INSTRUCTOR’S MANUAL

NEW YORK
REAL ESTATE
FOR SALESPEOPLE
FIFTH EDITION
MARCIA DARVIN SPADA

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TO THE INSTRUCTOR

The New York syllabus offers a challenge to both student and instructor. New York Real Estate for Salespersons 5th e is designed to meet this challenge. The To the Student section of the textbook explains how students should approach the textbook. The following offers some ideas that may be useful to the instructor:

Using the instructor’s manual

✓ This manual offers a complete outline of all content in the chapter. If you want, you need only to familiarize yourself with the chapter and then teach from the outline.
✓ The manual presents a focus of presentation for each chapter sometimes with suggested guidelines for time constraints. The focus explanation will help you emphasize the more relevant aspects of each topic.
✓ Each chapter of the manual presents supplemental learning activities. Students do not have these activities (or answers) in their textbook. Use them as needed for more class work or for home study. You may copy the content in the instructor’s manual.
✓ Further math questions are offered in this manual. They are divided and captioned as to where they are applicable in the textbook. Use as needed for classroom or suggested home study.
✓ Two 75-question classroom salesperson exams that are for practice only. Contact the author for state approvable classroom exams.

Using the textbook

✓ The textbook provides an interactive learning experience. Although learning activities are included at certain junctures in the chapter; it is still up to the instructor as to where you feel they would best meet the needs of students.
✓ Instructors who begin the course may want to include the introductory chapter that answers many general questions as to a career in real estate.
✓ Many of the activities such as the role playing exercise in the Law of Agency chapter, and the DOS case studies are required by the syllabus. Include these items in your presentation.
✓ The textbook follows the syllabus exactly as to form and content. A thorough presentation of the content will prepare your students for the state licensing exam.
The sample exam at the end of the textbook will provide diagnostic information as to how students are doing and where they need further study.

All key terms required by the syllabus are contained in the chapter where they are supposed to be addressed as well as in the glossary.

The publisher invites you to address any ideas regarding presentation or learning activities, questions, or concerns regarding the text and syllabus to the author. The author may be contacted through email at cramforexam@hotmail.com. You can also visit the author’s website: http://www.cramforexam.net where you can access up-to-date exam information, more practice exams, and supplemental study content that supports this textbook.

Supplemental Study Content

Cram for the Exam! Your Guide to Passing the New York Real Estate Salesperson and Broker Exams. All practice questions and exams in this comprehensive guide are footnoted to New York Real Estate for Salespersons, 5th e.

New York Real Estate for Brokers 5th e by Marcia Darvin Spada. This is the textbook for those who are preparing for the New York broker license and completely covers the syllabus for the required 45-hour broker course.

30-Hour Remedial Course by Marcia Darvin Spada. This companion textbook for the salesperson or broker course is for students who have completed the old salesperson 45-hour course (completed before July 1, 2008) and need to complete the entire 75 hours for the salesperson course or the 120 hours for the broker course.

PowerPoint Presentation. Extensive colorful slides that follow the key points of each chapter.

Classroom exams. These exams are referenced to New York Real Estate for Salespersons, 5th e. These exams created by the author can be submitted for DOS approval. Contact the author to obtain these exams.

To order a desk copy of this Cram or any Cengage Learning real estate textbook, contact:

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CHAPTER 1
LICENSE LAW AND REGULATIONS
CLASSROOM HOURS: 3

RATIONALE FOR CHAPTER
License law is fundamental to real estate practice in New York. Therefore, it is essential that students have a sound understanding of the statutes, rules, and regulations specific to New York practice. License laws can trace their history to the 1906 Code of Ethics adopted by the National Association of REALTORS®. Today, each state, including New York, has its own separate body of statutes that define and govern the practice of real estate. This framework is outlined in the chapter.

FOCUS OF PRESENTATION
1. Introduce the purpose of New York’s license law in general, that is, to protect the public, as opposed to other common ideas such as to regulate competition or illegally establish commission structures.
2. Review the distinction between the broker’s and salesperson’s license both in terms of the requirements for licensure as well as independence of practice. Many students enter the practice at the salesperson level and may aspire to go on to the broker license. If you have not done so already, this is a good opportunity to go over the question and answers presented in the introductory chapter regarding real estate as a career.
3. List the activities that require a real estate license in New York, as well as actions that are specifically exempt. Include a discussion of the rules for proper maintenance of a license.
4. Review the licensure process and particularly the salesperson’s application depicted in the textbook. Explain eAccessNY, the NYS online management system and its services, the licensure exam and the fees involved with licensure. Go online for a copy of the current exam schedule. DOS website: http://www.dos.state.ny.us. Discuss other types of licenses related to real estate.
5. Discuss New York’s rules for supervision of the salesperson by the sponsoring broker. Review the details of the salesperson’s practice that the broker is responsible for supervising (handling of deposit monies, delivery of instruments, etc.)
6. Define the regulatory powers of DOS. Take time to review and give examples of those activities that are prohibited by license law. Include a discussion of advertising guidelines and unlicensed assistants. Complete advertising guidelines are from available from DOS.

7. A supplemental learning experience is to provide a copy of the REALTOR® Code of Ethics. Identify how this REALTOR® statute corresponds with New York regulations.

LEARNING ACTIVITIES CONTAINED IN CHAPTER 1
Case Studies: synopsis of DOS hearings (2)
How Would You Respond? typical scenarios to analyze (2)
Key Terms: fill-in sentences (10)
Multiple Choice (20)

CHAPTER 1 OUTLINE
I. CATEGORIES AND RESPONSIBILITIES OF LICENSURE
   A. three categories of licensure:
      1. real estate broker—responsible for activities of sales associates
      2. associate broker—broker supervision
      3. salesperson—broker supervision
   B. licensure is required (unless exempt) to transact real estate for another individual and for a fee

II. REQUIREMENTS FOR LICENSURE
   A. New York Department of State (DOS), Division of Licensing Services—regulatory agency
   B. understanding of English language
   C. must be U.S. citizens or lawful permanent resident
      1. no state residency requirement
   D. Certificate of Relief from Disabilities if convicted felon
   E. age: broker—20 years; salesperson—18 years
   F. salesperson 75 hour qualifying course; broker 120 total qualifying hours
      1. high school diploma not required
   G. All applicants must pass New York exam; online appointment

III. DUTIES THAT REQUIRE LICENSURE
   A. listing
   B. selling
C. purchasing  
D. real estate exchanging (property, lots or vacant land for investment only)  
E. leasing and renting  
F. auction  
G. tenant relocation  
H. business sale where real estate is substantial part

IV. EXEMPTIONS TO LICENSURE  
A. individuals, for various governmental agencies  
B. attorneys admitted to practice in New York  
   1. need license if they employ salespersons  
C. Persons acting under court order  
D. tenant’s associations and not-for-profit corporations  
E. building superintendent or maintenance worker employed by one owner  
F. person employed by one owner to transact on their behalf

V. SALESPERSON APPLICATION  
A. most salespersons apply for the license online through their accounts in eAccessNY  
B. application fee- $50 paid through credit card on eAccessNY account

VI. MAINTAINING A LICENSE  
A. license and pocket card  
   1. conspicuously display broker license  
   2. salesperson kept by broker in safe and accessible place  
   3. pocket cards must be carried at all times—replacement: $10 fee  
B. change of address, status, or name- most activities performed online through eAccessNY account  
   1. broker moves principal or branch office—DOS notified within five days  
C. change status of license  
   1. associate broker to broker—$150 fee  
   2. changing salesperson’s name—$50 fee  
D. fees, branch office requirements, and term of licensure  
   1. broker—$150; salesperson—$50 fee per two year term  
   2. branch offices—$150  
E. termination or change of association
1. broker files salesperson termination with DOS—$10 fee
2. new sponsoring broker must file new association with DOS—$10 fee

F. dual licensure—broker/salesperson
1. licensees may hold more than one license at same time
2. associate brokers and salespeople must submit statement to DOS from each sponsoring broker indicating acknowledgment of other license

G. renewal requirements
1. renewal application must be signed by sponsoring broker
2. must indicate continuing education status
   a. continuing education 22 1/2 every two years
   b. exemptions—brokers licensed for 15 years; attorneys

VII. RECIPROCITY
A. non-resident salespersons and brokers must pass New York exam and maintain New York office unless state that they are from does not require New York licensees have office in their state or pass their exam
   1. New York has arrangements with other states

B. requirements for non-resident license
1. current certification from home state
2. New York application with fees
3. Uniform Irrevocable Consent and Designation Form
4. salesperson must be sponsored by New York broker
5. corporations must file with DOS, Division of Corporations, as foreign corporation
6. broker applicants from nonreciprocal states submit Supplement B of application, two character witness statements, New York resident’s reference, licensing requirements from home state, course transcripts

VIII. OTHER LICENSES OR REGISTRATION
A. apartment information vendor—$400 for 1 year term—DOS
B. apartment sharing agent—$400 per year for 1 year term—DOS
C. appraisal licensure and certification
   1. four levels of licensure: NYS Appraiser Assistant; NYS Licensed Real Estate Appraiser; NYS Certified Residential Appraiser; NYS Certified General Appraiser
2. $325 for two-year term—DOS

D. NYS licensed home inspector-$250-two year term-DOS

IX. REGULATIONS PROMULGATED BY DEPARTMENT OF STATE

A. business sign conspicuously posted on outside of place of business or in building directory
   1. indicate individual or company is broker

B. compensation and fee splitting
   1. salespersons receive compensation sponsoring broker only
   2. kickbacks—brokers may not share compensation with unlicensed individuals
   3. unlicensed individuals may not bring suit

C. other violations
   1. misstatement in application
   2. fraud
   3. incompetency
   4. misrepresentations
   5. mandatory seller property condition disclosure—NY law requires that sellers disclose known defects in the sale of 1- to 4-unit resident property.
   6. receiving compensation from more than one party without consent of all parties
   7. interference with contract of another broker
   8. offering property for sale or lease or placing sign without owner permission
   9. failing to deliver duplicate instruments
   10. accepting services of salesperson employed by another broker (salesperson may not represent another broker without consent of employing broker)
   11. retaining listing information upon termination of association
   12. being a party to listing contract that has automatic extension
   13. being party to exclusive listing contract which contains automatic continuation of listing beyond termination date
   14. drawing legal documents; giving legal advice
   15. failing to account for funds belonging to others
      a. commingling prohibited
   16. net listing contract illegal in New York
   17. discrimination
a. blockbusting

18. failing to provide definitions of difference between exclusive right-to-sell and exclusive agency listing agreements

19. failing to provide list of MLS members

D. guidelines on advertisements

1. must indicate that advertiser is broker
2. give name of broker and telephone number
   a. blind ad

E. unlicensed assistants

1. activities including answering phone, taking messages, arranging appointments, assembling documents

XI. LIABILITIES AND PENALTIES FOR VIOLATIONS

A. Violation of Article 12-A of Real Property law; misdemeanor

1. punishable by fine of up to $1,000
2. and/or imprisonment for not more than one year
3. DOS may reprimand licensee, or deny, revoke, or suspend license for as long as it deems proper
4. all courts of state may hear and try violators

B. DOS hearings and appeals

1. DOS investigates complaints and notifies licensee of charge and penalty
2. licensee may request hearing to contest charge and penalty
   a. voluntary mediation or
   b. hearing
3. appeal of decision—Article 78 proceeding
   a. method for appeals against regulatory agencies
4. revocation or suspension of broker’s license suspends licenses of affiliated salespersons and associate brokers
5. If salesperson or broker license revoked, licensee must wait one year for relicensure
SUPPLEMENTAL LEARNING ACTIVITIES – Chapter 2

Putting It To Work*
Why is it necessary that the real estate broker be paid based upon a set rate which is a percentage of the sales price? Is it because rates are officially set by a government agency? Can’t we make other arrangements such as the payment of a flat fee?

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How Would You Respond?
Peter has served time in jail more than 20 years ago for a felony he had committed when he was 21 years old. For the past ten years, Peter has worked as construction foreman. Peter’s body feels tired, and he is ready for a “desk job.” Since he has been in the “home” business all these years, he figures that the real estate profession is a perfect career change. What documents would Peter need to become licensed in New York, and assuming that he had the proper documentation, what level of licensure is Peter eligible for?
True or False – Chapter 2

1. Salesperson and broker licenses are renewable every year.
2. Attorneys must take qualifying courses to be licensed.
3. Violations of the license law are a felony.
4. Associate broker applicants need not take the broker exam.
5. The fee for a salesperson license is $75.
6. Apartment sharing agents are licensed by the Department of Housing and Community Renewal.
7. Net listings are permissible in certain instances.
8. DOS may impose up to a $1000 fine as a penalty for violation of license law.
9. A broker may share a commission with anyone.
10. You need not have a high school diploma to obtain a real estate license.
11. A real estate broker need not pay DOS fees for any branch offices.
12. A real estate salesperson may be an officer of a real estate brokerage corporation.
13. Nonresident licensees who are salespersons must work under the supervision of a sponsoring broker in New York.
14. DOS charges a $15 fee for the state exam.
15. Commingling refers to socializing with clients.
16. A real estate broker must be at least 21 years old.
17. A real estate salesperson must be at least 20 years old.
18. A real estate salesperson may be exempt from continuing ed.
20. A corporations may obtain a real estate broker license.
Multiple Choice – Chapter 2
1. The overall purpose of the license law is to:
   a. protect the public
   b. regulate competition and fee structure
   c. raise revenue
   d. create a quota of licensee
2. The association that has the primary purpose in exchange of license law information and promotion of uniformity of statutes between states is:
   a. NAR
   b. ARELLO
   c. HUD
   d. VA/FHA
3. The distinction between broker and salesperson is generally that a:
   a. broker must be sponsored by another agent
   b. salesperson can practice independently
   c. salesperson must be sponsored by a broker
   d. broker cannot practice independently
4. Which of the following is NOT an exemption to real estate licensure?
   a. owner of property
   b. trustee
   c. attorney
   d. property manager for more than one owner
5. A broker must present:
   a. all offers to the seller
   b. only those offers that appear to be in the best interest of the seller
   c. only full price offers
   d. only offers with $1000 earnest money
6. Under what authority does the Department of State derive its authority to regulate the activities of licensees?
   a. eminent domain
   b. taxation
   c. police power
   d. escheat
7. In representing the seller, the real estate agent is authorized to do which functions?
   a. draft contracts
   b. provide legal advice
   c. give tax advice
   d. show property

8. Roy held himself out to be a REALTOR®, but in fact had no license. He sold a large commercial property to Igor Investor who had promised Roy a $50,000 commission. When Igor discovered that Roy had no license, he decided to only pay him $25,000. Roy refused to accept the $25,000 and sought legal action against Igor. Which of the following applies?
   a. DOS will settle the dispute
   b. since Igor promised the fee, he is contractually bound to pay the full $50,000
   c. Roy is entitled to at least the $25,000 offered
   d. Roy is not entitled to any fee

9. When a salesperson or a broker receives an earnest money deposit, she should immediately
   a. turn the money over to the seller when the seller signs the offer to purchase
   b. deposit it in her own savings account
   c. place it in her desk drawer if the banks aren’t open
   d. give the money to the broker for deposit in a trust account

10. Which of the following will NOT result in revocation of a license?
   a. giving legal advice to buyer or seller
   b. gross misrepresentation of the condition of a property
   c. paying an unlicensed friend for leads that result in sales
   d. failure to work as a licensee full time for at least one year
ANSWER KEY TO SUPPLEMENTAL ACTIVITIES – Chapter 2

Putting It To Work*

A real estate commission is not set by any agency for all real estate companies. Rates are established by individual real estate firms who do so after evaluating their costs and expenses, and the expectation of reasonable profit. Owners and brokers are also free to, and do, negotiate various payment schedules including, but not limited to, sliding percentages based upon value, and flat fees. The type of payment not permitted is that in which the owner receives a net amount from the sales, with the broker receiving everything over that amount.

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How Would You Respond?

1. Peter needs a Certificate of Relief from Disabilities, Certificate of Good Conduct or Executive Pardon. He must attach this documentation to his paperwork. He is eligible for a salesperson license.
Chapter 2

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CHAPTER 2
LAW OF AGENCY
PART I LAW OF AGENCY
CLASSROOM HOURS: 11 (including The Independent Contractor Employee)

RATIONALE FOR CHAPTER
Agency is an essential topic for two reasons. First, it describes and defines the relationship between the agent and principal. This is particularly important because the implications of this relationship are often misunderstood. It is imperative that licensees understand and provide disclosure and informed consent. Second, the concept of agency defines the duties for which the practitioner should be held accountable.

FOCUS OF PRESENTATION
1. Define and give examples of classifications of agents universal—power of attorney; general—property manager; and special—real estate agent under a listing.
2. Discuss how agency relationships are created.
3. Discuss various methods for termination of an agency.
4. Give students an overview of commission arrangements pertinent to your area. Indicate that the law prohibits establishment of any fee structure between competitors, therefore, all principals are free to negotiate.
5. Discuss splits to sales associates and cooperating brokers and do a sample calculation of the commission on a buyer brokerage. Stress that an agency relationship is not based upon “who pays you,” but on the written agreement. You may refer to Chapter 10, Real Estate Math which explains and gives practice in computing commission splits.
6. Define agency and subagency and diagram each for students to illustrate how the relationship works within an office and among cooperating offices.
7. Discuss the duty of disclosure in the agency relationship. Use the disclosure form in the textbook or one that is provided by your local board. Both the role playing exercises and the How Would You Respond Questions and the address the role of the agent in different aspects of the transaction and may be utilized in the classroom to reinforce the both the role of the agent and when and how disclosure should be made.
8. Review the different types of listing contracts. This is an ideal time to review an actual listing contract used in your market area.

9. Review the local MLS rules and regulations concerning commission splits and cooperation between offices.

10. Explain how anti-trust law impacts the real estate industry. Particularly focus on MLS rules and local board rules and how they might violate anti-trust laws.

LEARNING ACTIVITIES CONTAINED IN PART I

Role playing exercises (3)
How Would You Respond?: typical scenarios to analyze (3)
Key Terms: fill-in sentences (9)
Multiple Choice (25)

CHAPTER 2 PART I OUTLINE

I. AGENCY RELATIONSHIPS
   A. agent—person hired on another’s behalf
      1. principal—person who selects agent
      2. customer—party that agent brings to principal
   B. categories of agent
      1. general—all affairs concerning certain matter
      2. special—narrow authorization; real estate agent
   C. fiduciary responsibilities—position of trust
      1. loyalty
      2. obedience
      3. skill, care, and diligence
      4. disclosure of information
      5. accounting
   D. agent’s responsibility to third parties—agent may not engage in misrepresentation of fact to third party
      1. positive misrepresentation—omission of facts even if buyer does not ask
      2. unintentional misrepresentation—broker makes false statement; does not know whether the statement is true or untrue
E. principal’s responsibility to agent
   1. cooperation
   2. compensation
   3. free from liability if principal has withheld information

F. principal’s responsibility to third parties
   1. disclosure and fairness to third parties
   2. seller property condition disclosure

II. REAL ESTATE BROKERAGE AND AGENCY
   A. brokerage—bringing buyers and sellers together
   B. brokerage contracts—created when principal hires broker
      1. contract is special agency with narrow authority
   C. agency and brokerage—are they synonymous?
      1. agency and brokerage synonymous most of the time

III. DETERMINATION OF COMPENSATION
   A. rate of commission—negotiable between broker and principal
   B. types of commissions
      1. percentage of final sales price
         a. net listing—illegal in New York
      2. flat fee
         a. flat fee to buyer brokers—commission paid to buyer broker not
            always determined by purchase price but by services provided
      3. commission of sales associates—established by owner of firm and sales
         associates
      4. franchise firms—franchise fee portion deducted from final commission
      5. cooperating brokers—commission paid to listing broker; then shared
      6. referral fees—payable to broker only with informed consent of party
         being referred

IV. CREATION OF AGENCY
   A. express agency—oral or written agreement
   B. implied agency—created by words or actions
      1. ratification—after the fact acceptance
      2. estoppel—party relies on incorrect representation
V. AGENCY ALTERNATIVES

A. cooperating brokers-in-house, or other offices, who participate as agents to buyers or sellers
B. subagent—agent of principal under agency relationship of primary broker
   1. must have principal’s informed consent
C. dual agent—attempt to represent buyer and sell in same transaction
   1. disclosure and informed consent of all parties
D. single agent—works only for buyer or seller
E. seller agent—works in best interest of seller
F. buyer agent—represents buyer
G. broker’s agent—hired through broker to work for that broker
   1. principal not vicariously liable for acts of broker’s agents
   2. broker who hired agents accepts liability
   3. still owes fiduciary duty to principal

V. SUBAGENCY: SUBAGENT AND BUYER BROKERS

A. subagency can be created by means of MLS
B. pooling of listings—offer of cooperation and compensation to MLS members whether acting as subagents of listing broker or buyer agent
   1. blanket unilateral offer of subagency no longer applies through MLS
C. agent may be buyer’s broker instead of working with listing broker
   1. buyer’s agent cannot be subagent of seller’s broker
D. if cooperating broker accepts subagency associated with listing—works through listing broker and principal’s subagent

VI. DUAL AGENCY

A. single licensee dual agency—agent represents interests of seller client and buyer customer in same transaction
B. broker dual agency—agents of broker represent buyer and seller in same transaction
   1. if broker offers other services such as negotiating mortgage for buyer when broker represents seller.
C. dual agency legal in New York with disclosure and informed consent
D. intended dual agency—listing broker acts as buyer’s broker and shows in-house listing with seller’s knowledge and consent
   1. neither can receive full representation
E. unintended dual agency—buyer led to believe by agent’s action being represented she is not
F. obligation of informed consent from all parties to transaction
   1. undisclosed dual agency breach of broker’s fiduciary duty
   2. violation of New York license law
   3. result in rescission of any contracts
G. undisclosed dual agency—subagent or seller agent working with customer/buyer agrees to negotiate for customer/buyer rather than working in best interest of seller client
H. consensual dual agency difficult
I. advance informed consent to dual agency—seller/buyer can agree to dual agency in advance of it occurring by indicated agreement on the agency disclosure form
J. company policies and in-house sales
   1. New York real estate offices provide consensual dual agency for in-house sales
      a. broker and buyer or broker and seller can dissolve agency relationship; accept customer status; retain another broker; represent himself
      b. all parties can accept consensual dual agency with disclosure and informed consent
      c. designated agent to represent a buyer and a seller within firm
K. obtaining informed consent of both parties
   1. section 443 of real property law provides for informed consent and written acknowledgment of dual agency in the sale or rental of 1- to 4-unit properties
   2. if seller and buyer agree to accept dual agency, acknowledgment of dual agency section of disclosure form must be signed
   3. disclosure only applies to one singular transaction at a time

VII. TERMINATION OF AGENCY
      A. ends in accordance with terms of contract
         1. expiration of listing contract
         2. completing terms of agency
3. operation of law—terminates at death of principal or agent
4. broker license revoked

VIII. AGENCY RELATIONSHIPS

A. sales associates affiliated with brokerage agents of broker; subagents of firm’s principals (clients)
   1. broker in two separate agency relationships
      a. broker—agent seller under listing agreement
      b. broker—principal of sales associates under subagency agreement
      c. broker responsible for actions of sales associates even though sales associate are independent contractors

B. single agency—broker represents buyer or seller in transaction

C. seller agency—firm elects to represent sellers of property
   1. handling in-house sales
      a. seller real estate firms offer alternative services to include buyer representation
   2. handling cooperative sales
      a. cooperative sales processed through MLS

D. who represents buyer in seller agency?
   1. if broker represents seller, buyer still has rights
      a. honest disclosure; property condition disclosure
      b. broker accurately answers questions from buyer
      c. broker complies with laws relating to discrimination

E. buyer brokerage—buyer as principal

F. popularity of buyer brokerage
   1. negotiate better price
   2. fiduciary confidentiality
   3. suggest creative financing
   4. common in commercial real estate

G. does everyone need agent?
   1. buyer agent shows MLS properties; others not listed
   2. shows property sold by owners

H. payment of buyer broker
   1. directly by buyer—rejects offer of cooperative commission

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2. common method—share in commission arrangement of listing broker—cooperating broker

I. buyers as clients
   1. buyer/purchaser listing agreement signed
   2. buyer broker has fiduciary relationship
      a. no employment of or vicarious liability for conduct of seller subagents

J. buyers as customers
   1. agencies specializing in buyer brokerage accept listings from seller clients
      a. prospective buyer elects customer status for properties listed with that firm

K. The NYS Home Equity Theft Protection Act-applies only to one-four unit residential property that is in default or foreclosure

IX. DISCLOSURE AND LISTING FORMS
   A. accompanied by disclosure form
   B. exclusive right to sell agreement—property listed with one broker
      1. if anyone else sells, broker still entitled to commission
   C. exclusive agency agreement—property listed with one broker
      1. if broker effects sale, entitled to commission; owner sells, broker earns no commission
   D. with these two contracts, agent discloses difference
      1. New York prohibits automatic extensions; specific time frame
   E. open listing agreement—seller lists with assistance of one or more brokers
      1. broker effecting sale entitled to commission
      2. if owner sells property; owes no commission
   F. exclusive right to rent agreement—between lessor and broker/agent
      1. rental fee paid to listing agent even if owner or another rents

X. AGENCY DISCLOSURE
   A. section 443 of Real Property law
      1. requires that licensees present written disclosure form
         a. sales and rental of residential 1- to 4-unit properties and residential condominiums and cooperatives in any size building
         b. two forms-agent/buyer or seller; agent/landlord/tenant
B. does not cover vacant land
C. utilized as follows:
   1. listing agreement
   2. present to buyer or buyer’s agent, first substantive contact
   3. buyer before entering into buyer/purchaser agreement
   4. buyer’s agent to seller; seller’s agent at first substantive contact
   5. signing of contract of sale
D. agent maintains copy—minimum of three years
E. Section 443 after new amendment as of January, 2011-allows advance informed consent to dual agency
F. relationship—Regulation 175.7 to Section 443
   1. broker makes it clear for which party he is acting
G. typical disclosure situations—open house; walk-ins; appointments; viewings
H. first substantive meeting—some detail and information about property shared
I. refusal to sign disclosure form
   1. agent must complete notarized declaration
   2. keep on file for three years
J. change in role
   1. buyer client agent to dual agent
   2. seller client agent to dual agent
XI. OTHER TYPES OF DISCLOSURE
   A. electrical service—written notice—no public electrical service
   B. utility surcharge—gas or electric—written notice provided by seller
   C. agricultural districts—if sold, specifically worded notice given
XII. THE REAL ESTATE BROKERAGE BUSINESS
   A. vicarious liability—person liable for actions of other
      1. section 442-c (RPL) broker vicariously liable for salesperson’s actions if:
         a. had actual knowledge
         b. broker retains benefits after knows of wrongdoing
XIII. ANTITRUST LAW
   A. violation—monopoly, contract, conspiracy, combination negatively impacts ability to do business

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1. called restraint of trade

B. history—antitrust laws; common law; need for statutes

C. Sherman Antitrust Act (1890); protect public against unreasonable restraint of trade

D. Clayton Antitrust Act (1914); supplements Sherman Act and has same general purpose

E. Federal Trade Commission (FTC) (1914) declares trade practices unfair

F. antitrust violations—include intrastate (within a state) trade
   1. New York has statutes against restraint of trade

G. enforcement—antitrust division; Department of Justice

H. Sherman Act violations
   1. corporations fined up to $1,000,000; individuals, up to $300,000
   2. felony; imprisonment up to three years
   3. Department of Justice imposes other fines

I. Federal Trade Commission—no penal sanctions per se illegal; not allowable under law
   1. price fixing; competitors conspire to charge same or similar price for goods or services
   2. group boycotts; conspiracy where person or group persuaded into not doing business with another
   3. market allocation agreement; agreement between competitors dividing certain area or territory for sales
   4. tie-in arrangements; agreements that buyer as condition of sale will buy another product from seller or not buy product or use service of another

J. United States v. Long Island Board of REALTORS®, Inc. 1972 WL 584 (E.D.N.Y.)
   1. legal precedent for anti-trust in New York
   2. similar sanctions to Prince George case

K. real estate and antitrust law
   1. commission rates must be negotiable
   2. MLS may circulate commission information
   3. commission rate altered with consent of both listing and selling broker
   4. recipient of commission must pay listing or selling broker agreed upon
percentage division
SUPPLEMENTAL LEARNING ACTIVITIES – CH 2

True or False

1. The customer of an agent is the party that the agent brings to the principal as sellers or buyers of a property.
2. Brokers may only be paid according to a percentage commission of the sales price of a property.
3. Net listings are always illegal in New York.
4. Commission split paid to sales associates in a real estate firm are established by fixed percentages set by MLS.
5. An agent as fiduciary cannot offer absolute loyalty to both buyer and seller in the same transaction.
6. A subagent does not have the same fiduciary responsibilities as the seller’s agent.
7. In New York, a seller/client should not agree to dual agency at the time of listing, but may accept it a future time in the real estate transaction.
8. Even after a listing contract terminates, the agent may still have authority to negotiate on behalf of a principal.
9. To violate antitrust law, the restraint of trade must be against the public interest.
10. The Antitrust Division of the U.S. Department of Labor enforces the Sherman and Clayton antitrust laws.
Multiple Choice – CH 2

1. Which of the following is NOT a broker’s obligation?
   a. loyalty to the principal
   b. disclosure of property defects to the buyer
   c. accounting of funds through a trust account
   d. disclosure of seller’s personal circumstances

2. Which of the following CANNOT be placed in a broker’s trust account?
   a. tenant security deposits
   b. MLS fees from agents in the office
   c. earnest money on one of the office’s listings
   d. rent on a client’s apartment

3. Commission fees may be established by:
   a. negotiation with the principal
   b. guidelines published by the local REALTOR® Board
   c. schedules established by DOS
   d. schedules established by MLS

4. An illegal commission arrangement in which the agent is authorized to keep all of the sales price over a given figure is a(n):
   a. flat fee
   b. net commission
   c. percent commission
   d. finder’s fee

5. A salesperson associated with a supervising broker can legitimately receive a fee directly from:
   a. his broker
   b. the seller
   c. the buyer
d. a cooperating broker

6. Smith enters into a contract with Harrison to sell certain land. During the negotiations, Smith, knowing his statements to be untrue, represents the nature of the soil, claiming it is firm enough to support the contemplated parking garage. Smith has engaged in:
   a. unintentional misrepresentation
   b. positive misrepresentation
   c. dual agency
   d. disclosure

7. A broker has the duty to disclose to the buyer which of the following?
   a. the amount of her commission
   b. seller’s financial status
   c. seller’s reason for selling
   d. structural defects

8. Bob Buyer asked Bill, a salesperson, if a home was well insulated. Bill said that he thought that it was since it was in such a nice neighborhood. After Bob bought the house he found that his heating bills were outrageous due to poor insulation. Which of the following is true?
   a. since Bill did not really know, he is not responsible.
   b. since Bob completed the transaction, he has no basis for further action against anyone
   c. Bill may be held liable for misrepresentation
   d. only Bill’s broker may be held liable for misrepresentation

9. Reginald Realtor had Betty’s land listed for sale at $70,000 when he became aware of a developer who would pay as much as $80,000 for the property. Reginald purchased the property from Betty for the full listing price, but failed to inform her of the higher resale offer. He then sold the land for the $80,000 to the developer. Which
of the following is true?

a. Reginald has done nothing wrong since Betty received the price she wanted
b. Reginald has done nothing wrong since he didn’t have a completed offer from
   the developer before the closing on Betty’s land
c. Reginald violated the duty of loyalty to his principal, Betty
   d. Reginald violated the duty of loyalty to his principal, the developer

10. A broker must always:

   a. present all offers to purchase to the property owner
   b. discuss a first offer with a later offeror
   c. tell the owner not to take and offer below the desired price
   d. advise the seller on legal matters.

11. A broker, in accepting commissions from both buyer and seller without disclosing
    the fact to both is:

   a. committing an illegal act
   b. following standard real estate practice
   c. guilty of appurtenance
   d. committing forgery

12. A multiple listing service proposed a “Uniform Pricing Guide” for real estate fees:

   a. this is an appropriate exercise of the regulatory power of DOS
   b. if the guide is published, all licensees would have to abide by its regulations
   c. if the guide is published, only members of NAR would have to abide by the regulations
   d. this is a violation of the Sherman Antitrust Act and is illegal
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CHAPTER 2
Part II THE INDEPENDENT CONTRACTOR EMPLOYEE
CLASSROOM HOURS: 1

RATIONALE
For the most part, salespersons will elect to become independent contractors. This form of employment may be different from what they currently experience. The responsibilities of the independent contractor, from both the salesperson and broker point of view, therefore, need to be defined to ensure compliance.

FOCUS OF PRESENTATION
1. Explain the nature of the independent contractor arrangement between salesperson and broker and the importance of financial record keeping and required IRS filings.
2. Review the basis for the federal and state laws which allow independent contractor status.
3. Review the terms of the independent contract relationship using the You Should Know highlight on page 95.
4. Review and discuss the independent contractor relationship agreement illustrated in Figure 2.15.
5. Encourage class discussion regarding the negotiation of an employment contract. This will help students to approach a broker with some idea of what to ask.
6. Discuss the necessary tax forms (1099 misc.) for IRS independent contractor filing.
7. Ask students why DOS Regulation 175.21 and DOS Regulation 175.23 (of the Real Property Law) are relevant to the independent contractor discussion.

