judgment-debtor and giving the holder of the judgment a right to levy (i.e. to seize) the land for satisfaction of the judgment.

LIEN - A charge or claim which one person (lienor) has upon the property of another (lienee) as security for a debt or obligation. Liens can be created by agreement of the parties (mortgage) or by operation of law (tax liens).

LIS PENDENS - A legal document recorded in the public records, which gives constructive notice that an action has been filed in either a state or federal court affecting a particular piece of property. "Lis Pendens" is a Latin term which means "action pending" and is in the nature of a quasi-lien.

MECHANIC'S LIEN - A statutory lien created in favor of materialmen and mechanics to secure payment for materials supplied and services rendered in the improvement, repair or maintenance of real property.

MORTGAGE - A legal document used to secure the performance of an obligation. In effect, the mortgage states that the lender can look to the property in the event the borrower defaults in payment of the note.

MORTGAGEE - The one who receives and holds a mortgage as security for a debt; the lender; a lender or creditor who holds a mortgage as security for payment of an obligation.

MORTGAGOR - The one who gives a mortgage as security for a debt; the borrower; usually the landowner; the borrower or debtor who hypothecates or puts up his property as security for an obligation.

REDEMPTION, EQUITABLE RIGHT OF - The right of a mortgagor who has defaulted on the mortgage note to redeem or get back his title to the property by paying off the entire mortgage note prior to the foreclosure sale.

RELEASE - The discharge or relinquishment of a right, claim or privilege. Releases involving real property transactions should be acknowledged and recorded.

SECURITY AGREEMENT - A security document which creates a lien upon chattels, including chattels intended to be affixed to land as fixtures; known as a chattel mortgage prior to the adoption of the Uniform Commercial Code.

SUBJECT TO MORTGAGE - A grantee taking title to real property "subject to mortgage" is not personally liable to the mortgagee for payment of the mortgage note. In the event the grantor-mortgagor defaults in paying the note, the grantee could, however, lose property, and thus his equity, in a foreclosure sale.

TAX LIEN - A general statutory lien imposed against real property for failure to pay taxes. There are federal tax liens and state tax liens.

TRUST DEED - A real property security device (also called a deed of trust) very similar to a mortgage, except that there are three parties -- the trustor, the trustee, and the beneficiary (the lender).

UPSET PRICE - A minimum price set by a court in a judicial foreclosure, below which the property may not be sold by a court appointed commissioner at public auction; the minimum price which can be accepted for the property after the court has had the property appraised.

LESSON 6

ENCUMBRANCES (NONMONEY)

Easements are the most common type of encumbrance affecting the physical condition or use of property - a right to use the land of another for a specific purpose. The two classes of easements are easements appurtenant and easements in gross.

- When buying property subject to recorded easements, always ask for a copy of the deed of easement to ascertain the location and extent of further restrictions on use - this could affect the price offered for the property.
- Easements appurtenant are said to 'run with the land' meaning they are automatically transferred to buyer even though not stated in the deed. There are two tracts of land - one receives the benefit of the easement, the other the burden.
- Easements are best created by express grant in a deed of easement, but can also be created by implied grant or reservation, prescription, condemnation, necessity, and dedication.
- Easements are permanent and irrevocable, whereas a license is a personal, revocable and nonassignable permission to use the land of another. What may look like legal access to a property may turn out to be a mere license, revocable at the will of the neighbor - check for recorded easement rights of access.

Other types of non-money encumbrances are private restrictions (sometimes found in CC&Rs - Covenants, Conditions and Restrictions, a recorded document that runs with the land and binds future owners), encroachments, lateral support, and party walls. Public restrictions affecting the use of real property are zoning , building codes, and variances.

- If a zoning ordinance and a deed restriction are in conflict, the more strict will control.
- Zoning laws are passed as a valid exercise of the police power if they reasonably protect the public health, safety, and general welfare of an area. Violations of zoning will make the title to real property unmarketable.
- Zoning laws are generally enforced as a pre-requisite for obtaining a building permit.
- Private restrictions can be found in restrictive covenants in a deed, mortgage, or CC&Rs. Such restrictions can be terminated, typically by all affected parties signing a quitclaim deed.

KEY WORDS -

ACCESS - A general or specific right of ingress and egress to a particular property.

COVENANTS AND CONDITIONS - Covenants are promises contained in contracts, the breach of which would entitle a person to damages. Conditions, on the other hand, are contingencies, qualifications or occurrences upon which an estate or property right would be gained or lost.

DECLARATION OF RESTRICTIONS - A statement of all the covenants, conditions and restrictions ("CC&R's") which affect a parcel of land.

EASEMENT - A property interest which one person has in land owned by another entitling the holder of the interest to limited use or enjoyment of the other's land.

EASEMENT IN GROSS - The limited right of one person to use another's land (servient estate), which right is not created for the benefit of any land owned by the owner of the easement; that is, there is no dominant estate, as the easement attaches personally to the owner, not to the land.

ENCROACHMENT - An unauthorized invasion or intrusion of a fixture or other real property wholly or partly upon another's property, thus reducing the size and value of the invaded property.

ENCUMBRANCE - Any claim, lien, charge or liability attached to and binding upon real property which may lessen the value of the property but will not necessarily prevent transfer of title.

NUISANCE - Conduct or activity which results in an actual physical interference with another person's reasonable use or enjoyment of his property for any lawful purpose.

PARTY WALL - A wall which is located on or at a boundary line between two adjoining parcels and is used or is intended to be used by the owners of both properties in the construction or maintenance of improvements on their respective lots.

PRESCRIPTION - The acquiring of a right in property, usually in the form of an intangible property right such as an easement or right-of-way, by means of adverse use of property that is continuous and uninterrupted for the prescriptive period.

RESTRICTIONS - Limitations on the use of property. Private restrictions are created by means of restrictive covenants written into real property instruments, such as deeds and leases.

RESTRICTIVE COVENANT - A private agreement, usually contained in a deed, which restricts the use and occupancy of real property.

RIGHT-OF-WAY - The right or privilege, acquired through accepted usage or by contract, to pass over a designated portion of the property of another.

RUNNING WITH THE LAND - Rights or covenants which bind or benefit successive owners of a property are said to run with the land, such as restrictive building covenants in a recorded deed which would affect all future owners of the property.

VARIANCE - Permission obtained from governmental zoning authorities to build a structure or conduct a use which is expressly prohibited by the current zoning laws; an exception from the zoning laws.

ZONING - The regulation of structures and uses of property within designated districts or zones. Zoning regulates and affects such things as use of the land, types of structure permitted, building heights, setbacks, and density (the ratio of land area to improvement area).

