INTRODUCTORY MATERIALS

- Introduction of the class and time
- Intro of who I am
- relatively new teacher, especially for this class
- Modesty, I don’t know all, like questions
- I talk too fast
- Argumentative/devil’s advocate
- free discussions/debate
- importance of participation and attendance
- no right or wrong
- Mid-term eval.
- Scope of class
- Syllabus go through
- reorganization of readings
- class progress/scope, play it by ear, you choose topics later
- abbreviations
- if tests too hard, you are all on equal footing
- readings, lots this week – bad due to 3 hour course
- book apology, jumps around
- No legal advice
- intro of class members, -name, year, reason/purpose, what be grow up, real estate experience
CHAPTER 1-INTRODUCTION TO REAL ESTATE

• what is unique about RE?
• focus on California
• focus on regulation of the real estate profession
• why is the real estate profession regulated at all? (No laissez-faire)
• every state has a regulated real estate industry
• what is unique about California regulations
  (a) consumer friendly
  (b) highly regulated
• DRE
  (a) web site
  (b) all sorts of information on licensing requirements
  (c) continuing education
  (d) testing schedules
  (e) we will cover Chapter 14 next
• the expensive nature of California real estate
• the most major investment (25-45% of monthly wages)

Land in California
• extensive coastline
• roughly 50% of all land is owned by the government
• demographic pressures
• projected population of 40 million in 2010

The Real Estate Profession
• commissions
  (a) negotiability
  (b) five to 6%
• glut of real estate agents
• influence of computers in the Internet
• the importance of marketing
• why do we even need real estate professionals?
  (a) familiarity with the market
  (b) market exposure

History of California Real Estate
• conceptions of land ownership under Native Americans
• the invasion of Europeans
• Spanish as opposed to English legal systems
• Spanish land grants (traceable through the recording system)
• heritage of Spanish names in California
• war between United States and Mexico
• the Gold Rush
• the role of agriculture
• the first licensing of the real estate profession was in 1919
  (a) abuses of land speculators

Real Property Versus Personal Property

Real Property
• property that cannot be moved
  (1) land
  (2) anything attached to the land
  • improvements
fixtures
(3) anything incidental or appurtenant to the land
(4) that which is immovable by law
because real estate can be moved, title to real property is passed by a deed as opposed to a bill of sale for personal property
land: comprised of surface rights, subsurface rights, and airspace
(a) airspace: subject to reasonable uses
(b) surface rights: includes littoral right and riparian rights
(c) subsurface rights (can be sold separately from the land itself)
improvements: includes billings, fences, walls, trees, fixtures
incidental/appurtenant to the land: attached to and runs with the land
Personal Property
movable goods
in RE context includes refrigerator, easily detachable appliances
usually not included as part of RE sale unless negotiated in
can be attached to real property and then it becomes a fixture
Fixtures
personal property that is attached to RP in such a way that it becomes part of the real property
why do we need a test to determine?
(1) method of attachment (if removal would result in damage)
(2) adaptability (unique to the particular RP?)
(3) relationship of parties
(4) intention
(5) agreement (good to cover this in advance whether buyer or seller)
trade fixtures: fixtures usually installed by tenant for the tenant's business
(a) usually the property of the tenant upon expiration of lease, but not always
(b) obligation to return premises to their original condition
Bundle of Real Property Ownership Rights
if you own property, you have a bundle of rights
(1) possession
(2) enjoyment
(3) control
(4) disposition
all of your rights are subject to government control
Methods of Land Description
inadequacies of common addresses
three primary ways:
(1) metes and bounds
(2) sections and townships
(3) lot and block
metes and bounds: describing a property by its boundaries, distances, and angles from a given starting point (the monument)
(a) see page 12
(b) very complicated and difficult
sections and townships: land is described in relation to its location from baselines and meridians established by the national government
(a) see the three starting points in California on page 14
(b) example on page 17
• lot and block: all subdivision maps are recorded at the County Recorder's office
  (a) example on page 18
  (b) very common

Chapter 14-Licensing/Education
• why we are covering this chapter now

Department of Real Estate
• the profession is regulated by the Department of Real Estate (DRE)
• purpose of the DRE is to protect the public and to provide regulations for the practice of the real estate industry
  • anyone involved in a real estate transaction on behalf of somebody else for purposes of receiving payment must be licensed. Why?
  • why does a profession regulate itself?

Real Estate Commissioner
• the DRE is governed by the Real Estate Commissioner
• the Commissioner is appointed by the Governor, and the Commissioner office is created by the Legislature
  • the Legislature has the ability to protect the health, safety, and well-being of the public
  • the Commissioner issues regulations and enforces laws
  • see duties of the Commissioner on page 483
  • included in the Commissioner's duties are developing a regulations and rules in order for people to get real estate licenses and to investigate complaints against real estate practitioners
  • the Commissioner has the power to revoke or suspend licenses
  • Real Estate Advisory Commission serves as advisory commission to the Commissioner

Real Estate License Requirements
• any person who is involved in the real estate transaction on behalf of another party in expectation of receiving payment must be licensed
  • only if you are the owner of a piece of property or the designated legal representative of the owner can you sell the land without the involvement of a real estate professional

Requirements for Sale Person's License
(1) 18 years of age
(2) legal residency
(3) "honest and truthful"
(4) complete a "college-level" Real Estate Principles Course
(5) successfully pass the required license examination

The Different Salesperson's Licenses
• conditional salesperson's license
  (a) 18 months only and not renewable
     (1) complete and pass the Real Estate Principles course
     (2) pass the DRE salesperson's license exam and pay your fees

• four-year's salesperson's license
  (a) regular, renewable license
     (1) complete Real Estate Principles, Real Estate Practice, and one other broker-required course
     • the courses that you can take are listed on page 489
     (2) pass the DRE test and pay your fees

The Salesperson Exam
• see topics on page 488
Broker's License
- a renewable, four-year license
- needed to operate a real estate office
- you need experience and required education
- experience:
  (a) two years of full-time work in real estate sales
  (b) alternative experience in real estate-related fields
  (c) those with four-year college degrees do not need the experience, and community college graduates only need one year of experience
- education: all applicants for a broker's license must take eight required courses regardless of their prior educational background
  (a) see the required and elective courses listed on page 489

Continuing Education
- 45 hours every four years
- fairly high requirements, ethics concerns
- see the specific educational requirements on page 493

Other Types of Licenses
- prepaid rental listing service license
- real property securities dealer (a person acting as a principal or agent that sells real property securities such as promissory notes or sales contracts)

Business Sales
- with the real estate license you are authorized to work in purchase and sale transactions of real property, but also of businesses
- the selling of a business usually involves the sale of personal property, naming rights, and goodwill (real estate is not always involved, but could include the terms of the lease or other types of property)
- unique disclosure requirements such as accurate income and expense statements, particular licensing requirements (such as alcohol), legal liabilities, etc.
  (a) ABC: your ability to sell alcohol is dependent upon whether you have a license, or are qualified for license
    (1) may be affected by the location of the business
    (2) new licenses are usually obtained through a lottery system
    (3) existing licenses may be purchased
    (4) hotel companies and convenience stores
- creditor protections: notification is necessary so that creditors may protect their interests in fixtures and other such things
  (a) without proper notification the transfer is not valid

Real Estate Law and Regulations
- California's real estate law is found in the Business and Professions and Code
- this law gives the Real Estate Commissioner the ability to adopt and promulgate regulations
- these Commissioner's regulations are found in the California Code of Regulations and have the effect of law
  (a) the purpose of these regulations is to aid in the administration and enforcement of law
- enforcement: the Commissioner has the authority to enforce the real estate law and regulations, and many investigate complaints against any real estate professional
- Due Process: the DRE will hold hearings regarding disciplining real estate professionals, with rights of appeal

Important Real Estate Laws
- ignorance of the law is no excuse (although that might be mitigating factor)
- misrepresentation
• divided agency
• commingling
• shell parties
• false advertising
• misuse of trade name
• broker's supervision of salespersons
• block busting

Real Estate General Fund
• as a real estate professional you must pay yearly dues for license and exam fees
• this money goes into the Real Estate General Fund
• 12% of this money is used to help protect consumers from fraudulent/negligent real estate professionals
• reflects California's strong consumer protection orientation

Trade/Professional Associations
• local boards of realtors can provide valuable resources about the local market, networking and marketing opportunities, and access to MLS
  - California Association of Realtors: (www.car.org) its goals are:
    (a) to promote high standards among the real estate profession,
    (b) to protect real estate consumers, to protect the real estate industry, and
    (c) to promote a good image of the real estate industry
    (d) to look out for the interests of the real estate industry
  - National Association of Realtors:
    (a) membership in this organization is a prerequisite to be able to call yourself a "realtor"
    (b) this organization has promulgated a "Code of Ethics" (see pages 511 through 517)
      (1) these Code of Ethics sometimes go above and beyond the law
      (2) these are important provisions and California real estate professionals are held to a high standard, even though these particular Code of Ethics apply to NAR members