LEARNING ACTIVITIES CONTAINED IN PART II
Key Terms: fill-in sentences (2)
Multiple Choice (15)

CHAPTER 2 PART II OUTLINE
I. INDEPENDENT CONTRACTOR VS. EMPLOYEE
   A. employee status affects how worker paid
      1. worker classified as independent contractor—no money withheld
      2. independent contractor earns more than $600, employer files Form 1099—misc. with IRS

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3. self-employment taxes

B. nonemployee status classified as independent contractors

C. IRS Code Section 3508(a)(b) IRS, real estate licensees as statutory non employees; independent contractors
   1. compensation related to output, not hours worked
   2. written contract between broker and sales associate
      a. not executed under duress

D. salesperson—broker independent contractor relationship
   1. salespersons work hours they choose; from home; have outside employment; responsible for expenses

E. negotiating an employment contract
   1. licensees must evaluate short and long term goals
   2. licensees must realize the differences among various brokerage firms

F. if non-compliance with independent contractor laws; then salesperson classified as employee

G. recommended forms; broker files IRS Form 1099-misc

H. broker still supervises
   1. required by DOS Regulation 175.21—Supervision of Salesmen

I. broker still maintains financial records
   1. required by DOS Regulation 175.23 Records of Transaction to Be Maintained

J. implications for future

K. IRS code—indpendent contractor status for sales associates
   1. status quo maintained unless statutory definition changed
SUPPLEMENTAL LEARNING ACTIVITIES – CH 2 - II

True or False

1. If a worker is classified as an independent contractor, no income is withheld from his paycheck.

2. According to the IRS code, real estate licensees are classified as independent contractors.

3. If an independent contractor earns over $200, a Form 1099 misc. must be filed by the employer.

4. In order to be classified as an independent contractor, monies received must be related to number of hours worked.

5. Federal and state laws require an independent contractor agreement between salesperson and broker.

6. Most brokerage offices in New York have similar commission payments to new sales associates.

7. If the salesperson-broker relationship is one of employer-employee, the broker must file a form 1099 misc. with the IRS.

8. A broker need only keep a record of residential transactions for one year.

9. Under the independent contractor arrangement, the broker does not have a duty to supervise.

10. Salespersons who work for commercial real estate firms must be independent contractors.
Multiple Choice  CH 2 - II

1. In Justine’s new office, the Procedures Manual for her independent contractors should NOT include:
   
   a. how to enter a listing into the MLS computer
   b. how to develop a marketing plan for a listing
   c. floor duty responsibilities
   d. the day and time of the mandatory weekly office meetings

2. Broker Kim plans to have her sales associates become independent contractors. The employment agreement should include:

   a. a statement explaining the minimum wage law
   b. health and unemployment insurance information
   c. that the sales associate will be paid solely on output
   d. the days and hours that the sales associate must be on duty

3. Elaine earned $400 last year as a salesperson and worked as an independent contractor. Her broker must file which of the following forms with IRS?

   a. 1099 misc.
   b. Form 1040
   c. Schedule C
   d. no form

4. Jamie would like to work as employee rather than an independent contractor. Which of the following applies?

   a. employee arrangements in the brokerage business are illegal
   b. he can become an employee of the broker if he and the broker agree to it
   c. he must work one year as an independent contractor before attaining employee status
   d. he must work for a commercial brokerage firm if he wants to become an employee
5. Which of the following statements is correct?
   a. New York does not have any laws pertaining to independent contractors
   b. the IRS treats real estate salespersons as statutory nonemployees or independent contractors
   c. salespersons who work more than 40 hours per week must agree to employee status
   d. independent contracts may not work more than 40 hours per week

6. In an independent contractor arrangement, the sales associate may:
   a. terminate the arrangement at any time
   b. work at least six months for a particular broker before terminating
   c. receive permission from DOS before terminating an arrangement with a broker
   d. pay a fee to DOS to terminate the arrangement with a broker

7. Autumn has a job she enjoyed at a New Age music store but she also wants to work as real estate salesperson in her spare hours. Which of the following is true regarding independent contractor salespersons?
   a. salespersons may not engage in outside employment
   b. salespersons may engage in outside employment
   c. salespersons may engage in outside employment only with the permission of the broker
   d. salespersons may engage in outside employment only if they work less than 20 hours per week in the brokerage firm

8. Broker Ben, a sole proprietor, went to Europe for three weeks and left his sales associate Michael in charge. Which of the following applies?
   a. Michael cannot be in charge as there is no broker supervision
   b. this is an appropriate arrangement
   c. this arrangement is prohibited by IRS regulations
   d. this arrangement is acceptable as long as no property closes while Broker Ben is away
9. In the sale of 1- to 4-unit residential dwellings, how long must a broker retain records?
   a. one year
   b. two years
   c. three years
   d. four years

10. How likely is it that all licensees will be required to become employees in the future?
    a. very likely
    b. very unlikely
    c. likely in New York but not in other parts of the country
    d. likely in other parts of the country, but not in New York
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CHAPTER 3

LEGAL ISSUES

PART I ESTATES AND INTERESTS

CLASSROOM HOURS: 3

RATIONALE FOR CHAPTER
This chapter introduces students to concepts concerning ownership of real property. At the conclusion of the chapter, students may feel somewhat saturated with new terms and surface knowledge, but as the class works with this information in later sections, they will see the benefit of this basic knowledge.

FOCUS OF PRESENTATION
1. First and foremost; keep in mind that you have three hours for this chapter. Keep things moving! Much of this content will come up in other subjects.
2. Define the concept of real estate, real property and the bundle of rights; illustrate this concept by using an actual bundle of pencils and “give” pencils (rights) to different students and illustrate the varying ownership rights.
3. Define the difference between the meaning of the term real property and then discuss air rights, mineral rights, and fixtures.
4. Define the two major types of estates in land: freehold which includes fee simple and life estates and nonfreehold or leasehold estates. These concepts are often difficult for students to grasp. To ease student anxiety, examples of each of the above types of estates should be provided. Use of the bundle of rights concept and the bundle of sticks will also be helpful.
5. Describe the ways in which title to real estate may be held. Again, try to add meaning to the terms through pneumonic devices and examples. When teaching ownership in severalty, for instance explain that this does not mean several but one. Stress “sever” meaning to cut or alone.
6. Define the different types of ownership by business organizations. Give examples of different types of ownerships as they relate to a real estate brokerage firms. This has been discussed in Chapter 1. Discuss both the general and limited partnership, limited liability companies and limited liability partnerships, stressing the liability exposure of the different types of partners.

LEARNING ACTIVITIES CONTAINED IN PART I
CHAPTER 3 PART I OUTLINE
I. ELEMENTS OF REAL PROPERTY
   A. bundle of rights
      1. real estate—land and all improvements
      2. real property—real estate plus all legal rights, powers, privileges inherent in ownership
      3. bundle of rights includes intangible rights; air rights, water rights, mineral rights, easements, leases, mortgages, licenses, profits
      4. real property includes everything permanently attached to land.
         a. land owner owns all structures and improvements
   B. everything not real property is personal property
      1. another name—chattel
      2. transferred by bill of sale
   C. land—downward to center of earth; upward to infinity,
      1. land includes soil, vegetation
      2. minerals below surface such as oil, gold, and silver
      3. air and subsurface rights
         a. may sell or lease to others; limited by zoning and federal law
      4. water rights—include percolating water rights, riparian water rights, surface water rights
         a. natural drainage important issue; landowner may not change
         b. riparian water right—belongs to owner of property bordering a flowing body of water
         c. littoral rights apply to property bordering body of water that is nonflowing; lake or sea
   D. fixtures—improvements both on and to land
      1. could have been personal property
         a. attachment
         b. adaptation
         c. agreement
2. exception—items of personal property that business operator installs in rented building space
   a. called trade fixtures—remain personal property
   b. may be removed at end of lease

II. ESTATES IN LAND
   A. estate in real property—interest giving holder right to possession
   B. estates divided into two groups; freehold estate and nonfreehold
      1. freehold estate—ownership for undetermined time
      2. leasehold—possession with a determinable end.

III. FREEHOLD ESTATES
   A. fee simple estates—inheritable; life estates are not
   B. fee simple absolute
      1. fee simple absolute most complete form of ownership; type most people have
   C. fee simple defeasible—ownership with conditions
      1. fee simple on condition—recognized by words “but if”; upon happening of stated condition, estate can be defeated with right of reentry
      2. qualified fee simple—recognized by words “as long as”; upon happening of stated condition estate automatically defeated
   D. life estates—ownership for life of owner or for life of another
      1. estate in remainder—conveyance to G for life and then another after G’s death.
      2. estate in reversion—upon death of life tenant, possession goes back to grantor or grantor’s heirs
         a. curtesy and dower—automatic life estates created by either husband or wife upon death of one or other; abolished in New York
         b. wife life estate—dower; husband life estate—curtesy
      3. rights and responsibilities of life tenants
         a. possess and enjoy
         b. net income produced by property
         c. right to timber for fuel and building—estovers; violation of estovers—act of waste
         d. pay property taxes and maintain property
IV. FORMS OF OWNERSHIP OF REAL PROPERTY

A. buyers have options in how to acquire property; vesting options

B. ownership in severalty—held in name of only one person or entity

C. concurrent ownership—two or more persons holding title at same time
   1. tenancy in common—one unity—possession
   2. joint tenancy—requires unities of time, title, interest and possession
      a. co-owners must have title in same instrument (deed), have same
         type of estate; same percentage of ownership; all co-owners have
         right of possession; right of survivorship exists
   3. tenancy by the entirety—only between husband and wife; otherwise like
      joint tenancy
   4. community property—several Western states; not New York
      a. husband and wife each own half of property, without the right of
         survivorship; equitable distribution
   5. trust—fiduciary relationship
      a. trustee holds title to property for benefit of another—beneficiary
      b. trustor conveys title to trustee who holds it for beneficiary

V. OWNERSHIP OF REAL ESTATE BY BUSINESS ORGANIZATIONS

A. partnership—two or more partners; created by contract
   1. general partnership—partner personally liable for debts exceeding partnership assets
      a. jointly and severally liable
   2. limited partnership—one or more general partners are liable; other partners liable up to
      amount they contributed
      a. used frequently in real estate investment

B. corporation—legal taxable entity requiring compliance with New York law
   1. can receive, hold, convey title to real property
   2. subchapter S corporations

C. syndication—multiple joint participation in real estate investment
   1. investment may be security as defined by Federal Securities Act; must
      include: investment of money; joint enterprise; purpose is making profit;
      profit derived from management by others

D. limited liability companies and limited liability partnerships
E. joint venture—pooling of resources to purchase real estate project.
   1. may be corporation; partnership; joint tenants; tenants in common
   2. mostly for one project

F. Real Estate Investment Trust (REIT)—source of funds to finance purchase of real estate
   1. trust can earn income from real estate investments without paying trust income tax
      a. gives 90% of taxable income to trust beneficiaries to avoid tax
How Would You Respond?

Lucy Baynes’ boutique, Natural Clothing, has expanded, and she plans on moving to a larger space when her lease terminates. She is arguing with her landlord because he refuses to allow her to remove the display shelves she had put up when she moved in. Lucy has promised her landlord that she will repair any damage to the walls when she removes the shelves. Who is legally correct: Lucy or the landlord?
True or False
1. The principle of supply and demand states that the greater the supply of any commodity in comparison to demand, the lower the value will be.
2. The location of a parcel of land is referred to as the situs.
3. Tenancy in common is ownership by husband and wife.
4. Items of personal property that a business owner installs in a rented building must stay with the building if the business owner terminates the lease.
5. Personal property is also known as chattel.
6. A freehold estate is ownership for an undetermined length of time.
7. A fee simple absolute estate is a freehold estate.
8. A leasehold estate never provides ownership of the property.
9. Personal property that attaches permanently to land or improvements is called a fixture.
10. A fee subject to a condition is not a defeasible estate.
11. If a conveyance is from grantor A for life and then to a named person upon death of A, it is an estate in reversion.
12. The life estate of dower and curtesy still exists in New York.
13. An estate for years exists only for a fixed period of time.
15. An estate at will may be terminated by either party simply by giving notice to the other party.
16. An tenant at sufferance has a legal right to remain on the property for as long as he wants.
17. When title to real property is held in the name of more than one person, it is called ownership in severalty.
18. Tenancy in common only requires the unity of possession to be valid.
19. Ownership as tenants by the entirety only refers to husband and wife.
20. New York is a community property state.
Multiple Choice

1. The attachment of an item of personal property to real property is known as a(n):
   a. fixture
   b. estovers
   c. emblement
   d. inchoate interest

2. An estate in which one person holds title only for the period of the lifetime of another is:
   a. life estate
   b. nonfreehold estate
   c. tenancy for years
   d. estate pur autre vie

3. An estate in which the title comes back to the grantor in the event of a breach of condition placed on
   the title is:
   a. fee simple absolute
   b. life estate in remainder
   c. life estate in reversion
   d. defeasible estate

4. An unmarried businessman specified that his property go to his nephew for the nephew’s life and then
   pass on to the businessman’s church. This is an example of a/an:
   a. life estate in remainder
   b. life estate in reversion
   c. nonfreehold estate
   d. estate pur autre vie

5. The leasehold estate that is characterized by a fixed period of time is:
   a. estate at will
   b. estate for year to year
   c. estate for years
   d. freehold estate

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6. The nonfreehold estate characterized by an automatic renewal of the interest at the end of its term in the absence of notice by either party to the other is:
   a. life estate
   b. estate from year to year
   c. estate at will
   d. estate pur autre vie

7. Tenancy in common is characterized by:
   a. all parties having the same interest
   b. survivorship
   c. marriage of the partners
   d. no requirement for owners to have the same interest

8. A key feature of joint tenancy is:
   a. unequal ownership of shares
   b. limitation of the number of partners included
   c. survivorship
   d. inheritance

9. Characteristics of tenancy by the entirety include:
   a. ownership by any two persons
   b. absence of survivorship
   c. ownership by husband and wife
   d. right of inheritance

10. Which of the following about condominium ownership is false?
    a. it applies to both residential and business property
    b. financing is not readily available
    c. one owns the individual unit exclusively
    d. tenants own the common area together

11. A cooperative is characterized by:
    a. identical units for all tenants
    b. individual ownership of the land
    c. individual freehold estates
    d. stock form of ownership
ANSWER KEY TO SUPPLEMENTAL LEARNING ACTIVITIES

How Would You Respond

Lucy is legally correct. The shelves installed by Lucy belong to her boutique and are therefore trade fixtures and are considered personal property. Lucy does have the responsibility of restoring the property to its original condition.

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CHAPTER 3
PART II LIENS AND EASEMENTS
CLASSROOM HOURS: 2.5

RATIONALE FOR CHAPTER
In this chapter, students are introduced to those factors that lessen the owner’s bundle of sticks in real property. These subjects will deepen students’ knowledge and understanding of the concepts of encumbrances including types of liens, easements, government restrictions, encroachments, and appurtenances and how they affect title and title transfer.

FOCUS OF PRESENTATION
1. Before you begin presentation, keep in mind that the time allotment is only 2 1/2 hours. In view of this, emphasize examples of liens and easements that are familiar to students and make use of the charts and illustrations in the chapter.
2. Introduce these topics as factors that diminish the bundle of rights, that is, take something out of the bundle, but leave the owner with the rest of the ownership “sticks.”
3. Define liens as a charge or claim against another’s property. This subject serves as a good example of how encumbrances diminish the bundle of rights. Refer to Figure 3.7 which illustrates examples of specific liens and voluntary liens and whether they are specific or general.
4. Describe easements as a “nonpossessory interest,” that is, the owner possesses the land but another has an interest in it. Figure 3.8 is a good visual example of an easement appurtenant.
5. Explain encroachments as a trespass of one’s property on another. Figure 3.10 is an excellent visual illustration of very common encroachments. Have students identify the encroachments in the figure.
6. Appurtenances can now be discussed. This is also the time to see if students have questions about air rights, water rights and so on.
7. This will lead into a discussion and definition of profits; the right to take products from other people’s property: oil and minerals are common examples. Define and illustrate with local examples, if possible.
8. The license, which is a right to use, but not own, another’s land, should be included in this discussion.
LEARNING ACTIVITIES CONTAINED IN PART II

How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill-in sentences (8)
Multiple Choice (15)

CHAPTER 3 PART II OUTLINE

I. LIENS
   A. claim or charge against property of another—security for debt
   B. lienholder may execute to force payment—foreclosure
      1. applied to liens in order of priority
   C. liens voluntary or involuntary
      1. voluntary lien—individual consents
         a. mortgage lien
      2. involuntary—legal proceeding where creditor places claim
         a. mechanic’s lien—contractor places lien for unpaid completed work

II. PRIORITY OF LIENS
   1. based upon when recorded with county clerk
   2. special priority—mechanics’ and materialmen’s
   3. highest priority—real property taxes, special assessments
      A. two groups of liens
         1. general liens—claims against person and all property
         2. specific liens—claims against specific property

III. SPECIFIC LIENS
   A. mortgage lien—debt incurred to purchase property
      1. property placed as security
      2. lender forecloses for nonpayment—property sold at auction
         a. proceeds satisfy liens in order of priority
      3. priority modified by subordination agreement
         a. earlier lender subordinate to later lender
   B. real property tax liens—levied by local government
      1. specific lien against real estate
2. have priority over all other liens
3. action for collection—tax sale

C. mechanics’ and materialman’s liens
   1. mechanics’—labor to specific property
   2. materialmans’—supplier
   3. New York lien for residential property filed with county clerk within four months from
date labor, materials furnished
      a. other types of property, liens filed within eight months
   4. mechanic’s liens renewed on an annual basis

D. lis pendens—legal notice of pending lawsuit concerning specific property

E. effects of liens on title—creates encumbrance
   1. paid in full before transfer of title
   2. foreclosure proceedings even if lien small amount
      a. mortgage lien—purchasers may assume seller’s mortgage instead of seller
         paying mortgage lien

IV. GENERAL LIENS
   A. judgment lien—court decree resulting from lawsuit
      1. against all real and personal property
      2. placed in other states—notice of lien
      3. enforced by execution of judgment
      4. proceeds from sheriff’s sale used to satisfy debt
      5. in effect—20 years in New York unless paid or discharged by bankruptcy
      6. renewed through court order to extend
      7. interest on judgment 9% per year
      8. writ of attachment—court order preventing transfer of attached property
during litigation
   B. income tax liens—imposed by IRS and NYS Dept. of Taxation and Finance
      1. creates general lien against all taxpayer’s property
         a. personal income tax, employee withholding tax, federal unemployment tax, self-
            employment tax, sales tax
         b. does not automatically receive priority status
   C. estate and inheritance tax liens—incurred at death of property owner on real
and personal property

1. general lien on property in estate passes to estate
   a. assures payment of taxes due at death
   b. New York imposes inheritance tax upon inheritance of real and personal property

2. federal government imposes tax on estate of deceased—federal estate tax
   a. lien attaches to all property in estate

3. federal and New York laws allow property to pass to surviving spouses without taxation

D. corporation franchise tax lien—yearly tax levied to corporations for doing business in New York
   a. subchapter S not taxed like other corporations

1. franchise tax calculated on net profit of corporation
2. if not paid, becomes lien against corporation’s assets
3. failure to pay invalidates corporation’s right to do business in New York

V. EASEMENTS

A. easement—nonpossessory interest in land owned by another

1. owns right to use or access to land
   a. ingress and egress (entry and exit)—primary purposes of easements
   b. common wall in duplex or condominium
   c. right to take water from land of another
   d. right to receive light and air

B. known as right-of-way

C. easements in gross—commercial easements in gross

1. owned by government or public utility
   a. example—underground water and electric lines

2. assignable by owner
   a. commercial easement in gross—sell or assign right to use easement to others

3. most common easement
   a. may be held by private sector

D. all other easements—easements appurtenant

1. between two land owners—one receives benefit; other accepts burden

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2. benefits—dominant tenement or estate
3. allows easement—servient tenement or estate
4. when easement still exists after title transfer—runs with land
5. to run with land—easement owner must own land for which easement is used (dominant tenement)
6. purpose—allows access to desirable feature

E. easements appurtenant—negative or affirmative
   1. affirmative—dominant tenement given right to physically enter servient tenement; negative—does not have right
      a. dominant tenement has right to restrict some activity or use of servient tenement
   2. negative easements appurtenant—view easements, aviation easements, and solar easements
      a. easement of light and air
      b. not common in New York

F. creation of easements appurtenant
   1. grant or reservation—express written agreement of land owners; usually deed
   2. easements by necessity—land has no access to roads; landlocked
   3. easements by prescription—obtained by use of land of another for legally prescribed length of time
      a. visible and well-known (notorious)
      b. continued and uninterrupted—ten years in New York
      c. court action
   4. easements by implication arise—implication from conduct of parties
   5. easement by condemnation—government’s right of eminent domain.
   6. party wall—common wall—two adjoining structures; called cross-easement

G. termination of easements appurtenant
   1. release by easement owner
   2. combining dominant and servient lands; called merger
   3. abandonment by easement owner
   4. purpose ceases to exist

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5. expiration of specified time for which easement created

VI. ENCROACHMENTS
A. encroachment—trespass on land of another
   1. created by intrusion to structure or object across boundary line
   2. includes tree limbs, fences, antennas, roof lines, driveways
      a. method determine existence—survey of boundary line
   3. New York—owner has right to bring legal action for removal of encroachment

VII. APPURTENANCES
A. appurtenances—ownership rights part of owning property
   1. may sell or lease rights to others
   2. includes profit, license, air rights, subsurface rights, and water rights
      a. accession rights—owners’ right to all land produces or added to land
   3. Accession rights are discussed in Chapter 4 Part III.

(Note to instructor: air rights, subsurface rights, and water rights are discussed in Chapter 3 Part I)
B. profit—right to take products of soil from land of another
   1. created same as easements
      a. salable, inheritable, and transferable
C. license—permission to do acts on land of another without possessing any estate or interest
   1. licensor may revoke at any time unless licensee has paid for specific time period
   2. not assignable or inheritable; temporary privilege
How Would You Respond?
Justine wants to purchase a small cottage which is situated directly behind a beachfront estate. On the left side of the beachfront property is a small path that leads directly to the beach. The salesperson she is working with assures her that the cottage has an easement which will allow her to use this path. The current owners have been using the path for 20 years. Justine doesn’t believe her salesperson as she thinks that when the property transfers to her, she will lose her right to use the easement.

Who is correct, Justine or her salesperson?

In this scenario, which property is the dominant tenement?

Which property is the servient tenement? Explain your answer.
SUPPLEMENTAL LEARNING ACTIVITIES  Ch 3 - II

True or False

1. The most common form of easement is the easement in gross.

2. Since easements run with the land, they can never be terminated.

3. An easement by prescription gives the right of continued use, not ownership of the land.

4. An example of an easement by grant is dedication of land for a common area.

5. A mortgage lien is a specific voluntary lien.

6. A real property tax lien is a specific voluntary lien.

7. A special assessment is a general involuntary lien.

8. A mechanic’s lien need not be recorded to be valid.

9. A judgment lien is against the real and personal property of the judgment debtor.

10. Only state taxing authorities and not the federal government may impose income tax liens.

11. Restrictive covenants are typically found in residential subdivisions.

12. Restrictive covenants may be enforced by local zoning officials and building departments.

13. A license implies possession of an interest in the real estate.

14. The existence of an encroachment may be determined by a survey of the boundary line.

15. The priority of the liens cannot be changed.
Multiple Choice

1. Which of the following is NOT an example of government limitation on the rights of property ownership?
   a. eminent domain
   b. restrictive covenants
   c. power of taxation
   d. escheat

2. The “trespass on the land of another” describes a(n):
   a. encroachment
   b. encumbrance
   c. easement
   d. profit

3. If an owner has the right to cross the land of her adjoining neighbor, she has a:
   a. servient estate
   b. dominant estate
   c. negative easement
   d. real property lien

4. John and Marcia are neighbors. John has the right to drive over Marcia’s land to get to a lake. Marcia has the right to prevent John from building a structure that would obstruct Marcia’s view of the lake.
   a. John has a negative easement appurtenant
   b. Marcia has an affirmative easement appurtenant
   c. John has an affirmative easement in gross
   d. Marcia has a negative easement appurtenant
5. An easement arising by Sam’s use of Marlene’s land for a continuous period of time is an easement by:
   a. expression
   b. implication
   c. necessity
   d. prescription

6. An electric utility company would obtain the right to run power lines through a property with a(n):
   a. appurtenant easement
   b. riparian right
   c. demise
   d. easement in gross

7. A license includes which characteristic?
   a. nonpossessory use of another’s land
   b. permanent and devisable privilege
   c. possessory use of another’s land
   d. assignable and transferable privilege

8. Which of the following is NOT a lien?
   a. a claim or charge against another’s property
   b. executed by foreclosure
   c. an encumbrance affecting title
   d. nonpossessory ownership of the land of another

9. Which of the following is NOT a specific lien?
   a. income tax
   b. mechanics’
   c. materialmens’
   d. real property tax
10. General liens include:
   a. real property tax
   b. judgment liens
   c. claims of a lumber supplier
   d. claims of a carpenter

11. Priority of liens is generally established by:
   a. order of recording
   b. understanding that income tax is first
   c. understanding that mortgages are first
   d. dollar amount of the various liens

12. The condemnation of land for use as an access to a highway is an example of:
   a. police power
   b. eminent domain
   c. zoning regulations
   d. power of escheat
How Would You Respond?

Justine’s salesperson is right. The easement has been used for more than ten years and therefore runs with the land and the transfer of title will not affect the easement. Justine’s property would be the dominant tenement because she is the user of the easement and the beachfront property would be the servient tenement as it would provide the pathway that Justine needs for beach access.

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CHAPTER 4
PART III DEEDS
CLASSROOM HOURS: 2.5

RATIONALE FOR CHAPTER
This chapter presents the concept of alienation; that is, the transfer of title to property. One might ask, how much does the licensee need to know about this subject? The deed is the most important document in the transfer of real estate. It is through this document that the licensee can understand what must happen in the transfer of title. This includes problems that can arise. An understanding of title transfer can provide important background knowledge.

FOCUS OF PRESENTATION
1. Once again, time is an important factor: 2 1/2 hours! Look over the chapter, and try to arrange a pace to take you through everything with emphasis on the types of deeds most commonly used in your market area.
2. A short explanation of the difference between voluntary and involuntary transfer of title should be addressed first. It is possible that many students will think that title is always transferred voluntarily.
3. Take the students through the basic elements of a valid deed; and then explain the types of deeds. Examples in this chapter include the full covenant and warranty deed with lien covenant, the bargain and sale deed and the quitclaim deed. After reviewing these and the other deeds, have students complete the Putting It To Work exercise where they are asked to identify the various parts of a deed. This will help you see how much students have absorbed.
4. Spend a short amount of time on property description and then discuss methods of transferring title through a will. The key here is for students to know that sometimes property transfer is effected through an estate and they should note the differences in this kind of transfer. Table 4.1 within the chapter summarizes all title transfer discussed in the chapter.
5. The remaining time should include a short definitional discussion of adverse possession, and accession rights. Have students memorize the meaning of accretion, alluvion, avulsion and reliction. The key terms review should help here. Refer to Figure 4.7 that depicts these concepts.

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LEARNING ACTIVITIES CONTAINED IN PART III

Putting it to work: identifying different sections of a deed from information contained in the chapter (2)
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill-in sentences (8)
Multiple Choice (15)

CHAPTER 4 PART III OUTLINE

I. VOLUNTARY AND INVOLUNTARY ALIENATION
   A. voluntary—willing transfer of title
      1. in life; through deed; at death; through valid will
   B. involuntary alienation—unwilling transfer of title
      1. during life—lien foreclosure sale, adverse possession, filing petition in
         bankruptcy, eminent domain
      2. death—through escheat

II. DEEDS
   A. used to legally convey title to real property
   B. elements of valid deed
      1. writing; required by Statute of Frauds
      2. grantor; legally competent; capacity to contract
      3. grantee; does not need legal capacity; must be living
         a. minors and legally incompetent people cannot convey title
      4. grantor in deed—party of the first part
      5. grantee in deed—party of the second part
   C. property description; formal legal description of property
   D. consideration; does not have to recite actual amount of consideration
   E. words of conveyance; contained in granting clause
      1. indicates type of deed
   F. habendum clause; describes that estate granted
      1. clause begins “to have and to hold
   G. execution; signed by each grantor
   H. acknowledgment; makes eligible for recording
1. before public officer such as notary public
2. without acknowledgment, grantee cannot record deed; no protection to title

I. delivery and acceptance; grantor delivers; grantee accepts

III. TYPES OF DEEDS

A. most frequently used in New York: full covenant and warranty with several covenants, quit claim deed, and bargain and sale deed

B. full covenant and warranty deed—contains strongest title guarantee
   1. covenant of seisin—grantor holds title deed and is conveying
   2. covenant of right to convey
   3. covenant against encumbrances—no encumbrances against title except those in deed
   4. covenant of quiet enjoyment—grantee not disturbed due to defect in title
   5. covenant for further assurances—grantor must perform necessary acts to correct defect in title
   6. covenant of warranty—defend title against lawful claims of all persons—most important covenant
   7. warranty deed with lien covenant—grantor guarantees no outstanding liens
      a. if there is—grantor satisfies
      b. commonly used in New York

C. bargain and sale deed—with or without covenants of warranty
   1. grantor has substantial title and possession
   2. conveys property for consideration, money, its equivalent
   3. with covenants—guarantees—grantor has not encumbered property in any way except that which stated in deed
      a. does not deal with prior encumbrances
   4. acceptable to lenders; bargain and sale deed without covenants is not
   5. used extensively in New York City

D. quitclaim deed contains no warranties
   1. deed of release
   2. may be used to clear “cloud on a title”
E. deed of gift; conveyed by full covenant and warranty or by quitclaim
   1. no consideration
F. judicial deed; court order
   1. includes sheriff’s deed, tax deed, guardian’s deed, referee’s deed, administrator’s, executor’s
   2. contain no warranties
G. guardian’s deed; used when property owner legally incompetent; not reached age of majority
H. sheriff’s deed; held by sheriff to pay judgment against property owner
I. referee’s deed—conveyance of property by court order referee may act for sheriff
J. tax deed; conveys title to new owner municipality obtained from original owner’s failure to pay taxes

IV. PROPERTY DESCRIPTIONS
   A. government or rectangular survey system; western section of nation; not New York
   B. metes and bounds; used frequently in New York
      1. metes—distances from point to point
      2. made from survey
      3. always ends at point of beginning
   C. description by reference, lot and block (plat of subdivision)
      1. incorporate into deed in addition to metes and bounds
      2. may be only description in deed
      3. may refer to plat(map) and lot number as part of subdivision
   D. monument; used in place of metes and bounds when describing multiple acre tracts
      1. if expensive to survey
      2. description from permanent objects—stone wall, large trees, boulders

V. METHODS OF TRANSFERRING TITLE
   A. descent—intestate—no valid will; laws of intestacy determine order of distribution
   B. escheat—property goes to state if no heirs
      1. only form of involuntary alienation after death
2. person appointed by court to distribute property of person dying intestate—administrator or administratrix

C. will—voluntary alienation
   1. leaves will—died testate; deceased called testator (male); testatrix (female).
   2. person appointed to carry out provisions will; executor (male), or an executrix (female).
   3. probate—judicial determination of validity of will by court
   4. gift of real property by will—devise; recipient; devisee
   5. gift of personal property by will—bequest or legacy; recipient; beneficiary or legatee

D. formal or witnessed will—signed before two witnesses; declares document to be last will and testament

E. codicil; supplement or appendix to will
   1. dedication by deed—developer, in plat of subdivision may, portion of land for common area

F. public grant—real property from government to private party
   1. instrument of conveyance—land patent
   2. also means land conveyed

G. adverse possession—person other than owner claims title
   1. conditions of possession:
      a. open and well known
      b. under color of title or claim of title
      c. without owner’s permission
      d. continuous and uninterrupted for ten years in New York
      e. satisfy court in action to “quiet title”

H. accession rights—owners have right to all land produces or adds
   1. accretion—gradual building up of land in watercourse—deposits of silt, sand, gravel
   2. alluvion—land mass added to property over time by accretion
   3. avulsion—loss of land when sudden or violent change in watercourse results in its washing away
   4. relicension—increase in land by permanent withdrawal of sea, river, lake,
stream

5. accretion and reliction alter boundary line of property
Putting It To Work

We have a camp on a lake. Additional dry land has developed on the edge of the lake between our lot line and the water. This has happened because of changes in the size of the lake and a buildup of sediment from streams feeding the lake.

Do I own this “new” land?
True or False CH 4 DEEDS

1. A bargain and sale deed with covenants is usually acceptable to lenders for mortgage purposes.

2. A quitclaim deed is a deed of release and contains no warranties.

3. A grantee conveys the title to real property through a deed.

4. A gift of personal property by will is a bequest.

5. The laws of alienation determine the order of distribution of property to heirs.

6. A supplement or appendix to a will changing a bequest in the will is called a condition.

7. A will can devise real property.

8. A valid deed must be in writing.

9. An example of a judicial deed is a guardian’s deed.

10. In New York, to attain real property through adverse possession, the possession must be continuous and uninterrupted for a period of ten years.