LESSON 7

CONTRACTS 1

The real estate purchase contract is the most important tool to a successful investor. Typically, there is a time span of several weeks between the time the buyer and seller reach agreement until the transaction is closed. If the parties are not bound to a legally enforceable contract, they may try to change their mind when either buyer's or seller's remorse sets in.

The sales contract also serves as the blueprint for the rest of the transaction --- financing, prorations, expenses, and closing. Once the contract is signed, the deal is set and the parties cannot modify their agreement without the other side's approval.

- A contract is an enforceable promise to do or not to do a certain thing. To be a binding promise, several elements must be present - what we call *COCA COLA*.
- *CO*nsideration - anything of value that influences a person to enter into a contract, including a promise, an act, or payment of money. Although standard, earnest money is not required.
- *CA*pacitY - adults (over 18) with mental capacity, as well as properly formed corporations and partnerships.
- *CO*nsent - mutual consent is evidenced by a definite offer that is properly accepted - said to be a 'meeting of the minds.' A valid offer may be revoked any time prior to notice of acceptance or it may be rejected by the offeree. Acceptance must be communicated to the offeror in the exact terms in

which it was made (the 'mirror rule') - any change, no matter how slight, results in a counteroffer (which extinguishes the original offer).

- Lawful Object - The object of the contract must be lawful when the contract is made and possible when the contract is to be performed.
- Contracts are classified as Express or Implied; Unilateral or Bilateral; Executory or Executed; Valid, Void, or Voidable; Unenforceable under the Statute of Frauds or barred by the Statute of Limitations.
- Sales contracts may be assigned unless prohibited in the contract.
- A Contingency is a provision in a contract that would excuse a person's performance upon a certain event such as failure to obtain the necessary financing. The "IF" provision. Best written as "conditioned upon" but sometimes written as "subject to" or contingent upon." Must be definite and specific in every detail, especially what happens if the event does or does not occur.
- If the buyer breaches the contract, the seller sometimes retains the earnest money deposit as liquidated damages. If the seller defaults, the buyer could sue for specific performance to obtain title to the property.

KEY WORDS ---

ACCEPTANCE - The expression of the intention of the person receiving an offer (offeree, usually the seller) to be bound by the terms of the offer.

ADHESION CONTRACT - A contract that is very one-sided and favors the party who drafted the document.

AGREEMENT OF SALE - An agreement between the seller (vendor) and buyer (vendee) for the purchase of real property.

BREACH OF CONTRACT - Violation of any of the terms or conditions of a contract without legal excuse; default, non-performance, such as failure to make payment when due.

CONSIDERATION - An act or forbearance, or the promise thereof, which is offered by one party to induce another to enter into a contract; that which is given in exchange for something from another.

CONTINGENCY - A provision placed in contract which requires the completion of a certain act or the happening of a particular event before a contract is binding.

CONTRACT - A legal agreement between competent parties who agree to perform or refrain from performing certain acts for a consideration. In real estate, there are many different types of contracts, including listings, contracts of sale, options, mortgages, assignments, leases, deeds, escrow agreements, and loan commitments, among others.

COUNTER-OFFER - A new offer made as a reply to an offer received from another; this has the effect of rejecting the original offer, which cannot thereafter be accepted unless revived by the offeror's repeating it.

DEFAULT - Failure to fulfill a duty or promise or failure to perform any obligation or required act. The most common occurrence of default on the part of a buyer or lessee is non-payment of money.

DEPOSIT - Money offered by a prospective buyer as an indication of good faith in entering into a contract to purchase; earnest money; security for the buyer's performance of a contract.

DURESS - Unlawful constraint or action exercised upon a person whereby he is forced to perform some act against his will. A contract entered into under duress is void.

ESTOPPEL - A legal doctrine by which a person is prevented from asserting rights or facts which are inconsistent with a previous

position or representation he had made by his act, conduct or silence.

EXECUTORY CONTRACT - A contract in which one or both of the parties has not yet performed.

EXTENSION - An agreement to continue the period of performance beyond the specified period.

HOLD HARMLESS CLAUSE - A clause inserted in a contract whereby one party agrees to indemnify and protect the other party from any injuries or lawsuits arising out of the particular transaction.

NOMINAL CONSIDERATION - A consideration bearing no relation to the real value of the contract. A deed often recites a nominal consideration, such as "ten dollars and other valuable consideration."

NULL & VOID - Having no legal force or effect; of no worth; unenforceable; not binding.

OFFER - A promise by one party to act or perform in a specified manner provided the other party will act or perform in the manner requested.

OFFER AND ACCEPTANCE - The two components of a valid contract; a "meeting of the minds."

OPTION - An agreement to keep open, over a set period, an offer to sell or purchase property.

RESCISSION - The legal remedy of canceling, terminating or annulling a contract and restoring the parties to their original positions; a return to the status quo.

STATUTE OF FRAUDS - That law which requires certain contracts to be in writing and signed by the party to be charged therewith in order to be legally enforceable.

STATUTE OF LIMITATIONS - That law pertaining to the period of time within which certain actions must be brought to court.

SPECIFIC PERFORMANCE - A legal action brought in a court of equity to compel a party to carry out the terms of a contract.

TIME IS OF THE ESSENCE - The clause in a contract that emphasizes that punctual performance is an essential requirement of the contract.

UNILATERAL CONTRACT - A contract in which one party makes an obligation to perform without receiving in return any express promise of performance from the other party, such as an open listing contract, where the seller agrees to pay a commission to the first broker who brings in a ready, willing and able buyer.

VENDEE - The purchaser of realty; the buyer. The buyer under an agreement of sale.

VENDOR - The seller of realty. The seller under an agreement of sale.

VOID - Having no legal force or binding effect; a nullity; not enforceable. A contract for an illegal purpose (i.e. gambling) is void.

VOIDABLE - A contract that appears valid and enforceable on its face, but is subject to rescission by one of the parties who acted under a disability, such as being a minor or being under duress or undue influence; that which may be avoided or adjudged void but which is not, in itself, void.

WAIVER - To voluntarily give up or surrender a right.

LESSON 8

OPTIONS & LEASES

An option is an agreement to keep open, for a set period, an offer to sell or lease real property - often used to give the buyer time to resolve questions of financing, title, zoning and feasibility before committing the buyer to purchase. An option merely creates a contractual right; it does not give the optionee (buyer) any estate in the property.

- The option must contain all of the essential terms of the underlying contract of sale - often a copy of the purchase agreement is attached. Many options are unenforceable because the parties leave out essential terms (such as future financing) - it is therefore advisable to have your attorney prepare the option document.
- If the optionee does not exercise the option by the deadline (time is of the essence), most options provide that the optionor keeps the option money and neither party is obligated to perform. Options should be recorded.
- The option can be assigned unless prohibited in the document; in some states, it can't be assigned if the consideration is an unsecured promissory note.