Duties to Client/Customers
• no misrepresentation
• no dual agency without disclosure and informed consent
• obligation to convey all offers and counteroffers (like a lawyer's obligation)
• preserve confidential information (subject to certain exceptions)
• no obligation to disclose latent defects
• no obligation to go beyond what is expected of a reasonable real estate professional (no surveys or engineering reports)
• no undisclosed interests in properties
• no undisclosed interests in services
• no commingling
• obligation to express all agreements in writing, and in clear language

Duties to the Public
• no unauthorized practice of law

Duties to Realtors
• no defamation
• no poaching
• no misrepresentation as to who represents buyer/sellers

Other Types of Professional Organizations
• realist
• the problem of fair housing
• specific community-based real estate professional organizations (CREW and others)
• there is no law stating you have to be a member of any these professional organizations, but it is a good idea for both experience and marketing
 CHAPTER 4 - AGENCY

• for purposes of real estate agency is the relationship between the broker/salesperson and the buyer/seller
• additionally, a salesperson can be seen as the agent of their broker (principal)
  (a) we will primarily be talking about the agency relationship between the broker/salesperson
and client
• an agent has the power to act for or in place of another, depending upon the extent of authority
• the abilities of an agent depend upon what responsibilities they are given and whether there is any
time limit
• agents work on behalf of the principal
• agency is a fiduciary relationship based on trust
  (a) for example, an agent must disclose all relevant information and not gain any personal
advantage in an unethical manner
• third-party: for purposes of discussing agency, a third-party is someone outside the direct agency
relationship between principal and agent, but the agent may owe the third-party certain duties
• agents owe their principals a duty to use reasonable skill and intelligence in carrying out the goals
of the principal and any other tasks the principal assigns the agent

Forms of Agency Authority
• express agreement
• implied authority: when a principal gives a third-party reason to believe that another person is or
his/her agent
• estoppel: if the principal has misled a third-party to believe that an agency works on the principal's
behalf and this misleading harms the third-party, the principal is "estopped" from denying that the agent was
the principal's agent
• ratification: approval of a transaction that has already taken place (a principal may ratify the
unauthorized acts of agent)

Agency Legal Issues
• you may dispose of your own property without a real estate agent or real estate license because no
agency is involved
• the importance of written agreements (no compensation to brokers without one)

Agency Responsibilities
• disclosure of all pertinent facts relating to the agency relationship
• client interest: the interest of the client must come first, before the interests of the agent or anyone
else
• monetary interests: an agent may not gain any monetary interest in the property without the
principal's prior consent, and full disclosure
• personal advantage: an agent may not use the principal's property to his/her advantage

Fiduciary Relationships
• a person acting on behalf of somebody else in a position of trust and confidence
• examples
  • fiduciary duties to client:
    (1) honesty
    (2) disclose material facts
    (3) care and diligence
    (4) integrity, financial accounting
    (5) loyalty
    (6) follow client's instructions
  • fiduciary duties to third parties:
    (1) honesty
(2) disclose material facts
(3) responsiveness
(4) fair dealing and good faith (what does this mean)

Forms
- the importance of forms
- the usefulness of forms
- the dangers of forms

Agency Relationship Disclosure
- disclose who you are the agent for
- dual agency: OK if full disclosure
- see diagram on page 91

What Must You Disclose
- the difference between material facts (more on this later) and negotiating positions
- disclosure form on page 90

Legal Status of Salespeople
- the distinction between employees and independent contractors
- the DRE considers salespeople to be employees of the broker even if the broker treats them otherwise as an independent contractor
- salespeople usually are independent contractors for purposes of payroll taxes, Social Security, etc.
- brokers are required, usually, to carry workmen's compensation and public liability insurance for their salespeople, just like you do for an employee
- see sample agreement on page 94-96

Listings
- a listing is a contract between a broker/agent and their client, which creates an agency relationship
- listings should be in writing
- listings belong to the broker, not the salesperson
- obligation to give copies

Open Listings
- non-exclusive contract for the client
- the client can enter into listing agreements with multiple brokers
- whichever broker finds the right buyer gets the commission
- if the seller finds their own buyer, no commission is owed to the broker
- not very popular among brokers due to uncertainty of commission

Exclusive Agency Listing
- a listing that allows only one real estate agent to sell the property during a specific time
- the seller can still sell the property on their own and not owe anything to the agent

Exclusive Right to Sell Listing
- like an exclusive agency listing, but the agent still gets the commission even if the owner sells the property
- most preferable for real estate agents
- if the seller cancels an exclusive right to sell listing and signs another one with a new broker, both brokers would be entitled to the commission whenever the property sold

Net Listing
- an agreement that the agent will sell the owner's property for a set minimum price, and any amount over the minimum price would go to the agent as a commission
- must be used with another type of listing, and is rarely used
- see listing agreement on pages 99 through 101

Multiple Listing Service (MLS)
• an association of real estate brokers that provides a common resource of information regarding listings, recent sales, and commission rates
• by retaining an agent/broker with access to the MLS, the seller can be assured of wider market exposure because of the sharing within MLS
• the purpose of the MLS is to encourage cooperation within the real estate industry, and facilitate cooperating brokers
  • see Internet resources on page 104
  • out-of-state sales
  • comparable sales: information on comparable sales is most valuable, and access to this type of information is usually limited only to members of the MLS
    (a) access to this type of information helps realtors have a sense of what the market is
    (b) there are alternatives on the Internet that give you at least some sales information to help develop an idea of comparable sales

**Commissions**
• the fee that is paid to the real estate broker, including the agent's compensation for his or her work
• usually a percentage of the selling price
• usually payable once the agent has found a "ready, willing, and able buyer" to purchase the seller's property according to the listing terms
  • negotiable
  • no agent documentation can imply that commissions are not negotiable, and the commission rate has to be printed in at least 10 point bold font size
• if two brokers work to sell property usually the commission is split 50-50, and the salesperson receives a share of their broker's part of the commission

**Transfer Disclosure Statement**
• the agent (and the seller) has a duty to inspect and disclose any information that may have a material effect on the value or desirability of the property
• the need to conduct a "reasonable, competent, and diligent" visual inspection of the property
• under California law, sellers of residential property of one to four units must provide prospective buyers with this Statement, and the seller's broker must provide this information to buyers
  • what is material?
  • Just how much does the agent/seller have to investigate?
  • If you have knowledge of defects, not easily observed, you must disclose them, but you only need disclose the material factors
  • you do not need to disclose the obvious, for example if the house is right by a freeway
  • agents have an independent duty to do their own inspection to doublecheck what the seller is or is not disclosing, you can't just rely upon what your seller tells you
  • agents are not expected to have knowledge about areas that are not:
    (a) reasonably accessible
    (b) off-site of the property
    (c) public records regarding permits, the title, or use the property
    (d) common areas in a common interest developments if the seller furnishes controlling documents and financial statement to the potential buyer
• see page 109 for the statement
• when in doubt it is better to disclose then not to disclose
• the agent representing the buyer also has a duty to inspect the property
• if the TDS is not given to the buyer prior to execution of the contract, the buyer may cancel the contract within a few days after receiving the TDS
• death: no duty to disclose a death in the home more than three years ago, requirements to disclose the reason for a death in a home in the past three years, but you have to give an honest answer to any questions about deaths in the home

**More Agent/Broker Responsibilities**

**Trust Accounts**

- brokers have an obligation to not commingle their client's or the buyer's monetary deposits with their own money
- if not delivered to the other side, then the broker must put any money received in a pre-established trust fund account
- the broker must never treat their client's money as their own money

**Records**

- the broker as an obligation to keep for three years all records related to a particular transaction in which the broker or their salespeople participated

**Power of Attorney**

- a written authorization of one person to allow another person to act on their behalf
  - (a) general power of attorney: a general grant of authority allowing the recipient of the POA to perform any task that the principal could
  - (1) a party in possession of a POA acts as the "attorney-in-fact" for the principal
  - (b) special POA: allows the person to only perform specified tasks in the POA itself
  - (1) a listing agreement is a form of a special POA, allowing the broker to perform certain acts on behalf of the seller/buyer

**Potential Torts**

- if an agent/broker breaches any of the duties that they owe to their clients they could be guilty not only of ethical breaches, but also torts for which they would be liable
- just because a client instructs you do something does not mean that you have a defense against a tort lawsuit
- torts include fraud, misrepresentation, negligence, and secret profits
- brokers are ultimately responsible for the torts of their salespersons under most circumstances