11. An easement may be dedicated by deed.

12. The land mass added to property over time by accretion is called alluvion.

13. The process of reliction may result in a property owner losing some of her land.

14. Accession is not an ownership right.

15. A will is not a method by which real property may be transferred.
Multiple Choice        CH 4 DEEDS

1. Which of the following is NOT a method of involuntary alienation?
   a. lien foreclosure
   b. adverse possession
   c. condemnation under eminent domain
   d. devise

2. Which of the following is NOT a requirement for a person claiming title under adverse possession?
   a. notorious use
   b. color of title
   c. permission of the owner
   d. uninterrupted use

3. Which is an example of involuntary alienation after death?
   a. testamentary disposition
   b. lien foreclosure
   c. escheat
   d. the devise of real property

4. Which of the following is NOT an essential element of a deed?
   a. signature of grantor
   b. signature of grantee
   c. consideration
   d. words of conveyance

5. In order to be recorded, New York requires a deed to be:
   a. acknowledged
   b. witnessed
   c. sealed
   d. clouded
6. Recording of a deed guarantees:
   a. actual notice
   b. constructive notice
   c. statutory notice
   d. clear title

7. Title to real property passes to the grantee when the deed is:
   a. signed by the grantor
   b. signed by the grantee
   c. delivered and accepted
   d. recorded

8. James Little sold a parcel of land to Marvin Acres and gave Acres a quitclaim deed. What warranties are given under such a deed?
   a. Little owned the property
   b. there are no encumbrances against the property
   c. Little owned a fee simple interest
   d. no warranties
Putting It To Work

The gradual creation of dry land where there was once only water due to the deposit of sediment is known as “accretion.” If dry land is created by a receding water line, the process is “reliction.”

A general rule is that when either accretion or reliction occurs, the landowner’s boundary line and land area are extended to take in the new land formed. This new land is known as the “alluvia.” This general rule makes sense, especially when you consider that the size of your land could be reduced through erosion. Since you are subject to the loss of land through natural forces, you should be subject to possible gains through different acts of nature. Also, you are the only person who reasonably could use this new land.

Remember, this is a general rule and it does not apply to an abrupt and perceptible change in the size or shape of the land. Ask an attorney to help you record your claim to the new land.

**True or False/ Multiple Choice**

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CHAPTER 4
Part IV TITLE CLOSING AND COSTS
CLASSROOM HOURS: 2

RATIONALE FOR CHAPTER
This chapter discusses the most important part of the real estate transaction: the closing. Not only will title transfer, but that well earned commission will finally materialize. By the time of closing, the licensees role is practically over, as attorneys for the buyer, seller, and lender usually prepare documents and arrange the details. It is helpful, however, for the licensee to understand the documents, expenses, and other elements of a closing. In this way, licensees can alert sellers and purchasers as to what to expect at closing and what their responsibilities are.

FOCUS OF PRESENTATION
1. The main problem with covering this subject is that with only two hours, you will have to do some fast teaching. If possible, have your students read over the chapter prior to this particular presentation. As you will see in the textbook, the topics are not discussed in great detail. A basic knowledge of what happens immediately before and during the closing should be your focus.
2. First discuss what a closing is. Ask students if they have participated in a closing and what their experience has been like.
3. Review why recordation is important. Students should already understand this concept from reading Chapter 4 Part III Deeds.
4. Briefly review and explain the documents required for a closing and which parties need to supply them. Explain what a title search is and the chain of title. Review the implications of an “unclear” or bad title.
5. Discuss the licensee’s role before closing which will primarily consist of arranging for a final walk through of the property. Include how the commission is paid; this will be of interest to all. See Figure 4.9 Broker Commission Agreement.
6. Spend some time reviewing RESPA and why it is important. Emphasize that it applies to federally financed residential property, not commercial. Use the You Should Know learning highlight on p. 171 to discuss the differences between RESPA and TILA.

7. Explain the meaning of debits and credits, what a closing statement is, and what prorations are and why they are necessary. Table 4.3 includes a list of title buyer and seller debits and credits. Computing prorations is explained in the chapter.

8. Explain prorations utilizing Figure 4.12, exercises for determining prorated items.

9. Explain other costs specific to closing such as transfer tax, mortgage recording tax, attorney’s and lender fees. Condominium and cooperative closings are discussed in Chapter 16.

LEARNING ACTIVITIES CONTAINED IN PART IV

Key Terms: fill-in sentences (8)
Multiple Choice (15)

CHAPTER 4 PART IV OUTLINE

I. WHAT IS A TITLE CLOSING?
   A. interested persons review and execute documents, pay and receive money, receive title to real estate
   B. functions of those who will attend the closing
      1. buyer pays; receives title
      2. seller paid; grants title
      3. agent collects commission
      4. attorney represent parties
         a. lenders—attorneys do not represent purchaser
   C. recording acts
      1. title insurers, abstractors, and attorneys rely on recorded documents

II. PRELIMINARIES TO CLOSING
   A. deed and other closing documents
      1. deed used to convey title
   B. survey—assure that no encroachments exist
      1. blueprint showing measurements, boundaries, area of property
   C. additional documents—depends on particular closing
1. bill of sale of personal property
2. certificate of occupancy
3. closing or settlement statement (HUD Form No. 1)
4. sales contract
5. deed
6. mortgage
7. note
8. disclosure statement
9. estoppel certificate
10. homeowner’s policy or hazard insurance policy
11. lease
12. lien waivers
13. mortgage guarantee insurance policy
14. option and exercise of option
15. installment land contract (contract for deed)
16. flood insurance policy
17. fire alarm or smoker detector affidavit

D. recording acts—protection for owner’s title against subsequent claimants
   1. recording provides protection in form of constructive notice
   2. actual notice; person knows about and sees document
   3. recording determines priority of interests in property

E. marketable title—seller must provide evidence
   1. title examination determines quality of title
   2. must be made by attorney, abstract, or title company
   3. marketable title not perfect title; not necessarily free of liens
   4. done through title search of all documents

F. chain of title
   1. must be unbroken for title to be good

G. abstract of title with attorney opinion—condensed history of title
   1. contains legal description of property
   2. summarizes related instruments in chronological order
   3. update should be obtained before closing
H. title insurance—insures policy owner against financial loss if title not good
   1. issued by same companies that prepare abstracts of title; issued upon
      acceptable abstract or title opinion
   2. premium is one-time payment when policy placed in effect
I. where closings are held—office of lender, attorneys’ offices, title company,
   local county clerk’s
J. property inspection—buyer inspects before closing
   1. “whole house inspection” by professional inspection company
K. pest inspection—seller responsible for treating and repairing damage
L. perc, soil, and water-flow tests
   1. perc test, inspection of percolation of septic system
   2. if property commercial, seller responsible for soil test to detect environmental problems
   3. water-flow tests conducted if water not municipal
M. role of licensee before closing—goes with purchaser on walk-through
N. payment of commission—closing
   1. all or part of deposit money typically credited toward commission
   2. broker who receives money puts it through escrow account and disburses monies due
      other agents
O. homeowner’s insurance—buyer usually provides homeowner’s fire and hazard
   insurance
   1. lender listed on policy as additional insured
P. standardized homeowner’s insurance policies
III. REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)
   A. applies to residential federally financed properties, not commercial properties,
      refinanced, owner financed loans
   B. purposes
      1. advance disclosure of settlement costs
      2. protect borrowers from unnecessarily expensive settlement charges
      3. provide borrowers with timely information
         a. three working days of loan application—lender provides good faith estimate
      4. eliminate referral fees or kickbacks—lenders permitted to charge only
         for services in amount of cost
5. buyer’s guide to settlement costs booklet
6. unreasonable or unnecessary settlement charges avoided

C. HUD Form No. 1.—lenders use standard settlement form to itemize all charges
   1. not required for assumptions and nonresidential loans

IV. CLOSING STATEMENT
   A. sets forth distribution of monies
   B. prepared by representatives of buyer and seller
   C. attorney, broker, lender, title company, or escrow agent

V. CLOSING COSTS AND ADJUSTMENTS—PREPARATION OF CLOSING STATEMENTS
   A. first step in preparing closing statement—list all items in transaction
   B. items include two categories: debits or credits; items owed are debits
      1. debits
         a. paid by buyer—buyer debits
         b. owed and paid by seller—seller debits
      2. credits
         a. money received by buyer—buyer credits
         b. money received by seller—seller credits

Note to instructor: See Table 4.3 of text which lists typical debits and credits

C. seller closing costs
   1. real property transfer tax (revenue stamps); tax on conveyance of title to real property
      a. paid by seller
      b. based on consideration seller receives
      c. $4.00 per $1,000 of purchase price
      d. subtracts amount of mortgage being assumed
      e. tax only on “new money” brought into transaction
      f. New York City; additional residential transfer tax (additional transfer tax of 1% of selling price; selling price over 500,000—tax 1.425%. Other property types; 1.425%; if consideration more than $500,000—2.625%
2. broker’s commission—percentage of selling price
   a. NYS Commission Escrow Act-applies to 1-4 unit residential properties and condos and coops -protects the brokers commission when a seller does not pay the full commission upon closing

3. attorney’s fees
4. cost of recording documents to clear title
5. satisfy existing liens

D. purchaser closing costs
1. title insurance policy
2. title search—paid by buyer or seller
3. mortgage recording tax
   a. three-quarters of a percent of mortgage amount in certain counties
   b. where public transportation system, amount one percent; three quarters paid by purchaser, one-quarter paid by lender
4. attorneys’ fees
5. lender fees
   a. escrow account for property taxes
   b. discount points
   c. credit check
   d. loan origination fees
   e. survey may be paid by seller or buyer

E. other recording fees
1. New York State Office of Real Property Tax Services requires recordation of Real Property Transfer Report form
   a. filed with county clerk;
   b. copy goes to local assessor
2. Combined Real Estate Transfer Tax Return
   a. indicates purchase price
   b. filed with county clerk—$5.00 filing fee typically paid by seller

VI. ADJUSTMENTS—PRORATIONS AT CLOSING
A. items adjusted and prorated
   1. include real estate taxes, fuel, survey, water and sewer charges, security
deposits, interest, homeowner’s association dues, insurance

B. ensure fair apportioning of expenses between buyer and seller

C. prorated items either accrued or prepaid

1. accrued expenses—costs seller owes at day of closing but buyer will pay
   a. seller gives buyer credit for these items
   b. includes unpaid real estate taxes, rent collected by seller, interest on seller’s mortgage assumed by buyer

2. prepaid expenses—costs seller pays in advance and not fully used up
   a. shown as credit to seller and debit to buyer
   b. prepaid taxes and insurance premiums, rent paid by seller under lease assigned to buyer, utilities billed and paid in advance, heating oil in tank

VII. RULES FOR COMPUTING PRORATIONS

A. identify the appropriate period to be prorated

   1. calendar year for property taxes
   2. month, for mortgage interest
   3. anniversary date, e.g., for insurance

B. reduce annual rate to daily rate by dividing by 360 (the number of days per year for our purposes)

C. determine number of days used in period

   1. add in days of month of closing

D. multiply number of days used times daily rate to figure dollar amount used of period

E. determine whether to

   1. debit this amount if in arrears
   2. credit the unused portion if paid in advance

Note to instructor: Refer to specifics in the Chapter for further explanation of proration calculations
SUPPLEMENTAL LEARNING ACTIVITIES  CH 4-TITLE CLOSING AND COSTS

True or False

1. At closing, lender attorneys usually represent the best interests of the purchaser.

2. Recordation of closing documents is a form of actual notice.

3. The Torrens system is a common form of title registration in New York.

4. A form of title evidence is an abstract of title.

5. Once a prospective purchase signs a contract, she may not re-enter the property until after the closing.

6. The broker commission is generally paid sometime before closing.

7. A lender is often listed on the homeowner’s policy as an additional insured party.

8. A perc test measures the heat transfer through the walls of the structure.

9. Generally, if pest infestation is found on the property before closing, the purchaser must pay to treat the problem.

10. RESPA requirements apply to both residential and commercial loans.
Multiple Choice

1. Which of the following do NOT appear as debits in the seller’s closing statement?
   a. balance due to the seller
   b. broker’s fee
   c. earnest money deposit
   d. unpaid property tax

2. If a seller has paid her entire real property tax of $1,200 for the year in advance, the appropriate entry in the closing statement for an October 30 closing would be:
   a. credit seller $200, debit buyer $200
   b. credit seller $200, debit buyer $1,000
   c. debit seller $200, credit buyer $200
   d. debit seller $200, credit buyer $1,000

3. A purchase money mortgage will appear in the closing statement as a:
   a. credit to seller and debit to buyer
   b. credit to seller and credit to buyer
   c. debit to seller and credit to buyer
   d. debit to seller and debit to buyer

4. A buyer is NOT credited for which of the following?
   a. prepaid real property tax
   b. earnest money
   c. sale of personal property
   d. unpaid property tax
5. A tax on the capital gain derived by foreign people on the sale of their real property in the U.S. is stated in which of the following documents:
   a. Real Property Transfer Report
   b. FIRPTA Certificate
   c. Title Abstract
   d. Property Condition Disclosure Form

6. Which is NOT a debit to the seller?
   a. mortgage interest in arrears
   b. broker’s fee
   c. unpaid assessments
   d. private mortgage insurance

7. Which of the following is NOT a possible lender fee associated with obtaining a mortgage?
   a. underwriting fee
   b. origination fee
   c. loan lock fees
   d. structural inspection fee

8. If a home is sold on the 17th of the month with a lease of $300 per month in effect for a tenant, we would expect to see:
   a. credit to the buyer for $300
   b. debit to the seller for $300
   c. credit to the buyer for $130
   d. debit to the seller for $170

9. A reserve held by the lender to pay for taxes and insurance when due is called the:
   a. closing statement
   b. proration
   c. earnest deposit
   d. escrow
10. Before closing, the lender may NOT do which of the following?
   a. verify the borrower’s employment
   b. investigate the racial composition of the neighborhood
   c. order a property appraisal
   d. order a credit report on the borrower

11. A document prepared before closing which assures the buyer that no encroachments exist on the property is known as a(n):
   a. estoppel certificate
   b. lien waiver
   c. survey
   d. chain of title

12. A document that insures an owner, lender, or other interested party against financial loss if the title if not good is known as:
   a. title abstract
   b. title insurance
   c. chain of title
   d. private mortgage insurance
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CHAPTER 5
THE CONTRACT OF SALE AND LEASES
PART I LEASES
CLASSROOM HOURS: 1

RATIONALE FOR CHAPTER
In New York, if an individual leases property for more than one owner, a real estate license is required. In many cases, all or a large part of a licensee’s business may be renting or even managing property. The business of leasing involves disclosure just as does the sale of property. The same laws also apply as to handling funds, not acting as an attorney, and so on. The chapter offers practical information which will benefit all licensees.

FOCUS OF PRESENTATION
1. First, emphasize that a lease is a contract and falls under the same laws as other real estate contracts in New York. Review basic terminology here; lessor; lessee; leasehold estates.
2. Next, review the types of leasehold estates. There are certain rules for periodic estates in New York and New York City. This is a common type of lease, so review thoroughly.
3. Rent regulations are governed by several laws including the Emergency Tenants Protection Act of 1974 (revised 1997). These regulations are particularly important to New York City students.
4. Lease provisions are fairly standard. You may want to share a completed lease from your market area with students as you review this section.
5. Topics such as the security deposit, improvement to the premises, assignment and subletting are important topics in any discussion of leases. This is a good time to encourage class discussion since most people have had some experience with these issues.
6. After explaining the lease, have students complete the Putting It To Work activity which gives them information to fill out a sample lease from a form in the chapter. You may also supply your own blank form.
7. Finish your presentation with a discussion of eviction proceedings. Basically, students should know the terms: constructive eviction, actual eviction, and self-help.
LEARNING ACTIVITIES CONTAINED IN PART I

Putting it to work: creating a sample lease application from information contained in the chapter (1)

How Would You Respond?: typical scenarios to analyze (2)

Key Terms: fill-in sentences (9)

Multiple Choice (15)

CHAPTER 5 PART I OUTLINE

I. DEFINITION OF A LEASE

   A. contract, in which owner transfers possession for prescribed time period
      1. consideration—rent
      2. landlord—lessor; tenant; lessee
      3. tenant has quiet enjoyment of premises
      4. landlord receives money plus reversionary interest

II. TYPES OF LEASEHOLD ESTATES

   A. leasehold estates less than lifetime
      1. provide possession, but not title
   B. estate for years
      1. exists for fixed period of time
      2. at end of time, estate (rental agreement) terminates automatically without notice
   C. periodic estate (estate from year-to-year)—period any negotiated time
      1. automatically renews itself for another period at end of each period unless one party gives notice to other at prescribed time before end of lease
   D. estate at will—duration of term unknown
      1. either party may terminate lease by giving notice to other
      2. notice of termination given at least 30 days before termination date
         a. must be served personally to tenant or conspicuously posted on premises
   E. month to month tenants
   F. estate at sufferance—tenant who is originally in lawful possession but refuses to leave after right to possession terminates
1. known as holdover tenant
   a. institute eviction proceedings
2. if landlord accepts rent after expiration of term, month-to-month tenancy created

II. STANDARD LEASE PROVISIONS

A. contractual requirements of offer, acceptance, legal capacity, legal purpose, consideration, reality of assent apply
   1. no statutory forms of leases in New York
B. capacity to contract
C. demising clause—takes possession of property
D. description of premises—formal legal description not required
E. clear statement of “term” or length of lease
   1. no limitation upon length of time
F. specification of rent and how paid
   1. due at end of lease period unless lease states otherwise
G. must be in writing for term of more than one year
   1. Statute of Frauds; New York—General Obligations Law
   2. oral leases under one year enforceable by courts
H. signatures of lessee and lessor need not be notarized unless lease recorded
   1. lease need not be recorded unless for term exceeding three years
   2. if lease recorded, must be signed, acknowledged, notarized
      a. recordation provides constructive notice of tenant’s rights in event of sale; death of landlord
I. plain language requirement for residential leases
   1. appropriately divided and captioned
J. use provisions—residential; premises must be reasonably used for intended purpose
   1. unless lease specifically prohibits, commercial leases allow premises used for any lawful purpose
      a. commercial lease may limit use of premises

III. TERMS OF LEASE

A. commercial leases—expressed in annual terms
   1. no New York statutory rights to renewal
B. commercial tenants may want options to expand premises or renew terms
   1. option to renew sets forth method for renewal
      a. may include option to buy
C. right of first refusal to allow expansion into additional space before leased to another tenant
D. residential leases
   1. Emergency Tenant Protection Act—revised 1997
      a. provisions for rent stabilization and rent control
      b. sets maximum allowable rent increases
E. security deposits—often negotiated as one month’s rent
   1. repair of only that damage tenant causes beyond ordinary wear and tear
   2. landlord can charge tenant separately for cleaning and repainting if parties agree
   3. security deposit not commingled with other monies of landlord
      a. escrow account
      b. multiple dwellings, six or more units, security deposit in interest bearing account; interest belongs to tenant
   4. New York legislation limiting amount of deposit and setting deadline for return
F. possession and habitability
   1. landlord does not have automatic right to inspect
   2. does not have right to send mechanics into premises unless lease authorizes
      a. right to enter in an emergency
G. landlord provides habitable conditions and maintains
H. improvement—leases state responsibility for maintenance and if lease does not state landlord responsible, then tenant is
   1. if person hurt on premises, landlord responsible if failed to make repairs as stated in lease
   2. New York’s Multiple Dwelling Law—landlord keeps dwelling in good repair
I. assignment and subletting
   1. assignment—transfer of lease contract from present tenant to assignee
      a. assignee responsible to landlord
   2. sublease—original tenant still responsible for lease payments

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3. may be lease provision prohibiting assignment or sublease without landlord’s approval
   a. if landlord withholds consent without good reason, tenant may seek release from lease
   b. tenant in residential building having four or more units has right to assign or sublease subject to written consent of landlord
4. commercial lease assignments—factors includes financial stability of assignee; experience, nature of business

J. apartment sharing—lease may restrict

IV. TERMINATION AND EVICTION REMEDIES

A. simplest way—expiration
B. mutual agreement to cancel before expiration
C. eviction of tenant—breach of agreement
   1. failure to pay rent
   2. failure to vacate after expiration
D. eviction—legal action in court system for removal of tenant
   1. actual eviction—landlord evicts without court
      a. wrongful use of self-help—landlord physically removes tenant and belongings
E. constructive eviction—mainly limited to residential properties; sometimes commercial
   1. occurs when tenant is prevented quiet enjoyment
   2. building becomes unlivable
      a. tenant must vacate while unlivable conditions exist
      b. not automatic right; involves litigation
F. withholding rent—rent strikes
   1. court decisions based on lack of basic facilities—water, heat, and so on
G. New York City, if landlord does not provide heat, water, electricity, or sewage disposal facilities; rodents present, tenants may take action
   1. minimum of one-third of tenants, after five or more days can petition court to collect rents rather than allowing landlord
   2. landlord pays compensatory and punitive damages to tenants if did not pay utility bill
H. abandonment by tenant—lease terminates
I. termination upon death or sale of property—lease agreement does not always terminate upon death of landlord or tenant
   1. new owner bound by terms of lease
J. attorney may be needed to handle eviction

V. DEATH OR SALE OF PROPERTY
   A. death or sale by the landlord
   B. death of the tenant
      1. a lease does not terminate upon the death of the tenant
   C. succession rights to an apartment
   D. succession rights for other types of properties
Putting it to Work*

We are moving out of the area. We own our home here except for a small mortgage and $80,000 in equity. If we rented this home, we could clear about $300 a month over our costs for mortgages and taxes, which we could use to help with the payments on our next home. Your thoughts?

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How Would You Respond?

1. April has lived in her apartment for two years. Her lease expired last month. She does not want to renew her lease, but her property owner wants her to sign for another year. Her property owner has asked her to move out if she does not sign a new lease, but April refuses. What kind of estate does April now have in the property? Is she guilty of trespassing? How can her property owner force her to move out? What is the legal name for April’s tenancy?

2. Marilyn, a real estate broker, is meeting with the president, Phil, of Tower Heights Corporation in Manhattan. Marilyn is to obtain the listing to rent apartments in a large complex owned by the company. Phil tells Marilyn that the apartments are extremely luxurious and that the company wants to create a certain image for the property. This image, Phil states, would be extremely tarnished if a lot of children were running around. Phil tells Marilyn that if she wants the listing, she must promise him that she will screen out families with children, or couples that seem like they are planning a family. How must Marilyn respond?
True or False

1. The consideration in a lease contract is the rent.

2. Leasehold estates imply possession as well as title to the tenant.

3. If a lease is not recorded and the property is sold with a tenant in possession at the time of sale, the purchaser will not have to honor the lease.

4. A tenant who does not leave upon expiration of the lease is termed a holdover tenant.

5. The estate for years must be in effect for a minimum of one year.

6. According to New York statute, rent is always due on the first day of a given month.

7. If a person is hurt on the premises, a landlord is always legally responsible because he is the owner of the property.

8. In New York, the security deposit is at least a minimum of one month’s rent.

9. The landlord has no right to send mechanics into a leased premises to install new plumbing fixtures unless the lease specifically authorizes him to do so.

10. In New York, a oral lease is valid for a term of less than one year.
Multiple Choice

1. Which of the following is NOT an essential element of a valid lease?
   a. a renewal option
   b. the duration of the lease
   c. the amount of rent due
   d. a description of the leased premises

2. Normally, if the lessor dies, which of the following is true regarding the lease he had signed? It:
   a. is void
   b. is automatically terminated
   c. can be terminated by the lessee
   d. is not affected in any way

3. The legal process used by a landlord to remove a tenant who has breached the terms of the lease is called:
   a. dispossession proceedings
   b. eviction
   c. ejectment
   d. abandonment

4. When the tenant wrongfully holds over following the expiration of the lease, the tenancy is: a. at sufferance
   b. at will
   c. for a period
   d. periodic

5. Select the lowest estate in real estate from the following list.
   a. life estate
   b. fee simple absolute
   c. tenancy at sufferance
   d. freehold estate
6. A lease that has a definite termination date is a tenancy:
   a. at sufferance
   b. at will
   c. for years
   d. periodic

7. If a lessee possesses a “tenancy at sufferance” estate she is:
   a. the owner of the property
   b. a holdover tenant
   c. a trespasser
   d. a rightful occupant

8. Constructive eviction occurs when:
   a. the property is destroyed by fire
   b. a tenant moves out because the landlord has failed to maintain the premises in a habitable condition
   c. the access road to the parking lot is partially blocked for three months by a street widening project
   d. tenant is evicted for failure to pay the rent

9. The right of a lessee to uninterrupted use of the leased premises is called:
   a. peaceful possession
   b. quiet enjoyment
   c. freedom from harassment
   d. holder in due course

10. The essential elements of a contract include which of the following?
    a. impossibility of performance
    b. substantial performance
    c. novation
    d. competent parties
Putting It To Work*

Several different factors must be considered, both practical and financial. First, it is difficult to be an absentee landlord. You would have great difficulty in seeing to repairs, etc., unless you hired a local person to manage the property. Also, tenant-occupied property, even with the best tenants, often will show the effects of age more dramatically than owner-occupied property. It probably would not show as well after the tenancy, perhaps causing you to lose part of your investment. Second, your $300 a month profit does not allow for maintenance or vacancies. These are very real costs of being a landlord. Finally, currently you have $80,000 in equity in your present home. Investing that in your next home allows you to postpone capital gains tax, and it also would lower your new payments by $600 or more.

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How Would You Respond?

1. April’s behavior has created an estate at sufferance. She is a tenant who originally was in lawful possession of the property but now refuses to leave although her right to possession is terminated. Since she was legally on the property from the beginning, she is not guilty of trespassing. The property owner must bring a legal action to evict her. April is a tenant at sufferance.

2. Marilyn cannot take the listing under the terms and conditions set forth by Phil as federal and state discrimination laws as well as the Real Property Law in New York forbids discrimination against families with children unless the property is specifically for individuals age 55 years and over.

True or False/Multiple Choice

1. T 1. a
2. F 2. d
3. F 3. b
4. T 4. a
5. F 5. c
6. F 6. c
7. F 7. b
8. F 8. b
9. T 9. b
10. T 10. d
CHAPTER 5
PART II CONTRACTS
CLASSROOM HOURS: 1

RATIONALE FOR CHAPTER
The contract basics discussed in this chapter focus mostly on offers to purchase, binders, and options. Most real estate licensees in New York work directly with different types of contracts although they cannot actually draw a contract. They generally can present and fill out either an offer to purchase or a binder. Therefore, they do need a basic knowledge of contract law and obligations.

FOCUS OF PRESENTATION
1. The emphasis throughout this chapter is to present basic contract information. In many areas of New York, the offer to purchase is completed by attorneys. Moreover, you may want to include some of the items that licensees are not supposed to do because they are not attorneys!
2. Begin the discussion with types of agreements; express versus implied, bilateral versus unilateral and so on. Table 5.1 defines each of the types of agreements. Spend some time on this as it is often confusing to students.
3. Next, discuss the elements of a contract, how they are terminated, and what happens in case of breach of contract. This should be a short discussion as the main thrust of your presentation should emphasize the actual offer to purchase. (Remember, there are only 2 classroom hours devoted to this subject.)
4. The contract for purchase and sale illustrated in the chapter is discussed section by section. If this contract is not applicable in your area, you may want to distribute and discuss a contract which typifies your market area. A sample binder is also illustrated and explained in the chapter.
5. Explain that most offers to purchase contain contingencies. After giving examples, discuss the role of the licensee in assisting in satisfaction of these contingencies.
6. Other contracts that should be addressed in this part of the chapter include installment sales contract, and leases with option to buy.
7. Students should study listing contracts and contracts with their broker in the law of agency presentation. The concept of commission entitlement including “ready, willing and able” and
“acceptance” concepts should be addressed in some detail. This is practical information that many students may find useful somewhere down the road.

LEARNING ACTIVITIES CONTAINED IN PART II
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill-in sentences (8)
Multiple Choice (15)

CHAPTER 5 PART II OUTLINE
I. BASIC CONTRACT LAW
A. contract—agreement between competent legal parties to do or refrain from doing legal act in exchange for consideration
B. classification of contracts
   1. express contracts—parties agreed to all terms
   2. written or oral
   3. includes majority of written real estate contracts
C. implied contracts—inferred from conduct and actions of another without express agreement
D. bilateral contracts—two parties make promises to each other
E. unilateral contracts—one party makes promise in order to induce second party to do something
   1. party making promise obligated under contract
      a. other party not obligated
F. executed contract—fully performed
   1. example—offer to purchase; all contingencies, conditions met; closing takes place
G. executory contract—not fully performed
   1. example—mortgage
H. valid contract—binding and enforceable on all parties
   1. all essential elements of contract
I. unenforceable contract—appears to meet requirements for validity but not enforceable in court
1. may still be considered valid if parties want to perform

J. void contract—no legal force or effect even though all essential elements for contract exist
   1. considered void under two conditions
      a. purpose of contract illegal
      b. impossible to complete because of act of God or operation of law

K. voidable contract—may or may not be enforceable
   1. failure of contracting parties to meet some legal requirement
   2. parties to voidable contract not required to void contract

II. ESSENTIAL ELEMENTS OF A CONTRACT
   A. competent parties—minors—under 18, do not have capacity to contract
      1. minor may hold adult to contract; adult cannot legally hold minor
   B. power of attorney—right given by one party to another to perform certain acts; for other party
   C. mutual agreement—parties must enter contract voluntarily
   D. lawful objective—contract must be for legal purpose
   E. consideration—giving of value
      1. includes money, property, promise of performance
      2. buyer’s offer to buy is consideration
   F. in writing—Statute of Frauds
      1. New York; General Obligations Law
      2. Section 5-703—contracts involving interest in real property written to be enforceable
      3. also requires “plain language in consumer transactions”

III. DISCHARGE OF CONTRACTS
   A. agreement of parties—release of contract
      1. novation
         a. substitution of new contract for prior contract
         b. substitution of new party for old party
   B. full performance—usual manner of terminating contracts
   C. impossibility of performance—if party to contract unable to perform; party still liable
      1. exception—contract becomes illegal as result of change in law after contract created
D. operation of law—describes manner in which rights and liabilities of parties changed by application of law

1. Statute of limitations—failure to bring lawsuit against defaulting party within legal time period; injured party loses right of remedy
   a. New York—time limit for suit in real estate transaction six years

2. filing bankruptcy petition

3. alteration of contract—intentional cancellation or alteration of written agreement

IV. CONTRACT REMEDIES

A. breach of contract—failure to complete for no legal reason
   1. does not terminate contract obligations

B. specific performance—contract completed as agreed

C. rescission—parties placed back in their original positions
   1. opposite of specific performance

D. compensatory damages—monies awarded for loss because of contract breach
   1. amount of money lost equals amount of compensatory damages court awards

E. liquidated damages—amount of money paid upon certain breaches of contract
   1. stipulated in contract
   2. may be in addition to compensatory damages

V. SALES CONTRACTS AND PRACTICES

A. offer to purchase
   1. offer and acceptance—meeting of the minds
   2. bilateral express contract
   3. relationship between parties; arms length
   4. acceptance that varies from offer not acceptance; counteroffer
   5. counteroffer supersedes first offer
   6. seller now offeror; buyer offeree
   7. include earnest money deposit, not legally required
      a. shows sincerity of buyer
      b. demonstrates financial capability
      c. serves as possible liquidated damages
8. contains terms and conditions of sale
B. preprinted form used in many areas of New York
   1. reviewed by attorneys for buyer; seller
   2. prepared addenda or riders cover supplemental issues of agreement
      a. examples; septic system; well water flow and quality tests, assumption of mortgage; mortgage approval
      b. caveat—warning or caution
      c. example; agricultural district disclosure

VII. BINDER
   A. written document for purchase and sale used in certain areas
   B. outline of the scope of transaction
   C. does not generally contain all elements of valid contract
      1. may lack specifics such as mortgage contingencies
   D. submitted to attorney who draws offer to purchase contract
   E. binder may or may not be enforceable in court

VIII. INSTALLMENT LAND CONTRACT
   A. buyer obtains legal title by paying purchase price in installments
   B. seller transfers title by delivering deed upon buyer’s payment of purchase price
      1. parties are vendor-seller and vendee-purchaser
   C. vendee pay taxes, insurance, and maintenance
   D. vendor’s security is retention of title
   E. cash flow advantages to buyer
      1. buyer may not qualify for conventional loans
      2. may not require down payment
   F. tax advantages for seller
      1. claim depreciation on property
      2. does not have to pay capital gains tax
         a. pay percentage each year
   G. installment contract cannot be used to circumvent mortgage “due on sale” clauses (seller may have mortgage)
1. lender may grant forbearance—refrain from taking legal action for payment of mortgage despite fact that it is due
   a. owner must be strong credit risk
2. interest rate on mortgage payable to lender

IX. LEASE WITH OPTION TO BUY
   A. optionor (owner) sells sole right to purchase to prospective buyer, optionee
      1. certain price, specified period of time
   B. optionee makes no promise to purchase
      1. “buying time” to decide or arrange financing
   C. often tied to lease
      1. all or part of rent may apply toward purchase price
      2. may expire at expiration of lease
   D. lease with option to buy beneficial to tenant (buyer)
      1. less money needed to take possession
   E. landlord benefits
      1. payments are rental; not subject to capital gains taxes

X. CONTRACTS AFFECTING BROKERS
   A. independent contractor agreements and listing contracts
   B. commission entitlement; two tests
      1. ready, willing, and able purchaser under terms of listing agreement; broker entitled to commission
         a. seller may reject offer but still has duty to pay commission
      2. acceptance
         a. broker brings buyer that seller accepts; broker entitled to commission
      3. both tests not required
Putting It To Work*

When you purchase an option on a piece of property, what do you actually get?