- Under an option, the optionor must sell the property if the optionee gives notice of exercise of the option; but the optionor cannot force the optionee to buy.
- Unlike an option, the holder of a right of first refusal has no right to purchase until the owner actually offers the property for sale or entertains an offer to purchase from some third party. Rights of first refusal are common in agreements between partners, shareholders, joint owners, landlords and tenants.
- Under a Lease Option, the tenant has acquired the right to purchase the property under specified conditions. Sometimes the purchase agreement is attached to the lease document; in the event the tenant exercises the option, the purchase agreement will then become effective. The option usually does not extend beyond the term of the lease.

A lease is an agreement whereby the landlord/lessor gives the tenant/lessee the right to use specific real property for a definite period, with consideration being the payment of rent. The lease is both a conveyance and a contract - it sets forth the rights and duties of the parties, and it is a transfer of the exclusive right to the use and possession of the property for a certain period of time.

- Some of the requisites for a valid lease are : capacity of the parties; sufficient description; rent as the consideration for use and possession; term (if over one year, must be in writing under the Statute of Frauds); delivery and acceptance; signature of lessor.
- Either party may transfer, unless prohibited. Lessor may assign lease or sell property, although buyer will take title subject to the rights of the lessee.

- Lessee may assign or sublease. An assignment transfers the entire interest of the tenant; a sublease transfers a portion of the property or the remaining term of the lease, with the sublessor retaining primary liability under the lease.
- Long term leases may be recorded provided signatures are acknowledged before a notary public.
- Leases may be terminated by breach of conditions and promises - by the tenant for improper use or non-payment of rent; by the landlord for failing to provide quiet enjoyment and habitable premises (constructive eviction).
- Tenants are typically required to post a security deposit to cover costs for damage or non-payment of rent.
- Many of the types of leases are described in the following key words section.

KEY WORDS

ANCHOR TENANT - Major department or chain stores that are strategically located at shopping centers so as to give maximum exposure to smaller satellite stores.

ATTORNMENT - The act of a tenant formally agreeing to become the tenant of a successor landlord; as in attorning to a mortgagee who has foreclosed on the leased premises.

CONSTRUCTIVE EVICTION - Acts done by a landlord which so materially disturb or impair the tenant's enjoyment of the leased premises that a tenant is effectively forced to move out and terminate the lease without liability for any further rent.

DISTRAINT - The right of a landlord, pursuant to a court order, to seize a tenant's belongings for rents in arrears.

EVICTION - The legal process of removing a tenant from possession of the premises for some breach of the lease contract.

FIRST REFUSAL, RIGHT OF - The right of a person to have the first opportunity either to purchase or lease real property.

GRADUATED RENTAL LEASE - A lease in which the rent payments commence at a fixed, often low rate, but "step up" or increase at set intervals as the lease term matures.

GROSS LEASE - A lease of property under which the lessee pays a fixed rent, and the lessor pays the taxes, insurance, and other charges regularly incurred through ownership.

HABITABLE - Being fit to live in. The residential landlord has an obligation to keep the leased premises in a habitable condition.

HOLDOVER TENANT - One who stays on the leased premises after his lease has expired. The landlord normally has the choice of evicting the holdover tenant or permitting him to remain and continue to pay rent.

IMPLIED WARRANTY OF HABITABILITY - A legal doctrine imposing on the landlord a duty to make the leased premises acceptable to live in and ready for occupancy and to continue to maintain them in a state of repair throughout the entire term of the lease.

LANDLORD - The lessor or the owner of leased premises. The landlord retains a reversion interest in the property so that when the lease ends the property will revert to the landlord.

LEASE - A lease is both a contract between lessor (landlord) and lessee (tenant) and a conveyance or demise of the premises by the lessor to the lessee. A lease is a contract in that it embodies the agreement between the parties.

LEASEHOLD - A less-than-freehold estate which a tenant possesses in real property.

LESSEE - The person to whom property is rented or leased; called a "tenant" in most residential leases.

LESSOR - The person who rents or leases property to another. In residential leasing, the lessor is often referred to as a landlord.

LESS-THAN-FREEHOLD ESTATE - An estate held by one who rents or leases property. This classification includes an estate for years, periodic tenancy, estate at will, and an estate at sufferance.

NET LEASE - A lease, usually commercial, whereby the lessee pays not only the rent for occupancy, but also pays maintenance and operating expenses such as taxes, insurance, utilities and repairs. Thus the rent paid is "net" to the lessor.

NORMAL WEAR AND TEAR - That physical deterioration which occurs in the normal course of the use for which a property is intended, without negligence, carelessness, accident or abuse of the premises (or equipment or chattels) by the occupant, members of household, or their invitees or guests.

NOTICE TO QUIT - A written notice given by a landlord to his tenant, stating that the landlord intends to regain possession of the leased premises and that the tenant is required to quit and remove himself from the premises either at the end of the lease term or immediately if there is a breach of lease or if the tenancy is at will or by sufferance; sometimes refers to the notice given by the tenant to the landlord that he intends to give up possession on a stated day.

OPTION - An agreement to keep open, over a set period, an offer to sell or purchase property.

PERCENTAGE LEASE - A lease whose rental is based on a percentage of the monthly or annual gross sales made on the premises.

PERIODIC TENANCY - A leasehold estate which continues from period to period, such as month to month, year to year. All conditions and terms of the tenancy are carried over from period to period, and continue for an uncertain time until proper notice of termination is given.

PROPRIETARY LEASE - A written lease in a cooperative apartment building, between the owner-corporation and the

tenant-stockholder, in which the tenant is given the right to occupy a particular unit.

QUIET ENJOYMENT - The right of a new owner or a lessee legally in possession to uninterrupted use of the property without interference from the former owner, lessor or any third party claiming superior title.

RENEWAL OPTION - A covenant in some leases that gives the lessee the right to extend the lease term for a certain period, on specified terms.

RENT - Fixed periodic payment made by a tenant or occupant of property to the owner for the possession and use thereof, usually by prior agreement of the parties.

RENT CONTROL - Regulation by state or local governmental agencies restricting the amount of rent landlords can charge their tenants; such regulation is a valid exercise of the state's police power.

RENTAL AGREEMENT - An agreement, written or oral, which establishes or modifies the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit and premises; a lease on residential property.

RENTAL POOL - A rental arrangement whereby participating owners of rental apartments agree to have their apartment units available for rental as determined by the rental agent, and then share in the profits and losses of all the rental apartments in the pool according to an agreed formula.

RETALIATORY EVICTION - An act whereby a landlord evicts the tenant in response to some complaint made by the tenant.

SECURITY DEPOSIT - Money deposited by or for the tenant with the landlord, to be held by the landlord for the following purposes: to remedy tenant defaults for damage to the premises (be it accidental or intentional), for failure to pay rent due, or for failure to return all keys at the end of the tenancy.