**Misrepresentation**

- lying or not disclosing information in order to receive an economic gain
- distinguish factual misrepresentation from "puffery", or factual statements from statements of opinion
- there are three types of misrepresentation: innocent, negligent, and fraudulent
  - (a) innocent: statements made by an agent that turned out to be false, but were not known to be false at the time they were made by the agent
  - (b) negligent: false statements made by the agent that the agent believes to be true, but were made without reasonable grounds for certainty or were made without having conducted adequate investigations
  - (1) this is a breach of your duty to the client, even if you did not have fraudulent intent
  - (2) the broker is responsible for any negligent statements made to a buyer or seller
  - (c) fraudulent:
    - (1) false statements made by the agent that the agent knows are false
    - (2) failure to disclose/concealment of material information
    - (3) any contract made due to fraudulent misrepresentation may be void, and the person making fraudulent statements (or withholding information) could be liable for civil or even criminal fraud

**Secret Profit**

- an agent may not make any secret profit, which is a breach of your fiduciary relationship with a client
- all financial offers must be presented to the seller (this includes any offers where the real estate agent is offered a secret profit)
• the real estate agent may not allow any friends or relatives to make a secret profit either

Deleted Termination of Agency Relationship
• exclusive agency/exclusive authorization and right to sell agreements have to have a specified time period
  • a client may prematurely terminate an agency agreement with the broker, but that client might be liable for the payment of the commission
  • similarly, if the broker/agent finds a ready, willing, and able buyer and the seller is still unwilling to sell to that buyer the seller may be liable for any commission
  • an agency relationship may be terminated by (1) acts of the seller/broker, or (2) operation of law

Acts of the Seller/Broker
• mutual agreement
• renouncing of the listing by the broker (could open the broker to breach of contract claims)
• revocation of the listing by the seller

Operation of Law
• expiration of the agency agreement
• destruction of the property
• death or incapacity of the listing broker or seller

Miscellaneous Topics
Role of Assistants
• letting assistants handle all the details to allow agents to bring in more business
• ethics and dangers of doing this
• career opportunities

Information Technology
• increasingly important, so basic knowledge is necessary
• competition from the Internet
• walk-through tours

Auctions
• a quick and easy way to unload property
• usually used by government agencies or lenders with foreclosed property
• can be a good opportunity for buyers, but it can be risky
• the emotions of an auction
• buyer beware (find out as much as you can about the property before bidding)

CHAPTER 5-CONTRACTS
• the importance of contracts in real estate and in everyday life
• contracts are very important in real estate, so it is important to understand some basic contractual concepts
• a contract is an agreement to do or not do something in return for something else

Types of Contracts
• Oral versus written contracts
• express contracts: an agreement made either orally or in writing
  (a) all real estate contracts should be express, and should be in writing
• implied contracts: an agreement created through acts and conduct, rather than words
• bilateral contracts: a promise for a promise

• unilateral contracts: a contract that can only be accepted through performance
• void, voidable, and unenforceable contracts
• executed versus executory contracts
• statutes of limitation (contract rights exist as long as the SOL has not run)
Elements of a Contract

• (1) agreement, (2) consideration, (3) capacity, (4) legality, and, sometimes, (5) writing

Agreement
• established by reviewing communications objectively
• death does not automatically cancel a contract, except in personal service contracts

Offer
(a) offeror/offeree
(b) advertisements are invitations to make an offer
(c) offers may be withdrawn at any time prior to acceptance
(d) mailbox rule

Acceptance
(a) acceptance must be in the manner specified in the offer, or if no method is specified then by any reasonable mode
(b) silence cannot be acceptance
(c) mirror image rule and counteroffers
  (1) a counteroffer is a rejection of the original offer and a new offer of terms
  (2) it switches the original roles of offeror and offeree

Termination of an Offer
(a) lapse of time
(b) express revocation or rejection
(c) failure to fulfill a condition (contingencies)
  (1) provisions whereby parties are released from contractual obligations if a condition does or does not happen
  (2) examples include financing, inspections, sale of another property
(d) death/insanity of the offeror or offeree
(e) intervening illegality

When Agreement Is Not Legitimate
(a) no true agreement has occurred if one party was tricked were forced into agreeing
(b) the victim of such an agreement can choose to void the contract
  (1) fraud
  (2) mistake
  (3) duress
  (4) undue influence

Consideration
• anything of value
• can be money, can be an agreement to do something, and can also be an agreement not to do something that one normally has a right to do, such as an agreement not to bring suit

Capacity
• in order for someone to truly consent voluntarily to a contractual arrangement, they must have the capacity to do so
  intoxication, minors, incompetence
  incompetence and intoxication are hard to prove
  Lucy vs. Zehmer
  noncitizens of the US may own property in California whether they are a US resident or not

Legality
• an illegal contract is void as a matter of law

Writing
• any contract may be oral, except those required to be in writing by the Statute of Frauds
• any contract for the sale of real estate must be in writing
• listing agreements for a commission must be in writing
• any contract that cannot buy its own terms be performed in one-year must be in writing
• promises to pay the debt of another

Parol Evidence Rule
• contracts expressed in writing are intended to be complete in final expression of the agreements
  between the contracting parties
• prior oral and written agreements of the parties cannot be considered when interpreting a written
  contract
• prior communications will only be introduced into evidence when a contract is incomplete or
  ambiguous

Contract Performance
• "Time is of the essence"
• assignment
• non-assignability of personal service contracts
• delegation
• remaining liability
• novation

Contract Discharge
• full versus substantial performance
• impossibility of performance
• mutual agreement
• operation of law
• acceptance of breach (why would you do this)
• statutes of limitations (see page 143)

Breach Remedies
• acceptance of breach (cost/benefit of pursuing a lawsuit)
• lawsuit for damages
• Liquidated Damages
  (a) agreed-in-advance damages in the event of breach
  (b) must not be penalty
  (c) sometimes statutorily set, such as 3% of the home’s purchase price in the event of a breach of
  a deposit receipt
• Specific Performance
  (a) normally not used
  (b) appropriate often in real estate contexts due to inadequacy of damages

Residential Purchase Agreement
• means by which the buyer puts in an offer to the seller, which, if accepted, becomes a contract for
  the sale of the home
• not necessary, but common
• see page 146
• note on forms: handwriting and typewritten words prevail over pre-printed info
• Purchase Agreement Addendum (page 156)
• Counter Offers
  (a) see page 159
  (b) ease of incorporating terms of original offer that are liked
  (c) the client dictates terms of the offer, not their agent

Inspections Advisory
• disclosure obligations of seller and agent (page 160)
• specific disclosure requirements (page 162)
• process over substance (provision of documents)
• Condominiums
  (a) governing documents
  (b) financial statements
  (c) assessment statements

Options
  ■ an agreement to take a property off the open market
  ■ the consideration is the agreed to restrict the salability of property (see page 165 for contract)
  ■ auction contract often provides the terms for a final contract, if exercised

CHAPTER 15-REAL ESTATE MATH

Why Math?
  • why now?
  • money is involved
  • need basic understanding for transactions
  • need for calculator, preferably financial

Area Measurement
  • rectangle: area = length x width
  • triangle: area = base x height/2
  • Square: area = length x length
  • irregular lots
    (a) break up the lot into measurable units such as a series of squares, rectangles, and triangles
    (b) diagram on page 531
  • volume: length x width x height

Units of Measurement
  • be sure to compare apples to apples
  • yards/feet
    (a) square yards = square feet/9
    (b) square feet = square yards x 9

Percentages/Decimals
  • decimal to percent and vice versa
  • .095, 1.2, .009
  • 8.5%, 50%, 110%
  • dollars and cents method

Principal, Interest Rate, and Return
  • return = principal x interest rate
  • principal = return/interest rate
  • interest rate = return/principal
  • alternative terminologies
    (a) return: profit, commission, interest, net income
    (b) principal: investment, cost, price, value
    (c) interest rate: rate of return, rate of profit, rate of commission, rate of cap., percent rate
  • Huber's pyramid (page 535)

Commissions
  • calculate your commission
  • splitting commissions: depends upon how many brokers are involved, and how many agents
    (a) diagram on page 538

Calculating Profits and Losses
  • using the pyramid versus using ratios (page 539)

Principal, Interest, and Time
the factor of time in interest calculations
the use of a banker's month
the duration of the loan determines how much interest is earned
the compounding factor also is important
interest return = principal x rate x time
principal = interest return/rate x time
rate = interest return/principal x time
Huber pyramid on page 541
problems from page 542-3
time:
(a) unless otherwise stated, the interest rate is always assumed to be an annual interest rate
(b) this assumes annual compounding
(c) but most payments of principal and interest are done on a monthly basis
(d) problems on page 544
points
(a) one discount point = 1% of the loan amount
(b) problem on page 544

Determining Prorations
- when this comes up
- the importance of crediting or debiting payments that are received/made in advance of sale
- mortgage payments, taxes, assessments, etc.
- 30-day banker's month, and 360-day statutory year
- problems on page 546-7

Depreciation
- straight-line depreciation
  (a) assumes depreciation is dependent solely on the passage of time and spread uniformly over the useful life of a building
  (b) only structures depreciate, not land
  (c) annual depreciation = improvement value/economic life
  (d) problems on page 547-8
  (e) IRS depreciation schedule of 27.5 years straight-line depreciation for residential properties and 39 years for commercial properties
CHAPTER 2-ESTATES, TRANSFERS, AND TITLES