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How Would You Respond?

1. Belinda Green signs an exclusive right to sell listing contract with Diamond Real Estate. Four weeks into the contract, Belinda calls her salesperson and states that a friend of hers wants to purchase the house. She wants to know if the real estate company will negotiate the commission because she found the purchaser on her own. What obligations does Diamond Real Estate have?
True or False  

CH 5 CONTRACTS

1. An express contract can be written or oral.

2. An implied contract is inferred from the conduct of another without express agreement.

3. A contract that has been fully performed is called a unilateral contract.

4. A void contract may or may not be enforceable between the parties.

5. Another name for offer and acceptance is meeting of the minds.

6. Even if the seller makes a counteroffer, a contract still exists regarding the first offer.

7. If a buyer does not put down an earnest money deposit along with the offer to purchase and sale, then there is no consideration, and the contract is invalid.

8. The Statute of Limitations states that all contracts that create an interest in real estate be in writing.

9. The substitution of a new contract for a prior contract is called novation.

10. An order from the court requiring specific performance means that the contract will be completed as originally agreed.
Multiple Choice

1. In front of three witnesses, Dave verbally promises to sell his home to Amos. Amos gives Dave $10, and they shake hands to seal the deal. Their contract is:
   - a. valid
   - b. voidable
   - c. unenforceable
   - d. enforceable

2. Barbara promised $500 to Bob if Bob would paint her garage. Bob completes the painting. What type of contract has been created?
   - a. unilateral
   - b. bilateral
   - c. multilateral
   - d. executory

3. Elaine buys a house from Carl with the stipulation that Carl remove the three junk cars from the side yard of the property. When Elaine takes possession of the property only two of the cars have been removed, and one is still mired in the mud of the yard. This contract is:
   - a. executed
   - b. executory
   - c. void
   - d. voidable

5. Which of the following does NOT terminate an offer?
   - a. death of the offeror before acceptance
   - b. insanity of the offeror before acceptance
   - c. revocation by the offeror before acceptance
   - d. revocation by the offeror after acceptance
6. The Statute of Frauds requires contracts to be in writing to be:
   a. enforceable
   b. valid
   c. voidable
   d. unenforceable

7. Which of the following regarding a listing contract is false? It:
   a. creates a fiduciary relationship between the principal and agent
   b. is an agency contract
   c. gives equitable title to the agent
   d. creates a special agency

8. The owner of an option has purchased:
   a. a leasehold interest
   b. the right to claim title
   c. a nonfreehold interest
   d. title to the property

9. An installment land contract:
   a. is the same as a listing
   b. is the same as an option to purchase
   c. provides for retention of title by the vendee until paid for by the vendor
   d. provides for retention of title by the vendor until paid for by the vendee

10. What constitutes an executed contract?
    a. only one party to the contract has made a promise
    b. at least one party to the contract may still sue for specific performance
    c. all of the parties have fully performed their duties
    d. one of the conditions of the contract has been completed
11. Smith enters into a contract with Dudley to sell certain land. During the negotiations, Smith wrongly represents the nature of the soil, claiming it is firm enough to support the contemplated parking garage. This contract is:

a. void
b. voidable by Dudley because of fraud
c. voidable by Smith because of a mistake
d. voidable by neither because they had signed a contract
<table>
<thead>
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<th>True or False</th>
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CHAPTER 5
PART III CONTRACT PREPARATION
CLASSROOM HOURS: 1

RATIONALE FOR CHAPTER
Some differences in contract preparation exist between upstate and downstate New York. Upstate includes the areas north and west of Sullivan, Ulster, and Dutchess counties and parts of Greene and Columbia counties. Downstate includes the above-mentioned areas and below, including Westchester and Orange counties, the five boroughs of New York City, and Long Island.

In many upstate counties, the real estate agent fills out a preprinted contract. In other places, such as the downstate area, the agent prepares a binder or an offer to purchase. An attorney prepares the contract of sale. This chapter is an overview of the items needed for contract preparation. The chapter also discusses the customs and practices regarding signing of the contract.

FOCUS OF PRESENTATION
1. In this chapter, you will want to show your students how a contract really works. Review the forms of contract and the data required for contract preparation.
2. Emphasize the real estate agent’s role in preparing contracts and the signing process.
3. You may want to have students complete the Putting It To Work activity in the chapter which provides information for filling out a contract for purchase and sale. Although the answer key is based on the contract in the textbook, you can substitute your own contract for students to work with.

LEARNING ACTIVITIES CONTAINED IN PART III
Putting it to Work: students fill out sample contract of sale form from information contained in textbook (1)
How would you respond? typical scenarios to analyze (2)
Key Terms: fill-in sentences (4)
Multiple Choice (15)

CHAPTER 5 PART III OUTLINE
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I. WHAT FORM OF CONTRACT TO USE
   A. first document signed by purchaser may be binder
      1. binder—also called receipt, purchaser offer, and agreement
   B. form for real estate contract depends on type of property being purchased
   C. most areas—residential—standard contracts of sale
      1. Bar Associations publish these forms
      2. Local Boards of REALTORS® and MLS publish them
      3. may vary slightly from place to place, but clauses in contract are similar
   D. standardized forms for commercial transactions
      1. also available through Bar Associations, Boards of REALTORS®, and MLS
      2. residential properties with more than five units, retail and business properties
   E. forms of contracts are:
      1. contract of sale (residential one- to four-unit property)
      2. condominium contract of sale
      3. cooperative contract of sale
      4. commercial contract of sale for residential income property
      5. commercial contract of sale for retail, business property, and tracts of land
      6. installment sales contract
      7. option to buy

II. DATA REQUIRED FOR CONTRACT PREPARATION
   A. prior deed—to draft new deed
   B. prior title insurance policy
   C. certificate of occupancy (CO)
   D. personal data names, address, telephone number, marital status, and social security numbers
   E. tax bills

III. VERIFYING PROPERTY DESCRIPTION
   A. for residential or commercial sale—property’s common address (street address)
   B. unimproved land transferred—deed, tax map, plat map, and/or survey may be attached and referred to on contract of sale
   C. agent should verify street address and location are correct by checking these documents

IV. WHO PREPARES CONTRACT?
A. upstate NY-real estate agent for purchaser fills in either preprinted binder-purchaser offer or preprinted contract of sale
B. may be attorneys for both buyer and seller
C. contract not binding until attorneys review and possibly revise it
D. downstate-customary for buyer’s agent to prepare binder, memorandum of sale, or receipt of sale setting forth terms of transaction

V. THE MORTGAGE CONTINGENCY
A. mortgage contingency clause-closing contingent or dependent upon purchaser’s receipt of mortgage commitment.
B. gives purchaser between 45 and 60 days to obtain loan commitment from date contract is signed
C. purchaser must promptly apply for mortgage loan, and cooperate with requests of lender
D. types of mortgage financing include:
   1. traditional mortgage financing
   2. VA or FHA financing
   3. purchase money mortgage
   4. assumable mortgage

VI. THE DOWN PAYMENT
A. down payment-portion of property’s purchase price paid in cash-not part of mortgage loan
B. any of these can hold down payment
   1. listing agent
   2. seller’s attorney
   3. selling broker
C. advantages of lawyers holding down payments
   1. New York Lawyers’ Fund for Client Protection
   2. protect monies from dishonest practices by attorneys
   3. reimburse client money misused in practice of law
D. IOLA account (Interest on Lawyer Account)
   1. uses interest to fund nonprofit agencies and reimburse parties for attorney misconduct

VII. CONTRACT PROCEDURES
A. who signs first and why?
   1. purchaser signs contract of sale first
   2. purchaser making offer and down payment so seller knows purchaser is serious
B. review of contract with seller to verify this information
   1. all of parties who have title to property
   2. price buyer is offering
   3. what items seller includes or excludes in purchase price
   4. when property available for closing and when sellers plan to vacate property
   5. whether certain contingencies are acceptable to seller
   6. whether sellers will participate in financing with purchase money mortgage or other
C. riders
   1. contract may have number of addenda, or riders
   2. brokerage firms use prepared preprinted addenda, or riders
   3. available through Boards of REALTORS® and MLS
D. clauses relating to lead-based paint
   1. seller and purchaser sign lead-based paint disclosure form if applicable
   2. applies only to residential properties built before 1978
E. custom and practice regarding signing of contract
   1. choices for contract signing and delivery using faxes, computers, and e-mail
F. delivery by mail
G. sit-down signing
H. delivery of down payments
   1. downstate-buyer draws check payable to seller’s attorney to be held in escrow in seller’s attorney escrow account
   2. upstate-real estate agent delivers deposit to broker for deposit in broker’s escrow account

VIII. WHO CAN GIVE LEGAL ADVICE WITH RESPECT TO CONTRACT?
A. New York Judiciary Law prohibits practice of law by non-attorneys
B. attorney review clause-real estate broker can avoid this by including condition making contract subject to approval by each party’s attorney
C. alternatively real estate agents can use fill-in-the-blanks form approved by joint committee of Bar Association and Board of REALTORS® of county
D. agents are not permitted to develop any “legal terms”
E. agent cannot give legal advice and must not discourage parties seeking advice from attorneys
True or False

1. The attorney uses the prior deed to draft the new deed.
2. The structure may require a new survey of property.
3. Lenders generally require a certification of occupancy on the resale of a single-family residential property.
4. If there are code violations, the seller must correct them before title transfer.
5. New residential construction requires a certificate of occupancy, but never commercial property.
6. Generally, for a residential or commercial sale of improved property, the property’s common address (street address) is used.
7. When tracts of unimproved land or lots are transferred, the deed, tax map, plat map, and/or survey may be attached and referred to on the contract of sale.
8. In many areas of upstate New York, the real estate agent for the purchaser fills in either a preprinted binder-purchaser offer or a preprinted contract of sale.
9. The contract usually gives the purchaser between 45 and 60 days to obtain a loan commitment from the date the contract is signed.
10. The down payment is the portion of a property’s purchase price that is paid in cash and is not part of the mortgage loan.
11. When a binder or purchase offer is signed first, the does not generally make a deposit.
12. If the real estate salesperson takes a deposit, the salesperson holds it in his checking account.
13. To protect escrow money, attorneys must maintain a “special” bank account.
14. Generally, the seller signs the contract of sale first.
15. The contract may have a number of addenda, or riders.
16. Generally, upon signing a contract of sale, the seller and the purchaser sign a lead-based paint disclosure form if applicable.
17. A real estate agent must present the agency disclosure form when the parties sign the contract of sale.
18. Throughout New York, the seller’s attorney always prepares the contract.
20. A real estate agent can offer their clients legal advice in certain cases.
Multiple Choice

1. Which of the following is NOT generally required for a real estate contract?
   a. prior deed
   b. survey
   c. certificate of occupancy
   d. Torrens certificate

2. Who can write the contract of sale?
   a. sellers agent
   b. sellers attorney
   c. buyers agent
   d. none of the above

3. Who signs the contract first?
   a. seller
   b. purchaser
   c. attorney
   d. agent

4. What is commonly used to verify a residential property address?
   a. street address
   b. tax map
   c. the deed
   d. survey

5. What is the customary percentage of a down payment?
   a. 10%
   b. 12%
   c. 15%
   d. 20%
ANSWERS TO SUPPLEMENTAL LEARNING ACTIVITIES

True or False  Multiple Choice
1. T      1. d
2. T      2. d
3. T      3. b
4. T      4. a
5. F      5. a
6. T
7. T
8. T
9. T
10. T
11. F
12. F
13. T
14. F
15. T
16. T
17. F
18. F
19. T
20. F
CHAPTER 6  
REAL ESTATE FINANCE  
CLASSROOM HOURS: 5  

RATIONALE FOR CHAPTER  
All students of real estate should have a keen understanding of the importance of finance in a real estate transaction. Most buyers will require the significant participation of a lender to provide the majority of the purchase price. Thus, understanding lending procedures is essential to consummate the transaction.

FOCUS OF PRESENTATION  
1. Essentially, this chapter address four main issues: definition of a mortgage, different types of mortgages, government backed mortgages, and lender’s criteria for a loan. Because the chapter is lengthy, keep these main areas in mind.
2. Stress to the students who is the mortgagor and who is the mortgagee. Use Figure 6.1 in the text to illustrate this concept.
3. Begin your discussion by defining the note (bond) and mortgage and explain the clauses. The Putting It To Work exercise is a good reinforcement activity. Use the sample bond and mortgage in the text or illustrate from an example which you provide.
4. Briefly explain what happens at foreclosures; define equity of redemption and deficiency judgments. Differentiate between sale of mortgage free and clear and sale subject to a mortgage.
5. Distinguish between government backed loans and conventional loans and then begin the discussion of the different types of loans and payments. Important concepts in this discussion are the nature of amortization and the differences between adjustable and fixed rate loans. Refer to the You Should Know paragraph that explains the advantages and disadvantages of FHA and conventional loans.
6. Spend some time discussing the installment land contract. This is mentioned throughout the text and it would be helpful for students to understand how it works.
7. Next discuss the government loan program. Distinguish between agencies that insure, guarantee, and actually give loans. You may want to check on current policies and also remind students to check, as these programs are constantly changing. Refer students to Figure 6.8 Home Mortgage
Qualifying Example, Figure 6.9 Qualifying Income for a Conventional Loan, and Figure 6.10 Understanding Loan Payments. Also include in your discussion a comparison of mortgage payments for varying interest rates and then compare the actual cost of a purchase if financed for 30 years as opposed to 15 years.

8. Explain the purpose of the secondary mortgage market. Point out Tables 6.2 and 6.3 which summarize government loans and secondary mortgage loans.

9. Next discuss TILA and Regulation Z and the lender’s criteria for granting a loan. Within this discussion, address the development and purchase of a cooperative.

10. Explain discount points. Students often have trouble understanding this concept. Stress that points are a charge by the lender that increases the lender’s profit on the loan.

LEARNING ACTIVITIES CONTAINED IN CHAPTER 5

Key Terms: fill-in sentences (10)
Multiple Choice (20)

CHAPTER 6 OUTLINE

I. MORTGAGES

   A. mortgage; two-party instrument between lender and borrower creates lien on property; lien theory
      1. basis for mortgages in New York
      2. mortgagor—borrower
      3. mortgagee—lender

   B. mortgage loan has two instruments: note and mortgage

   C. mortgage clauses and covenants
      1. names of mortgagor and mortgagee
      2. acceleration clause—balance due if borrower in default
      3. prepayment penalty clause—payoff of loan before due date with or without penalty
         a. FHA, VA, and conforming loans cannot have prepayment penalty
      4. defeasance clause—borrower right pay lien in full
      5. right of foreclosure
      6. mortgagor has good and marketable title
      7. alienation clause (due on sale clause)—balance due if mortgagor sells
property—mortgage unassumable without lender’s permission
8. execution and acknowledgment by borrower

D. note or bond—evidence of debt
1. states annual rate of interest
2. can be interest only note until maturity or amortized note
3. grace period—specified time frame in which payment may be made

II. FORECLOSURE
A. liquidation of title to real property to recover funds to pay mortgage debt
1. New York—foreclosure by action in equity and sale
   a. lawsuit against mortgagor by lender—property sold at auction
   b. proceeds distributed to parties having lien
B. equity of redemption
1. after default, borrower has right to redeem his property by paying all debts
   a. right terminated by foreclosure sale
C. deed in lieu of foreclosure (friendly foreclosure)
1. borrower in default conveys the title lender
D. deficiency judgment—granted if proceeds of foreclosure not enough to satisfy lien
1. court order stating borrower still owes lender money

III. DUTIES AND RIGHTS OF THE MORTGAGOR (BORROWER)
A. pay all taxes and assessments on timely basis
B. maintenance and protection through insurance; 80%–100% (minus lot value)
C. possession of property during mortgage term as long as borrower not in default
1. redeem title by paying off mortgage

IV. RIGHTS OF LENDER
A. foreclose and take possession if borrower defaults
B. right to assign mortgage—provides liquidity to mortgages
C. sale of property that has mortgage
D. sale free and clear (cash sales)—no requirements by lenders
   1. licensee should disclose material defects

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E. sale “subject to” mortgage—purchaser does not become liable for payment of note
F. lender may only obtain deficiency judgment against seller who remains liable through note
G. sale with buyer assuming mortgage debt—purchaser assumes liability for mortgage and note
   1. seller of assumable mortgage remains liable unless specifically released by lender
   2. agent should recommend seller obtain release of liability

V. RECORDING OF MORTGAGE
   A. should always be recorded
   B. junior mortgage—describes priority rather than type of mortgage
      1. subordinate (lower in priority) to another mortgage
      2. shorter term and higher interest rate
   C. priority and subordination
      1. established by time date and hour lien recorded
      2. can be modified by subordination agreement
   D. releases—recorded and called discharge or satisfaction of mortgage

VII. MORTGAGE LOANS AND PAYMENTS
   A. two groups; conventional and government loans
   B. straight term mortgage; borrower pays interest only for specified term, then principal
   C. fixed rate loan; interest rate for entire loan adjustable rate mortgage (ARM)
   D. term; pay interest only; large balloon payment at end
   E. adjustable; payment varies with index
      1. negative amortization; index rises while payment fixed causing payments to fall below amount to pay interest required by index
   F. balloon; installment payments do not pay off mortgage over term; one large last payment
   G. amortized mortgage; liquidate in equal steps; typical home mortgage
   H. pledged account; payments go through borrower savings account
   I. graduated payment mortgage; smaller payments in earlier years
1. difference between flexible payment; flexible payment has flexible interest rate; graduated payments retains fixed interest

J. open end; can refinance up to limit with no new collateral

K. blanket; covers two or more properties; found in subdivisions

L. wraparound—second mortgage larger than first only when first mortgage is assumable

M. swing loan (bridge loan)—short term; not secured by mortgage

N. purchase money: seller acts as lender; usually for portion of purchase price
   1. typically be subordinate to larger loan from institutional lender
   2. possible only if seller has extensive equity in home

O. construction; short term to build homes
   1. lender may require contractor to be bonded for completion of project
   2. must obtain long term financing; known as take-out loan or end loan

P. installment land contract (contract for deed); not mortgage but type of financing instrument
   1. seller (lender) retains legal title; purchaser has equitable title
   2. seller (lender) conveys legal title to buyer (borrower) once contract has been met

Q. deed of trust; not used in New York; title conveyed to trustee

R. home equity loan; against equity of house, can be first (if property is owned free and clear) or second mortgage

VIII. PRIMARY METHODS OF FINANCE

A. conventional loans—nongovernment insured
   1. uninsured conventional loan—borrower’s equity—difference between property value liabilities security for lender
   2. insured conventional—purchaser borrows 90 to 95 percent of property value
      a. private mortgage insurance (PMI)
      b. Homeowner’s Protection Act of 1998 (PMI Act)—mortgagors with new loans after July 29, 1999 can have PMI canceled

B. government loans
   1. FHA insured loans—agency of HUD—insures loans
      a. buyer pays upfront mortgage insurance premium (UFMIP) and
mutual mortgage insurance
b. most popular program is FHA 203(b) loan; owner-occupant to purchase one-to four-family; minimum 3% from borrower
c. FHA 234(c) loan for individual condominium units

C. Department of Veteran Affairs Guaranteed Loan Program; guarantees repayment of top portion of loan to lender
   1. 100 percent loan; no downpayment required

D. Rural Housing Service (RHS)
   1. loan programs for family farms, finance new and improved rural housing, develop community facilities, maintain and create rural employment
   2. makes direct loans; guarantees loans made by private lenders, and provides limited number of grants
   3. up to 100 percent of appraised value is available on loans
   4. interest can be as low as one percent per year

E. State of New York Mortgage Authority (SONYMA)—raises money from sale of New York tax free bonds used for mortgage loans
   1. lower interest rates than conventional
   2. percentage of funds used for certain target or economically distressed areas in New York
   3. insured by private mortgage insurance
   4. nontarget area; purchaser must be first time buyer or not have had ownership for past three years; restrictions do not apply to target areas

IX. SECONDARY MORTGAGE MARKET
A. buys and sells mortgages from primary mortgage market
   1. must be assignable to qualify

B. Federal National Mortgage Association; FNMA (Fannie Mae) private organization, formerly government agency
   1. buys the most mortgages

C. Government National Mortgage Association; GNMA (Ginnie Mae) government agency; originally designed to fill Fannie Mae’s role in purchasing FHA and VA loans

D. Federal Home Loan Mortgage Corporation FHLMC (Freddie Mac); government agency designed to purchase conventional loans
E. conforming loans—loans processed on uniform loan forms and according to FNMA/FHLMC guidelines

X. TRUTH-IN-LENDING ACT (TILSRA)

A. TILA requires four disclosures
   1. annual percentage rate
   2. finance charge
   3. amount financed
   4. total amount of money that will be paid toward mortgage

B. Federal Reserve Board implemented regulations by establishing Regulation Z
   1. Regulation Z provides consumer protections in mortgage loans for residential real estate
   2. does not apply to commercial loans
   3. addresses advertisement of credit terms for residential real estate

C. disclosure—statement within 3 days of application regarding interest rate

D. cooling-off period—three day right of rescission for loan transaction

E. advertising—advertised credit terms available

F. effect on licensees—not violate Regulation Z

G. penalties—criminal liability and punishment by fine up to $5,000, imprisonment for up to year, or both

XI. LENDER’S CRITERIA FOR GRANTING A LOAN

A. investment quality of property
   1. appraisal performed for subject property
   2. lender makes conclusion as to value

B. loan to value ratio—percentage of loan purchaser obtains against value of property
   1. value for mortgage purposes is appraised value or purchase price; whichever is less

C. type of property
   1. rental property; lender adds in rent as income; borrower qualifies for higher loan
   2. less risk with owner occupied property; better maintenance

D. granting loans for cooperative purchase—purchaser buying shares of stock in cooperative corporation
1. presale—board of directors may approve or disapprove applicants
2. board may set financial qualifications
3. pro rata and square footage of specific unit—based on square footage of individual unit and other factors such as location in building
4. lender must look at other financial responsibilities
5. sponsor declaration—entity who does conversion must file disclosure statement with New York attorney general’s office
   a. first part—scope of project; prospectus; red herring
   b. prospectus approved by attorney general for filing, it is black book, or offering plan; may be offered to public
6. how many phases—presale phase—prospective purchasers may view units, but may not purchase
7. sale of units occur during black book phase
   a. some cases, a presale law allows units to be sold with approval of attorney general
8. how many floors—height of cooperative and number of floors must abide by zoning requirements

XII. BORROWER’S ABILITY TO REPAY LOAN

A. income/salary—borrowers submit income tax returns for most recent two years
   1. self-employed or commissioned employees with declining incomes carefully evaluated
B. qualifying ratios—two debt ratios
   1. monthly housing expense to income
   2. total payment obligations to income
C. employment history—stability and continuance/education and training
   1. borrower employment for past two years verified as evidence of ability to pay
D. sole proprietorship, partnership, corporation
   1. if business sole proprietorship and borrower owner, income falls under control of borrower
   2. if business is partnership, other parties have income interest
E. verification and documentation
1. verification of employment, rent or mortgage, bank account balance, outstanding loans, sales contract deposit, pension, release of information authorization, consent to credit check
F. liquid assets and closing funds—borrower has to show sufficient funds to close transaction
G. monthly obligations, history of repayment and credit reports

XIII. DISCOUNT POINTS
A. each point lender charges costs either buyer or seller, one percent of loan amount
B. New York has usury laws that fix maximum allowable interest rate
C. borrowers may pay discount points to buydown mortgage interest rate
SUPPLEMENTAL LEARNING ACTIVITIES   CH 6

INSTRUCTORS - Class Activities

1. Plan to obtain mortgage rate sheets from local lenders and newspapers and use in class.

2. After students are familiar with the basics of mortgage calculations, have them construct a “comparison shopping” chart, displaying the comparative cost for a given program between two or three lenders.

3. Have students construct a chart showing the trade-offs between two or three lenders in terms of mortgage rate, term, and points. Challenge them to determine who has the best overall deal in regard to a given loan.
Putting It To Work*

My wife and I had our mortgage application turned down at the first bank we applied to and are trying to obtain a mortgage elsewhere. How long is the seller obligated to entertain our offer? Must we make a new offer to hold the property while we search out additional lenders?

*Reprinted by permission of James A. Ader, Administrator, Greater Capital Association of REALTORS®, Inc. and the Albany Times Union, in the column Real Estate Spotlight.
1. In New York, mortgages are not generally recorded.

2. The purchase of a unit in a cooperative involves the purchase of shares in a corporation.

3. The final payment (called a balloon payment) is substantially larger than any previous payment in a balloon mortgage.

4. Wraparounds work only when the existing first mortgage is assumable.

5. All conventional loans are amortized loans.

6. The purpose of Regulation Z is to regulate interest rates.

7. Loans that follow Fannie Mae guidelines are called conforming loans.

8. A prepayment penalty is particularly advantageous to borrowers who are required to pay off their mortgage as a condition of a contract of sale.

9. Each discount point a lender charges for a loan may be worth two percent of the loan.

10. In a blanket mortgage, the removal of a property covered under the mortgage places the mortgage in default.
Multiple Choice    CH 6

1. A mortgage is different from a deed of trust in that the mortgage:
   a. is a lien against the title held by the mortgagor
   b. conveys title from the mortgagor to another person
   c. is evidence of the debt owed
   d. conveys title to the lender

2. The mortgagor is the one who:
   a. gives or provides the mortgage
   b. is the lender of the money
   c. is the trustee
   d. is the equitable title holder

3. Mortgage instrument clauses do NOT include which of the following?
   a. acceleration
   b. appraisal
   c. defeasance
   d. due on sale

4. What is paid first out of the proceeds of a foreclosure?
   a. property tax
   b. expenses of the sale
   c. first mortgage holder
   d. the person holding title

5. The right of a mortgagor to recover the property and obtain legal title to it after
default and before foreclosure sale by paying all monies due is called:
   a. right of defeasance
   b. caveat emptor
   c. riparian right
   d. equitable right of redemption

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6. A mortgage that reduces the debt uniformly in a number of steps is termed a(n):
   a. amortizing
   b. balloon
   c. graduated payment
   d. term

7. Negative amortization is a possibility with which type of mortgage?
   a. open end
   b. shared appreciation
   c. adjustable
   d. amortizing

8. A mortgage that covers two or more parcels of land is a:
   a. blanket mortgage
   b. package mortgage
   c. wraparound mortgage
   d. purchase money mortgage

9. Discount points paid by the buyer to originate a loan:
   a. increase the effective yield of the loan to the lender
   b. reduce the costs of the loan to the buyer
   c. reduce the principal loan balance owed by the buyer
   d. apply to the first month’s mortgage interest

10. Which of the following is NOT included in closing or settlement costs?
    a. discount points
    b. appraisal fee
    c. federal tax
    d. origination fee
ANSWER KEY TO SUPPLEMENTAL LEARNING ACTIVITIES

Putting It To Work

1. It depends on the terms of your contract with the seller, but rarely is it necessary to submit a new offer. Every contract, which of course you need before you can seek a loan, has a mortgage contingency date. If you have time to make an application to a second bank and know you will have an answer before the contingency date, then you don’t have a problem. If you can’t make the contingency date, it is common practice to ask the seller for an extension. If an extension is not granted, most contracts require that, before the contingency date, you must notify the seller by certified or registered mail (return receipt requested) that you are unable to obtain financing. As long as the letter is postmarked on or before the contingency date, the contract will be considered null and void. If you fail to properly notify the seller on time, you may lose your deposit and may be held liable for breach of contract.

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CHAPTER 7
MORTGAGE BROKERAGE
CLASSROOM HOURS: 1

RATIONALE FOR CHAPTER
Real estate salespersons and brokers cannot negotiate residential mortgages unless they register as a mortgage broker or become licensed as a mortgage loan originator who works under the supervision of a mortgage broker or mortgage banker. Borrowers have a choice in applying for a mortgage loan. They can use the services of a traditional lender or a mortgage broker, both being paid for their services. Real estate agents should encourage borrowers to shop around for mortgage products. This chapter discusses the mortgage broker and mortgage banker licenses.

FOCUS OF PRESENTATION
1. Remember that this classroom time is only one hour long. Cover the important ideas in class, and advise your students to review the chapter if they have any further questions. The main focus of the chapter are the differences between the mortgage broker, the mortgage loan originator, the mortgage loan servicer, and the mortgage banker. The emphasis should be on the qualifications and the functions of mortgage brokers and mortgage bankers.
2. Focus more on the mortgage broker role in real estate transactions since many real estate brokers also become mortgage brokers.
3. Note that Article 12-E was added to the banking law effective 2009-2010 which added the mortgage loan originator license and the mortgage loan servicer registration. These new laws are fully covered in the chapter.
4. The most important aspect of the mortgage broker's role in this chapter will be how he assists the agent and the buyer in the closing process.