SHELL LEASE - A lease wherein a tenant leases the unfinished shell of a building, as in a new shopping center, and agrees to complete construction himself by installing ceilings, plumbing, heating and air conditioning systems, and electrical wiring.

STEP-UP LEASE - A lease with fixed rent for an initial term and provision for pre-determined rent increases at specified intervals and/or increases based upon periodic appraisals; sometimes called a graduated lease.

SUMMARY POSSESSION - A legal process used by a landlord to regain possession of the leased premises if the tenant has breached the lease or is holding over after the termination of tenancy.

SURRENDER - A premature conveyance of a possessory estate to a person having a future interest, as when a lessee surrenders the leasehold interest to the owner of the reversion interest, the lessor, before the normal expiration of the lease.

TENANT - In general, one who holds or possesses property, such as a life tenant or a tenant for years; commonly used to refer to a lessee under a lease.

TRIPLE NET LEASE - A net, net, net lease, where in addition to the stipulated rent, the lessee assumes payment of all expenses associated with the operation of the property.

YEAR-TO-YEAR TENANCY - A periodic tenancy in which the rent is reserved from year to year.

LESSON 9

LAND DESCRIPTIONS

No two properties are identical so it is important to clearly identify the property you are buying or selling. The description must be acceptable by the courts of the state where the property is located for use in real property deeds. The principal methods of description used by surveyors are recorded map; government survey; and metes and bounds.

- Developers tend to use the recorded map method with reference to Lot, Block, and Tract description.
- About 30 states use the township and range system of description designed to create a checkerboard of identical squares covering a given area. Generally, the longer the description, the smaller the parcel of land.
- Metes and bounds description is often used in describing 'irregular' shaped parcels. Metes are measurements (distance) and bounds are boundaries (direction).
- It is good practice to have a surveyor verify the description and check for encroachments and easements along the property line. Lenders will often require a survey. Who pays for the survey is a matter of negotiation and custom.

KEY WORDS -

ACRE - A measure of land equaling 43,560 square feet; 4,840 square yards; 160 square rods.

BASE LINE AND MERIDIAN - An imaginary set of lines used by surveyors to locate and describe land under the Rectangular Survey Method of property description used in many states.

BENCH MARK - A mark affixed to a permanent reference or monument, such as an iron post or a brass marker (usually embedded in a cement sidewalk), used to establish elevations and altitudes over a surveyed area.

BOUNDARIES - The perimeters or limits of a parcel of land as fixed by legal description, usually a metes and bounds description.

BUFFER ZONE - A strip of land separating one parcel from another.

CUL DE SAC - A street which is open at one end only, and which usually has a circular turnaround; a blind alley.

ENCROACHMENT - An unauthorized invasion or intrusion of a fixture or other real property wholly or partly upon another's property, thus reducing the size and value of the invaded property.

FLAG LOT - A land parcel having the configuration of an extended flag and pole. The pole represents access to the site that is usually located to the rear of another lot fronting a main street.

FLOOR AREA RATIO - The ratio of floor area to land area expressed as a percent or decimal, which is determined by dividing the total floor area on a zoning lot by the lot area.

FRONTAGE - The length of a property abutting a street or body of water; that is, the number of feet that "front" the street or water.

GOVERNMENT SURVEY - A system of land description in which large blocks of land are divided into tracts bounded by imaginary lines conforming to the true meridian.

GROSS AREA - The total floor area of a building measured from the exterior of the walls (excluding those unenclosed).

LAND DESCRIPTION - A description of a particular piece of real property.

LANDLOCKED - Real property having no access to a public road or way.

LANDMARK - A stake, stream, cliff, monument or other object or feature which is used to fix or define land boundaries; also a prominent feature of a landscape or property that is the symbol for the place.

LANDSCAPING - Shrubs, bushes, trees and the like, on the grounds surrounding a structure.

LATERAL AND SUBJACENT SUPPORT - The support received by a parcel of real property from the land adjoining it is called lateral support. Subjacent support is that support which the surface of the earth receives from its underlying strata.

LEGAL DESCRIPTION - A description that is complete enough that an independent surveyor could locate and identify a specific piece of real property.

MEANDER LINE - An artificial line used by surveyors to measure the natural, uneven, winding property line formed by rivers, streams and other watercourses bordering a property.

METES AND BOUNDS - A common method of land description that identifies a property by specifying the shape and boundary dimensions of the parcel, using terminal points and angles.

MONUMENTS - Visible markers, both natural and artificial objects, which are used to establish the lines and boundaries of a survey.

PARCEL - A specific portion of a larger tract; a lot.

PLAT - A map or a town, section, or subdivision indicating the location and boundaries of individual properties.

POINT OF BEGINNING - The starting point in a metes and bounds description of property, which is usually a street intersection or a specific monument.

RANGE - A measurement, used in the government survey system, consisting of a strip of land six miles wide, running in a north-south direction.

TOWNSHIP - A piece of property, used in the government survey system of land description, which is 36 miles square, and contains 36 sections, each 1 mile square; and consists of 23,040 acres.

LESSON 10

WORKING WITH PROFESSIONAL AGENTS

Buyers and sellers typically work with a licensed real estate salesperson or broker. It is important to ascertain if that person is working "for" you (you are the client) or "with" you (you are the customer). Most states will require that the licensee make early written disclosure concerning the agency relationship.

- State licensing law requires anyone acting as a broker or salesperson to first obtain a real estate license - this involves taking real estate classes, passing an examination and paying fees. The state has the power to revoke or suspend a licensee for violating any of the licensing laws.
- Common examples of violations would be misrepresentation, false advertising, undisclosed dual agency, secret profits, and commingling of client monies.
- An agent is one who represents another, called the principal, in dealings with third persons. The best way to create an agency is by means of an express written contract, although agency can also be created after the fact through "ratification" by the principal of the agent's acts.
- The agent owes the principal fiduciary duties of good faith, full disclosure, confidentiality, obedience, accounting, and the exercise of reasonable skill and care.
- An agency relationship can be terminated by expiration of the term, death of either party, mutual rescission or revocation by the principal; i.e., the principal has the power to revoke the agency at any time, but may be liable for breach of the agency contract if the agent has done nothing wrong.

- A listing is a written employment contract in which the owner authorizes a broker to deal with prospective buyers on behalf of the owner. The listing is a personal service contract that can neither be recorded nor assigned. The amount of commission is negotiable between owner and agent.
- The main types of listings are the exclusive listings, open listings, and net listings. The Multiple Listing Service (MLS) is an organized "pooling" of listings by broker members.
- The listing agent represents the seller; in some cases, the listing agent may offer to represent the buyer as well in what is called a dual agency. In other cases, the buyer may decide to retain the services of a buyer's broker to represent the buyer exclusively - in most cases the buyer's broker will be paid from an authorized commission split with the listing broker.