Estates
- an interest in real estate ranging from the interest of the tenant to a fee simple absolute interest

Fee Interests
- **fee simple**: a perpetual interest in a property until otherwise transferred
  - (a) fee simple absolute (doesn't really exist)
  - (b) fee simple defeasible: a fee interest in property subject to particular limitations imposed by the grantor of the fee interest
    - (1) breaking the condition of transfer may terminate the property transfer
    - (2) condition precedent: title does not take effect until the condition occurs/is performed
      - (promise to build a college)
    - (3) condition subsequent: gives the grantor the right to terminate the estate
    - (4) fee simple determinable estate: the fee interest lasts "so long as" the conditions of the grant are met
  - (5) a fee simple interest subject to any type of condition has less value than a fee simple absolute

Life Estates
- an ownership interest in real property that exists only for the life of the grantee, or for life of some other person (such as the grantor)
  - the owner of a life estate has the following rights and responsibilities:
    - (a) physical possession
    - (b) rents and profits
    - (c) leasing and financing rights (but not longer than the term of the life estate)
    - (d) no waste
    - (e) maintenance, but no improvements
    - (f) usually responsible for costs
  - if the grantor wants to get the property back after the life of the life tenant the grantor holds an *estate in reversion*
  - if someone else gets the property after the life of the life tenant that other party has an *estate in remainder*
  - a grantor can also be the life tenant themselves

Interests in Property Not Including Ownership (Leases)
- **less-than-freehold estates**: rights to the use of property for a limited period of time
  - **differing forms of tenancy**
    - (a) estate for years: a lease for a fixed period of time, agreed to in advance
      - (1) can be any length of time, as long as it is definite in advance
      - (2) no notice to terminate is necessary
    - (b) estate from period-to-period: a renewable lease agreement to rent a property for a period of time
      - (1) similar to "month-to-month"
      - (2) notice to terminate is necessary
    - (c) estate at will: a rental agreement that can be terminated at any time, but there must be at least a 60-day notice to vacate
    - (d) estate at sufferance: what occurs when the tenant remains in the property after the expiration of a previous fixed term (usually without permission)

Acquisitions/Transfers

Deed Transfers
- most common
  - the deed is a written instrument that conveys and evidences title
  - grantor/grantee
• **grant deeds**
  (a) grantor must execute and specifically grant property in the grant deed
  (b) if the property is transferred pursuant to grant deed there is an implied warranty that:
    (1) the grantor has not previously conveyed title to the property to somebody else
    (2) the property does not have any undisclosed encumbrances
    (3) any after-acquired title is also transferred pursuant to a grant deed
  (c) see form on page 34

• **quitclaim deeds**
  (a) conveys only the interests that the grantor has in the property without any representation regarding warranty, title, or interest
  (b) usually used to fix "clouds on title"
  (c) quiet title actions
  (d) cannot quitclaim liabilities without the grantee's consent
  (e) see page 36

• **deed elements**
  (a) writing
  (b) description of grantee and grantor
  (c) competency of grantor
  (d) adequacy of description (usually see legal description, but not necessary)
  (e) signed by the grantor
  (f) deed does not take effect until delivered and accepted
    (1) manual delivery
    (2) delivery through recordation (grantee must have agreed to the recording)

• **trust deeds**
  (a) a security device that pledges real property as security for the payment of a loan
  (b) usually removed through a deed of reconveyance, which is used to convey legal title to the borrower

**Will Transfers**
• can only be done when the grantor dies testate (leaves a will)

• **revocable living trusts:**
  (a) property can be transferred to a trust that exists during the life of the grantor
  (b) eliminates probate costs
  (c) property (including personal property) is placed in a trust created for the benefit of heirs
  (d) the trust is fully revocable during the life of the grantor, but upon the grantor's death the trust takes full effect

• **Probate Transfers**
  (a) a court-sanctioned process through which the assets of the deceased are distributed
  (b) the court will appoint an administrator or the deceased will have already appointed an executor
  (c) sales commission determined by the court
  (d) distressed sales
  (e) general advice on wills

• **intestate succession**
  (a) when no will is left
  (b) determined by laws of the state
  (c) often common sense
  (d) beyond the scope of the class
  (e) escheat: when there is no will and no heirs, the property, after five years, goes to the state

**Natural Cause Transfers**
• **accession:** when an owner acquires title to additional land by natural causes
Transfer by Occupancy

- Abandonment:
  - (a) relinquishing the right to property
  - (b) one cannot acquire property from somebody else's abandonment without court affirmation
- **adverse possession**: acquiring title to somebody else's land through *continuous* and *notorious* occupancy
  - (a) a way to acquire title without a deed
  - (b) must meet strict requirements for a period of five years in the state:
    - (1) payment of property taxes for five years
    - (2) open and notorious occupancy (nothing hidden to the real property owner)
    - (3) uninterrupted use for five years
    - (4) claim of title
    - (5) hostile claim (no prior consideration payments to real owner)
  - (c) very difficult to prove
  - (d) often done through quiet title actions
  - (e) not enforceable against government land or railroad land

- **Prescription**: acquiring the right to use someone else's land after having used it for five continuous years
  - (a) this is not a way to acquire title, but only use of the land
  - (b) easement context

Transfer by Dedication

- a gift of land for some public use
- must be accepted by the recipient (usually a government agency)
- developer dedications

**Title**

- the right to ownership and the evidence of that ownership
- forms of ownership
- **separate ownership**: distinct ownership by an individual or entity
  - (a) LLC ownership and liability limitations
  - (b) separate property considerations in community property (inheritance, prior marriage)
- **tenancy in common**: property that is owned by two or more people, who may have equal or unequal ownership interests
  - (a) each tenant may transfer or sell their interest in the property
  - (b) partition actions needed in event of serious disagreements
- **joint tenants**: two or more people having identical interests in real property
  - (a) right of survivorship
  - (b) joint tenant interest cannot be willed, but can be sold
    - (1) sale of a joint tenancy interests severs the joint tenancy with respect to the joint tenant that sold the property, and the joint tenant's replacement becomes a tenant in common with remaining joint tenants
  - (c) 4 elements for creation:
    - (1) all joint tenants acquire title by the same interest
    - (2) all joint tenants acquire interest at the same time
    - (3) all owners share an equal interest
    - (4) all owners have an equal right to possess the property
  - (d) upon death of one of the joint tenants, their interest reverts back to the remaining properties without going through probate
partnership ownership: two or more parties can come together to form a partnership (or other corporate entity) for purposes of owning property
   (a) general partnership: partners share all profits and losses, and share management responsibilities
   (b) Limited partnership: Limited partners' losses are limited to the amount of their investment, but they do not have management responsibilities
community property: all the property acquired by husband/wife and domestic partners
   (a) one half of the community cannot legally sell the other half’s interest without their express written authorization, otherwise the "injured" spouse can avoid the sale or transaction within a one-year period
   (b) LLC property transfers
   (c) community property is managed equally by both halves of the community
   (d) normally upon the death of one half of the community, the deceased's interest goes to the surviving spouse, unless the deceased spouse had separately willed their share of the property to somebody else (in that instance the surviving spouse becomes a tenant in common with the heir)
   (e) property acquired prior to the marriage, or during the marriage but through inheritance remain separate property, unless the separate property is commingled
   (f) be careful about advice on how to hold title or how to arrange a community property, or what is separate property
   (g) many tax and estate planning consequences
Recording
   • makes a legal instrument connected to a real estate transaction a part of the official records of the county where the property is located (must be acknowledged before it can be recorded)
   • deeds, mortgages, trust deeds, leases
   • constructive notice (imputed knowledge)
   • the first party to record a land transaction without prior notice (constructive or actual) of prior claims to the same property obtains title to the property
   (a) fraudulent sales
Priority of Recordation
   • order of recordation
   • exceptions to the order of recordation priority
   (a) government liens, property taxes, special assessments
   (b) actual/constructive notice of another party's prior rights
   (c) mechanic's liens
   (d) agreements to the contrary (subordination clauses)
Acknowledgment
   • in order to record something, the document must be acknowledged (notarized)
   • documents can have legal validity without an acknowledgment
   • what is a notary and what they do
Legal Advice
   • the dangers of doing so
   • the dangers of being your own lawyer
   • establishing a relationship with the lawyer
   • the use of preprinted forms
CHAPTER 3-ENCUMBRANCES
   • something that burdens a property by either limiting title or negatively affecting the value the property
   • someone who holds an encumbrance on the property has a right or interest in the affected real property, but not an ownership or occupancy interest
   • two types:
(a) financial liens (securing a debt that is owed)
(b) encumbrances that affect the physical use/condition of the property