LEARNING ACTIVITIES
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill in sentences (7)
Multiple Choice (15)

CHAPTER 7 OUTLINE
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I. MORTGAGE BROKERAGE AND MORTGAGE BANKING
   A. mortgage broker-individual or company that solicits, processes, places, or negotiates residential mortgage loan
      1. registered by NYS Department of Financial Services
      2. finds or sources loan for purchaser
   B. New York requirements for mortgage broker registration
      1. good standing in community; two years of relevant experience or education
      2. credit report
      3. set of fingerprints
      4. $99 fingerprint fee
      5. $1,500 investigation fee
      6. must submit surety bond or pledged deposit of $10,000
   C. individual applying holding real estate broker license must submit dual agency affidavit to NYS Department of Financial Services
   D. if employed by licensed mortgage bankers or mortgage brokers-no license required
   E. Mortgage loan originator license- works for mortgage broker or mortgage banker
      1. must fulfill education requirements and pass a written exam
   F. Mortgage loan servicer registration-receives schedule loan payments from a borrower for a mortgage
      1. must pay fee and demonstration $250,000 net worth and be bonded for $300,000
II. MORTGAGE BROKER RESPONSIBILITIES
   A. arranging the home loan transaction
   B. disclose to purchaser material (important) facts about loan
   C. mortgage broker disclosure under the banking law
      1. represents borrower/buyer in submitting loan application to lender
   D. dual agency disclosure under the banking and New York real property laws
      1. Article 12-D of the New York Banking Law
      2. mortgage broker and mortgage banker-also real estate broker in same residential real estate transaction must disclose dual agency
      3. buyer/borrower and seller must sign mortgage broker disclosure form and acknowledgment before mortgage broker provides services
      4. real property law-Section 443-also requires dual agency disclosure
E. preapplication disclosure
   1. disclosures include fees payable at time of application; conditions for refunding fee; whether mortgage broker using three or fewer lenders
   2. NYS Department of Financial Services-optonal form-Pre-Application Disclosure and Fee Agreement.
F. penalties for violating the banking law
   1. license may be revoked or suspended by New York NYS Department of Financial Services
   2. subject to criminal and civil prosecution and penalties
III. NEW YORK MORTGAGE BANKER REQUIREMENTS
A. individual or company licensed by New York NYS Department of Financial Services to engage in business of making residential mortgage loans
B. also called mortgage companies
C. make mortgage loans for housing construction and purchase of existing housing
D. requirements for license are:
   1. net worth of $250,000
   2. existing line of credit of $1 million
   3. filing of surety bond for $50,000 or deposit agreement coupled with pledged deposit of securities or other assets for $50,000
   4. employees who have five years’ experience making residential mortgage loans
   5. demonstration of good character
   6. background report
   7. set of fingerprints, $99 fingerprint fee, $3,000 investigation fee
IV. MORTGAGE BROKERS VERSUS MORTGAGE BANKERS
A. requirements to become either a mortgage banker or mortgage broker are much different.
   1. mortgage banker
      a. certain net worth
      b. line of credit of at least $1 million
   B. mortgage banker-responsible for collecting mortgage payments and may risk credit
      1. financial risks much greater for mortgage banker
      2. not required to report yield service premium
   C. mortgage brokers does not lend his company’s money
      1. introduces borrower to lender and does much of paperwork
2. advantage of mortgage broker-picks from variety of available lenders to secure best deal for borrower

V. ROLE OF MORTGAGE BROKER/CONSULTANT IN REAL ESTATE TRANSACTION

A. find appropriate financing at favorable interest rate and terms for purchaser.

B. people with whom mortgage broker/consultant works include:
   1. the buyer/borrower
   2. the real estate agent-working for buyer
   3. the buyer’s attorney

VI. SERVICES OF THE MORTGAGE BROKER/MORTGAGE LOAN ORIGINATOR

A. prequalification letter and the approval letter
   1. loan officer issues prequalification
   2. prequalification-not commitment by lender
   3. loan officer determines purchaser prequalifies-issues prequalification letter
   4. letter used to make offer on property and show seller that purchaser qualifies

B. finding financing
   1. originate loans with intention of brokering them to wholesale lending institutions
   2. act as wholesale lenders, catering to mortgage brokers for loan origination

C. lock extensions
   1. after rate lock expires-mortgage broker/consultant may negotiate lock extension

D. coordinates and oversees lending process

E. obtaining mortgage commitment
   1. mortgage commitment-statement by lending institution-assures purchaser that lender will loan certain sum of money
   2. underwriting process-lender evaluates borrower’s financial data and determines whether borrower will obtain loan

F. finding mortgage products
   1. fully amortized loans
   2. ARMs (adjustable rate mortgages)
   3. construction loan
   4. conforming and nonconforming loan

G. nonconforming loan-loan that does not meet Federal Reserve Bank criteria for funding

H. scheduling and closing loan
1. assuring lender conditions are satisfied and funds are available at closing
2. scheduling date for closing between all parties

I. table funding-at time of settlement, transfer loans to lenders that simultaneously advance funds for loans
SUPPLEMENTAL LEARNING ACTIVITIES                   CH 7

True or False

1. A mortgage broker is an intermediary who finds or sources loans for purchaser.
2. There is no fee for a mortgage broker registration.
3. An individual applying to become a mortgage broker who holds a real estate broker license must submit a dual agency affidavit.
4. Individuals employed by either licensed mortgage bankers or mortgage brokers are not required to have a license.
5. Mortgage broker dual agency is legal with disclosure and informed consent.
6. Mortgage bankers make mortgage loans for housing and construction and the purchase of existing housing.
7. In New York, a mortgage banker must have a line of credit of at least $1 million.
8. The financial risks are must greater for a mortgage broker than a mortgage banker.
9. Prequalification is not a commitment by the lender.
10. Underwriting is a statement by a lending institution that assures the purchaser that the lender will loan a certain sum of money.
11. A nonconforming loan is a loan that does not meet Federal Reserve Bank criteria for funding.
12. In fully amortized loans, prescribed payments of principal and interest are paid throughout the life of the loan.
13. A yield spread premium is also known as a lender rebate.
14. A mortgage loan cannot be closed without locking in an interest rate.
15. In New York, a mortgage broker must register with the NYS Department of Financial Services.
16. A mortgage broker may arrange for a prequalification or preapproval letter.
17. A mortgage banker does not lend its own money.
18. Transferring loans to lenders that simultaneously advance funds for loans is known as table funding.
19. The mortgage broker's fee can be paid by the borrower.
Multiple Choice  CH 7

1. Mortgage broker dual agency is legal if:
   a. the mortgage broker is also a real estate agent
   b. it remains undisclosed to the borrower/buyer
   c. with disclosure and informed consent
   d. a preapplication disclosure is submitted to the borrower/buyer

2. Mortgage brokers require the following:
   a. a $99 fingerprinting fee, a $1,500 investigation fee
   b. a surety bond or a pledged deposit of at least $10,000
   c. all of the above
   d. none of the above

3. Which of the following is NOT a mortgage banker requirement?
   a. demonstration of good character
   b. net worth of at least $250,000
   c. set of fingerprints, a $99 fingerprinting fee, a $3000 investigation fee
   d. existing credit of at least $2 million provided by a banking institution

4. Generally, the mortgage broker is:
   a. large enough to originate loans and create pools of loans that it sells directly to Fannie Mae, Freddie Mac, and Ginnie Mae
   b. able to pick from a variety of available lenders to secure the best deal for the borrower
   c. not required to report its yield spread premium
   d. responsible for collecting mortgage payments and risks its own credit

5. The process in which the lender evaluates all of the borrower's financial data to determine whether the borrower will obtain the loan is called:
   a. loan underwriting
   b. mortgage commitment
   c. pre-approval
   d. prequalification
ANSWERS TO SUPPLEMENTAL LEARNING ACTIVITIES  

CH 7

True or False/ Multiple Choice

1. T  1. c
2. F  2. c
3. T  3. d
4. T  4. b
5. T  5. a
6. T
7. T
8. F
9. T
10. T
11. T
12. T
13. T
14. T
15. T
16. T
17. F
18. T
19. T
CHAPTER 8
REAL ESTATE MATHEMATICS
CLASSROOM HOURS: 1

RATIONALE FOR CHAPTER
A knowledge of basic math is integral to real estate practice. Many students, however, have not been back to school in a long while and others may have a mental block against the subject. The review questions in the math chapter are divided and captioned so that the types of questions are grouped as to which chapters they belong to. Hopefully, instructors who teach other subjects in the syllabus that involve mathematical computations will refer to the relevant sections of this chapter. This section of the instructor’s manual is also divided and captioned according to subject and chapter where the application is appropriate and may be used as an additional self-study supplement for students. It also provides extra questions for the instructor to present as time and need allows.

FOCUS OF PRESENTATION
1. Before beginning your presentation, find out the students that are comfortable with math and those who are not. Sometimes, it is helpful to pair a student who is good in math with one who has lesser abilities in this subject. This alleviates the boredom of the student that has already conquered this and hopefully gives support to the student who has not.
2. Class participation is a helpful way to teach math. Get your mathematicians up to the board. It’s a good way to reinforce learning and students enjoy it.
3. Have students review the chapter first and find out the areas where they want more emphasis.
4. Leave time to give personal attention to the students who need it.
5. Leave about 20 minutes to have students complete and review the math questions from the multiple choice section.
6. For students who need more help, refer to the real estate math resources offered through Cengage Learning. A helpful study prep tool is the Cram for Exam that matches New York Real Estate for Salespersons and New York Real Estate for Brokers.

LEARNING ACTIVITIES CONTAINED IN CHAPTER 8
Multiple Choice (15)
Multiple Choice

Commission and Sales, Chapter 2, Law of Agency

1. A seller wants to net $50,000 from the sale of her home after paying a 6% commission and $700 in fix-up repairs. What does the minimum sale price have to be?
   a. $53,700
   b. $53,742
   c. $53,891
   d. $53,936

2. A salesperson earns a $4,800 commission by selling a $75,000 property. What is his rate of commission?
   a. 1.41%
   b. 6.4%
   c. 7.81%
   d. 15.62%

3. A broker’s commission is 7% of the first $50,000 plus 5% of the sale price over $50,000. What is the total commission on the sale of a $87,000 property?
   a. $4,350
   b. $5,350
   c. $5,520
   d. $6,090

4. A tract 300 feet square was sold by a broker for $2,750 per acre. If the commission rate was 9%, how much did the broker earn?
   a. $511.34
   b. $568.15
   c. $1,893.93
   d. $2,066.00
5. If a real estate broker earned a commission of $5,600 at a commission rate of 7%, at what price was the property sold?
   a. $39,200
   b. $68,000
   c. $80,000
   d. $125,000

*Prorations, Chapter 4 Part IV, Title Closing and Costs*

6. A home is sold for $127,500 with the transaction closed on May 14. The tax rate is $1.35 per $100 with the taxes unpaid at closing. What is the entry in the seller’s statement?
   a. $ 640.69 debit
   b. $ 784.13 credit
   c. $1,080.56 credit
   d. $1,721.25 debit

7. What would be the amount appearing on a seller’s closing statement if he had agreed to pay two discount points on a sale, the terms of which were the following? Price, $45,000; Loan, 90% of purchase price.
   a. $900
   b. $91
   c. $810
   d. $81

8. A sale is closed August 23, with the real estate tax of $600 per year unpaid. What is the appropriate entry in the closing statement?
   a. debit seller $388.33
   b. credit seller $388.33
   c. debit buyer $211.66
   d. credit buyer $211.66

9. A seller whose insurance policy is $325 per year has paid 6 months in advance from July 1. When she sells the home on December 4, the appropriate entry will be:
a. debit seller $301.52  
b. credit seller $50.56  
c. debit seller $111.94  
d. credit seller $23.48  

**Principal, Interest, Points, Chapter 6, Real Estate Finance (Mortgages)**  
10. A mortgage balance is currently $43,627.14 and the amount of interest applied to the loan this month is $309. What is the annual interest rate?  
   a. 7.08%  
   b. 7.79%  
   c. 8.5%  
   d. 15%  

**Use the amortization chart on p. 321 of the textbook for questions 11–14**  
11. A home is sold for $117,500 with the buyer obtaining a 90% conventional loan at 10.5% for a 30-year term. What is the monthly payment for principal and interest?  
   a. $ 944.35  
   b. $ 967.61  
   c. $ 987.71  
   d. $1,075.13  

**Use the following information for questions 12–14**  
A home is sold for $45,700 with the buyer obtaining a 95% loan for a term of 20 years at a rate of 9.75%.  
12. How much of the first payment goes to interest only?  
   a. $ 40.69  
   b. $ 62.38  
   c. $352.75  
   d. $371.31  
13. What is the balance on the loan after one payment?  
   a. $39,182.04  
   b. $43,062.25
14. What is the total interest that will be paid over the life of the loan?
   a. $53,180
   b. $55,465
   c. $89,115
   d. $98,880

15. If one month’s interest paid on a mortgage is $200 and the principal balance is $30,000, what is the rate of interest?
   a. 6%
   b. 6.67%
   c. 7.25%
   d. 8%

16. A purchaser negotiates a loan for 80% of the purchase price of her new home. If the interest rate is 9% and the first monthly payment on the loan includes $337.50 for interest, what did the purchaser pay for the home?
   a. $37,500
   b. $46,875
   c. $50,625
   d. $56,250

*Area Calculations: Chapter 9, Land Use Regulations*

17. A lot measures 200 feet by 474 feet. How many acres are contained in the lot?
   a. 2.18
   b. 17.99
   c. 43
   d. 95

18. A parcel of land measures 150 feet by 250 feet and sells for $10,000. What is the price per square foot?
   a. $0.27
   b. $0.53
   c. $1.44
19. A rectangular acre of land has a width of 165 feet. What is the depth of the property?
   a. 264 feet
   b. 275 feet
   c. 379 feet
   d. 718.74 feet

20. A house measuring 28 feet by 52 feet is constructed for a cost of $52 per square foot. What is the total cost of the house?
   a. $14,560
   b. $27,664
   c. $65,712
   d. $75,712

21. A 3.5 acre lot is to be divided into building lots of 100 feet by 200 feet, reserving 15% of the total land area for roadways. How many lots will be obtained?
   a. two
   b. five
   c. six
   d. eight

22. A home of 1545 square feet sells for $77,250. What is the price per square foot?
   a. $20.20
   b. $49.44
   c. $50.00
   d. $64.20
23. The perimeter of a rectangular lot is 120 yards. The length is twice the width plus 8 yards. What is the length in feet?
   a. 52
e   b. 76
c. 128
d. 188

24. A broker has a problem of subdividing a ten-acre tract into 50 __ 100 foot lots; after allowing 85,600 square feet for the necessary streets, how many lots will the broker realize from this subdivision?
   a. 70
e   b. 87
c. 92
d. 116

Ad Valorem Taxes, Chapter 9, Land Use Regulations, Chapter 12 Valuation Process

25. A home has a market value of $72,500. The tax assessed value is 82% of the market value and the tax rate is $1.33 per $100 of assessed value. What will be the monthly payment for taxes?
   a. $67.71
e   b. $82.57
c. $812.50
d. $990.85

26. The market value of property is $83,500 and the assessed value is 80% with a tax rate of 37 mils. What is the quarterly payment for taxes?
   a. $617.90
e   b. $722.38
c. $823.87
d. $1,029.83

27. The tax valuation of a property being sold at $50,000 is 75% of the sales price. If the tax rate is $4.50 per $100, what is the semiannual payment for taxes?
   a. $750.25
   b. $843.75
   c. $1,500.50
   d. $1,687.50

28. If the assessed value of a property is $136,000 and the annual tax paid is $1,700, what is the tax rate per $100 of assessed value?
   a. $0.80
   b. $1.25
   c. $2.31
   d. $125.00

29. If a property sold at tax value and the annual tax was $588.80 at a tax rate of $2.30 per $100, what was the selling price?
   a. $13,542
   b. $17,664
   c. $25,600
   d. $51,200

**ANSWER KEY TO SUPPLEMENTAL LEARNING ACTIVITY**

**Multiple Choice**

*Commission and Sales*

1. d
2. b
3. b
4. a
5. c

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Prorations
6. a
7. c
8. a
9. d

Principal, Interest, Points
10. c
11. b
12. c
13. c
14. b
15. d
16. d

Area Calculations
17. a
18. a
19. a
20. d
21. c
22. c
23. c
24. a

Ad Valorem Taxes
25. a
26. a
27. b
28. b
29. c
CHAPTER 9
LAND USE REGULATIONS
CLASSROOM HOURS: 3

RATIONALE FOR CHAPTER
Land use controls are likely to affect all real estate transactions in some form or another. They are directly connected to the decision making process as to whether a purchaser will desire a specific property. A licensee that is not educated as to land use regulations may find that lack of knowledge will be very detrimental to his or her self as well as prospective clients and customers. Although the focus of the chapter is general, students should further educate themselves with local regulations.

FOCUS OF PRESENTATION
1. Land use is always an interesting topic to teach because many students have had some sort of experience with regulations (positive or negative). You might want to begin the discussion with shared information or newspaper clippings from your area that illustrate current debates or disputes. If there are students in the class who have experience with land use issues, continue to include their examples throughout the presentation.

2. An important focus in teaching land use is the terminology. For this particular subject, you may want to go through all of the keys terms first and give students an overview of their meaning. Reinforcement can come later into the discussion.

3. Begin the material in the chapter by explaining the difference between public and private land use controls. Then define and illustrate, possibly using local examples.

4. The discussion should then move to public land controls which is the major portion of the presentation. You should explain that controls fall under government’s right of police power and are divided essentially into state, federal, and local controls.

5. Further information regarding exemptions to the Interstate Land Sales disclosure act is included in this outline if you want to use it.

6. The important powers of taxation, eminent domain and escheat are discussed next. Students need mostly a definitional concept of what these powers are. Use Table 9.1 to explore these concepts.
7. Local controls that pertain to zoning should be addressed next. Ask students to explain why there are no statewide zoning ordinances. Consider bringing in a local zoning map to illustrate the types of zones and where they are located in your community.

8. Provide the students with copies of local zoning codes and maps.

9. Discuss the role of the planning board in reference to subdivision development including site plan and review and also other planning board functions.

10. Differentiate between the deviations from zoning ordinances with examples including the circumstances for each and why spot zoning is illegal in New York. Figure is useful in illustrating these deviations. Include a short explanation of the role of the zoning board of appeals. Note that in New York City the planning commission and zoning board of appeals are one body. Include a short discussion of the progression of a construction project including building codes, building permits, and certificates of occupancy.

LEARNING ACTIVITIES CONTAINED IN CHAPTER 9

How Would You Respond?: typical scenarios to analyze (2)

Key Terms: fill-in sentences (10)

Multiple Choice (20)

CHAPTER 9 OUTLINE

I. THE NEED TO PLAN FOR THE FUTURE
   A. decisions made today will impact land use in future

II. PRIVATE LAND USE CONTROLS: DEED RESTRICTIONS, COVENANTS AND CONDITIONS
   A. Deed restrictions in form of covenants or conditions; run with land
   B. restrictions that provide for reversion of title if violated are conditions
      1. can also be limitations on use of land by developer for residential subdivision
      2. contain references to recorded plat of subdivision
      3. must be reasonable; must benefit all property owners
         a. typical restriction—setback requirements
   C. covenants enforced by property owners
      1. owners not act to enforce covenants; restriction will be terminated
         a. doctrine of laches—landowners must protect rights or lose them
III. PUBLIC LAND USE CONTROLS
A. laws and powers given to states by federal, state, local statutes, agencies and regulations
B. police power—government provides for public health, safety, welfare

IV. STATE AND LOCAL CONTROL
A. New York State Article 9-A of Real Property Law—regulated by DOS
   1. covers subdivided lands within and without New York only when sold through installment land contract
   2. documentation describing land and filing fee to DOS
B. environmental impact statements—State Environmental Quality Review Act
   1. mandates all levels of state and local government assess environmental significance of actions they approve, fund, or undertake
C. transportation planning—support and provide access to residential, commercial areas, public places
   1. NYS DOT builds, oversees, and maintains roadways, bridges and overpasses on state owned roads
   2. New York City has department of transportation
      a. municipality may need to acquire easement
D. New York State Office of Parks, Recreation and Historic Preservation (OPRHP)
   1. Field Services Bureau acting as State Preservation Office—administers federal and state preservation programs authorized by federal act and New York Historic Preservation Law
   2. State Register of Historic Places—receives federal preservation funding grants
E. transfer of development rights—rights inherent in parcel of land
   1. may be transferred to another property that needs more rights
   2. often purchased from historic properties that do not need them

V. FEDERAL CONTROLS
A. Interstate Land Sales Full Disclosure Act—interstate (across state lines) sale of unimproved lots
   1. administered by HUD; prevent fraudulent marketing when land sold
sight unseen
2. developer must file statement of record with HUD before offering unimproved lots through telephone or mail; must provide a Property Report to purchaser

Note to instructor: The following is supplemental information not included in the textbook

3. exemptions to act include:
   a. subdivisions in which lots are 5 acres or more
   b. subdivisions consisting of fewer than 25 lots
   c. lots offered for sale exclusively to building contractors
   d. lots on which building exists or where contract obligates seller to construct building within 2 years
      i. sale or lease of real estate that is zoned for commercial or industrial development
      ii. developer or licensee, may be subject to fine up to $5,000 or imprisonment for up to 5 years or both for violations

B. Department of Housing and Urban Renewal (HUD)
   1. administers funding of federal money to municipalities and private individuals for projects related to housing
   2. grant money funded to larger cities on annual basis
   3. major portion of money funded through Community Development Block Grant Program

C. New York State Department of Environmental Conservation
   1. protect quality of land, water, air, scenery, fish, wildlife
   2. prevent deterioration of natural and physical environment

VI. POWER OF TAXATION
   1. inherent burdens on private ownership of land
   2. taxes levied by government constitute specific lien against real estate
      a. priority over all other liens

VII. EMINENT DOMAIN
   A. government takes private property for public use
      1. taking called condemnation
         a. used only if property condemned for use and benefit of public
      2. property owner must be paid fair market value

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3. owners may appeal to courts if not satisfied with compensation

B. taking as defined by New York courts
      a. taking if deprives owner of economically viable use of property; owner no longer reasonably use for intended purpose

VIII. POWER OF ESCHEAT
   A. owner dies intestate—decedent’s property distributed to heirs
   B. if no one qualified to receive title to property, state uses power of escheat to claim title

IX. LOCAL AUTHORITY
   A. zoning classifications
      1. bundle of rights and “as of right zoning”
         a. zoning cannot discriminate between different landowners in using zone in similar way
      2. residential zones—single-family homes, various levels of multi-family dwellings
         a. accessory uses—incidental or subordinate to main use of property
         b. small business or home occupation—conducted by residents of dwelling; secondary to use of dwelling
         c. group home—residential facility for five or more adults who have been institutionalized and released
         d. definition of family
            i. individual, or two or more persons related by blood or marriage or adoption, living together
            ii. group of up to three people who are not married, or blood relatives, or adopted, living together
            iii. one of more persons living as single housekeeping unit, as distinguished from group occupying hotel, fraternity, or sorority
      3. commercial zones—retail stores, restaurants, hotels, service businesses
      4. industrial zone—light or heavy manufacturing, warehouses
      5. vacant land—without buildings or unimproved
6. agricultural zone—animal grazing and crop production
   a. creation of Agricultural Districts enacted in 1971
7. public open space—not intensely developed
8. park lands—public areas—overseen by OPRHP and DEC
   a. also special agencies such as Adirondack Park Agency
9. recreation areas—supervised by DEC and OPRHP
10. institutional uses—hospitals, correctional facilities, courthouses, college and university campuses, schools,

B. types of zoning
   1. incentive zoning—developers construct amenities for use by residents
      a. floor to area ratio often incentive
         i. amount of floor space of building in comparison with lot size
      b. low floor to area ratio economically desirable to developers
      c. municipality may grant lower floor to area ratio if developer provides amenities
   2. cluster zoning provides for planned unit developments (PUD)
      a. example of multi-use zoning where number of uses allowed in one zone
      b. developer places combination of housing close together in exchange for leaving parts developed or open for residents
      c. adjacent properties called abutting land

C. open meeting law (Sunshine Law)—meetings of governmental agencies open to public

X. LOCAL LAND USE PLANNING
   A. have power to investigate, report, and make recommendations to legislative body
   B. establishes subdivision regulations
      1. considerations
         a. demographics—study of social and economical statistics of community
         b. census—statistical recordation of individuals and properties in municipality
            i. census tracts—small geographical areas established through cooperation between local community and bureau of census
         c. infrastructure—support systems of community
d. impact fees paid by developer cover increased cost of services

C. zoning actions—planning board makes recommendations
   1. moratorium—delay in allowing development of property
      a. phased development—development allowed when support services available
      b. moratoriums temporary

D. capital budget—municipalities’ expenditures

E. Federal Housing Authority (FHA) approval—minimum building standards for properties whose mortgage approved and insured

F. plat, density, street and traffic patterns
   1. plat—recorded map; rendering of subdivision lots
   2. rules governing density set forth to avoid overcrowding
      a. includes minimum lot size; setback requirements, sideline requirements, minimum size of dwelling
      b. subdivisions have dead ends streets; cul-de-sacs

G. air rights—solve problem of density in larger urban areas,
   1. landowner construct improvements or leases or sells air space

H. site plan and review—allows planning board to evaluate proposal’s physical, social, and economic effects
   1. topography—physical features and contours of land
      a. relevant to how and where dwellings situated
   2. plan includes new utility systems, drainage, easements running through the property, zoning surrounding site, open spaces, configurations of streets, sidewalks, types of structures, environmental considerations, marketing information
   3. survey part of site plan—measures boundaries and physical dimensions

XI. THE ZONING BOARD OF APPEALS
   A. reviews rulings made by planning board; legislative body
   B. grant or deny exceptions and special permits
   C. processes variance applications
   D. owner must appeal to board for exception to zoning ordinance
      1. if request denied; property owner may petition Supreme Court through Article 78 Proceeding
a. appeal brought forth because of ruling by government agency.

E. variance—permitted deviation from zoning ordinance

F. two types of variances: use and area

1. use variance—permission to use land for purpose that under current zoning prohibited
2. must demonstrate hardship
3. owner deprived of economic use or benefit from property
4. hardship unique; not universal to neighborhood
5. variance will not change character of neighborhood
6. hardship not self created

G. area variance—permission to use land in manner not allowed by dimensional or physical requirements of current zoning

1. considerations in granting
   a. undesirable change or detriment to nearby properties if granted
   b. if can be achieved by other means
   c. if variance substantial
   d. if adverse effect on physical or environmental conditions of neighborhood
   e. if self-created; does not preclude granting

H. special use permit—use not permitted in zone except with permission of planning board, other legislative body

1. not granted without public hearing
2. does not require hardship
3. can be authorized if proposed use in harmony with local zoning; not adversely affect neighborhood; beneficial to community

I. spot zoning property is rezoning to permit use different from zoning requirements

1. illegal in New York; and deemed spot zoning under following conditions
2. if rezoning solely for benefit of property owner without benefit to neighborhood
3. if value of neighborhood properties lessened

J. nonconforming use—preexisting use different from by zoning code

1. called preexisting nonconforming use or “grandfathered”

XII. LOCAL ENFORCEMENT

A. New York State Uniform Fire Prevention and Building Code

1. provides minimum standards for all building types
2. applies to residential and commercial structures

B. building codes require owner obtain building permit from government authority before constructing or renovating; commercial or residential
   1. local government may perform inspections to enforce code
   2. after satisfactory final inspection, certificate of occupancy issued
      a. permits occupation of structure by tenants or owner
      b. many cities may require CO before occupancy by new owner or tenant even if no construction or renovation
      c. code violations

C. professional services
   1. civil engineers—topographical description of land and mapping of roadways
   2. environment engineers evaluate environmental issues
   3. surveyors
   4. professional land use planners—development and implementation of master plan

D. departments of health—local health departments arm of New York State Department of Health (NYSDOH)
   1. reviews and approves water supply and individual wastewater treatment facilities within covered (under law) residential subdivisions
   2. before building permit issued, health department approve water source and individual wastewater treatment system
   3. subdivisions covered under Public Health Law may not be built until approved map filed with city or county health department

Note to instructor: Health department approval is also discussed in Chapter 11)

E. local courts—usually, not always, uphold municipal actions.
CHAPTER 9  LAND USE REGULATIONS

SUPPLEMENTAL LEARNING ACTIVITIES

Putting It To Work*

We are considering new construction, and the agent on-site said there will be deed restrictions. What are deed restrictions?

*Reprinted by permission of James A. Ader, Administrator, Greater Capital Association of REALTORS®, Inc.; and the Albany Times Union in Mr. Ader’s column; Real Estate Spotlight.

How Would You Respond?

Beverly is looking for a townhouse for herself and her ten year old son, Sandro. Since she works long hours and wants to spend as much time with Sandro as possible, she tells you that she wants to live in a community where all the services that she needs, such as grocery stores, cleaners, movies, etc. are close by? What might you suggest?
**True or False**

1. In New York, the state need not compensate property owners for taking sections of home frontage to widen roads.

2. Taxes levied by local governments constitute a specific lien against real estate.

3. If a person leaves no will, her property immediately reverts to the state through the power of escheat.

4. Planning boards in New York need not hold public hearings, but may make decisions affecting the community in closed door sessions.

5. Zoning is an example of the police power of the state.

6. Zoning ordinances rarely include property setback requirements.

7. Deed restrictions are limitations placed on the use of land by developers.

8. When a property is conveyed from one owner to another, the restrictive covenants become null and void.

9. Ad valorem taxation is an example of private land use control.

10. Special use permits are illegal in New York.
Multiple Choice

1. Land restrictions that provide for reversion of title if violated are:
   a. covenants
   b. conditions
   c. negative easements
   d. affirmative easements

2. Restrictive covenants may NOT be terminated by which of the following?
   a. expiration of a time period
   b. unanimous vote of owners
   c. failure to enforce on a timely basis
   d. violation by one party

3. Enforcement of restrictive covenants is by:
   a. injunction
   b. escheat
   c. eminent domain
   d. condemnation

4. Sam has operated a shoe store in the same location for twenty years. The area has just recently been zoned residential only. Sam’s use is now:
   a. illegal
   b. a variance
   c. spot zoning
   d. nonconforming but legal

5. Maria owns a house on a road that has now developed into a high-speed four-lane highway through town. Maria’s area of the street is zoned residential only, but Peter, a photographer, would like to buy Maria’s house for use as a studio. Due to the high speed traffic now, Maria cannot find a buyer for the home for residential use. Maria’s problem appears to justify a(n):
   a. injunction
   b. nonconforming use
   c. variance
   d. spot zoning
6. The application of public land use controls is the exercise of which power of government?
   a. taxation
   b. police
   c. eminent domain
   d. escheat

7. Building codes require a number of inspections of a property that are concluded with the issuance of a:
   a. declaration of Restrictions
   b. statement of record
   c. property report
   d. certificate of occupancy

8. Land use controls may be accomplished by which of the following?
   a. the habendum clause in the deed
   b. adverse possession
   c. deed restrictions
   d. a life estate

9. A property owner wanting to build a garage on a lot that is not of the size prescribed by the zoning may apply for a:
   a. spot zoning permit
   b. area variance
   c. use variance
   d. new ordinance

10. Which of the following statements about land use controls is false?
    a. deed restrictions are a form of private land use control
    b. public land use controls are an exercise of police power
    c. enforcement of private restrictions is by injunction
    d. eminent domain is a private land use control
ANSWER KEY TO SUPPLEMENTAL LEARNING ACTIVITIES

Putting It To Work*
Deed restrictions, also known as restrictive covenants, are used to regulate any number of different matters in new-construction neighborhoods. You should not contract to buy until you are given, and review carefully, the restrictions for your area. The deed restrictions in your case may include (but are not limited to) any of the following: size, material and style of fencing; restriction on the outside storage of boats; recreational vehicles and commercial vehicles; architectural requirements, setbacks, sizes of structures; use of property for commercial ventures; restrictions on landscaping (such as height of trees); use of clotheslines; and exterior colors on buildings. In some areas, there might be a Homeowner’s Association. In these instances, the Association rules can set similar restrictions so these too must be understood before you buy.

*Reprinted by permission of James A. Ader, Administrator, Greater Capital Association of REALTORS®, Inc. and the Albany Times Union, in the column Real Estate Spotlight.

How Would You Respond?
1. If a planned unit development (PUD) exists in your community, this would be the type of housing that would best serve Beverly’s needs. If such a community did not exist in an area where Beverly wants to live, a well planned and developed urban or suburban neighborhood that allows multi-use within a zone might work for her.

True or False Multiple Choice
1. F 1. b
T. T 2. d
3. F 3. a
4. F 4. d
5. T 5. c
6. F 6. b
7. T 7. d
8. F 8. c
9. F 9. b
10. F 10. d

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CHAPTER 10
MUNICIPAL AGENCIES
CLASSROOM HOURS: 2

RATIONALE FOR CHAPTER
Sellers and/or buyers may have questions about the real estate they own or purchase. In New York, the agency that handles certain matters varies. After completing the 75-hour course, students should have a basic understanding of the agencies that handle certain real estate related problems.

FOCUS OF PRESENTATION
1. The chapter defines the municipal agency, explains the functions it performs, and then gives a Real Estate Example of that agency.
2. To reinforce what students have learned, ask them to share examples of their own experiences with these agencies.

LEARNING ACTIVITIES CONTAINED IN CHAPTER 10
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill in sentences (6)
Multiple Choice (15)

CHAPTER 10 OUTLINE
I. GOVERNMENT AGENCIES
   A. cities and towns-classified under New York law by populations
      1. city of first class has a population of 175,000 or more
      2. city of second class has a population of at least 50,000 and less than 175,000
      3. city of third class is any other city that does not fit these categories
   B. city council
      1. members elected
      2. term is two years
   C. New York City-city council
      1. law-making body of City of New York
      2. comprised of 51 members from 51 different Council Districts in five
boroughs
3. full power over municipal budget, authority over zoning, land use, and franchises

D. town board
1. adopts and amends local laws relating to membership and makeup of the board-
legislative or governing body for town

E. village board of trustees
1. mayor and trustees of a village make up village board of trustees-elected officers
2. term of office of trustees two years- resolution or local law can change
term of office to four years
3. New York Municipal Home Rule Law-adopt and amend local laws if they do not violate
New York Constitution or general law

F. functions of city councils, town boards, and village boards of trustees
1. adoption of laws and ordinances including the zoning ordinance and
cluster zoning approval
2. adoption of municipal budget
3. adoption of tax rate
4. decisions to take private property for public use (eminent domain)

II. COUNTY, TOWN, AND VILLAGE PLANNING BOARDS
A. town planning board
1. town board may create planning board

B. village planning board
1. five or seven members

C. county planning board
1. offers professional advisement to all agencies and boards within county

D. basic functions of county planning
1. advises other agencies in land use matters
2. coordinates projects among different municipalities
3. variety of other duties

III. ZONING BOARD OF APPEALS
A. provides a “safety valve” for zoning ordinances
B. makes the zoning ordinances more flexible and keeps zoning legislation out of the courts
C. maintain the essential character of the neighborhoods
D. appointed by mayor or city manager of a city, the village board of trustees, town board
   1. three or five members
   2. term equal in years to the number of members on board
E. functions
   1. interprets the zoning ordinance
   2. grants use and area variances-can impose reasonable conditions and restrictions

IV. ARCHITECTURAL REVIEW BOARD
   A. composed of people with expertise in art, architecture, or planning,
      oversees design issues
   B. authority to review building plans and specifications-can withhold
      approval of building
   C. functions
      1. approves new construction and remodeling following local zoning
         ordinance laws
      2. promotes orderly and harmonious development of municipality
      3. protects municipality’s cultural heritage

V. ENVIRONMENTAL MANAGEMENT COUNCIL/CONSERVATION
   ADVISORY COUNCIL/WETLANDS COMMISSION
   A. county level
      1. county establishes County Environmental Management Council
      2. consists of one member of each city, town, and village
   B. city, town, or village
      1. local legislative body can appoint Conservation Advisory Council-advises
         development, management, and protection of natural resources
   C. functions
      1. can conduct research regarding environment projects
      2. assists municipal organizations preparing plans or reports
      3. reviews proposals or applications as directed by county
VI. WETLAND COMMISSIONS

A. NYS Department of Environmental Conservation-agency that oversees wetlands according to NY Environmental Conservation Law (ECL)

B. functions of council and/or wetlands commission
   1. advise municipal agencies/conducting studies regarding preservation, development, and use of natural and physical features
   2. develop public information program
   3. work with planning boards and agencies to include environmental improvement in Master Plan
   4. accept property, both real and personal to further environmental standards
   5. oversee regulations regarding construction on or near a wetland

VII. HISTORIC PRESERVATION/LANDMARK COMMISSION

A. regulate/protect places/objects that have special character, historical or aesthetic interests

B. buildings may be exterior and/or interior landmarks
   1. interior landmark includes hangings, sculptures, railings, and ceiling panels

C. landmark preservation ordinances- zoning ordinance preserving buildings rather than use of buildings on the land

D. General Municipal Law- landowner cannot be required to restore and rehabilitate historic building

E. functions
   1. recommends ordinances preserving historic districts, landmarks, and historic sites
   2. reviews and approves applications for construction, alteration, demolition or relocation of historical property or object
   3. recognizes sub districts within preservation district

VIII. BUILDING DEPARTMENTS

A. enforces building code

B. protects public by ensuring code restrictions are followed

C. the New York Uniform Fire Prevention and Building Code-provides minimum standards for all buildings types in New York, residential and
D. functions related to building departments
   1. provides building permits for construction and renovation
   2. provides certificates of occupancy (CO) for construction or renovation
   3. oversees building code compliance
   4. sends building inspectors onsite to oversee compliance

IX. TAX ASSESSOR
   A. local government official-estimates value of real property in city, town, or village
      1. elected tax assessor serves for six years.
   B. must maintain assessments at uniform percentage of market value each year-value converted into assessment
      1. assessment-one component in computation of real property tax bills
   C. assessor must keep physical description and value estimate of every parcel current
      1. uniform assessment roll-all properties in municipality analyzed to determine which assessments need change
   D. assessment roll-document containing each property assessment
   E. functions
      1. placing value on taxable property; and lists on assessment roll
      2. maintaining tax maps
      3. assisting taxpayers with certain exemptions
      4. maintaining property tax records

X. RECEIVER OF TAXES AND ASSESSMENTS/TREASURER
   A. collecting officer who receives real property taxes and assessments during specified collection period
   B. in New York City, Commissioner of Finance responsible for collection of taxes on real property in city
   C. functions
      1. bills for and collects property and school taxes
      2. collects other fees such as water fees and permit fees

XI. CITY/TOWN/VILLAGES ENGINEER
A. appointed by mayor for two-year term in second-class cities
B. civil engineer with five years' practical experience
C. supervises engineering work under the direction of commissioner of public works
D. acts as superintendent of public buildings, bridges, docks, and wharves

XII. TOWN ENGINEER
A. appointed by town board-town of first class may appoint deputy engineers
B. must be a licensed professional engineer
C. may survey or examine lands, or waterways, public or private, within town
D. functions
   1. estimates costs public works projects
   2. supervises streets and other public works
   3. issues permits for street openings
   4. responsibility for sewage, water supply and distribution systems

XIII. COUNTY AND CITY HEALTH DEPARTMENTS
A. board of health
   1. provides for local boards of health and Departments of Health in counties, cities, Villages, and towns
   2. boards of health-governing body of local health department.
B. local health department
   1. NYSDOH-state regulatory agency-oversees health issues in New York
   2. local health department upholds all federal, state, and local public health laws
   3. New York City Department of Health and Mental Hygiene
      a. Commissioner of Health appointed by mayor heads the New York City Department of Health And Mental Hygiene.
C. functions of city and county health departments
   1. drinking water safety
   2. septic system approval
   3. wastewater treatment approval
SUPPLEMENTAL LEARNING ACTIVITIES  

CH 10

True or False

1. Under the New York Municipal Home Rule Law, a village has the power to adopt and amend local laws as long as they do not violate the New York Constitution or any general law.