KEY WORDS -

AGENCY - A relationship created when one person, the "principal," delegates to another, the "agent," the right to act on the principal's behalf in business transactions and to exercise some degree of discretion while so acting. An agency gives rise to a fiduciary relationship and imposes on the agent, as the fiduciary of the principal, certain duties, obligations and high standards of good faith and loyalty.

AGENT - One who is authorized to represent and to act on behalf of another person (called the principal). A real estate broker is the agent of his client, be it the seller or buyer, to whom he owes a fiduciary obligation. A salesperson is the agent of the broker and does not have a direct personal contractual relationship with either the seller or buyer.

ATTORNEY-IN-FACT - One who is authorized by another to act in his place under a power of attorney.

BROKER - One who acts as an intermediary between parties to a transaction. A real estate broker is a properly licensed person who, for a valuable consideration, serves as an agent to others to facilitate the sale or lease of real property.

BROKERAGE - That aspect of the real estate business that is concerned with bringing together the parties and completing a real estate transaction. Brokerage involves exchanges, rentals, trade-ins and management of property, as well as sales.

CODE OF ETHICS - A written system of standards of ethical conduct. The Code of Ethics of the National Association of Realtors, first written in 1913, establishes the high standards of conduct for members of the Realtor community.

COMMINGLING - To mingle or mix; for example, to deposit client funds in the broker's personal or general account. A licensee found guilty of commingling can have the license suspended or revoked by the Real Estate Commission.

COOPERATING BROKER - A broker who joins with another broker in the sale of real property; sometimes called the selling broker.

COURTESY TO BROKERS - The practice of sharing commissions with cooperating brokers.

DEFERRED COMMISSIONS - Commissions that are earned but not yet fully paid.

DUAL AGENCY - Representing both principals (buyer and seller) to a transaction.

EXCLUSIVE AGENCY - A written listing agreement giving one agent the right to sell property for a specified time, but reserving to the owner the right to sell the property himself without payment of any commission.

EXCLUSIVE LISTING - A written listing of real property in which the seller agrees to appoint only one broker to sell the

property for a specified period of time. The two types of exclusive listings are the exclusive agency and the exclusive right to sell.

EXTENDER CLAUSE - A "carry over" clause (referred to as a safety clause) contained in a listing -- provides that a broker is still entitled to a commission for a set of period of time after the listing has expired if the property is sold to a former prospect of the broker.

FARM AREA - A selected geographical area or one specific building to which a real estate salesperson devotes special attention and study.

FIDUCIARY - A relationship which implies a position of trust or confidence wherein one is usually entrusted to hold or manage property or money for another. Among the obligations a fiduciary owes to the principal are duties of loyalty; obedience; full disclosure; the duty to use skill, care and diligence; and the duty to account for all monies.

FINDER'S FEE - A fee paid to someone for producing a buyer to purchase or a seller to list property; also called a referral fee.

GENERAL AGENT - One who is authorized to perform any and all acts associated with the continued operation of a particular job or a certain business.

INDEPENDENT CONTRACTOR - One who is retained to perform a certain act, but who is subject to the control and direction of another only as to the end result and not as how he performs the act. The critical feature, and what distinguishes an independent contractor from an employee or agent, is the right to control.

LICENSEE - A person who has a valid license. A real estate licensee can be a salesperson or a broker, active or inactive, an individual, a corporation, or a partnership.

LISTING - A written employment agreement between a property owner and a broker authorizing the broker to find a buyer or a tenant for a certain real property.

OFFICE EXCLUSIVE - A listing in which the seller refuses to submit the listing to Multiple Listing Service, even after being informed of the advantages of MLS, and signs a certification to that effect.

OPEN HOUSE - The common real estate practice of showing a listed home to the public during established hours, frequently on Sunday afternoons.

OPEN LISTING - A listing given to any number of brokers. The first broker who secures a buyer ready, willing and able to purchase at the terms of the listing is the one who earns the commission.

OVERRIDE - A commission paid to managerial personnel (e.g. principal broker) on sales made by their subordinates, usually calculated as a percentage of the gross sales commissions earned by the salesperson.

POCKET LISTING - A listing which is retained by the listing broker or salesperson, who does not make it available to other brokers in the office or to other Multiple Listing Service members.

POWER OF ATTORNEY - A written instrument authorizing a person (the attorney-in-fact) to act as the agent on behalf of another to the extent indicated in the instrument.

PRINCIPAL BROKER - The licensed broker directly in charge of and responsible for the real estate operations conducted by a brokerage company.

PROCURING CAUSE - That effort which brings about the desired result, as in producing the buyer for the listed property.

REALTOR - A registered word which may only be used by an active real estate broker who is a member of the state and local real estate board affiliated with the National Association of Realtors. The use of the name REALTOR and the distinctive seal in advertising is strictly governed by the rules and regulations of the National Association of Realtors.

LESSON 11

REAL ESTATE ECONOMY AND LENDERS

To be successful investing in real estate, you should have a good understanding about how the Federal Reserve System and Institutional lenders operate in the National Economy.

- The total value of all goods and services produced in the economy in any given period is called the *Gross National Product (GNP)* - it fluctuates within a business cycle that follows a pattern of Prosperity - Recession - Depression - Expansion.
- The Federal Reserve System controls the money flow and credit by setting the cash reserve requirement for its member banks; by setting the Discount Rate for loans required to maintain reserves; and by buying and selling government bonds.
- By increasing reserves, this decreases the money in circulation, halts growth and stems inflation. By decreasing the discount rate, more money is placed in circulation thus stimulating the economy.
- The kinds of Institutional Lenders playing a key role in the real estate marketplace are Commercial Banks, Life Insurance Companies, and Savings and Loan Associations.
- The kinds of Non-Institutional Lenders playing a key role are mortgage companies, pension funds, and private individuals.
- The source of funds to create loans by lenders of first and junior loans is the Primary Money Market.
- The Secondary Money Market is where existing loans are bought and sold to provide funds for lenders in the primary market. Some of the important players are Fannie Mae

(Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Mortgage Association).

KEY WORDS -

FEDERAL HOME LOAN MORTGAGE CORPORATION (FHLMC) - Commonly known as Freddie Mac, a federally chartered corporation established in 1970 for the purpose of purchasing mortgages in the secondary market.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA) - Popularly known as Fannie Mae, it is now a private corporation that purchases conventional and non-conventional loans in the secondary market.

FEDERAL RESERVE SYSTEM (the Fed) - The nation's central bank created by the Federal Reserve Act of 1913. Its purpose is to help stabilize the economy through the judicious handling of the money supply and credit available in this country.

INSTITUTIONAL LENDER - Financial institutions such as banks, insurance companies, savings and loans or any lending institution whose loans are regulated by law.