**Liens**
- a financial encumbrance used to secure the payment of a debt or the discharge of an obligation
  - (1) trust deeds/mortgages (voluntary)
  - (2) mechanic's liens (involuntary)
  - (3) judgment/attachments (involuntary)
  - (4) tax lien/assessments (involuntary)
- specific liens: a lien associated with just one property (property taxes or trust deed)
- general liens: liens on all the properties of a party, not just one (income taxes and judgment liens)

**Trust Deeds/Mortgages**
- both are voluntary and specific security devices, in the form of a written instrument that makes the affected real property collateral for a loan
- a promissory note is what usually creates the debt
- in California trust deeds are what are used to secure debt, while back East mortgages are used
- should be recorded

**Mechanic's Liens**
- a lien filed against a property by a party that was not paid after furnishing labor/materials for construction work on the property
- not effective unless recorded
- have high priority over almost all other liens except recorded trust deeds and taxes/assessments
- how it works (Waland)
- notices of completion: (gives the contractor only 60 days to file a claim, and all others 30 days, otherwise the parties have 90 days after completion of the job to file)
  - (a) without a recorded notice of completion, there are other ways to determine when work has been completed
  - notices of non-responsibility: if this is recorded it gives constructive notice that the owner is not responsible for work being done on their property, and prevents suppliers from filing valid mechanic's liens against the party that recorded the notice
    - (a) particularly relevant for landlords when tenants are doing work
  - surprise of mechanic's liens

**Tax/Assessment Liens**
- when a property owner does not pay taxes that they owe, the unpaid taxes can be a lien on the property
- eventually the property can be sold to pay for the unpaid taxes
- assessments: specialized improvements that are paid for by those property owners that benefit from the improvements, such as landscaping, sewers, etc.

**Judgments**
- if a property owner loses a judgment, an abstract of the judgment against them can be recorded against the property
- the abstract of judgment becomes a lien upon all nonexempt property of the losing party
- the abstract becomes a lien upon all of property acquired after recordation of the abstract
- can be removed by a satisfaction of judgment

**Lis Pendens**
- a recorded notice the gives constructive notice to the public that a lawsuit is pending concerning a particular property (the notice is recorded against the property in question)
- by recording a lis pendens an attorney can stop the transfer of a property that is the subject of a lawsuit
- the property is not marketable until the lis pendens is removed
• watch out for malicious use of lis pendens

Injunctions
• court order to do or not to do something

Priority Fights
• there is a specific order to which various claims will be satisfied when there are inadequate funds left over from the sale of a property to pay all existing encumbrances
• the general order is as follows: (1) taxes/assessments; (2) previously recorded judgments; (3) mechanic's liens; and then (4) first trust deed; (5) second trust deed; and so on, until the proceeds from the sale are exhausted

Non-Financial Encumbrances
• these affect the physical use of the affected property
• they include: (1) easements, (2) private restrictions, (3) zoning, (4) encroachments, and (5) leases

Easements
• non-exclusive rights to use someone else's property
• appurtenant: benefits the neighboring landowner
  (a) easement runs with the land
  (b) servient and dominant tenements
• in gross: an easement that does not benefit the adjoining landowner, such as a utility easement
  (a) Bay Trail easements
• creation:
  (a) in writing
    (1) by contract (should be recorded)
    (2) grant deed/deed reservation (should be recorded)
  (b) implied easements
    (1) implied easement (subsurface mineral rights implies surface easement to get minerals)
    (2) easement by necessity
    (3) prescriptive easements (using another's land for five continuous years)
• transfer: if an easement is not recorded and the purchaser has no actual knowledge of the easement, then the easement is extinguished upon property transfer
• termination:
  (a) express termination (usually via quitclaim deed)
  (b) merger of dominant and servient tenants
  (c) excessive use or misuse
  (d) abandonment/non-use (a prescriptive easement can be extinguished if not used for a period of five continuous years)
• license: permission to enter somebody else's land for a limited purpose

Private Restrictions
• private deed restrictions
• CC&Rs
• the restrictions are usually placed upon the property by the grantor or developer
• purpose behind such restrictions is to keep land uses and architectural uses uniform throughout a subdivision, and include
  (a) covenants: a promise not to do or to do a certain thing
    (1) usually remedied by injunctions or money damages
  (b) conditions: a promise to do or not to do something, the failure of which can terminate the contract
    (1) usual remedy is for the property to revert back to the grantor
• race/ethnicity/religion restrictions

Zoning
restrictions made by the government applicable to all parties
restrictions enacted pursuant to the police power of local jurisdictions
whereas private restrictions are usually meant to benefit individual landowners, the purpose of public restrictions like zoning is to benefit the general community at large
in the event of a conflict between zoning and private restrictions, zoning will prevail
when both zoning and private restrictions address the same issue for a given property whatever is more strict will prevail

Encroachments

- many forms
- you have three years to have an encroachment removed

Homestead Exemptions

- a unique creation of California law that provides homeowners with a small degree of protection for their primary homes
- your creditors have the power under certain circumstances to force you to sell your property to satisfy your debts
- there is a recognition, however, that no matter what your debt is, the law should protect the primary home of the debtor
- by declaring a Homestead you may protect $75,000 of any equity you have in your primary home
- if the equity in your home exceeds the exemption, the home may be sold to satisfy creditors, but the exemption amount is protected for six months so you may reinvest it in another home
- does not protect against certain trust deeds, mechanic's liens, or liens owed prior to Homestead filing

CHAPTER 7-ESCROWS AND TITLE INSURANCE

Escrows

- the importance of escrows (separate class)
- the money holder
- the escrow officer serves as a neutral party that insurers that both the buyer and seller live up to their obligations
- the buyer and seller issue written instructions to the escrow officer to hold funds and proceed when all previously-agreed-to conditions have been performed
  - analogy to car sales
  - the importance and usefulness of a good escrow officer
  - Fidelity Title and Richard Carter
  - escrows are used not just in real estate sales

Requirements

- 1) signed escrow instructions, which are a contract between the buyer and seller
- 2) a neutral party acting as a dual agent of the buyer and seller
- 3) conditional delivery of funds and documents when all conditions specified in the escrow instructions have been met
- escrow instructions, once they are signed by the parties, may not be changed without the written consent of both parties

Escrow Officer

- there are a few different parties that can serve as escrow holder, including corporations, an attorney, banks, or a real estate broker involved in a given transaction
- most often you find an escrow company or title company to serve as the escrow officer

The Escrow Process

- selection:
  - (a) no secret profits from referrals
(b) often a process of negotiations between buyer and seller
(c) referrals are okay, or at least develop a relationship of trust
• instructions:
  (a) formal instructions to the escrow officer based upon the purchase contract between buyer and
      seller
  (b) both parties should always make sure that the instructions reflect the contract
• financing: because all real estate usually has financial encumbrances and/or is being bought by the
  buyer with financing, the escrow officer pays a role in making sure that prior creditors are paid
  (a) pay off demand statements used if the seller's financing is to be paid off
  (b) beneficiary's/lender's statement if the buyer is assuming a pre-existing loan
• settlement statements
• closing
  (a) the date after all conditions have been satisfied when documents are transferred and funds are
      distributed, and the date that the documents are recorded

Settlement Statements
• prorations: proportionately dividing and allocating expenses and income to the buyer and seller as
  of the closing date
  (a) includes taxes, insurance, interest, and rent
  (b) 30 day basis
  (c) see page 215-216

Title Insurance
• chain of title: a recorded public history of a property
• why you should care and why you need title insurance
• title insurance companies search the public records for the history of a property
• title insurance is only paid for at one time, during the purchase of a property, usually
• buying property with title defects
• like escrows, there are regulations prohibiting real estate professionals from making a secret profit
  by referring to client to a title insurance company
  • usually chosen by the buyer, although the seller may request that a certain company be used
  • very complicated topic

Title Insurance Process
• preliminary title report: an initial survey of the condition of the property's title, usually obtained
  while the deal is being negotiated.
  (a) It contains:
      (1) name of the owner/description of the property
      (2) a list of outstanding taxes, bonds, assessments
      (3) a listing of any CC&Rs
      (4) a listing of any liens/encumbrances
  (b) based upon what is found in the preliminary title report, a prospective purchaser can
      negotiate reductions in price, or demand that certain title defects be remedied prior to the sale
  (c) a preliminary title report will list exceptions to title

Title Insurance Policies
• insurance policies are written in a way that is very hard to sue title insurance companies
• see page 224
• if you do suffer a loss that is covered by your title insurance, the title insurance company will make
  you whole and/or defend you or sue on your behalf in court
• tends to cover just things that are recorded in the public record
• see exclusions from coverage on page 226
• CLTA
(a) tends to be the standard insurance policy  
(b) exclusions from coverage include:  
   (1) easements, encumbrances, liens, etc. not in the public record  
   (2) rights of parties in physical possession of the land  
   (3) unrecorded claims that might be ascertained by a physical inspection (survey)  
   (4) mining rights, water rights, and government restrictions  