2. It is mandatory that a town board create a planning board.

3. Municipal planning board duties may include recommending amendments to the zoning ordinance or map.

4. Zoning board of appeals provides a “safety valve” for the zoning ordinances by making the zoning ordinances more flexible.

5. One main duty of a zoning board of appeals is to maintain the essential character of the neighborhoods.

6. Architectural review boards have the authority to withhold approval of building permits.

7. A municipality may regulate wetlands by setting up a separate Wetland's Commission.

8. One function of a conservation advisory council and/or wetlands commission is to oversee regulations regarding construction on or near a wetland.


10. The tax assessor is a local government official who estimates the value of real property.

11. One of the receiver of taxes' main duties is to assist taxpayers with certain exemptions.

12. The town engineer must be a licensed professional engineer.

13. A building department enforces the building code.

14. New York State Department of Health is the state regulatory agency which oversees water related issues in New York.

15. One function of the city and county health department is drinking water safety.
Multiple Choice

1. City councils, town boards, and village boards of trustees do NOT generally perform which of the following?
   a. adopting of a municipal budget
   b. making investigations relating to planning and development
   c. deciding to take private property for public use
   d. calling a moratorium to halt building projects for a specified time

2. Which of the following is NOT a function of a planning board?
   a. preparing and amending a master plan for the community
   b. recommending amendments to the zoning ordinance or map
   c. providing a "safety valve" for zoning ordinances
   d. implementing the master plan

3. One function of a tax assessor is:
   a. billing for and collecting property and school taxes
   b. collecting water fees and permit fees
   c. tracking payments for the municipality
   d. estimating the value of real property

4. Which of the following is NOT a function of the town engineer?
   a. maintaining the tax maps
   b. supervising streets and other public works activities
   c. issuing permits to private contractors for street openings and curb and gutter construction
   d. assuming responsibility for sewage, water supply, and distribution systems

5. Which of the following statements are FALSE concerning health departments?
   a. local county health departments cooperate with NYSDOH
   b. larger first class cities generally have their own health departments
   c. a town board must use a private agency as its health department
   d. local agencies may have laws that are more restrictive than state laws
### ANSWER KEY TO SUPPLEMENTAL LEARNING ACTIVITIES

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<thead>
<tr>
<th>True or False</th>
<th>Multiple Choice</th>
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CHAPTER 11
CONSTRUCTION AND ENVIRONMENTAL ISSUES
PART I CONSTRUCTION
CLASSROOM HOURS: 2

RATIONALE FOR CHAPTER
Licensees need to have at least a basic knowledge not only to effectively market property but also to help evaluate representations made by sellers as to property condition. Real estate boards encourage members to use seller property condition disclosure forms. Not only do these forms help to define existing problems but it involves the seller more directly in the selling process.

FOCUS OF PRESENTATION
1. This chapter has a great deal of information. If possible, have students read over the chapter before the presentation. When explaining concepts, make use of the many tables and illustrations in the chapter for visual enforcement.
2. Begin the chapter with a very quick overview of land use concepts including building codes, permits, specifications, and zoning. Explain the role of the New York codes and then discuss site use and preparation. Take no more than 10–15 minutes for this subject matter.
3. Students need to have a basic understanding of New York on-site well and waste system requirements. Your students living in rural areas may already know something about this topic. Look toward them for examples. Use Figure 11.2 An on-site sanitary waste system, and Table 11.1 Required Minimum Separation Distances to Protect Wells from Contamination to illustrate these concepts.
4. Begin your discussion of the structural components of a house by referring to the illustration in Figure 11.4 which shows these components. Reference to Figure 11.5 which illustrates the footing and foundation will also offer visual support. Upon completion of this section, have students complete the Putting It To Work Exercise which serves to reinforce structural terminology.
5. Insulation is the next major topic for discussion. Explain the meaning of the R-factor and give examples of various types of insulation. Figure 11.11 illustrates two common types.

6. The major mechanical systems of the house constitute the last and largest portion of the chapter. Try to leave as much time as possible for this section. As an introduction to the material, explain to students what the major systems are: heating, cooling and ventilation, plumbing, and electrical. Try to separate these items for them.

7. Use the PowerPoint to supplement the mechanical systems not shown in the textbook.

8. When explaining plumbing systems, emphasize that each house has two systems; one for drinking water and one where wastewater goes.

9. Emphasize the systems that are mainly used in your market area. For example, if students are mainly from a rural area, you may want to spend more time on wells and septic systems.

10. Next, present an overview of the National Electric Code and the role of the New York Board of Fire Underwriters and other inspection companies.

11. Review the New York regulations regarding smoke alarms and carbon monoxide detectors.

12. Emphasize the role of the agent in mandatory seller property condition disclosure. Review the form in its entirety. It can be downloaded at the DOS website.

**LEARNING ACTIVITIES CONTAINED IN PART I**

Putting it to Work: filling in structural components (1)
How Would You Respond? typical scenarios to analyze (2)
Key Terms: fill-in sentences (8)
Multiple Choice (15)

**CHAPTER 11 PART I OUTLINE**

I. LAND USE
A. building codes, permits, and certificates of occupancy  
   1. construction, installation, and materials conform to minimum requirements of New York State Uniform Fire Prevention and Building Code  
B. plans and specifications  
   1. contractors file plans and specifications with local building department or planning board  
   2. building plan or blueprint—detailed architectural rendering of structure  
      a. must be stamped by licensed architect or engineer  
   3. building specifications—written narratives explain building plan  
      a. may include materials, explanation of various systems in structure, design features  

II. SITE REQUIREMENTS  
A. New York State on-site well requirements  
   1. NYSDOH provides guidelines and regulations  
      a. well constructed in accessible location  
      b. good distance from potential sources of pollution  
      c. minimum distance between water supply and wastewater disposal units  
      d. clear projection from buildings by at least five feet  
B. New York State on-site sanitary waste system requirements  
   1. Appendix 75-A, New York Public Health Law—guidelines for on-site individual wastewater treatment systems  
      a. if overlays drinking water aquifer, local health departments establish population density limits; minimum lot sizes  
   2. must be four feet of usable soil above rock for installation of absorption field  
   3. soils with rapid percolation rates blended with less permeable soils to slow infiltration rate  
   4. separated from buildings, property lines, well and waterways according to specified minimum distances
5. usable area 50 percent of size of system set aside for replacement or expansion if possible
6. environmental assessment before construction

C. Energy Conservation Construction Code of New York—minimum requirements for design of new and renovations to existing structures
1. regulates building envelopes, HVAC, hot water, electrical
   a. building envelope—materials through which heating, cooling, or fresh air passes
2. historic buildings exempt

III. SITE USE
   A. drainage—one of first considerations in preparing site for construction
      1. grading places drainage areas water runoff
      2. crawl spaces graded to ensure positive drainage
   B. landscaping—conceal unsightly areas, noise barrier, define certain spaces, prevent soil erosion, remove pollutants
   C. appurtenances—ownership rights; may be leased or sold to others
      1. appurtenances researched for impact on property developed
   D. shading—placement determines areas that receive sunlight at different times
   E. walkways and paths—building codes generally call for walkway from front door to street or driveway
      1. planning board may require developer to construct walkways around or through subdivision for public use
   F. zoning—if site plan does not comply with existence zoning ordinances, variance may be required

IV. STRUCTURE
   A. footings—concrete base below frost line that supports foundation
      1. twice width of foundation wall; depth—usually minimum of eight inches; should be as deep as foundation wall is thick
   B. foundation walls—composed of poured concrete, masonry block, sometimes brick
      1. height of foundation wall determines if structure full basement or crawl
space
2. vertical masonry piers built inside foundation walls for additional support
3. full basements most common in New York
4. NY code requires vapor barriers; heavy duty plastic; depending on local conditions, termiticide may also be required

C. slab-on-grade construction—poured directly on ground; eliminates crawl space or basement
   1. floating slab—pour footing first and then slab
   2. monolithic slab—footing and slab poured at same time

D. wood framing—wooden skeleton of structure
   1. framing members—2" thick; 2" × 4"; piece of lumber 2" thick by 4" wide
   2. also known as studs

E. flooring
   1. sill plate placed on top of foundation wall; first wooden member of house
      a. used as nailing surface for floor system
   2. box sill, or banding, rests on sill plate around top of foundation wall
   3. floor joists span distance between foundation walls and girder; provide support for subfloor
   4. main carrying beam or girder spans distance from one side of foundation to other; joists rest on girder for support
   5. lally columns may support main carrying beam of structure
      a. round steel columns filled with concrete placed in basement or crawl space; height adjusted accordingly
   6. modern construction may use wooden floor trusses in place of single floor joists; factory made
   7. plywood or particle board subflooring rests on top of joists

V. STRUCTURAL TIE IN OF ALL COMPONENTS
   A. walls—built of 2" x 4" studs, 16" on center
1. bearing walls support ceiling and/or roof; put up first
2. horizontal base plate, also called sole plate—foundation for system
3. double top plate also known as flitch beam used to tie walls together; provide additional support for ceiling and roof
   a. flitch beam—two or more timbers bolted together with metal plate in between
4. openings in wall for doors or windows supported by headers
5. type of framing describes platform framing—framing of structure rests on subfloor platform
   a. most common residential type
   b. balloon framing—single system of wall studs run from foundation to ceiling; rarely used in residential construction
   c. post-and-beam framing—much larger than ordinary studs; placed several feet apart; seldom used in residential construction

B. ceiling framing and roof—ceiling joists rest on top plate of wall
   1. ridge beam highest part of framing; forms apex or top line of roof
   2. rafters—long wooden members fastened to ends of ceiling joists
   3. contemporary residential construction—two varieties of roof styles: gable roof and hip
   4. roof should extend at least 6” beyond exterior of structure

C. sheathing (sheetrock or wallboard) placed over exterior framing members

D. overhang includes three components: soffit, fascia, frieze board
   1. soffit—area under roof extension
   2. fascia—area of material facing outer edge of soffit
   3. frieze board—wooden member fastened directly under soffit; decorative and functional
   4. prevents wind, moisture from penetrating junction of soffit and sheathing

E. roof system covered with plywood or particle board; then roofing paper, shingles

VI. ENERGY EFFICIENCIES
A. Insulation rated via R-factor
   1. degree of resistance to heat transfer of walls (heat kept in or out)
      a. larger R-factor, greater degree of insulation

B. types and location of insulation
   1. flexible available as blanket, batt or quilt—fiberglass or fibrous material
      a. installed between studs
   2. loose fill—light material blown into place
   3. rigid or wall board—heat and acoustical insulation
   4. reflective—opened to provide air space
   5. sprayed—UFFI—not used anymore—has toxic properties

C. Energy Code—mandates minimum R-values for insulation
   1. designates areas where insulation must be installed
   2. all materials that absorb moisture need vapor barrier

VII. MAJOR MECHANICAL SYSTEMS
A. ventilation systems—central exhaust fan and ducts to remove stale air
   1. fan installed in basement or attic
   2. systems differ in how fresh air replaces exhausted air

B. types of heating systems
   1. hot water system—when liquids heated or cooled, called hydronic system
      a. consists of pipes, boiler, and room heating units such as radiator or convector
      b. water heated in boiler; propelled through pipes by circulator pumps to radiators or convectors
   2. steam system—boiler and system of pipes; steam conveyed to radiators
      a. found in older homes
   3. forced warm air—furnace which contains fan or blower, heat source such as gas or oil, and filters
      a. extracting cool air and passing air through heat sources
      b. warmed air flows through ducts to various rooms
      c. can provide heating and cooling through same ducts
4. electrical heating—baseboard heaters placed along walls
   a. when electricity passes through wire, molecules stirred up; creates heat
   b. units consists of resistor, insulator and terminal
   c. not cost effective
   d. radiant panels—composed of tubes that carry electricity, steam, or hot water, as a heat source

C. types of heating fuel and power
   1. warm air furnaces consist of blower, heat exchanger, casing, and controls
   2. electric heat—resistance heating element which heats air directly or through metal sheath enclosing element
   3. oil fired heat—requires delivery and storage of fuel
      a. above and underground heating storage tanks for residential use
         not regulated by NYSDEC or EPA
         i. Nassau and Suffolk counties have their own regulatory program
   4. gas fired heating combustion takes place within metal heat exchanger; conveyed through flue or vent
      a. widely used in New York

D. air conditioning—integration of heating, ventilation and air conditioning (HVAC)
   1. central air conditioning located outside of air conditioned space
   2. components—liquid refrigerant, evaporator, compressor, condenser, and receiver
   3. common refrigerant—formerly Freon, now other substances used
   4. evaporator takes heat and brings to refrigerant; compressor flows refrigerant through system; condenser liquefies refrigerant gas by cooling it; receiver used for excess liquid
      a. integral systems with forced air—can cool or heat
b. air cooled and water cooled systems—depends on type of condenser

5. BTU ratings—measure of heat energy
   a. amount of heat required to raise temperature of one pound of water by one degree Fahrenheit
   b. capacity of air-conditioning unit rated in tons of refrigeration

E. heat pump—heating and cooling
   1. air source heat pumps extract heat from outside
   2. cycle reversed in summer; extract heat from interior and produce air conditioning
   3. ground source heat pumps—draw on ground temperature
   4. limitation—only operate well in moderate climate

F. plumbing systems—two systems: water supply and drainage
   1. must be separated to prevent contamination
   2. gas hot water heaters—vertical storage tank enclosed in insulated metal tank
   3. electric hot water heaters—heating element immersed inside tank which heats water
   4. summer-winter hookup—copper coil immersed in hot water tank of house heating boiler; pipes connect coil to hot water storage tank
   5. tankless coil—no hot water storage tank; hot water supplied by immersing coils into boiler water
   6. solar hot water heaters—three major components: the solar collectors, a storage tank, and a heat exchanger

G. plumbing systems—wastewater
   1. drainage system carries wastewater; deposits into public sewer system or private septic tank
   2. waste and water move down fixture drain, through soil pipes to main soil stack
   3. main soil stack connects to house drain where waste leaves system
H. on-site wastewater treatment systems—most rural and some suburban residential areas

1. household wastewater treatment system—septic system
   a. house sewer is pipeline connecting house, drain and septic tank
   b. distribution box distributes flow from septic tank evenly to absorption field or seepage pits
   c. absorption field—system of narrow trenches
   d. discharge from septic tank distributed through pipes into trenches and surrounding soil
   e. seepage pit covered pit with perforated lining through which discharge infiltrates into surrounding soil
   f. Health Department regulations—if soil site conditions are adequate for absorption trenches, seepage pits cannot be used

I. municipal systems—wastewater drains through house sewer to main sewer system

J. domestic water—incoming services—well and town

1. most suburban and municipal areas in New York have public water
   a. water brought under pressure from municipal water main or private or community well to house pipes

K. well water—New York requirements

1. regulated by NYSDOH
2. types of wells: drilled, dug and spring; drilled wells best
3. specifications for well water
   a. depth of more than 20 feet below ground surface
   b. must be disinfected
   c. owners must monitor water

L. types of piping

1. cast iron pipe—underground plumbing; house drainage system; strong and durable
   a. disadvantage—heavy and time consuming to install
2. copper pipe—water supply and drainage systems
a. available as flexible or rigid
3. plastic pipe—used more often in plumbing systems; three types: PVC, ABS, CPVC
   a. less resistant to heat; CPVC sometimes used for hot water pipes
   b. plastic pipe cannot be used for drinking water according to New York code
4. brass pipe no longer used in many plumbing installations; expensive; used when hard water problem
5. steel pipe—used extensively 40 or more years ago for the water supply and less frequently for house drainage systems
M. pipe sizing for adequate pressures
   1. minimum acceptable pressure is lowest pressure which permits safe, efficient, and satisfactory operation
      a. maximum acceptable pressure—highest pressure that will not cause damage
      b. stipulated by building codes
      c. may be regulated by systems within house such as booster pump
N. venting requirements of plumbing fixtures—pipes installed in wastewater drainage system to provide flow of air to and from drainage system
   1. permits gases and odors in drainage piping to circulate up through system and out of house
   2. building codes specify venting requirements
O. electrical systems
   1. voltage service of 120/240 volts is standard; most residential service is a minimum of 100 amps but new construction is generally 150- to 200 amps
   2. must include circuit breakers
   3. electrical distribution panel located in utility room, basement, or garage
   4. house needs sufficient electrical wall receptacles
   5. incoming services—brought through outside cables and delivered conductors to house wiring system
      a. above ground cables; called service drop
b. below ground or buried cables; called service lateral

6. utility company and land owner responsibilities
   a. utility company bring electrical service
   b. property owner responsible for all inside wiring

7. voltage—electrical pressure that pushes through wires
   a. 120 volts standard voltage for lighting and small appliance; 240 volt usage for other applications

8. amperage—amount of current flowing through wire

9. amperage required for different electrical usage calculated in watts or kilowatts
   a. electrical circuits installed according to kilowatt requirements
   b. if wire size or service not strong enough circuit will overheat causing fuses to melt or circuit breakers to trip
   c. fuse—device that melts and opens circuit causing power to stop
   d. circuit breakers more convenient and safer than fuses; don’t need replacement like fuses

10. amperage can be identified by number on fuse or circuit breaker located on distribution panel

11. aluminum vs. copper wiring
   a. aluminum used where current heaviest; point of entry
      i. branch circuit wiring—goes to switches and outlets
      ii. aluminum overheats at outlets
   b. copper works better

12. BX cable—armored electrical cable; insulated conductors (wires) in flexible metallic enclosure
    a. found in branch circuit wire that feed outlets
    b. Romex cable—non-metallic sheath cable; like BX cable except plastic coated; therefore moisture resistant and flame retardant; less expensive; easier to install
    c. found in older homes

13. conduit—pipelike enclosure used to house current carrying conductors
(wires)
  a. galvanized steel or plastic; found at service entrance
  b. used above and below ground
  c. BX and Romex cable used for branch circuit wiring only; conduit used in all applications
14. Greenfield—another type of conduit; no conductors (wires) inside until they are put in
  a. flexible metal rather than rigid; can take vibrations
  b. used for connecting air conditioners, clothes dryers

P. National Electric Code—national standard for electrical installation and service
  1. written by National Fire Protection Association
     a. renewed every three years; used for all electrical installations; must be adhered to
  2. minimum requirements; municipalities may have more restrictions

Q. New York Board of Fire Underwriters—one of oldest companies to inspect electrical installations
  1. New York code requires all electrical installations inspected for compliance with National Electric Code
  2. municipalities choose qualified inspection organization to check compliance
  3. other companies: Atlantic Inland and Syracuse North

R. smoke alarms and carbon monoxide detectors
  4. carbon monoxide detectors-due to Amanda's law must be installed in all residential structures in New York
  5. smoke alarms-every one- and two-family dwelling in New York, including residential condominiums and cooperatives, and multiple dwellings (three or more apartments) must have an installed operable single-station smoke alarm
  6. carbon monoxide detectors and smoke alarms regulated by the NYS Uniform Fire Prevention and Building Code

R. life expectancies
  1. systems should be routinely inspected on yearly basis
2. licensees should require sellers make repairs before putting house up for sale

VIII. MANDATED GUARANTEES, WARRANTIES, AND INSTALLATIONS
True or False

1. The New York Department of Environmental Conservation oversees well water regulations.

2. Rapid percolation rates allow septic systems to be placed within 25 feet of a drilled well.

3. With passive solar designs, the house should be oriented so that the side with the most windows faces within 30 degrees of north.

4. Once a property is sold, all easements on the property become null and void.

5. Structures situated on land that has rolling hills possess more natural drainage capabilities than structures situated on flat land.

6. The most common type of framing used in residential construction is platform framing.

7. The gable and hip roof are rarely used today in residential construction.

8. The smaller the R-factor, the greater the degree of insulation.

9. Urea formaldehyde insulation (UFFI) is a spray-on insulation.

10. House ventilation systems supply fresh air into the house and remove stale air.

11. A heat convector in a house can be in the form of a radiator.

12. A heat pump is completely effective in all types of climates.

13. Integral HVAC systems which use the same duct work for heating, ventilating and air conditioning are one of the most economical type installations.

14. Electric heating is the most economical type of heating available to New Yorkers.

15. In a septic system, the house sewer is the pipeline connecting the house and drain and septic tank.
Multiple Choice

1. A type of property exempt from requirements of the New York Energy Code is:
   a. residential
   b. commercial
   c. industrial
   d. historic

2. Ownership rights that can be sold or leased to others that are a consequence of owning property are known as:
   a. appurtenances
   b. encumbrances
   c. exclusive rights
   d. laches

3. The concrete base below the frostline that supports the foundation is known as the:
   a. sill plate
   b. footing
   c. slab
   d. batter board

4. A type of construction that eliminates a basement or crawl space is called:
   a. pier and beam
   b. balloon framing
   c. slab-on-grade
   d. masonry block

5. The regulatory agency that provides guidelines for well water in New York is the:
   a. Department of Health
   b. Environmental Protection Agency
   c. Department of the Interior
   d. Department of State
6. A component of a roof that prevents wind and moisture from penetrating the junction of the soffit and sheathing is:
   a. sill plate
   b. frieze board
   c. fascia
   d. ridge beam

7. Spray on insulation that solidifies in the wall and contains toxic properties is known as:
   a. batt insulation
   b. urea formaldehyde foam insulation
   c. loose fill insulation
   d. rigid insulation

8. In a hot water heating system, heat is transferred to the air in the room by:
   a. blowers
   b. convectors
   c. ceiling fans
   d. heating coils

9. A type of heating system which uses a boiler to produce heat and is typically found in older homes is a(n):
   a. heat pump
   b. tankless coil system
   c. steam system
   d. forced warm air

10. An economical form of heating fuel that does not require fuel storage is:
    a. electric
    b. oil
    c. gas
    d. propane
11. HVAC system components are assigned:
   a. R factors
   b. BTU ratings
   c. heat extraction ratings
   d. ventilation standards

12. A component of all types of ventilation systems includes:
   a. Freon
   b. joists
   c. a central exhaust fan
   d. coils

13. An advantage of a heat pump is that it:
   a. supplies heating and cooling through the same unit
   b. is effective in extremely cold climates
   c. produces warmer air than a typical furnace
   d. is the most economical heating system for New York climates

14. In New York, the minimum distance between a well and an absorption field is:
   a. 25 feet
   b. 50 feet
   c. 75 feet
   d. 100 feet

15. Which of the following is NOT a NYSDOH requirement for well construction?
   a. disinfection before usage
   b. built to specifications outlined by NYSDOH
   c. must constructed by drilling
   d. must be constructed in an area not subject to flooding
True or False Multiple Choice

1. F       1. d
2. F       2. a
3. F       3. b
4. F       4. c
5. T       5. a
6. T       6. b
7. F       7. b
8. F       8. b
9. T       9. c
10. T      10. c
11. T      11. b
12. F      12. c
13. T      13. a
14. F      14. d
15. T      15. c
CHAPTER 11 PART II
ENVIRONMENTAL ISSUES
CLASSROOM HOURS: 3

RATIONALE FOR CHAPTER
Environmental concerns have become an element of the home buying thought process. Although it is unrealistic to expect that a home will be free of certain environmental influences, most homes generally do not contain materials and substances that pose a health threat. However, in recent years, new concerns have made it mandatory that licensees are aware of various problems, how they affect transfer of title, and how they may be remediated.

FOCUS OF PRESENTATION
1. The chapter is essentially divided into two main categories as defined by the state syllabus: long-standing issues and contemporary issues. This approach will help to organize the material for you and the students.
2. Environmental issues is a big topic that lends itself to lots of discussion. Keep in mind the time constraints for this topic so that you can complete the chapter within the required three hours. This may present difficulty so you may want to follow these time suggestions: environmental legislation: 15 minutes; longstanding issues: 1 hour, 15 minutes; contemporary issues: 1 hour 15 minutes; chapter review: 15 minutes
3. The first major longstanding issue is the water supply and wastewater system regulation. This topic is relevant particularly to licensees who will sell properties in rural areas where wells and individual wastewater treatment systems are utilized. Use Figure 11.14 to explain New York’s water supply system.
4. The relationship between NYSDOH and subdivision lot approval is an important topic and should also be addressed in this section.
5. Contemporary issues include asbestos, radon, lead, and indoor air quality. Include a short discussion of UFFI (insulation). Be sure to include the Residential Leadbased Paint Hazard Reduction Act in your presentation. Licensees must
comply in the sale or rental of pre 1978 residential properties. Included in the text are two sample forms that can be used for disclosure: Figure 11.19 a leadbased paint testing contingency and Figure 11.20 a disclosure of information and acknowledgement form. This section also addresses environmental impact statements and due diligence reviews.

6. First explain the impact of CERCLA, the Superfund Amendments, and the State Environmental Quality Review Act. These laws bear a direct relationship as to why environmental awareness is necessary to the transfer of title to property.

7. In discussing these issues, you may bring examples of contingencies in sales contracts such as termite inspection, radon testing, and well water flow and quality.

8. Other contemporary issues include underground storage tanks, electromagnetic fields, and CFCs. In all of your discussions, keep in mind that the goal is not to create scientists, but to give students a familiarity with these issues.

9. For further background on this topic, refer to Environmental Issues and the Real Estate Professional by Marcia Darvin Spada. This booklet also contains a helpful instructor manual. To order, contact Cengage Learning.

LEARNING ACTIVITIES CONTAINED IN PART II

How Would You Respond?: typical scenarios to analyze (2)

Key Terms: fill-in sentences (8)

Multiple Choice (15)

ENVIRONMENTAL ISSUES

CHAPTER 11 PART II OUTLINE

I. OVERVIEW OF TODAY’S MAIN ENVIRONMENTAL ISSUES
   A. longstanding issues—water, wastewater treatment facilities, termites
   B. contemporary issues—asbestos, lead, radon, indoor air quality, PCBs, underground storage tanks, electro-magnetic fields, and chloroflourocarbons

II. LONGSTANDING ISSUES—WATER
   A. municipal drinking water; public—federal Safe Drinking Water Act of 1974
guideline for New York regulations

B. New York Department of Health (NYSDOH)—regulatory agency
   1. local health departments—agents of NYSDOH; may have more restrictive regulations
   2. public water supply system—municipality such as city, village, town
   3. New York Sanitary Code—specifies maximum contaminant levels and standards, establishes design criteria, requires licensing of operators, enforces code
      a. if contaminant level violated, supplier must notify NYSDOH; submits water sample to laboratory analysis; media notification

C. private water distribution systems—well; should meet same standards as public water
   1. well—water source from ground
   2. NYSDOH—guidelines for wells
      a. drilled wells recommended over dug wells; less likely to become contaminated

D. community wells—two or more wells; may serve different residences
   1. if serves 25 people or has more than five homes; regulated by NYSDOH and NYSDEC

E. New York City, all water public except for some private wells in Staten Island

F. health related issues—sanitary code recommends frequencies for water monitoring
   1. water tested for following
      a. bacteria—most frequent contaminant; tested every day
      b. mineral content—proper balance of minerals
         i. corrosiveness vs. noncorrosiveness—includes pH level
         ii. high pH—water very alkaline; low pH—water more acid
         iii. non corrosive—soft water with low pH; low number of total dissolved substances (tds)
         iv. total dissolved substances—number of different minerals
v. corrosive water—hard water with high pH and large
number of tds
vi. biggest concern—highly corrosive water may contain
dangerous amounts of lead

G. testing and remediation—must test to see if water contaminated; laboratory testing

1. special sanitary survey and water sampling service available to residents of some counties
2. on request, health specialist from county health department makes sanitary survey of area surrounding private water supply
3. NYSDOH offers assistance for decontamination of private water sources
4. contingencies in offers to purchase may include determination of well water flow and quality

H. individual wastewater treatment systems

1. approval and installation of systems less than 1000 gallons per day regulated by NYSDOH
2. NYSDEC standards apply to buildings or residences that process 1000 or more gallons of wastewater per day
3. minimum standards include site requirements, design and construction guidelines for septic systems
4. NYSDEC approves plans for community and public wastewater

I. septic systems—plans for systems, other than outlined in state regulations, must submit to Health Department for approval

1. created by design professional—NYS licensed engineer or architect
   a. submit as-built plans of system
   b. construction supervised by design professional who must certify system built in accordance with approved plan
2. environmental assessment
3. offers to purchase may include septic system contingency

J. subdivision and individual lot approval—subdivision falls under NYSDOH
jurisdiction if has five or more lots leased or sold for residential building

1. lot—parcel five acres or less sold or offered within three-year period
   a. Suffolk County—applies to commercial or industrial

2. before building permit issued, water supply and wastewater treatment systems approved by local or State Health Department
3. realty subdivision maps cannot be filed with county clerk without Health Department approval
   a. Suffolk County projects must also file with County Department of Environmental Control

4. owner of one parcel in an unapproved subdivision must also have plans approved by Department of Health
5. if land does not fall within definition of subdivision or lot not in subdivision, approval not required; zoning ordinances, building codes, local health department regulations may apply
6. NYSDEC reviews plans for public and community wastewater treatment facilities

K. testing and remediation

1. health department personnel go on site; percolation and deep hole tests
   a. deep hole tests—determine ground water elevations; suitability to treat wastewater
   b. percolation tests used to determine absorption of soil
2. DOH staff may inspect site during construction; also code enforcement officers, design professionals
3. some areas—inspection programs monitor wastewater treatment sites after construction

III. LONGSTANDING ISSUES: PEST INFESTATION

A. termites—flying insects that eat wood—cause considerable damage
B. testing and remediation—unlicensed individual may test for termites
C. individual licensed by NYSDEC may apply termiticide; substance used to eliminate termites
D. holes bored around property; solution poured in
1. termite infested areas cut out and rebuilt
E. offers to purchase may be contingent upon termite inspection
F. if infestation found, purchaser may have right to cancel contract
G. chlordane—toxic chemical insecticide and termiticide; banned in early 1980’s

IV. LONGSTANDING ISSUES: WETLANDS
A. known by many names including marshes, swamps, bogs, wet meadows and flats
B. protected areas—provide flood and storm water control, surface, ground water protection, erosion control, pollution treatment, fish and wildlife habitat, open space, natural beauty
C. Article 24 of Environmental Conservation Law, also known as Fresh Water Wetlands Act; overseen by NYSDEC
   1. must be greater than 12.4 acres
   2. adjacent area of 100 feet also protected buffer zone
D. NYSDEC maps all protected wetlands
   1. once NYSDEC files map for area, locality can regulate