KICKERS - Different types of equity participation a lender may seek as a condition for lending money, such as participation in rentals, profits, or extra interest.

LOAN-TO-VALUE RATIO - The ratio that the amount of the loan bears to the appraised value of the property or the sales price, whichever is lower.

MORTGAGE BANKER - A corporation or firm which normally provides its own funds for mortgage financing.

MORTGAGE BROKER - A person or firm which acts as an intermediary between borrower and lender; one who, for

compensation or gain, negotiates, sells or arranges loans and sometimes continues to service the loans.

SECONDARY MORTGAGE MARKET - A market for the purchase and sale of existing mortgages, designed to provide greater liquidity for mortgages; also called secondary money market.

LESSON 12

REAL ESTATE FINANCING

Few investors pay cash for the real estate they buy. Rather, they try to leverage their investment by financing the bulk of the purchase price. As you enter the world of real estate finance, you will notice a special language used to describe various loan terms, types of mortgages and trust deeds, as well as numerous clauses in the loan documents. The *Glossary* below will help guide you with this special language.

- The underlying documents in a loan transaction are the Promissory Note that evidences the debt, and the Mortgage or Trust Deed that secures the debt with the real property acting as the collateral.
- When the property is sold and the lender's note is paid off, escrow must obtain a release to clear the mortgage from the record. This illustrates the critical role played by the settlement company since the new lender will not want to disburse funds until the seller's mortgage is released, yet the seller's lender will not release until payment is assured.

- The government offers some attractive loan programs in the form of Federal Housing Administration (FHA) and Veteran's Administration (VA) loans.
- The government also regulates the disclosure and advertising of credit terms under the Truth in Lending Act, and the disclosure of settlement costs under the Real Estate Settlement Procedures Act.

KEY WORDS -

ACCELERATION CLAUSE - A clause in a promissory note, agreement of sale, or mortgage which gives the lender the right to call all sums due and payable in advance of the fixed payment date upon the occurrence of a specified event, such as a sale, default, assignment or further encumbrance of the property.

ALIENATION CLAUSE - A clause in a promissory note or mortgage which provides that the balance of the secured debt becomes immediately due and payable at the option of the mortgagee upon the transfer or sale of the property by the mortgagor.

AMORTIZATION - The gradual repayment of a debt by means of systematic payments of principal and interest over a set period, where at the end of the period there is a zero balance.

ANNUAL PERCENTAGE RATE - The relationship of the total Finance Charge to the total amount to be financed as required under the Federal Truth-in-Lending Law.

ASSUMPTION OF MORTGAGE - The act of acquiring title to property which has an existing mortgage on it and agreeing to be

personally liable for the terms and conditions of the mortgage, including payments.

BALLOON PAYMENT - The final payment of a note or obligation, which is substantially larger than the previous installment payments, and which repays the debt in full; the remaining balance which is due at the maturity of a note or obligation.

BLANKET MORTGAGE - A mortgage that is secured by several structures or a number of lots. A blanket mortgage is often used to finance proposed subdivisions or development projects, especially cooperatives.

BUDGET MORTGAGE - A mortgage with payments set up to cover more than interest and principal reductions.

CERTIFICATE OF REASONABLE VALUE (CRV) - A certificate issued by the Veterans Administration setting forth a property's current market value estimate, based upon a VA approved appraisal.

COLLATERAL - Something of value given or pledged as security for a debt or obligation. The collateral for a real estate mortgage loan is the mortgaged property itself, which has been hypothecated.

COMMITMENT - A pledge or promise to do a certain act, such as the promise of a lending institution to loan a certain amount of money at a fixed rate of interest to a qualified buyer, provided the loan is obtained on or before a certain date.

COMPOUND INTEREST - Interest which is computed upon the principal sum plus accrued interest.

DEED OF TRUST - A legal document in which title to property is transferred to a third party trustee as security for an obligation owed by the trustor (borrower) to the beneficiary (lender).

DISCOUNT POINTS - An added loan fee charged by a lender to make the yield on a lower-than-market interest VA or FHA loan competitive with higher interest conventional loans.

DUE ON SALE CLAUSE - A form of acceleration clause found in some mortgages, especially savings and loan mortgages, requiring the mortgagor to pay off the mortgage debt when selling the secured property, thus resulting in automatic maturity of the note at the lender's option.

EQUITY - That interest or value remaining in property after payment of all liens or other charges on the property. An owner's equity is normally the monetary interest over and above the mortgage indebtedness.

FEDERAL HOUSING ADMINISTRATION (FHA) - The FHA was set up in 1934 under the National Housing Act to encourage improvement in housing standards and conditions, to provide an adequate home financing system by insurance of housing mortgages and credit, and to exert a stabilizing influence on the mortgage market.

FINANCE CHARGE - The total of all costs imposed directly or indirectly by the creditor and payable either directly or indirectly by the customer, as defined under the federal Truth-in-Lending Law.

FINANCE FEE - A mortgage brokerage fee to cover the expenses incurred in placing the mortgage with a lending institution; a mortgage service charge or origination fee.

FINANCIAL STATEMENT - A formal statement of the financial status and net worth of a person or company, setting forth and classifying assets and liabilities as of a specified date.

FIRM COMMITMENT - A definite undertaking by a lender to loan a set amount of money at a specified interest rate for a certain term.

HYPOTHECATE - To pledge specific real or personal property as security for an obligation, without surrendering possession of it.

INTEREST - The sum paid or accrued in return for the use of money.

INTERIM FINANCING - A short-term loan usually made during the construction phase of a building project; often referred to as the "construction loan."

JUNIOR MORTGAGE - A mortgage that is subordinate in right or lien priority to an existing mortgage on the same realty, such as a second mortgage.

LAND LEASEBACK - A creative financing device often used with raw land that a developer wants to improve, in which the developer sells the land to an investor who leases the land back to the developer under a long-term net lease and subordinates his fee ownership to the lender providing development financing.

LAW DAY - The date an obligation becomes due; sometimes refers to the closing date.

LEGAL RATE OF INTEREST - The maximum interest rate permitted by law, with anything above that rate being usury.

LETTER OF CREDIT - An agreement or commitment by a bank ("issuer") made at the request of a customer ("account party") that the bank will honor drafts or other demands of payment from third parties ("beneficiaries") upon compliance with the conditions specified in the letter of credit.

LEVEL PAYMENT MORTGAGE - A mortgage which is scheduled to be repaid in equal periodic payments which include both principal and interest.

LEVERAGE - The use of borrowed funds to purchase investment property with the anticipation that the property acquired will increase in return so that the investor will realize a profit not only on his own investment, but also on the borrowed funds; the use of a smaller investment to generate a larger rate of return through borrowing.