• ALTA  
  (a) more expensive than a CLTA policy, but more protection  
  (b) usually required when lenders or other parties cannot personally inspect the property or get a  
      survey of the property  
  (c) a survey is part of this insurance policy  
  (d) no protection against government restrictions  

Title Insurance Costs  
• title insurance fees are usually paid for by the buyer in Northern California according to  
  preestablished rate schedules put out by various insurance companies  
  • shop around  
  • my own insurance stories, Milpitas, NWPRA (water, agri)
CHAPTER 6-LANDLORD AND TENANT

- the lease relationship (a contract)
- landlord/lessor and tenant/lessee

Leasehold Estates
- exclusive right to occupy and use property, with a reversionary interest in the landlord
- tenancy ends when lease is over or if tenant breaches the lease contract
- no special form or need for writing unless lease is longer than 1 year

Estate for Years/Fixed Term
- lease agreement for predetermined length of time
- no advance notice is needed to terminate because the lease automatically ends

Estate from Period to Period (Periodic Tenancy)
- tenancy that continues from period to period
- automatically renewable
- represented by a rental agreement that has no expiration
- tenancy can only be terminated by one period’s notice

Estate at Will
- tenancy that can be terminated by either party with no fixed duration
- doesn’t really exist in CA, instead a periodic tenancy governs

Estate at Sufferance
- when the tenant retains possession after the expiration of their fixed term
- landlord need not provide a notice of termination because of the expiration of the fixed term
- if the landlord accepts payment of rent after the expiration of the term the lease reverts to a periodic tenancy

Lease Specifics
- no special form needed
- must address duration, rent, parties, and property description
- a lease must be signed by the landlord, but the lessee need not sign and if the lessee acts like it is renting the apartment

Specific Lease Issues
- duration: very few restrictions on term length (99 years generally)
  (a) remember rate increases and duration of lease
- assignment and subletting issues: general presumption in favor, unless otherwise specified
  (a) assignments: a transfer of all lease responsibilities
  (b) subletting: a transfer of less than the entire lease interest, and the original lessee remains liable
- renewals/extensions: notification of options
- rights of tenants upon property sale (can be forced out, HB issues)
- security deposits: for residential properties must be returned within 21 days
  (a) accounting for any subtractions from the deposit

Lease/Rental Agreement Termination
- (1) termination of term: leases end at the expiration of the term, while rental agreements terminate after a 30-day written notice (60 days if the tenant has been there are over a year)
- (2) lack of quiet possession: if the tenant does not have reasonable and quite use of the premises, they have grounds to terminate the lease (cannot be bothered by the landlord)
- (3) habitability repairs: any sort condition that threatens the tenant's health or safety can be grounds for terminating the lease if the landlord does not repair the substandard conditions in a reasonable amount of time after having been notified by the tenant (see obligations of landlord on page 190)
- (4) eviction issues: even if a tenant does not comply with the terms of the lease, there are certain steps to take in order to effect a tenant, options include:
(a) three-day notice to pay: a notification that the tenant must pay all past-due rent
(b) three-day notice to quit: a notification that the tenant has three days to leave the premises
(c) unlawful detainer action: if successful, court will issue a writ of possession allowing a sheriff to remove the tenant from the premises
(d) be very careful of service/notice provisions
(e) tenant may not lockout tenants, take their property, shut off utilities, or trespass
(f) plan for at least a month to do this

• (5) surrender: a lease may be prematurely terminated by the mutual agreement of the parties
  (a) how to break a lease early (talk it over)
  (b) when it has an obligation to mitigate damages
  (c) negotiating with a poor tenant

• (6) destruction of conditions: if the premises is destroyed, usually the lease is automatically terminated
  (a) partial destruction may only partially terminate the lease (abatement of rent)
  (b) eminent domain issues

Special Lease Forms
Sale-Leaseback
  • when the owner of a property sells the property to somebody else, but remains in the building as a new tenant
  • often used when a business wants to build building to their specifications, but then get their money back by selling the building

Lease-Purchase Option
  • when the tenant has the option to purchase the leased premises for a given period of time
  • gives the tenant flexibility

Ground Leases
  • where the owner of the land retains ownership rights, but leases the property out for a long-term
  • Colma Station

Special Payment Provisions
  • graduated leases: use of the CPI or escalator clauses to raise rents according to some neutral standard
    (a) use these provisions insurers that the rent at least keeps track with inflation and is based on a neutral measure
  • gross leases: or the lesser is responsible for all property taxes, insurance, and other property expenses, the tenant only pays on flat rental fee
  • net leases: where the tenant pays property taxes, insurance, and other operating costs in addition to the rent
    (a) often referred to as a "triple net lease"
  • percentage leases: where the tenant pays a certain percentage of the monthly gross sales to the lesser
    (a) usually in addition to a fixed monthly rental minimum
    (b) common in shopping centers

Property Management
  • what it is
  • business must be run by somebody with a real estate broker's license and property managers must have a real estate license
    • pay is usually through flat fee plus percentage of gross income
    • residential managers (16 units or more)
    • see form on page 198

Rent Control
  • what it is and isn't
• vacancy control
• perverse incentives
• the popularity of rent control and why
• current status of law

CHAPTER 8-REAL ESTATE FINANCE
• the role of finance in real estate
• leverage
• using other people's money
• how rising real estate values have been a great investment

Hypothecation
• pledging property as collateral for a loan, without giving possession
• property is usually what is pledged as security for real estate loans

Promissory Notes
• legal instrument that demonstrates debt
• joint and several liability
• they are negotiable instruments (can be transferred from one party to another)
• straight notes: the principal is paid off in the maturity date, while the interest is paid in installments or at the end
• balloon notes: periodic payments of both principal and interest, with a large "balloon" payment at the due date
• amortized installment note: where both the principal and interest are paid in equal installments until the debt is paid in full, over a fixed period of time
  (a) usually you are mostly paying interest at first
  (b) fixed or adjustable-rate mortgages
  (c) how to calculate the monthly payments

Financial Instrument Issues
• acceleration clauses: upon the occurrence of a specific event or condition, the entire amount due under the promissory note comes due
• due on sale clauses (alienation causes): a provision that provides that a loan will become due and payable in full whenever the property is sold, signed, transferred, or otherwise conveyed
• assumption clauses: they allow a buyer to assume the loan of a seller that is encumbering the subject property
  (a) taking title to a property subject to a prior loan allows the buyer to take over the loan payments, but the current seller remains legally responsible for the loan
• subordination clauses: if a trust deed has a subordination clause, that allows for a future reordering of the priority of financial liens on a property
  (a) often used to allow for the possibility of new higher-priority construction loans
• prepayment penalties: only enforceable during the first five years of a one-to-four unit home loan
• impound accounts: money required to be set aside by the borrower to pay for recurring costs such as taxes and insurance
• assignment of rents: allows the lender, upon the default of the borrower, take possession of the affected property and collect rents/make payments

Interest Rates
• interest is the rent you pay to borrow money
• interest equals principal x rate x time
• fixed rate versus adjustable rates

Amortization
• spreading the payments due under a loan over a fixed period
• includes principal and interest
• amortization tables (see page 252)

Adjustable-Rate Mortgages
• instead of equal monthly payments with a fixed rate loan, payments under an ARM vary depending upon the interest rate
  • typically cheaper than fixed rate loans, at least at first
  • adjusted at regular intervals
  • usually capped

Shortened Payment Terms
• 15 versus 30-year mortgages

Points and Loan Fees
• one point equals 1% of the loan amount
• equal to one quarter percent interest rate reduction
• prepaid interest, in the form of added closing costs
• in addition to points, there are also loan origination/application fees

Usury
• maximum interest rate allowed under law
• generally in California it is 10%, or 5% above the discount rate, whichever is higher
• most sources of real estate financing are exempt from usury limit
• transactions made through licensed brokers are also exempt from usury laws, as long as it is not the broker's money

Security Devices
• mortgages, trust states, land contracts
• interchangeability of terms