V. CONTEMPORARY ISSUES—ASBESTOS
A. fibrous mineral found in rocks and soil; used in construction applications
   1. strong, durable, fire retardant, efficient insulator
   2. flooring, walls, ceiling tiles, exterior housing shingles, insulation for heating and electrical systems
B. past 20 years, homes probably do not contain asbestos
C. if material in good condition, do not disturb
D. EPA and CPSC—ban of most asbestos products
E. health effects—identified as carcinogen
   1. asbestosis—chronic disease of lungs—inhalation of fibers
   2. mesothelioma—cancer of chest and abdominal membranes
F. testing and remediation—EPA regional asbestos coordinators provide information on accredited asbestos contractors
   1. workers protected under federal regulations—specify training, protective clothing, special respirators
2. detected through air monitoring, bulk sampling, or wipe sampling
   a. manufacturer of product may be able to tell

G. removal of asbestos—complicated process
   1. maintenance plan developed to ensure asbestos materials in good condition
   2. other remedies
       a. encapsulation—material sprayed with sealant
       b. enclosure—placing barrier around material
       c. total removal—last alternative

VI. CONTEMPORARY ISSUES—LEAD
   A. metallic element found worldwide in rocks and soil; used in older homes and apartments
   B. lead-based paint—enters air when surfaces are scraped, sanded, heated in paint-stripping procedures
      1. particles circulate in air; inhaled or ingested
      2. Residential Lead-based Paint Hazard Reduction Act (1992)—mandates information, disclosure and providing of inspection opportunities in certain transactions
         a. sellers, lessors, or agents must disclose presence of known lead-based paint and/or lead-based paint hazards
         b. sellers, lessors or agents must distribute lead hazard pamphlet and disclose any known information to buyers or agent concerning lead paint
         c. sellers and lessors must provide purchasers and lessees with copies of any available records or reports pertaining to presence of lead-based paint
         d. mutually agreeable 10-day period for a lead paint assessment before purchaser becomes obligated under contract
         e. civil penalties for noncompliance up to $11,000
   C. lead in drinking water—homes before 1988; plumbing systems used lead-based solder
1. lead enters drinking water through corroded pipes

D. lead in soil—built before 1950; lead from exterior surface paint in surrounding soils

E. health effects

1. accumulates in body tissues; death or permanent damage to central nervous system, brain, kidneys
2. infants, children, pregnant women more vulnerable

F. testing and remediation

1. lead-based paint—remove sample; laboratory testing
2. lead in place if not eaten by children; cover with wallpaper; completely remove
3. lead in water—Safe Drinking Water Act established maximum contaminant level
   a. banned use of materials containing lead in public water supplies and in connected residences
   b. U.S. Congress banned use of lead-based solder in plumbing applications within homes and buildings
   c. run faucet for 15 seconds before drinking water
   d. renovations—contractor should remove any lead solder
4. lead in soil—grounds should be well landscaped; minimizes exposure of children to contaminated dust
5. wipe floors, window-sills, and other surfaces

VII. CONTEMPORARY ISSUES—RADON

A. colorless, odorless, tasteless, radioactive gas; byproduct of natural decay of uranium

B. if present in surrounding soil or well water; can enter home

1. enters through cracks in concrete, floor drains, sump pump openings, basements, hollow block walls
2. seep into ground water; remain entrapped
   a. more radon in well water; less in public water supply

C. health effects—particles lead to lung cancer
1. concentration in air measured in units of picocuries per liter of air (pCi/L)

2. most homes contain one to two picocuries of radon per liter of air
   a. if radon levels greater than four picocuries per liter of air; EPA recommends follow-up test
   b. no level safe

D. testing and remediation

1. water supplies—removed or reduced by special filter systems
   a. involves fans, pumps, other appliances

*Note to instructor: see Figure 7.24 that illustrates radon reduction in a single family home*

2. radon detection kits (canisters) must be certified by Environmental Laboratory Accreditation Program
   a. purchased from local or state Department of Health, accredited laboratories, hardware stores
   b. if done by individual; laboratory testing
   c. short term testing; few days to several months; long-term testing; up to one year—more accurate
   d. water sample: laboratory analysis

E. EPA working with state and local governments, private sector to reduce indoor radon

1. also with builders to develop radon-resistant construction

F. New York follows EPA guidelines; no statewide code

VIII. CONTEMPORARY ISSUES—INDOOR AIR QUALITY

A. Urea Formaldehyde Foam Insulation—formaldehyde colorless, gaseous chemical compound present indoor and outdoor air
   1. ingredient in foam used for home insulating until early 1980s
   2. UFFI contains large amounts of formaldehyde
   3. no longer used but present in many homes
   4. since 1985, HUD, enforced regulations that sharply curtail use of materials containing formaldehyde
5. use of formaldehyde compounds still widespread in furniture, cabinets, other building materials

B. health risks—shown to cause cancer in animals; no definitive evidence linking cancer in humans
   1. higher levels of formaldehyde trigger asthma attacks in individuals who have condition
   2. other problems—skin rashes; watery eyes, burning sensations in eyes, throat, nasal passages

C. testing and remediation—increase ventilation and circulation of outside air
   1. emissions from building materials decrease with age
   2. qualified building inspector examines home; monitoring kits available
      a. monitor for minimum of 24 hours

D. biological agents and allergens—bacteria, mold, mildew, viruses, mites, pollen, animal dander
   1. mold and mildew growth—damp conditions from high humidity and water pipe leaks
   2. dust mites grow in warm, damp environment
   3. respiratory illnesses caused by inhaled viruses or bacteria; allergic reaction possible

E. sick building syndrome—people in commercial building sick; allergic reactions to flu like systems; more serious complaints
   1. no other outside cause—chemical illness may be problem
   2. indoor air quality—sick building syndrome
   3. state or local department health department called to identify cause if public building
   4. private buildings—private consultant

F. poly-chlorinated biphenyls—manmade odorless liquid organic
   1. used with electrical transformers as cooling and insulating medium
   2. PCBs from chemical plant in Fort Edward, New York leaked into Hudson River
   3. also leak into ground from electrical transformers
4. known carcinogen
5. testing and remediation
   a. if suspected EPA or NYSDEC will go to site and test
   b. if positive, soil containing PCBs removed to special incinerators and landfills

IX. ENVIRONMENTAL ASSESSMENTS
A. State Environmental Quality Review Act (SEQRA) 1976—preparation of environmental impact statement on actions which may have significant effect on environment
   1. State Environmental Quality Review (SEQR)—process requiring all levels state and local government assess environmental significance of actions they have discretion to review, approve, fund, or undertake
   2. applies to residential, commercial, industrial structures; other types of land use; state or national historic properties
   3. agency that coordinates called lead agency
   4. if no governmental approval—SEQR process does not apply
   5. process begins with three part environmental assessment form.
B. environmental impact statement (EIS)—describes and analyzes proposed action which may have significant effect on environment
   1. applicant can hire consultant to write statement
   2. minimum 30-day comment period; public hearing held
   3. environmental impact statement becomes lead agency’s final document

X. DUE DILIGENCE
A. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 1980
   1. program created to identify sites containing hazardous substances, ensure clean up by responsible parties, seek reimbursement
B. Superfund Amendment imposes liabilities to owners whose property is environmentally contaminated
C. liability passed to new owners
   1. may include cost of cleanup
2. sale of large tracts, land, other types of commercial property, lenders, purchasers and tenant conduct due diligence reviews
3. conducted by private engineer or consultant

D. may go through four phases
1. Phase I—investigative phase; tests done to property, review of records of history; surrounding property examined
2. Phase II—if phase one shows problem more investigation; phase II testing phase initiated
   a. if testing does not show significant problems, assessment ends
3. if problem, Phase III initiated
   a. coordinated cleanup efforts take place
   b. different responsible parties may be involved
4. Phase IV, management phase—includes periodic monitoring by responsible parties

XI. OTHER PRESENT CONCERNS—UNDERGROUND STORAGE TANKS
A. NYSDEC regulates bulk storage of chemicals, petroleum above and underground
B. federal regulations overseen by EPA apply to underground storage only
C. chemical facilities are commercial or industrial businesses that store chlorine, fertilizers, pesticides
   1. NYSDEC sets standards for storage and handling; sites must comply with local zoning ordinances
D. concerns of leaking; testing and remediation
   1. leakage may discharge petroleum products containing MTBE or other hazardous liquids into soil; contaminate ground water
   2. older tanks, worn by age, corrosion due to chemical content
   3. NYSDEC can inspect for leakage; owners required to test periodically; report to NYSDEC
   4. if leakage; must call spill hotline within two hours
      a. product removed and tank repaired or replaced
   5. NYSDEC, Division of Spills Management, oversees and assists with
E. petroleum bulk storage—regulated by NYSDEC if combined storage capacity of over 1,100 gallons; above or underground
   1. EPA, under Federal Underground Storage Program regulates smaller tanks for gasoline, diesel fuel, waste oil
   2. New York delegated its petroleum bulk storage (PBS) program to four counties: Nassau, Suffolk, Rockland and Cortland
F. EPA exemptions to petroleum storage—neither EPA or NYSDEC regulate small above or underground heating oil tanks for on-premises consumption
   1. exception: Nassau and Suffolk counties—some regulations administered through local health departments
      a. all leaks or spills should be reported and remediated
   2. farm and residential motor fuel of less than 1,100 gallons, used for non commercial purposes not regulated
   3. owners of regulated storage tanks containing petroleum and chemicals—register with NYSDEC, pay fee, provide information about site, indicate material stored

XII. OTHER PRESENT CONCERNS—ELECTRO-MAGNETIC FIELDS (EMF)
   A. created when electricity flows through wire
      1. two separate fields: electric field and magnetic field
   B. present where there are power lines; generator and transmission lines
      1. longer the lines, stronger the electricity
   C. no federal laws which regulate EMF emissions
   D. 1978, New York adopted prudent avoidance policy—advises caution and avoidance of exposure
   E. New York Public Service Commission, 1990—limit of 345 kilovolts for power line
      1. kilovolts—measure of voltage or juice flowing through power line
      2. magnetic field strength (measured in milligauss) limited to 200 milligauss at edge of right of way
   F. health effects—no official evidence by government of health problem
1. some studies suggest causes higher incidence of leukemia; brain cancer
G. testing and remediation—exposure decreases with distance
   1. electric fields shielded by walls, trees, or hills
   2. magnetic fields cannot be shielded
   3. reduce exposure in home—electrical appliances not placed close to where people sleep, work, sit
   4. local power companies offer home testing; private testing possible
   5. opposing magnetic fields can cancel each other—electrician rewire home to reduce magnetic fields

XIII. OTHER PRESENT CONCERNS—CHLOROFLUOROCARBONS—CFCS
    A. CFCs—chemical manmade substances—applications: refrigerators, air conditioners, styrofoam products, aerosol dispensers, cleanings agents.
    B. hydrochlorofluorocarbons (HCFCs) known as Freon, formerly used in most home air-conditioning units
    C. CFCs and HCFCs—non toxic, extremely stable
    D. air-conditioning and aerosols
      1. car air conditioners uses—CFCs; home—HCFCS
      2. CFCs in aerosol spray cans banned since late 1970’s
    E. expelled into air—enter stratospheric ozone layer
      1. ozone layer—layer of gas, screens sun’s ultraviolet (UV-B) radiation
         a. lives of 100 years or more
         b. ozone hole is formed
      2. thinning of ozone layer; UV-B radiation reaches earth
         a. increase in skin cancer and cataracts may occur
      3. damage to crops and marine ecosystems; reduction of food supply can occur
    F. 1990, an amendment to Clean Air Act curtailed use
       1. CFCs not produced after 1995
       2. HCFCs can replace CFCs in some air-conditioning systems; may be produced until 2030
       3. bans release of CFCs and HCFCs during service, maintenance, disposal
of air conditioners, other equipment
4. as of 1992, refrigerants must be recovered from appliance before disposal
5. EPA fines up to $25,000 per day for violation

G. remediation techniques
1. national program to protect ozone layer; CFC and HCFC recycling
2. development of substitute chemicals
3. banning non-essential uses; product labeling
4. refrigerant recovery machines developed and used

H. hydrofracking-natural gas extraction

XIV. AGENT'S ROLE
A. impact on salesperson/broker
B. liability of salesperson/broker

CH 11 Part 2: Environmental Issues
SUPPLEMENTAL LEARNING ACTIVITIES

Putting It To Work*
Can levels of radon be reduced or is our home ready for the trash heap?
*Reprinted by permission of James A. Ader, Administrator, Greater Capital Association of REALTORS®, Inc. and the Albany Times Union, in the column Real Estate Spotlight.

True or False
1. New York public health officials believe that a private water supply is much safer than a public water supply.
2. Virtually no one in New York depends on well water as a source of water supply.
3. The Department of Health oversees the safety of drinking water in New York.
4. A septic system is a form of individual wastewater treatment for a home.
5. Plans for private wastewater treatment systems other than specifically outlined in New York regulations must be drawn up by a design professional and submitted for health department approval.
6. If found in the home, total removal of even small amounts of asbestos-containing material is the recommended procedure.

7. In some homes, plumbing systems can be a source of lead contamination.

8. If a home is supplied with water taken from a ground water source, there is less potential for a radon problem than if the home is supplied with water from a municipal source.

9. Under federal law, a developer must obtain a permit to construct property in a designated clean air region.

10. Older urea-formaldehyde building materials are most probably not a significant source of formaldehyde emissions.

11. Sick building syndrome can be caused by the presence of chemical pollutants and bacteria in a building.

12. The lead agency in the SEQR process is always a New York State rather than a local governmental agency.

13. In New York, the Department of Health oversees the storage of chemicals in underground storage tanks.

14. There are no federal laws which oversee electro-magnetic field emissions.

15. Federal law requires refrigerants to be recovered from an appliance before disposal.

**Multiple Choice**

1. A well that serves 25 or more people in New York is known as a(n):
   a. spring well
   b. dug well
   c. community well
   d. watershed

2. One of the biggest dangers of highly corrosive water is that it may:
   a. contain dangerous amounts of lead
   b. be difficult to swallow
   c. look dirty
   d. have too much chlorine
3. Plans for public wastewater systems are approved by:
   a. NYS Department of Conservation
   b. NYS Department of Health
   c. NYS Department of State
   d. NYS Department of Sanitation

4. According to the New York public health law, a subdivision falls under NYSDOH jurisdiction if it has:
   a. 2 lots
   b. 3 lots
   c. 4 lots
   d. 5 lots

5. A fibrous mineral that is used in building products and is linked to lung disease is known as:
   a. asbestos
   b. radon
   c. lead
   d. UFFI

6. Radon remediation is regulated by:
   a. New York State codes
   b. EPA guidelines
   c. Superfund Amendment
   d. Consumer Product Safety Commission

7. A colorless, odorless chemical found in many building materials, particularly insulation, is known as:
   a. asbestos
   b. Freon
   c. formaldehyde
d. CFCs

8. Phase I of a due diligence investigation is generally the:
   a. remediation phase
   b. investigation phase
   c. clean-up phase
   d. management phase

9. Small heating tanks for on premises consumption:
   a. are regulated by EPA
   b. are regulated by NYSDEC
   c. are regulated by NYSDOH
   d. not regulated by any government agency

10. With regard to electromagnetic field emissions, which of the following is true?
    a. tests have shown that they cause lung disease
    b. distance is not a factor in protecting from emissions
    c. New York has adopted a prudent avoidance policy
    d. there are no limits as to kilovolts as to a given power line

**ANSWER KEY TO SUPPLEMENTAL LEARNING ACTIVITIES**

**Putting It To Work***
The levels of radon in a home can be reduced, and generally, without making major changes to the home. A variety of methods can be used to reduce radon in homes. Sealing cracks and other openings in the foundation are a basic part of most approaches. The use of sealing alone has not, however, been shown to lower radon levels consistently. In most cases, systems with pipes and fans are used to reduce radon. Such “sub-slub depressurization” systems do not require major changes to the home. They do prevent radon gas from entering the home from below the concrete floor and foundation. Other systems are used, depending on the design of the property. Contact an EPA approved contractor for more information.
**True or False Multiple Choice**

1. F  
2. F  
3. T  
4. T  
5. T  
6. F  
7. T  
8. F  
9. T  
10. T  
11. T  
12. F  
13. F  
14. T  
15. T
CHAPTER 12
VALUATION PROCESS AND PRICING PROPERTIES
CLASSROOM HOURS: 3

RATIONALE FOR CHAPTER
Perhaps the most important question licensees will receive from prospective sellers concern the value of their property and how fast it can sell. Accuracy in this regard is an important aspect of the agent’s duty. There are two ways to go wrong: setting a value too low which will cost the seller money, and stating a value too high in order to obtain the listing which constitutes misrepresentation.

FOCUS OF PRESENTATION
1. Keep in mind that the focal point is the analysis of a CMA. Stress that an online researched CMA is what is typically used. (Figure 12.2 illustrates an online CMA.)
2. Continue your discussion by defining the difference between an appraisal and an a comparative market analysis. Briefly discuss the sales comparison, cost and income approaches. Include a short discussion of depreciation, functional, and external obsolescence.
3. Define valuation and review the types of value emphasizing the meaning of market value. Discuss evaluation and include a simple definition of highest and best use and why it is important.
4. This should lead into a discussion as to the distinctions between market value, price, and cost.
5. Then explain the three appraisal approaches to value.
6. You may want to show students how the MLS works online if a computer and program is available. You could also provide examples of computer created CMAs. Plan to spend at least 45 minutes (of your 3 hours) on the specifics of the CMA.
7. To enforce the theory behind producing a CMA, discuss the components of a residential market analysis. Now that the students have had some exposure to the CMA, this discussion will be more meaningful to them.

LEARNING ACTIVITIES CONTAINED IN CHAPTER 12
Key Terms: fill-in sentences (8)
Multiple Choice (15)

CHAPTER 12 OUTLINE
I. APPRAISAL, VALUATION, EVALUATION AND MARKET VALUE
A. appraisal—unbiased estimate of value based on factual data as of certain date
B. difference between an appraisal and comparative market analysis
   1. appraisal uses three approaches to value: sales comparison, cost and income; appraiser reconciles data
   2. comparative market analysis (CMA)—analysis of competition in marketplace
      a. considers other properties currently on market, sold properties, expired listings
C. types of value
   1. investment value—price investor would pay based on financial goals
   2. insurance value—coverage necessary to protect structure from loss
   3. value in use—value for owner and not necessarily value in market place; example: vacation home
   4. assessed value—percentage of market value up to 100 percent
      a. formula for assessed value: market value x assessment rate = assessed value.

Note to instructor: Property tax calculations are covered in Chapter 8 Real Estate Mathematics. If time allows, you may want to explain this concept more fully.

D. evaluation—study of nature, quality, utility of property; not necessarily value
estimate

1. land utilization studies, highest and best use studies, feasibility studies
   a. highest and best use—use that preserves usefulness of land, provide greatest income, highest land value

E. market value—most probable price, as of specific date, which property sells in competitive market

1. buyer and seller equally motivated; seller not under duress
2. both parties well-informed or well-advised
3. reasonable time allowed for market exposure
4. payment made in cash or equivalent
5. financing typical for property type
6. price represents normal consideration
7. “arms-length” transaction—unrelated buyer and seller

II. DIFFERENCE BETWEEN VALUE, PRICE AND COST

A. price—amount purchaser pays and seller accepts; may or may not equal value
B. cost—dollar expenditure for labor, materials, legal services, architectural design, financing

1. entrepreneurial cost—financing, start up costs, overhead,
2. cost may be equal to, above, or below, market value
   a. cost above market value because of financing problems, time schedules, construction problems
   b. because of aesthetic features, location, or historical value, property worth more in market place than its cost
3. direct or hard costs—labor and materials
4. indirect costs that create and support project

III. COMPARATIVE MARKET ANALYSIS

A. listing process—recommending market price
B. determined by comparison of similar property similar recently sold properties and currently listed

1. allowances made for differences in lot size, age, number of rooms, square footage, number of baths
C. comparables (comps): real estate files, assessor’s files, MLS data
   1. more recent date of sale of comparable, more valuable comparable

IV. RESIDENTIAL MARKET ANALYSIS
   A. residential market analysis—study of listed property as it stands on its own, and in light of market conditions
   B. recently sold properties—three to six sold properties in same neighborhood must be analyzed and compared
      1. considerations: type of structure, age, size and number of rooms, lot size, location, condition, days on the market, listed price, selling price
   C. current competing properties—history of competing properties researched and analyzed
      1. length of time on market, listing price reductions, number of times price reduced
      2. properties to be built should not be compared with existing properties
   D. recently expired properties—may be priced too high for current market conditions
      1. research prices of expired listings reveal information for price range for subject property
   E. buyer appeal—subjective; visual aspects
      1. distance from house to road, landscaping, entry way color, construction
   F. market position—number of similar properties available in same neighborhood
      1. must analyze difference between subject and others; marketing strategy to make difference known
   G. assets and drawbacks—certain assets universal
      1. good to excellent condition; desirable location; tolerable traffic pattern
         a. cul de sacs (dead end streets), more appeal
      2. properties may have undesirable features; traffic areas, landscaping problems, proximity to other properties
      3. current competing listings, expired listings, and sold properties, analyzed to see how assets or drawback affected sale, price range, final sales price
H. area market conditions—dependent on economy, supply and demand, seasonal considerations
1. supply and demand—if properties in short supply, greater demand; properties plentiful, more competition
2. indication of time to sell and corresponding market conditions: thorough examination of pending and sold properties
I. recommended terms—more favorable terms, more quickly property sells
1. availability upon transfer of title
2. financing terms; assumable mortgage; available mortgage; seller financing
J. market value range—price range for subject property can be determined through market analysis
1. consists of high, middle, low price
   a. higher priced property—range may be greater than that of lower priced property
2. choice can be offered to seller; property will sell more quickly if placed in low end of price range; slowly if at high end
3. price needs continual evaluation to ensure market activity
4. if sellers reluctant to accept price range based on well researched analysis, licensee may refusing listing

V. SALESPERSON’S ROLE
A. competence—salesperson looks toward broker for guidance if needed
1. well researched listing presentation with appropriate examples from market place
   a. justifiable and appropriate data
B. diligence—“doing your homework”
1. follow through and proper marketing
2. contact agents who showed property
3. feedback from other agents helps evaluate property’s assets and drawbacks
4. communication with seller
5. tracking market for continued readjustment

C. documentation—records of agents who showed house
   1. records of preview caravans
   2. lists of people attending open houses
   3. document and review new listings on daily basis noting those competitive properties; also older listings that have sales pending
      a. may adjust list price if similar house under contract is lower in price than subject

D. effective communication—provide information to seller in professional manner
   1. communicating with other agents who have shown property; relate this information to seller

VI. HIGHEST AND BEST USE
   A. highest and best use valued as vacant and as improved

VII. SITE VALUATION

VIII. THE THREE APPRAISAL APPROACHES TO VALUE
   A. sales comparison approach—primary approach for single-family homes
      1. compares subject property with other similar properties sold recently; called comparables
         a. adjustments made for difference
         b. minimum of three comparables
      2. similar to sales comparison approach but technique different
      3. plus adjustment made when comparable deficient when compared to subject property
      4. minus adjustment made when comparable contains feature not in subject
      5. net adjustment amount calculated and result applied to price comparable sold
   B. cost approach—estimates value of properties that have few, if any, comparables; not income-producing
      1. schools, hospitals, government office buildings, new construction
2. first step—estimate value of site if vacant  
   a. site value estimated by sales comparison approach
3. second step—estimate cost of reproducing or replacing  
   a. reproduction cost—price to construct exact duplicate as new  
   b. replacement cost—building of comparable utility using modern  
      building techniques and materials  
   c. cost figures available through construction cost services
4. third step—deduct from estimated cost of replacing or reproducing with  
   new construction depreciation existing and resulting from any of three  
   forms of depreciation
5. fourth step—depreciated value site improvements added to value of  
   structure
6. depreciation—loss in value from any cause
7. functional obsolescence—flawed or faulty property
8. economic obsolescence—property out-of-date for external,  
   environmental,  
   or locational reasons
C. income approach—estimates present value of properties that produce income  
   1. application of capitalization rate  
      a. rate that other investors achieve on like investments in same area  
   2. process puts all comparable properties on same basis by eliminating  
      items that vary substantially from one property to another
D. valuation—process of estimating value  
   1. based on age, square footage, location, cost to replace

IX. PRICING PROPERTIES
   A. preparing the CMA
   B. data collection  
      1. making adjustments
SUPPLEMENTAL LEARNING ACTIVITIES       CH 12

True or False

1. The valuation of a property is based on a subjective approach which does not necessarily include factual data.

2. The market value of a property is not affected by the seller’s need for a quick sale.

3. Legal fees are examples of indirect costs associated with the construction of a house.

4. To effectively market a property, a salesperson need not be aware of the market activity of competing properties.

5. In preparing a comparative market analysis, the salesperson need only select competing properties currently for sale.

6. Evaluation and valuation are essentially one and the same.

7. The market position of a property refers to the number of similar properties that are available in the same price range as the subject property.

8. It is possible for the price of a property, and its cost to construct, to be the same dollar amount.

9. The opinion of value in an appraisal is formulated from more than one approach to value.

10. Purchasers of real property almost always pay the market value.

11. Price is defined as the market value of a property.

12. Evaluation of a property does not result in an estimate of value of the property.

13. A comparative market analysis may derive a price range for the subject property rather than one specific sales price.

14. Both an appraisal and a comparative market analysis reconcile the three approaches to value; market, cost and income to derive an estimate of value.

15. The mortgage loan value is whatever the lender believes the property will bring at a foreclosure sale.
Multiple Choice

1. Which of the following statements in regard to value is false?
   a. value results from anticipation of future benefits
   b. cost is the same as price
   c. price is a measure of the amount paid for an item
   d. cost is the sum of labor and materials

2. Which of the following is NOT a type of value?
   a. assessed value for tax purposes
   b. mortgage loan value
   c. condemnation value
   d. highest and best use

3. What is an appraisal?
   a. the establishment of market value
   b. determination of gross rent multiplier
   c. an opinion of value
   d. declaration of value for income tax purposes

4. An analysis of the competition in the marketplace that a property will face upon sale attempts is known as a(n):
   a. evaluation
   b. appraisal
   c. cost analysis
   d. comparative market analysis

5. The value of property that a lender believes a property will bring at a foreclosure sale is known as:
   a. assessed value
   b. insurance value
   c. mortgage loan value
   d. foreclosure value
6. Lucy’s parents sell her their condominium because they can no longer afford the mortgage payments. Which of the following is true?
   a. this sale is an example of an arm’s-length transaction
   b. Lucy’s parents probably received market value
   c. Lucy’s parents are not under duress to sell
   d. this sale is not an arm’s-length transaction

7. Which of the following is false?
   a. cost may be equal to market value
   b. cost may be below market value
   c. cost may be above market value
   d. price always equals cost

8. If a seller principal wants to price his home well above the listing price suggested by a licensee after a well researched residential analysis, the licensee should:
   a. adjust the price to meet the seller’s wants
   b. refuse to take the listing
   c. take the listing, but do not enter it into MLS
   d. take the listing, but not market it in hopes that someone will buy the property before expiration

9. Which of the following is NOT included in a residential market analysis?
   a. current competing listings
   b. recently sold properties
   c. buyer appeal
   d. expertise of the licensee marketing the property

10. The Blakes are applying for a mortgage for a house they are purchasing. The lender tells them that they are sending someone out to value the property. What type of valuation will the lender’s representative likely perform? A(n)
    a. comparative market analysis
    b. residential market analysis
    c. appraisal
    d. evaluation
True or False  Multiple Choice

1. F   1. b
2. F   2. d
3. T   3. c
4. F   4. d
5. F   5. c
6. F   6. d
7. T   7. d
8. T   8. b
9. T   9. d
10. F  10. c
11. F

12. T
13. T
14. F
15. T
CHAPTER 13
HUMAN RIGHTS AND FAIR HOUSING
CLASSROOM HOURS: 4

RATIONALE FOR CHAPTER
Fair housing is the law of the land, and even though these laws have some exemptions, they do not apply to real estate licensees. The commitment to fair housing for all individuals is one of the most important duties of licensees. This chapter serves not only as a guideline to federal and New York law, but addresses the behavior, duties, and responsibilities of licensees to fair housing practices.

FOCUS OF PRESENTATION
1. The material in this chapter generally lends itself to many questions and shared experiences by students. Take advantage of this participation to reinforce the material in the chapter.
2. A good way to begin this chapter is to offer a brief (15 minute) overview of the subject by reviewing the key terms list. This list contains important terminology that must be memorized as well as the titles of the various fair housing laws.
3. Next address the status of fair housing today and the responsibilities of the broker and salesperson including record keeping and reporting fair housing misconduct.
4. Next review the major federal fair housing laws emphasizing their important points including the Civil Rights Act of 1866, the Fair Housing Act of 1968, and the 1988 amendments. Use the examples of prohibited acts from the textbook to explain the implications of the law. Discuss the Supreme Court decisions and place them in a historical timeframe for students.
5. At this point, spend some time with the meaning of three important terms related to this topic: blockbusting, steering and redlining.
6. The Americans with Disabilities Act was to commercial real estate what the Fair Housing Act 1968 and 1988 amendments were to residential real estate. Include this law in your discussion.
7. Emphasize to students that the New York Human Rights Act, and New York City
laws are more restrictive than the federal laws. Local statutes in various communities throughout New York may also be more restrictive. The differences are explained fully in the chapter. Therefore, in teaching the exemptions to these laws, (which do not apply to licensees anyway), explain to students that although federal law may allow certain exemptions, New York laws do not necessarily offer the same exemptions.

8. Table 13.1 is a good illustration of protected classes under the various housing laws applicable in New York.

9. Your presentation should continue with a discussion of legal responsibilities. You may want to reinforce this concept by examining the Case Study in the chapter which refers to a DOS hearing involving the use of testers.

10. Complete your discussion with student input as to the emotional results of housing discrimination. Students may be willing to discuss personal experiences. The role playing exercises in the chapter may be used at any time during your presentation when you feel your students are ready.

11. Check over the supplemental reading list at the end of the chapter. Plan to use some of these excellent resources in your presentation.