LINE OF CREDIT - A maximum amount of money a bank will lend one of its more reliable and credit worthy customers without need for any formal loan submission.

LOAN COMMITMENT - A commitment by a lender of the amount he will loan to a qualified borrower on a particular piece of real estate for a specified amount of time under specific terms.

MORTGAGEE - The one who receives and holds a mortgage as security for a debt; the lender; a lender or creditor who holds a mortgage as security for payment of an obligation.

MORTGAGOR - The one who gives a mortgage as security for a debt; the borrower; usually the landowner; the borrower or debtor who hypothecates or puts up his property as security for an obligation.

NONDISTURBANCE CLAUSE - A clause inserted in a mortgage whereby the mortgagee agrees not to terminate the tenancies of lessees who pay their rent if the mortgagee forecloses on the mortgagor-lessor's building.

NOTE - A document signed by the borrower of a loan, stating the loan amount, the interest rate, the time and method of repayment and the obligation to repay. The note is the evidence of the debt. When secured by a mortgage, it is called a mortgage note.

OPEN-END MORTGAGE - A mortgage in which the borrower is given a limit up to which he may borrow, with any incremental advances of money up to but not exceeding the original borrowing limit to be secured by the same mortgage.

ORIGINATION FEE - The finance fee charged by a lender for placing a mortgage, which covers initial costs such as preparation of documents and credit, inspection and appraisal fees.

PACKAGE MORTGAGE - A method of financing in which the loan that finances the purchase of a home also finances the purchase of personal items such as a washer and dryer, refrigerator, stove and other specified appliances.

PARTIAL RELEASE - A clause found in a mortgage that directs the mortgagee to release certain parcels from the lien of the blanket mortgage upon the payment of a certain sum of money.

PARTICIPATION MORTGAGE - A mortgage in which the lender participates in the income of the mortgaged venture beyond a fixed return, or receives a yield on the loan in addition to the straight interest rate.

PERMANENT FINANCING - A long-term loan, as opposed to an interim loan.

PREPAID INTEREST - The paying of interest before it is due.

PREPAYMENT PENALTY - The amount set by the creditor as a penalty to the debtor for paying off the debt prior to its maturity. The prepayment penalty is charged by the lender to recoup a portion of interest that he had planned to earn when he made the loan.

PREPAYMENT PRIVILEGE - The right of the debtor to pay off part or all of the debt without penalty prior to maturity, such as in a mortgage or agreement of sale.

PRIME RATE - The minimum interest rate charged by a commercial bank on short-term loans to its largest and strongest clients (those with the highest credit standings).

PRINCIPAL - The capital sum; interest is paid on the principal -- not spelled principle.

PRIVATE MORTGAGE INSURANCE (PMI) - A special form of insurance designed to permit lenders to increase their loan-to-market-value ratio, often up to 95 percent of the market value of the property.

PROMISSORY NOTE - An unconditional written promise of one person to pay a certain sum of money to another, or order, or bearer, at a future specified time.

PURCHASE MONEY MORTGAGE - A mortgage given to the seller as part of the buyer's consideration for the purchase of real property, and delivered at the same time that the real property is transferred as a simultaneous part of the transaction.

REFINANCE - The act of obtaining a new loan to pay off an existing loan; the process of paying off one loan with the proceeds from another.

SALE AND LEASEBACK - A transaction in which, typically, an owner sells his improved property and as part of the same transaction signs a long-term lease and remains in possession.

SECOND MORTGAGE - A mortgage which is junior or subordinate to a first mortgage; typically, an additional loan imposed on top of the first mortgage, which is taken out when the borrower needs more money.

SIMPLE INTEREST - Interest computed on the principal balance only.

SPOT LOAN - A loan on a particular property, usually a condominium unit, by a lender who has not previously financed that particular condominium building.

STANDING LOAN - A commitment by the interim or construction lender to keep the money already funded in the project for a specified period of time after the expiration of the interim loan, usually until permanent take-out financing is secured.

STRAIGHT NOTE - A promissory note evidencing a loan in which "interest only" payments are made periodically during the term of the note, with the principal payment due in one lump sum upon maturity.

SUBJECT TO MORTGAGE - A grantee taking title to real property "subject to mortgage" is not personally liable to the mortgagee for payment of the mortgage note. In the event the grantor-mortgagor defaults in paying the note, the grantee could, however, lose property, and thus his equity, in a foreclosure sale.

SUBORDINATION AGREEMENT - An agreement whereby a prior mortgagee agrees to subordinate or give up their priority position to an existing or anticipated future lien.

TAKE-OUT FINANCING - Long-term permanent financing.

TRUST DEED - A real property security device (also called a deed of trust) very similar to a mortgage, except that there are three parties, the trustor, the trustee, and the beneficiary (the lender).

USURY - Charging a rate of interest in excess of that permitted by law.

WAREHOUSING - A term used in financing to describe the process which loan correspondents employ, assembling into one package a number of mortgage loans which the correspondent has originated and selling them in the secondary mortgage market.

WRAP-AROUND MORTGAGE - A method of refinancing in which the new mortgage is placed in a secondary or subordinate position. In essence, it is an additional mortgage in which another lender refinances a borrower by lending an amount over the existing first mortgage amount, without cashing out or distributing the existence of the first mortgage.

YIELD - The return on an investment or the amount of profit, stated as a percentage of the amount invested.

LESSON 13 -

TAX, APPRAISAL & CLOSING

The United States Internal Revenue Code permits certain income tax advantages with respect to real property ownership and sales. The prudent real estate investor should acquire a working knowledge of tax rules and rely on the advice of a tax expert for analysis and updating.

- Income is classified as 'ordinary income', 'capital gains' or 'capital loss' --- long-term capital gain is gain realized from the sale of property owned for more than 12 months.
- The kinds of property eligible for Capital Gains tax treatment are property held as a principal residence, for an investment, for the production of income, or for use in a trade or business. Real estate held for sale to customers (dealer property) is taxed as ordinary income.
- Income-producing property or property used in a trade or business can be depreciated (not land).
- Special rules apply to the sale of your personal residence --- if you have owned and occupied your personal residence for two of the last five years, you may exclude from the gain at sale up to \$250,000 (\$500,000 if married filing jointly).
- Under Sec. 1031 of the IRC, some or all of the realized gain from the exchange of one investment property for another ('like-kind property') may result in tax being deferred to a later transfer - more of a tax-deferred rather than a tax-free transaction.

Closing of the transaction takes place when the seller delivers title to the buyer in exchange for payment by the buyer of the purchase price. Typically, a bonded neutral depository acts as the agent in a short-lived trust to effect and finalize the transaction --- called an escrow or settlement in some states.