Trust Deeds
• trustor, trustee, beneficiary
  • the promissory note is evidence of the debt, and the trust deed makes the subject real estate security for the loan
  • legal title is held by the trustee, while trustor has possession and equitable title to the property
  • satisfaction: deed of full reconveyance, which is recorded to give the public notice that a debt has been paid off
    (a) deed of full reconveyance must be forwarded after satisfaction and within 90 days of receiving the request
    • default remedy: (1) nonjudicial foreclosure (trustee's sale) or (2) judicial foreclosure
      (a) nonjudicial foreclosure
        (1) 10-15 day grace period
        (2) if no payment during the grace period, trustee records a notice of default, after notification from the beneficiary
        (3) within 10 days of recording the notice, trustee must notify those junior lienholders that filed a request for notice
        (4) than trustor has three months to reinstate the loan, with all added costs
        (5) if no reinstatement, then there is a 21 day notice of sale
        (6) then there is the sale, with the highest bidder getting the property. Any money more than the amount owed is returned to the trustor, in the new owner gets immediate possession
        (7) no deficiency judgments
      • deficiency judgments: no deficiency available for nonjudicial foreclosure sales and for purchase money trust deeds (for the purchase of primary residence obtained at the time of purchase)
      • judicial foreclosure: complicated and time-consuming, but does allow deficiency judgment
        (a) remember no deficiency judgments for purchase money trust deeds
Deed in Lieu of Foreclosure
• a deed given by an owner to their lender to prevent the lender from foreclosing on the encumbered property
Mortgages
• mortgagor and mortgagee
• remedy: judicial foreclosure
• right of redemption: following judicial foreclosure, mortgagor has one year to reinstate the loan, and retains possession of the property during that time
• deficiency: available unless the mortgage was a purchase money mortgage
• statute of limitations: unlike trust deeds, in an action for closing mortgage there is a four-year as so well from the date of the last payment
Effect of Foreclosures
• junior trust deeds often wiped out, but not tax liens or mechanics liens, generally
Junior Trust Deeds (Liens)
• why they exist
• usually have higher interest rates and shorter pay off due to increased risk
• the holder of a junior lien has the same rights as the holder of the first deed of trust
• the holder of a junior lien can also keep a first deed of trust current
  (a) generally a good idea when the property across this value is more than the amount owed on the first trustee
• the holders of junior liens should always recorded a request for notice to learn when the trustor is not paying the first trust deed
Land Contracts
• a finance instrument where the seller retains legal ownership of the property and till the buyer has made the last payment
• similar to an installment sales contract, but the buyer gets possession
Truth in Lending
• requires that lenders give full disclosure about the costs of credit
• allows comparison shopping of annual percentage rates
• the APR is the relationship (expressed as a percentage) between the total of the finance charges (interest rate, points, and loan fee) and the total amount financed
Equal Credit Opportunity Act
• prohibits lenders from discriminated on the basis of a variety of factors
• designed to help people with low income gain access to credit
CHAPTER 9-FINANCIAL INSTITUTIONS

• why you need to know about financing
• the creative use of financing
• its importance to first-time homebuyers
• develop a relationship with mortgage brokers
• possible uses of financing: (1) purchase price, (2) refinance, (3) construction loans, (4) home-improvement loans, (5) takeout/repayment loans
• no financing, no sale
• real estate finance class

Influences on Our Financing System

• the role of interest rates
• the role of the Federal Reserve
• tight money versus loose money

Loan Terms/Considerations

• loan-to-value ratio
• closing costs (points, interest rates, origination fees)
• credit scores
• equity
• liquidity of assets
• opportunity costs of owning real estate
• PMI: a guarantee to lenders to cover the portion of a conventional loan debt exceeds the 80% loan-to-value

How to Obtain a Loan

• the importance of shopping around
• your credit history, employment history, salary
• stated income
• what kind of limits were salary requirements of lenders have

Credit Scores

• the importance of your score
• the mystery behind it
• mistakes
• your rights

Sources of Funds

Institutional Lenders

• mutual savings banks:
  (a) the largest source of residential home purchase financing
  (b) they use depositors' funds to loan to home purchasers providing their depositors a higher rate of interest
• general-purpose lenders/banks: they loan money for more than just real estate
• life insurance companies: generally only involved in financing very large transactions, not run-of-the-mill residential property

Noninstitutional Lenders

• private individuals
  (a) most common form is sellers that take back a second trustee as part of a real estate transaction
• credit unions
• real estate investment trusts (REIT): a private company that sells securities specializing in real estate
  (a) equity trust: a REIT that specializes in real estate sell for real estate projects
(b) mortgage trust: a REIT that invests in mortgages and other types of loans/obligations
- pension plans: can become directly involved in developing properties
- mortgage bankers: participate in the secondary mortgage market

Government-Backed Loans
- helps first-time homebuyers
- the drawback in terms of delays
- important for realtors to know about these programs

FHA Programs
- the FHA does not originate loans, but insures them
- the borrower and the property to be purchased must meet the approval requirements of the FHA
- if the FHA approves, then a bank will make the loan, with the FHA ensuring the approved lender
  against foreclosure losses
- in return, the borrower pays a mortgage insurance premium to the FHA
  this makes borrowers more willing to loan money

VA Programs
- like FHA programs, the VA does not originate loans, but guarantees them
- California Department of Veteran's Affairs: originates loans

California Housing Financing Agency
- provides down payment assistance

Secondary Mortgage Markets
- where loan originators sell their loans to investors and other institutions
- provides liquidity to loan originators
- helps ease local credit crunches

Government Related Agencies
- Fannie Mae, Ginnie Mae, Freddie Mac all help to provide funds for loan originators to loan
  they buy up mortgages and package them to be sold often as mortgage-backed securities

Mortgage Brokers
- a real estate broker can help a client arrange financing
- Mortgage Loan Disclosure Statement obligation of the broker (page 325)
- there are interest rate restrictions
- the role of mortgage brokers

Real Property Securities Dealer
- real estate brokers may sell real estate investment securities to the public, with a permit from the
  Real Estate Commissioner, and a surety bond
- Real Property Securities Dealer is someone who sells real property securities such as promissory
  notes and sales contracts

CHAPTER 10-INTRODUCTION TO APPRAISAL
- an appraisal is an opinion or estimate of value
- value means value to the average person in an arms-length transaction
- price does not equal value
- value equals what the property is worth based upon the price that a willing seller and willing buyer
  would pay, given full information and a reasonable amount of market exposure
- the concept of highest and best use
  (a) the use that will produce the maximum amount of profit or net return
- the appraisal profession and license
- why you need to know about appraisal
  (a) the skill of valuing property
  (b) it is crucial to financing and deals
- appraisal as a separate class
The Appraisal Process

- 1) define the assignment
- 2) gather relevant data
- 3) perform one or more of the three appraisal methods
- 4) using skill and judgment determine the final opinion of value

What Is the Assignment?

- purposes of appraisal:
  (a) include determining market value (most common), insurance value, assessment value, rental value, and others
  (b) most often used for property transfers, loan processing (refinance), condemnation, and insurance
- who is the client?

Data Gathering

- knowing the market
- awareness of economic trends
- knowing what affects value
  (a) physical, social, economic, and political factors
- knowing the importance of location
- the importance of site location and topography
- the value of amenities

Basic Appraisal Principles

Supply and Demand
- a hallmark characteristic of real estate is scarcity
- the effect of demand outstripping supply in California

Change
- the real estate market is always changing depending upon a variety of factors such as the economy, demographics, schools, infrastructure, and supply and demand
- real estate itself is often changing, such as deterioration of improvements

Conformity
- the maximum value of a property is obtained when the property use is in conformity with surrounding property uses
- primary reason for zoning

Contribution
- a contribution to a property should be measured in terms of what does it add to the value of the whole property rather than the cost of the contribution itself
- cost does not necessarily equal value
- diminishing returns

Substitution
- a buyer will not pay more for a particular property and cost to buy a similar property of equal utility desirability
- the primary reason behind the sales comparison appraisal method
- the maximum value of a property tends to be set by the cost of acquiring an equally desirable substitute property

Regression/Progression
- regression: the value of the best property in an area will be adversely affected by the value of other properties in the area
- progression: the value of a "lesser" property is increased in value by virtue of its location in a neighborhood of better homes
  (a) buy the worst house on a block
CHAPTER 11-APPRAISAL METHODS

- why you need to be familiar with appraisal
- the importance of comparable sales
- three primary methods:
  1. **sales comparison approach**: best used for single-family homes where there are many comparables
  2. **cost approach**: best used for new or unusual properties
  3. **income approach**: best used for income-producing properties

**Sales Comparison Approach**
- using comparable sales to determine value
- the principle of substitution: a person will not pay more for a property if they can buy something similar for less

**Selecting the Comparables**
- be sure to try to compare apples to apples
- need reliable information
- need at least three comparables
- comparable sales need to be recent
- see pages 374-375

**The Need for Adjustments**
- no two properties are exactly the same
- differences to account for could include location, age, lot size, building size, property condition, and changed market conditions
  - if the comparable property has an attribute not present in the subject property, the appraiser needs to deduct the value of that item from the comparable property's selling price
  - if the subject property has an item not present in the comparable property, the appraiser needs to add the value of the item to the comparable property's selling price

**Cost Approach**
- determining the value of a property by adding together the value of the land and the depreciated value of the improvements
  - used when appraising (1) new structures or (2) unique structures for which there are no comparable sales
  - used when there are no comparable sales for the subject property and the subject property is not income producing