- To create a valid escrow, you need a written contract between buyer and seller, plus a conditional delivery of transfer documents.
- In closing a real estate transaction, the escrow or settlement company performs such duties as paying liens, computing prorations, ordering title evidence and legal documents, drawing up final closing statements, obtaining signatures, recording documents and receiving and disbursing funds.
- Escrow follows the instructions of the parties and acts as the 'clearinghouse' for the details of the transaction.

Appraisal is the process of developing and communicating an opinion about a property's value --- typically required when real estate is sold, financed, taxed, or insured. It is the estimate or opinion of 'value' as of a specified date.

- Value is the worth of a thing in money or goods at a certain time. Examples are market value, assessed value, loan value, subjective value, and book value.
- The main elements of value are (DUST): Demand, Utility, Scarcity, and Transferability. Cost is not relevant to value.
- Value of property is created, changed, or destroyed by these forces : Physical, Social, Economic, and Political.
- Some of the important principles of appraising are Supply and Demand; Change (Regression and Progression); Substitution; Highest and Best Use, and Conformity.
- The appraiser follows a systematic procedure: Define the Problem; Gather data; Classify data under the Market Data,

Cost, and Income approaches to value; Correlates the results; and prepares the Appraisal Report.

KEYWORDS ---

ACCELERATED DEPRECIATION - A method of calculating the depreciation of certain property (that property which is used in a trade or business, or which is held for the production of income) at a faster rate than would be achieved from using the straight line method of depreciation.

AD VALOREM - Latin for "according to valuation," usually referring to a type of tax or assessment.

APPRAISAL - The process of estimating, fixing, or setting the market value of real property. An appraisal may take the form of a lengthy report, a completed form, a simple letter, or even an oral report.

APPRECIATION - An increase in the worth or value of property due to economic or related causes, which may prove to be either temporary or permanent.

ASSESSED VALUATION - The value of real property as established by the state government for purposes of computing real property taxes.

BASIS - The financial interest which IRS attributes to the owner of an asset for purposes of determining annual depreciation and gain or loss on sale of the asset.

BOOT - Money or other property given to make up any difference in value or equity between two exchanged properties.

BUILDING RESIDUAL TECHNIQUE - A method of determining the value of an improvement normally used in appraising income property.

CAPITAL GAIN - The taxable profit derived from the sale of a capital asset.

CAPITAL IMPROVEMENT - Any structure which is erected as a permanent improvement to real property; any improvement which is made to extend the useful life of a property, or to add to the value of the property.

CAPITALIZATION - A mathematical process for converting net income into an indication of value, commonly used in the income approach to appraisal.

CAP RATE (CAPITALIZATION RATE) - The percentage selected for use in the income approach to valuation of improved property. The cap rate is designed to reflect the recapture of the original investment over the economic life of the improvement, to give the investor an acceptable rate of return (yield) on the original investment, and to provide for the return on borrowed capital.

CLOSING - The final stage of consummating a real estate transaction when the seller delivers title to the buyer, in exchange for the purchase price.

CLOSING COSTS - Expenses of the sale which must be paid in addition to the purchase price (in the case of the buyer's expenses), or be deducted from the proceeds of the sale (in the case of the seller's expenses).

CLOSING STATEMENT - A detailed cash accounting of a real estate transaction prepared by an escrow officer or other person designated to process the mechanics of the sale, showing all cash that was received, all charges and credits which were made, and all cash that was paid out in the transaction; also called a settlement statement.

COMPARABLES - Recently sold properties which are similar to a particular property being evaluated, and which are used to indicate a reasonable fair market value for the subject property.

DEPRECIATION (APPRAISAL) - A loss in value due to any cause; any condition which adversely affects the value of an improvement.

DEPRECIATION (TAX) - For tax purposes, depreciation is an expense deduction taken for an investment in depreciable property.

DEPTH TABLE - Tables of percentage designed to provide a uniform system of measuring the additional value to lots which accrues because of added depth, with the extra depth valued according to the added utility which it creates.

ESCROW - The process by which money and/or documents are held by a disinterested third person (a "stakeholder") until the satisfaction of the terms and conditions of the escrow instructions (as prepared by the parties to the escrow).

FAIR MARKET VALUE - The highest monetary price which a property would bring, if offered for sale for a reasonable period of time in a competitive market, to a seller who is willing but not compelled to sell, from a buyer, willing but not compelled to buy, both parties being fully informed of all the purposes to which the property is best adapted and is capable of being used.

FUNCTIONAL OBSOLESCENCE - A loss in value of an improvement due to functional inadequacies, often caused by age or poor design.

GIFT TAX - A graduated federal tax paid by a donor upon making a gift.

GROSS INCOME MULTIPLIER - A useful rule of thumb to estimate market value of income producing residential property. The multiplier is derived by using comparable sales divided by the actual or estimated monthly rentals and arriving at an acceptable average.

HIGHEST AND BEST USE - That use which, at the time of appraising the property, is most likely to produce the greatest net return to the land and/or the building over a given period of time.

IMPUTED INTEREST - Interest implied by the federal tax law.

INCOME APPROACH - An approach to the valuation or appraisal of real property as determined by the amount of net income the property will produce over its remaining economic life.

MARKET VALUE - The highest price, estimated in terms of money, which a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which the property is adapted and for which it is capable of being used.

NET INCOME - The sum arrived at after deducting from gross income the expenses of a business or investment, including taxes and insurance, and allowances for vacancy and bad debts; what the property will earn in a given year's operation.

OBSOLESCENCE - A type of depreciation of property.

OVERIMPROVEMENT - An improvement that by reason of excess size or cost is not the highest and best use for the site on which it is placed.

PLOTTAGE - The merging or consolidating of adjacent lots into one larger lot, with the consequent result of improved usability and increased value; also called assemblage.

PRESENT VALUE OF ONE DOLLAR - A doctrine which is based on the fact that money has a time value. The present worth of a payment to be received at some time in the future is the amount of the payment less the loss of interest.

PRORATE - To divide or distribute proportionately.

SETTLEMENT - The act of adjusting and prorating the various credits, charges and settlement costs to conclude a real estate transaction.

USEFUL LIFE - That period of time over which an asset, such as a building, is expected to remain economically feasible to the owner.

VACANCY FACTOR - An allowance or discount for estimated vacancies (unrented units) in a rental project. The vacancy rate is

the ratio between the number of vacant units and the total number of units in a specified project or area.

VALUE - The power of a good or service to command other goods in exchange for the present worth of future rights to income or amenities; the present worth to typical users and investors of future benefits arising out of ownership of a property.

WEAR AND TEAR - The gradual physical deterioration of property, resulting from use, passage of time and weather. Only property subject to wear and tear is depreciable.

ZONING - The regulation of structures and uses of property within designated districts or zones. Zoning regulates and affects such things as use of the land, types of structure permitted, building heights, setbacks, and density (the ratio of land area to improvement area).