**Process**
- (1) determine the value of the land using the sales comparison approach
- (2) estimate the replacement cost of the building as if it were new
- (3) deduct estimated depreciation from the building
- land value + new cost of building - depreciation of improvements = market value
- **replacement cost**: the cost of building a similar structure using modern construction methods
  - (a) the similar structure must have the same "utility" as the subject property
  - (b) not the same thing as reproduction/replication cost (exact replica)
- determining cost:
  - (a) comparative-unit method (price per square foot)
  - (b) unit in-place method
  - (c) quantity survey method
  - (d) Marshall and Swift
- **depreciation**: a reduction in the value of a property
  - (a) types
    - (1) physical deterioration (curable or incurable)
(2) functional obsolescence (loss in value due to outmoded style or space)
(3) economic obsolescence
(b) straight-line method (depends upon economic life)
(1) actual age versus economic life (effective age)
(c) the difficulty of estimating depreciation is the weakness in the cost approach

The Income Approach
- determining the value of a property based upon the income that it produces
- the present worth of future net income
- capitalization: converting income into value
  - value = net income/capitalization rate or \( V = \frac{I}{R} \)
  - this method is used by those who primarily value property for its income producing potential

Steps
- (1) calculate effective gross income
- (2) determine operating expenses
- (3) determine net income
- (4) divide net income by the capitalization rate

Determining the Net Income
- take the gross rents, and deduct vacancy/rental losses to find the effective gross income
- determine what the operating expenses are of the facility and deduct those from the effective gross income to determine the net income
  (a) operating expenses include variable costs and fixed costs, along with replacement reserves

Selection of the Capitalization Rate
- how the capitalization rate affects values (there is an inverse relationship between the appraised value and the capitalization rate)
  - comprised three components: (1) interest rate of a low risk investment, (2) the rate of return desired by the investor, depending upon the perceived risk of the investment, and (3) recapture rate
  - the greater the perceived risk, the greater the Rate

Gross Rent Multiplier
- multiply the rent by whatever factor you choose to determine value
- very crude and inaccurate, but useful as a screening device
- if you know the purchase price and rent for a particular building, you can determine the gross rent multiplier to be used on properties that are comparable
  - sales price/rent = Gross rent multiplier

Reconciliation
- not just averaging your results
- select the most appropriate approach/appropriate comparables

The Appraisal Profession
- various types of licenses
- OREA web site
- difficult requirements
CHAPTER 12-SUBDIVISIONS

- police power of local governments
- subdivision: a parcel of land divided into five or more parcels (can be a subdivision or a condominium complex)

Subdivision Map Act

- state law that has enforced by local governments requiring subdividers to file subdivision maps that comply with the local government's master plan
- administered by local governments in accordance with local requirements
- objectives:
  (a) coordinate infrastructure of new subdivision with pre-existing infrastructure
  (b) ensure that there are adequate public dedications

Subdivided Lands Law

- require subdividers to prepare subdivision public reports in order to protect the public against fraud
- requires the preparation of a public report
- administered by the DRE
- only applies to five or more lots/parcels

Public Report

- the public report must demonstrate that
  (a) the developer has met all statutory requirements for the development
  (b) the lots can be used for the purpose for which they are being offered
  (c) must disclose all important facts regarding the subdivision
  (d) disclose arrangement of lots within the subdivision, and a description of off-site improvements and recreation facilities
- see common interest development form on page 406
- the public report is only required for the sale of newly subdivided lots, not resales
- developers/selling agents of newly subdivided properties should keep a receipt of the buyer's acknowledgment that the receive the public report
- see the differences between the Subdivision Map Act and Subdivided Land Act on page 413

Common Interest Developments

- importance of common interest developments and new class
- defined to be a project where
  (a) there are common areas used by all owners within a development
  (b) individual ownership of individual living units (whether single-family homes or condos)
  (c) managed by nonprofit Association (HOA)

Planned Unit Development (PUD)

- a subdivision where lots are owned separately, but there are common areas owned by all

Community Apartment Projects

- an apartment complex that is owned by a nonprofit organization that is run by the residents of the complex
- apartment dwellers receipt only a leasehold interest in the apartment and a fractional interest in the organization

Condominiums

- ownership of land and buildings in common with other owners, plus individual ownership of specific air spaces
- each individual condominium unit is transfer pursuant to a regular grant deed
- each individual condominium is treated as a separate unit for purposes of security, taxes, etc.
- when sold, the seller of a condominium must provide the following information to potential buyers:
  (a) CC&Rs
(b) bylaws of the Association
(c) financial statements
(d) good idea to also get the minutes from meetings

Timeshares
- what they are
- when you buy a timeshare you are buying a grant deed that gives you the right to use a property for a specific period of time
- some timeshares are structured around using properties in different places
- not an investment
- rights of rescission

CHAPTER 12-GOVERNMENT CONTROLS AFFECTING REAL ESTATE

Environmental Laws

CEQA
- full disclosure to the public
- what it covers
- EIR: a study of how a subdivision/project can affect the surroundings (environment)

Coastal Commission
- regulates development along the coast and other bodies of water
- only state widebody with land use authority

Environmental Disclosure Requirements
- lead paint
- geologic hazard zones
- environmental contamination

Planning Authority
- each city/county has a planning commission inflamed apartment responsible for planning the long-term development future
- the idea is to plant infrastructure in advance of development instead of after-the-fact
- General Plan requirements

Zoning
- how the General Plan is implemented
- regulates what uses property can be used for
- price to establish uniformity through various zoning districts
- meant to protect the health and welfare of the community
- primary restriction on the use of private property
- includes restrictions on items such as uses, height, size, setback
- residential zones include R1 through R5
- title insurance does not address zoning issues
- nonconforming uses
- variances: exception to zoning regulations in cases of unusual physical hardship
- conditional use permits

Building Codes/Building Requirements
- meant to protect the health and safety of the public
- housing laws address occupancy standards
- the need for building codes

Manufactured Housing
- the trends
- once it becomes real property real estate salespeople can sell it

Contractor Licensing Laws
- the purpose is to protect the public against incompetent building contractors
also ensures that there is some money set aside to compensate injured parties

**Eminent Domain**
- a physical taking
- what is fair market value?
- partial condemnation and severance damages
- not just government action that results in property values declining
- redevelopment process

**Fair Housing Laws**
- prohibits redlining, steering, race restrictions, block busting
- the obligation of an agent not to participate in an owner's discrimination
- the liability of a broker
- may not advertise in a way that encourages or suggests discrimination
- Fair Housing laws now include people with children and people with disabilities
- HUD may enforce through penalties and undercover operations

**CHAPTER 13-REAL ESTATE TAXATION**
- why you need to know: affects closings, affordability of a home, and investment calculations

**Property Taxes**
- an "ad valorem" tax based on the value of the property
- the effect of Proposition 13
  - (a) 1% of market value initially and then 2% increase per year
  - (b) additional local assessments can be added (but it is difficult)
- calculated whenever a property is transferred
- the role of the County Assessor
- property taxes are a lien against a property
- special provisions for senior citizens and disabled persons, and people whose homes are condemned
- certain kinds of properties are exempt from property taxes (government, charitable, religious)
- assessment appeals
- if a property owner fails to pay property taxes, the county tax collector may sell the property pursuant to a tax sale after a five-year redemption period

**Assessments**
- a supplemental tax on property enacted with voter approval to pay for specific improvements or services
  - this tax does not go into the general fund
  - can be enforced similar to property taxes

**Mello-Roos Liens**
- bonds to pay for infrastructure, pay back by the homeowners to benefit from the infrastructure improvements
  - a way to get around Proposition 13
  - if a property is subject to this lien, it must be disclosed by the seller and their agents to any potential buyers

**Transfer Taxes**
- a county charge of $.55 per $500 of property value, excluding any assumed financing
- some cities add on a transfer tax in addition to the county charges

**Gift/Estate Taxes**
- a property transferred through probate is subject to estate taxes
- if you give the property to somebody else, there's a potential gift tax ($11,000 annual exemption)
• estate taxes generally applied to estates that exceed $1 million in value (although this is changing over the years)
  • no state gift or inheritance tax

**Income Taxes**
  • any profit from the sale of property is a form of income
  • California has its own income tax
  • capital gains taxes

**Primary Home Tax Deductions**
  • the federal government has enacted a tax code that encourages people to own property
  • if you own your own home you may deduct: (1) mortgage interest on loans, (2) property taxes, (3) prepayment penalties
  • there is a $250,000/$500,000 deduction from the sale of a primary residence (that you lived in for at least two of the previous five years)

**Income Producing Property Tax Deductions**
  • mortgage interest on loans, property taxes, prepayment penalties, and (5) operating expenses, and (5) depreciation

**Depreciation**
  • the only depreciate improvements not land
  • straight-line depreciation schedule of 27.5 years for residential and 39 years for commercial
  • a way to postpone paying property taxes
  • the capital gains catch

**Taxes on the Sale of Property**
  • capital gains: tax in the lower rate than other forms of income
  • installment sales: spreading income over multiple years to avoid progressive tax rates
  • see calculation on page 469
  • 1031 Exchanges: allows investors to trade up properties while avoiding income taxes until later
  • tax withholding:
    (a) burden is on the buyer, but escrow usually handles this
    (b) done to ensure that the seller pays proper capital gains taxes