**LEARNING ACTIVITIES CONTAINED IN CHAPTER 13**

- Putting it to work: Role playing exercises (8)
- Case study: synopsis of DOS hearing (1)
- Key Terms: fill-in sentences (10)
- Multiple Choice (20)

**CHAPTER 13 OUTLINE**

1. TESTERS
   
   A. enforcer of law
      
      1. volunteers or employees of federal, state agencies, private civil rights groups
      2. testers often white and black couple visit real estate offices posing as prospective homeseekers
3. purpose—check real estate brokerage offices to see if race influences information or services offered by licensees
4. investigations by testers recognized by U.S. Supreme Court and DOS

II. PRESSURE FROM SOCIETY—EQUAL HOUSING OPPORTUNITY TODAY
   A. fair housing not achieved in practice
   B. discriminations still exists on part of owners, sellers
      1. discrimination in rental, discriminatory statements by sellers,
         discriminatory advertising, refusal of buyers to look at properties in certain areas

III. BROKER’S RESPONSIBILITY TO UPHOLD FAIR HOUSING POLICY
   A. supervise salespersons, provide fair housing training, and take appropriate steps to insure compliance
      1. *Meyer v. Holley*—U.S. Supreme Court (January, 2003) ruled individual broker-owners are not personally liable for the acts of agents who commit fair housing law violations
   B. office procedures—NAR recommends agents sign a policy statement commitment to equal opportunity
   C. firm designate a fair housing officer
   D. office procedures outline initial contact including discussing the services offered, assigning agents to the customer, and obtaining initial customer information
   E. fair housing poster—amendment to the Fair Housing Act of 1968 requires all offices to display prominently

IV. REPORTING FAIR HOUSING MISCONDUCT
   A. immediately report discriminatory behavior or conversations to broker
   B. licensee should not agree to represent individuals who refuse to comply
   C. illegal discriminatory behavior reported to either New York Division of Human Rights or in NYC, New York City Commission on Human Rights

V. BROKER’S RESPONSIBILITY TO UPHOLD FAIR HOUSING POLICY
   A. regularly engage in fair housing training NAR, [http://www.realtor.org](http://www.realtor.org), the NYS Division of Human Rights, state and local boards, and proprietary schools
B. equal service—greeting people, obtaining listings, holding open houses, record keeping, and follow up—same measure of treatment

   1. housing needs and wants should be emphasized and limited to the price, size, special features, and location of a property

C. record keeping—housing choices should be written down and kept by the agent

D. know how to report fair housing misconduct

E. know fair housing laws

VI. FEDERAL AND STATE ANTI-DISCRIMINATION LAWS

A. Civil Rights Act of 1866—prohibits all racial discrimination

B. Federal Fair housing Act has exemptions, 1866 law has no exemptions as to race; applies to residential housing

   1. Jones v. Alfred H. Mayer Company—U.S Supreme Court applied the Civil Rights Act of 1866 to prohibit any racially based discrimination in housing

   2. Supreme Court decisions

      a. Plessy vs. Ferguson (163 U.S. 537)—separate but equal acceptable

      b. Buchanan vs. Warley (245 U.S. 60)—city ordinances that denied minorities the right to occupy houses in certain zoned areas unconstitutional

      c. Brown vs. Board of Education—reversed Plessy vs. Ferguson; separate but equal not equal

C. federal Fair Housing Act of 1968—prohibits discrimination in housing on basis of race, color, religion, national origin

D. amendment in Housing and Community Development Act of 1974—added prohibition against discrimination on basis of gender

E. Fair Housing Amendments Act of 1988—prohibition of discrimination based on mental or physical disability or familial status

VII. THE FEDERAL FAIR HOUSING ACT OF 1968

A. Fair Housing Act of 1968 lacked teeth for enforcement; Congress passed
amendments for enforcement in 1988

B. mental or physical disability—landlords must allow people with disability to make reasonable modifications to dwelling
   1. tenant’s expense
   2. end of tenancy, tenant must return premises to original condition at own expense
   3. New York Law provides for similar housing modification for disabled

C. new multi-family construction occupied within two years of the date of 1988 amendments must provide certain accommodations for disabled; example: switches and thermostats at level that can be operated from wheelchair

D. New York law also provides that multi-family dwellings allow accessibility for persons with disabilities
   1. doors which allow passage into and throughout premises must be wide enough to allow wheelchair

E. familial status—adult with children under 18, person who is pregnant, one who has legal custody of child
   1. elderly housing—if units occupied by individuals age 62 or older, or 80% of units have persons age 55 or older—facility exempt

F. 1988 amendments—added major enforcement provisions

VIII. EXEMPTIONS TO FEDERAL FAIR HOUSING ACT

A. owner in sale or rental of no more than three single-family dwellings at any one time
   1. if owner not living in dwelling at time of transaction or not last occupant—limited to only one exemption in 24-month period

B. owner of apartment building up to four units exempt in rental if owner occupies one of units

C. properties owned and operated by religious organizations for benefit of their membership; noncommercial purposes

D. private club to provide lodging for benefit of membership; non commercial purposes

E. none of exemptions if any of following occurred:
1. discriminatory advertising
2. services of real estate licensee or person in business of selling or renting
   a. within preceding 12 months, participated in three or more transactions; participated as agent in two or more transactions; owner of dwelling designed or intended occupancy by five or more families

F. enforcement and penalties
1. administrative procedure through Office of Equal Opportunity of HUD
2. HUD may act on own information
3. New York does not have an agreement to receive and/or investigate complaint referrals from HUD
4. individuals may file separate complaints with both HUD and New York Division of Human Rights
5. case mediated, heard in civil court, or heard before ALJ
   a. ALJ may impose civil penalty up to $10,000 first offense, $25,000 if another violation within five years, and $50,000 if two or more violations occur in seven years
   b. fines of $25,000 or $50,000 without limitation of time periods if party engages in multiple discriminatory acts
6. aggrieved party may bring civil suit in Federal District Court within one year of alleged violation unless complaint filed with HUD; then two years
7. if aggrieved party wins suit, no limitation on damages; injunction may be issued
8. U.S. attorney general may file civil suit

IX. THE AMERICANS WITH DISABILITIES ACT
A. 1992; protects rights of individuals with disabilities
B. cannot be denied access to public transportation, commercial facility, or public accommodation
C. compliance—facility designed, constructed, altered to meet the accessibility standards of law if readily achievable
1. “readily achievable”—easily accomplishable; carried out without much difficulty or expense

D. new construction of public accommodations and commercial facilities readily accessible and usable

E. enforced by U.S. Attorney General

   1. injunctions against operation of business, fine of up to $50,000 for first offense, fine of $100,000 for subsequent offenses

F. individuals with AIDS, alcoholism, or mental illness covered

X. NEW YORK STATE LAWS-NEW YORK HUMAN RIGHTS LAW, ARTICLE 15 OF EXECUTIVE LAW

   A. broader in scope than federal
   B. prohibits discriminatory practices; other areas besides housing
   C. created Division of Human Rights
   D. includes residential property, land, commercial property, credit transactions
   E. New York has three more protected classes: age (persons 18 years or older); marital status; and sexual orientation
   F. addresses public housing
   G. exemptions—less than federal law and more restrictive

       1. rental of duplex, if owner or member of owner’s family live in one of housing accommodations
       2. where restriction of rental of all rooms in housing accommodation to individuals of same gender
       3. rental of rooms in single family house, if rental by occupant or owner
       4. if exclusively to persons 55 years or age or older
       5. public housing which addresses special needs of particular age group
       6. unlike federal law, no exemptions for sale or rental of single family housing
       7. exemptions only exist for rental of a two-family (duplex) owner occupied dwelling; federal law permits exemptions for up to four family owner occupied units
8. licensees may not participate in exemptions except restriction exclusively to persons 55 or older

H. credit for housing, land or commercial space

1. sanctions against discrimination to obtain credit for “purchase, acquisition, construction, rehabilitation, repair or maintenance” of housing, land, commercial space
2. prohibits discrimination in “granting, withholding, extending, renewing credit, fixing credit rates
   a. unlawful to use application form which inquires about discriminatory information

1. enforcement and penalties
2. complaint must be filed with New York State Division of Human Rights within one year
3. individuals may bring action in New York Supreme Court within three years of alleged discriminatory act
4. New York attorney general or Division of Human Rights may also file complaint
5. Division of Human Rights
   a. investigate complaint and if not dismissed, hearing will be held 270 days after complaint filed
6. disputes may first submit to voluntary arbitration; cost paid by parties
7. if found guilty, guilty party ordered to cease and desist
8. order issued requiring guilty party initiate affirmative action to undo wrongdoing
   a. compensatory damages may be awarded
9. in housing discrimination only, punitive damages, not exceeding $10,000, may be awarded
10. New York may also require repayment to state of profits obtained because of discriminatory activity
11. if respondent still committing discriminatory acts, Division may obtain restraining order
12. Division, within one year, investigates to see if respondent in compliance terms of agreement

XI. NEW YORK REAL PROPERTY LAW AND DOS REGULATIONS
   A. prohibits evicting a tenant if tenant becomes pregnant or has child while occupying premises
   B. prohibits landlords from refusing rental to families with children
   C. covers mobile home parks
   D. DOS may investigate complaints
      1. suspend or revoke license charging incompetency and untrustworthiness—provisions of Article 12-A of RPL
      2. can issue nonsolicitation order—prohibits licensees from soliciting listings in specified areas of the state
      3. Secretary of State can declare cease and desist zones if determined that owners in area have been subject to intense solicitation
      4. after zone established, owners can have DOS place them on cease list

XII. NEW YORK CITY COMMISSION ON HUMAN RIGHTS
   A. covers residents living in five boroughs
   B. four additional protected groups: alienage or citizenship status; lawful occupations, sexual orientation, and lawful source of income
      1. alienage or citizenship status—citizenship or immigration status of person who is citizen or national of U.S.
   C. two-family owner occupied housing only exempt from law if housing not been advertising, or listed, or other public notice
   D. rental of rooms in owner occupied housing accommodation other than publicly assisted housing exempt
   E. complaint filed within one year with Commission
   F. complainant may file with New York City Human Rights Commission or Division of Human Rights
   G. other municipalities may have more restrictive laws than state law

VIII. TYPES OF DISCRIMINATION
   A. may not refuse housing to protected groups based discrimination
B. illegal acts are as follows:

1. telling buyer house has been sold when it has not
2. refusing to accept offer to purchase because offeror is member of certain religion
3. telling rental applicant apartment not available because of gender of applicant
4. refusing to rent to person confined to wheelchair or make modifications (at tenant’s expense)
5. refusing to rent to family with children

C. blockbusting illegal—occurs when licensees induce owners to sell or rent property by telling them persons included in protected classes moving into area

1. also occurs when licensees sell properties to protected classes with intent to cause property owners to panic and sell at reduced prices
2. blockbusting prohibited by New York Real Property and Human Rights Laws

D. steering—licensees direct prospective minority purchasers to integrated areas to avoid integration of nonintegrated areas

E. discriminatory advertising—illegal to make, print, publish, concerning sale or rental of dwelling which discriminates against protected groups

F. financing of housing-redlining—Act prohibits lending institutions from refusing to make loans to purchase, construct, repair dwelling based on discrimination of protected classes

1. applies to denial of loan or financial assistance
2. discrimination in fixing terms of loan, including interest rates, duration of loan
3. fair lending law, Community Reinvestment Act—federal penalties to banks that fail to make loans or open branch offices in poor and minority areas
a. filtering down—properties in neighborhoods were once middle or upper income decline in value allowing people of lower incomes to purchase properties; if lenders don’t make loans to lower income purchasers, communities deteriorate

G. real estate brokerage services—prohibited by federal act and New York law; illegal to deny membership in real estate organization or MLS on discriminatory grounds

XIV. LEGAL RESPONSIBILITIES
A. real estate professionals in position to take lead to ensure equal opportunity and fair housing
B. emotional results of discrimination in housing
C. laws alone not enough

*Note to instructor: If time allows, this is a good opportunity for class discussion about individual experiences with discrimination*

XV. MEGAN’S LAW
1. requires a public registry of known sex offenders
   a. real estate agents have a duty to disclose the presence of sex offenders in the neighborhood
   b. extent of disclosure responsibility has been tested by the courts; *Glazer v. LoPreste* (278 A.D. 2nd 198)

XVI. EMOTIONAL RESULTS OF HOUSING DISCRIMINATION

XVII. CEASE AND DESIST LISTS AND NONSOLICITATION ORDERS
SUPPLEMENTAL LEARNING ACTIVITIES

Instructors -

Role Playing*

1. You serve an area with homes owned by a wide variety of races, ages and religions. Your own children attend a school that is approximately 60% white, 20% black, 10% Hispanic and a 10% mix of American Indian and Asian. Your buyer asks you: “Are the schools integrated?”

2. You live in a community very much like your prospective buyer’s choice, but closer to the river. The home under consideration is in a relatively new subdivision. Your neighborhood is older, with larger homes and established trees. You have no children in school as this family does. Your buyer asks you: “Would you live here?”

3. Your clients are a professional couple, second generation Japanese. They have two children. Your buyer asks you: “I’m from out of town. Could you suggest some good areas?”

*Source: *Fair Housing in the 90’s Facilitator’s Guide*, November, 1990, prepared by the Office of Equal Opportunity of the National Association of REALTORS®
True or False

CH 13

1. The first significant statute affecting equal housing was Title VIII of the Civil Rights Act of 1968.

2. The 1988 amendments to the Fair Housing Act added provisions to prevent discrimination based on mental and physical disability and age.

3. Familial status, under the law, does not cover women who are pregnant.

4. Although racial steering is illegal according to federal law, it is permissible in certain instances in New York.

5. A private non commercial club, not open to the public, may legally provide lodging for its members only.

6. It is legal for a New York homeowners to refuse to rent rooms in their houses to a family with children.

7. In New York, real estate licensees may participate in the same exemptions afforded homeowners under the Human Rights Law.

8. It is permissible, in New York, to restrict all rooms in a housing accommodation to members of the same gender.


10. Homeowners in New York may petition the Department of State, Division of Licensing Services, for a cease and desist order barring licensees from soliciting their homes for listings or sales.

11. A credit application may be denied in New York if the bank feels that the applicant has “too many mouths to feed” at home and therefore cannot afford the loan payments.

12. The courts, both on a federal and state level, have not upheld investigations by testers.

13. Because of all the laws which provide equal opportunity in housing, minorities are rarely confronted with discrimination.

14. The Americans with Disabilities Act applies to public and commercial facilities.

15. The Americans with Disabilities Act is enforced by the U.S. attorney general.
Multiple Choice  CH 13

1. Which of the following is NOT protected under the Fair Housing Act of 1968?
   a. race
   b. disability
   c. religion
   d. national origin

2. The illegal practice of directing minorities to areas populated by the same race is called:
   a. steering
   b. blockbusting
   c. redlining
   d. discriminatory advertising

3. The illegal practice of a banker refusing to approve loans for a neighborhood based on the racial composition of the area is:
   a. blockbusting
   b. steering
   c. redlining
   d. coercion

4. Roy refuses to rent an office condominium to an individual who is a Native American. This individual has recourse against Roy under the provisions of:
   a. the condominium law in New York
   b. the Civil Rights Act of 1866
   c. the Fair Housing Act and Amendments of 1988
   d. no law, as Roy’s action was legal
5. Bill Broker enforces a tenant security deposit policy of $200 for whites and $300 for all other individuals. Bill’s policy will be legal:
   a. if he can document the financial qualification data
   b. the policy is explained in writing to all applicants
   c. he is authorized to do so by the property owner
   d. under no circumstances

6. Charles, a condominium manager, has published a brochure to market the property. The brochure contains the equal housing logo, but has pictures of only white residents. Which of the following applies?
   a. the logo will make the brochure legal
   b. the pictures make the brochure discriminatory
   c. there would be discrimination only if there were a deliberate attempt to sell or rent only to whites
   d. none of the above

7. The federal Fair Housing Act prohibits discrimination because of:
   a. age
   b. financial status
   c. occupation
   d. religion

8. Which of the following is exempt from the Fair Housing Act? A(n):
   a. religious group that limits rentals to properties that it owns to members of the group
   b. real estate broker
   c. real estate salesperson
   d. lending institution
9. Asian families were beginning to buy into a previously all white community. Freddie Fast of XYZ Realty canvassed the neighborhood, telling home owners that they should sell now and that he could obtain top prices for the properties and excellent financing for the purchase of new homes in a better area. His approach is considered:
   a. redlining
   b. blockbusting
   c. steering
   d. integration

10. The 1988 Amendment to the Fair Housing Act added the protected classes of:
    a. age and gender
    b. familial status and persons with disabilities
    c. age only
    d. religion and cultural status

11. Which of the following ads will NOT violate the Fair Housing Act of 1968 and the 1988 Amendments?
    a. room for rent, no pets or children
    b. house for sale, near Catholic Church and in Spanish/American area
    c. room for rent, two credit references, no pets
    d. house for rent, individuals of Russian descent preferred
**Role Playing***

1. (a) Suggested answer: “Our office does not maintain statistics regarding the racial makeup of the student body in the schools in our market area. If you would like such information, you should contact either the school itself or the school district’s office. Those sources can also tell you which schools will be available to your children, the class size, the basic curriculum and provide the best answers to your questions. Also, you might want to check with some of your potential new neighbors about how they feel about the schools their children attend.”

   (b) “Mr. Buyer, the only school I’m really familiar with is the one my own children attend. Since I don’t have personal experience with the other, I cannot give you complete information you really want and need. Let me refer you to the school district office which can give you information about curriculum, class size, and the names of the schools which service the various neighborhoods in which you are interested.”

2. (a) Suggested answer: “Yes, I would. The area is well maintained and that particular house is very nicely located. It’s very convenient to the commuter trains and shopping and the elementary school is only a few blocks away.”

   (b) “No, I wouldn’t because the house is just too small for our teenagers’ activities.”

3. (a) Suggested answer: “We feel that all the areas in which we do business have many positive features. The communities, style and price of housing do vary, however. What did you have in mind? Do you have any particular needs in a house?”

   (b) “We’re very positive about all the areas we services. Each community has its own particular charm and, of course, no place is perfect. What size and style of home are you looking for? Are you familiar with any of the communities we have listings in?”

*Source: *Fair Housing in the 90’s Facilitator’s Guide, November, 1990, prepared by the Office of Equal Opportunity of the National Association of REALTORS®
ANSWER KEY TO SUPPLEMENTAL LEARNING ACTIVITIES   CH 13

True or False/Multiple Choice

1. F   1. b
2. F   2. a
3. F   3. c
4. F   4. b
5. T   5. d
6. T   6. b
7. F   7. d
8. T   8. a
9. T   9. b
10. T   10. b
11. F   11. c
12. F
13. F
14. T
15. T
CHAPTER 14
PROPERTY INSURANCE
CLASSROOM HOURS: 2

RATIONALE FOR CHAPTER
Property insurance is necessary to all types of property. It is not the job of the real estate agent to know the extent of the coverage required by a client or customer or his coverage needs. Ultimately, it is the insured's responsibility to make sure they are fully covered. This chapter includes the types of insurance available to property owners and the agent’s role in assisting clients and customers with insurance issues.

FOCUS OF PRESENTATION
1. Begin your discussion with the purpose and importance of property insurance, and define insurance terms. Explain the difference between monocline and package policies.
2. Explain what is and what is not covered under standard insurance policies.
3. Review the homeowners policies, emphasizing their different purposes. Give one example of when each would be appropriate.
4. In the section "Amount of Insurance Needed", make sure your students understand the difference between actual cash value and replacement cost, and are aware of the 80% minimum.
5. Discuss the problems in obtaining insurance in certain locations, and the resources available to these homeowners.
6. At this point, ask your students to do How Would You Respond at the end of the chapter using the information they just learned.
7. Review the reasons for the cancellation of a policy.
8. Define premium and deductible.
9. Briefly discuss the commercial and umbrella policies.
10. Conclude with the Real Estate Agents Role, and the Real Estate Example given for this section. For more information on mortgages and lenders, see Chapter 5
and Chapter 11. Note that the former NYS Insurance Department has merged with the former NYS Banking Department and both agencies are now called the NYS Department of Financial Services.

LEARNING ACTIVITIES CONTAINED IN CHAPTER 14
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill in sentences (5)
Multiple Choice (15)

CHAPTER 14 OUTLINE

I. THE PURPOSE OF PROPERTY INSURANCE
   A. protects home or income/business property damage or loss case of fire, theft, vandalism
   B. section I covers property of insured
   C. section II personal liability coverage
   D. anyone who owns or leases property needs property insurance

II. CHOICES IN PURCHASING PROPERTY INSURANCE
   A. types of policies
      1. monoline policy-one type of coverage
      2. package policy-several different types of coverage

V. STANDARD TYPES OF HOME PROPERTY INSURANCE
   A. offers liability protection against financial loss owner would suffer if:
      1. natural disaster or vandalism
      2. stolen personal property
      3. injury on property from owner's or family’s negligence
      4. damage by insured to other’s property by negligence

V. BASIC TYPES OF HOMEOWNERS AND TENANT POLICIES IN NEW YORK
   A. Homeowners-1 (HO-1)-insures home and contents
   B. Homeowners-2 (HO-2) Broad Form Policy-insures home and contents against perils in HO-1 policy and other additional perils listed
C. Homeowners-3 (HO-3) Special Form Policy—covers home for risks of physical loss except excluded-flood, earthquake, war, or nuclear accident
D. Homeowners-5 (HO-5) Comprehensive Form Policy—protection same as HO-3 policy; personal possessions covered for all risks of physical loss except excluded
E. Homeowners-8 (HO-8) Market Value Policy—HO-1 providing actual cash value coverage for building
F. Tenants or Cooperative Owners Policies (HO-4)—reimburse tenants for increased living expenses if home becomes uninhabitable from damage caused by covered perils
G. Condominium Unit Owners Policies (HO-6)—insures against damage to contents of apartment, cooperative, or condominium and personal liability of insured

VI. THE AMOUNT OF INSURANCE NEEDED
A. owner and insurance company
   1. owner should analyze home’s value (excluding land) and personal property
   2. insurance companies inspect home before insuring
B. actual cash value (ACV)—reimbursement for replacement cost minus physical depreciation of lost or damaged property
C. replacement cost—covered and reimbursed for actual cost of replacing damaged property
D. insure home/structure for at least 80 percent of cost to receive full payment
E. contents—actual cash basis—will not receive full cost of replacement
F. endorsement—document attached to policy to modify original policy

VII. BASIC AMOUNTS OF COVERAGE
A. standard homeowner's policy—$100,000 liability coverage
B. insurance professionals and mortgage lenders advise or require $300,000 to $500,000
C. endorsement can be purchased to add extra amount
D. addition of room or home improvement increases replacement cost of home
E. replacement cost generally increases each year

VIII. INSURING PERSONAL PROPERTY AND OTHER DWELLINGS ON THE PROPERTY
A. personal property related by percentage to amount main dwelling is insured
B. special limits-total amount company pays for loss of all property in category
C. medical and personal limits
   1. not offered as percentage of residence limit
   2. medical payments limit included within personal liability limit

VIII. PROBLEMS IN OBTAINING INSURANCE
A. homeowner unable to purchase policy because of housing situation-special insurance choices
B. New York Property Insurance Underwriting Association (NYPIUA)
   1. pool of all insurance companies writing fire insurance in New York
C. National Flood Insurance Program (NFIP)
   1. administered by The Federal Emergency Management Association (FEMA)

IX. CANCELLATION AND NONRENEWALS OF A POLICY
A. insurance company may cancel policy with cancellation notice during first 60 days in effect with reason by NY law
B. after 60 days may be canceled or not renewed for limited reasons
C. after three-year period insurance company may refuse to renew policy.

X. THE COST OF HOMEOWNERS INSURANCE
A. cost of homeowners insurance varies from policy to policy
   1. cost directly related to policyholder(s) and property
   2. premium-money property owner pays for coverage
B. New York City’s five boroughs constitutes separate rating for homeowners insurance
C. excluding NYC-rating territories based on community’s public fire protection
   1. Class 1 (the best protection)
   2. Class 10 (unprotected)
D. deductible-amount insured pays toward claim before receiving policy benefits

XI. OTHER TYPES OF PROPERTY INSURANCE
A. property owners can purchase insurance specifically for rental/income properties
B. insurance available for businesses, including business property
C. commercial policies
1. Commercial General Liability (CGL)-basic liability policy-covers four forms of injury
2. Business Owner’s Policy-bundles property and liability with one premium
D. umbrella policy-excess liability policy-provides additional coverage above primary policies or exhausted homeowners and automobile coverage

XII. REAL ESTATE AGENT’S ROLE
A. explaining purpose and costs of property insurance to buyer
   1. extra cost of homeownership
B. explaining the lender’s interest in property insurance
   1. property is collateral for the mortgage loan
C. explaining why lender may escrow the property insurance along with property taxes
   1. escrow account-held by third-party agent representing borrower and lender
D. explaining when to obtain property insurance on cash sale
   1. remind purchasers to fulfill requirements
True or False

1. Property insurance protects a home, a business, or income property against any physical damage or loss of assets in the case of fire, theft, or vandalism.

2. A package policy includes several different types of coverage, such as property insurance and liability insurance.

3. Generally, if the insured purchases coverage on a replacement cost basis and insures the home for at least 80 percent of its replacement cost, the insurance is automatically issued on a replacement cost basis.

4. NYPIUA offers fire and extended coverage to consumers who are unable to purchase this type of insurance from individual insurance companies.

5. NYPIUA stands for New York Prevention Insurance for Underage Americans.


7. Insurance coverage for losses resulting from floods is generally provided in homeowners or tenants policies.

8. The New York Insurance Law requires that insurers provide proper disclosure to their policyholders of any windstorm deductibles attached to their homeowner's policies.

9. Under New York law, an insurance company may cancel a homeowners or tenants policy by issuing a cancellation notice during the first 45 days without reason.

10. All-Risk Policy covers expenses incurred when business is in financial trouble.

11. An umbrella policy is an excess liability policy that provides additional coverage above that offered by primary policies.

12. A deductible is the amount the insured must pay toward a claim before receiving benefits.
Multiple Choice        CH 14

1. Liability insurance is a(n):
   a. package policy
   b. type of health insurance
   c. type of coverage to protect against claims alleging one's negligence
   d. type of special coverage for people who live in flood-prone areas

2. Basis property insurance does NOT protect against:
   a. fire
   b. theft
   c. damage by the insured to someone else's property due to negligence
   d. flood

3. Actual cash value:
   a. means that the insured is covered and reimbursed for the actual cost of replacing the damaged property
   b. means that the insured is reimbursed for the replacement cost minus the physical depreciation of the lost or damaged property
   c. is the assessment of the property before insuring an individual
   d. is a special type of fire coverage for when the structure cannot be saved
4. Coverage for contents:
   a. is issued on an actual cash value basis
   b. is listed under Homeowners-1 insurance for up to $10,000
   c. is only possible with an endorsement
   d. guarantees the insured for full replacement of the items lost

5. Which of the following is NOT a valid reason for an insurance company to cancel an insurance policy:
   a. discovery of fraud or material misrepresentation
   b. nonpayment of a premium
   c. a ruling by the Superintendent of insurance that the policy's continuation violates the insurance law
   d. ethnic composition of the neighborhood
## True or False Multiple Choice

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CHAPTER 15
TAXES AND ASSESSMENTS
CLASSROOM HOURS: 3

RATIONALE FOR CHAPTER
A purpose of taxation is to pay for municipal services. The property tax is the most important revenue of local governments and schools. Assessed values, upon which property taxes are based, are also used to calculate state aid for education. This state aid is the second largest revenue for schools. Prospective purchasers are extremely concerned about property taxes. Licensees must understand the assessment process within the municipality that is their market area. They should also be familiar with the format of the tax bill and available exemptions.

FOCUS OF PRESENTATION
1. The three allotted hours should be sufficient to cover the material in the chapter. It is very likely that your students will be familiar with the assessment process. You may want to bring samples of tax bills from your municipality to reinforce and further clarify the material in this chapter.
2. Begin your discussion with a definition of assessment and the difference between properties that are subject to taxation and those that are not. Include a discussion of the most common exemptions: seniors, veterans, and the school tax exemption.
3. Review the deadlines for property assessments and the meaning of uniform percentage. Include appropriate deadlines for your area if different from the textbook. Figure 15.3, the real property tax cycle will help you to clarify the assessment process.
4. Explain the difference between homestead and nonhomestead properties and the market value standard for assessments.
5. Of much interest are grounds for assessment protests. Discuss the various grounds for protest of an assessment and the procedures that should be followed.
6. Next, discuss the meaning of the tax levy, the tax rate, and how the property tax bill is computed. Chapter 8, Real Estate Math, offers further explanation of tax computation as well as several practice problems. If time allows, you may want to have students compute several problems.

7. Complete your presentation with a brief discussion of the equalization rate and penalties for nonpayment of taxes.

8. The website for the NYS Office of Real Property Tax Services is http://www.tax.ny.gov/. Access the website for supplementary materials. Note that the NYS Office of Real Property Tax Services has merged with the NYS Department of Taxation and Finance.

**LEARNING ACTIVITIES CONTAINED IN CHAPTER 15**

How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill in sentences (6)
Multiple Choice (20)

**CHAPTER 15 OUTLINE**

I. PURPOSE OF TAXATION
   A. ad valorem basis—according to value
      1. New York—real property tax based on fair market value of real property
   B. assessing units and special assessment districts raise money through real property taxes
      1. assessing units—counties, cities, towns, villages, school districts
      2. special assessment districts include volunteer fire departments
   C. all real property assessed, not all of it taxable
      1. tax exemptions set by state law
      2. sometimes municipalities can determine exemptions and amounts
      3. exemptions are either full or partial
   D. advantages of property tax as opposed to other taxes:
1. predictability-property market values not subject to stock market or the economy.
2. difficulty in concealing
3. property tax reaches all sectors of the economy Low administrative costs
4. taxation process cheap-less than $7 per $1,000 raised in property taxes

E. tax map
1. used to locate parcels and obtain information required for assessments
2. local governments use tax maps to maintain current inventory of all parcels in a city, town, or village

II. CALCULATION OF REAL ESTATE TAXES
A. what determines tax bill
1. property’s taxable assessment-percentage of its market value
2. tax rates of the taxing jurisdiction

B. tax levy determines tax rate
1. revenue needed for budget of local government

C. classification of Homestead and Nonhomestead Properties
1. homestead class includes:
   a. residential
   b. vacant land parcels not exceeding 10 acres located in assessing unit w/ zoning law
   c. land used for agricultural production and farm buildings and structures on land
2. nonhomestead
   a. commercial
   b. industrial
   c. some vacant land
3. most places properties regardless of type must be assessed at a uniform percentage
a. New York City and Nassau County—different classes of property—residential, vacant land, commercial, and industrial—assessed at different percentages of market value

III. ASSESSED VALUE

A. assessed values—determination begins property taxation
   1. assessor determines value of each parcel in his assessing unit
   2. decides the level of assessment (LOA)

B. property tax assessment involves establishing market value of each parcel of land to be taxed within taxing unit

IV. RELATIONSHIP TO FULL OR MARKET VALUE

A. New York Real Property Tax Law—properties assessed at uniform percentage of market value each year
   1. percentage—level of assessment (LOA)

B. New York City and Nassau County—allowed to assess each of four specific classes of property at different levels

V. ASSESSMENT RATIO

A. state tax law requires calculation of Residential Assessment Ratios (RARs) annually
   1. assessors use RARs as general measure of assessment equity
   2. taxpayers use RARs in board of assessment review grievances and/or small claims hearings

VI. EQUITY ISSUES AND DIFFERENCES IN ASSESSMENTS

A. properties become underassessed when assessments not updated.

VII. RELATIONSHIP OF THE BUILDING PERMIT PROCESS TO REASSESSMENT

A. reassessment occurs on regular basis established by statutes
B. occurs with improvements made to real estate
C. tax assessors—not permitted to do spot reassessments on single property unless material change is apparent or reported

VIII. UNDECLARED IMPROVEMENTS DISCOVERED
A. guidelines of International Association of Assessing Officers (IAAO)-all properties must be field-inspected at least every six years to ensure current/consistent data

IX. COMMUNITY-WIDE REASSESSMENT
A. purpose-to restore fairness within the community
   1. property’s assessment reflects market value.

X. REASSESSMENT UPON SALE
A. usually assessment does not change upon purchase
B. house must be equitably compared to other similar houses

XI. TAX RATE
A. budget- proposed expenditures and revenues from various sources
   1. difference between two represents tax levy
      a. amount to be raise by taxes on real property
      b. tax rate set by municipality to meet budgetary requirements

B. tax rate formula: \[
\text{Rate} = \frac{\text{Tax dollars required}}{\text{Taxable assessed value}}
\]

XII. MULTIPLE TAX DISTRICTS
A. New York property within municipality pay taxes using same rate
B. differences in assessed value account for differences in tax bills
C. exceptions to single-rate tax system-“special assessing units” in New York City and Nassau County

XIII. DETERMINATION OF THE PROPERTY TAX BILL
A. Assessed value × tax rate = annual taxes

XIV. VARIOUS TAXING JURISDICTIONS
A. New York-no statewide real property taxes
B. assessing units (taxing jurisdictions) follow municipal boundaries: city, town, etc.

XV. EQUALIZATION
A. appropriation-government agency sets aside funds for certain purpose syllabus
B. equalization rate formula is: \[
\text{Equalization rate} = \frac{\text{Total assessed value (AV)}}{\text{Total market value (MV)}}
\]
XVI. SPECIAL ASSESSMENTS
   A. special assessment-specific lien against property until paid

XVII. PROPERTY TAX EXEMPTIONS
   A. partial exemption to veterans purchasing property with pension, bonus, or insurance
   B. reduction in property taxes qualifying senior citizens must pay
   C. reduction in property taxes to qualifying persons with disabilities

XVIII. PROTESTING ASSESSMENTS
   A. if assessment seems wrong owner may file grievance
   B. owners may meet local assessors to discuss property assessment any time

XIX. GRIEVANCES—BOARD OF ASSESSMENT REVIEW
   A. board of assessment review (BAR) hears grievances
   B. complaint names specific figure believed to be accurate
   C. burden of proof on complainant

XX. UNEQUAL ASSESSMENT/UNEQUAL ASSESSMENT RATIO
   A. excessive assessment-full value disagreement
      1. assessed value greater than property’s full value
   B. unlawful assessment
      1. properties located outside boundaries of assessment roll
      2. property entered on assessment roll by someone other than assessing unit
      3. inaccurate identification of property.
   C. misclassification—Homestead and Nonhomestead Classes

XXI. SMALL CLAIMS ASSESSMENT REVIEW
   A. further review—state Supreme Court or specially appointed small claims hearing officer
   B. residential only file for Small Claims Assessment Review (SCAR)
   C. filing with the County Clerk for SCAR—fee $30
   D. hearing procedure
   E. types of evidence
      1. fair market value of property proved by appraisal testimony
2. ratio of assessed to full market value

F. appeal- process according to the New York Civil Practice Law and Rules (CPLR)

G. protesting commercial property assessments-certiorari proceedings
   1. legal process property owner challenges real estate tax assessment on property

XXII. REAL PROPERTY TAX LIENS
   A. attaches against property when taxpayer does not pay property taxes
   B. first priority over other liens
   C. in rem-legal action to collect taxes, against real property not individual

XXIII. Administrative Tax Sale
   A. foreclose property; sell property to collect taxes owed
   B. tax foreclosure and tax sale
      1. tax lien is sold to the taxing district

XXIV. AGENTS’ RESPONSIBILITIES
   A. know amount of property taxes and disclose information to purchaser
1. Property is taxed on an ad valorem basis.
2. A property's assessment is a percentage of its market value.
3. The amount of the tax levy determines the tax rate.
4. Not all real property is subject to assessment.
5. Property taxation begins with the determination of assessed values.
6. Property tax assessment involves establishing the market value of each parcel of land to be taxed within the taxing unit.
7. Full exemptions from paying property taxes do not exist in New York.
8. All senior citizens in New York automatically qualify for property tax exemptions.
9. Reassessment of property for tax purposes occurs on a regular basis established by statutes.
10. There are cases when the assessor is within his rights to change an assessment.
11. Back taxes are unpaid property taxes.
12. Appropriation occurs when a government agency sets aside funds for a certain purpose.
13. A special assessment is a specific lien against the property until paid.
14. The board of assessment review (BAR) hears grievances.
15. Reassessment of property must be done annually by the assessing unit.
16. When a tax payer is delinquent in paying property taxes, a tax lien attaches against the property.
17. All property is subject to assessment; however, not all property is taxed.
18. A written complaint protesting an assessment on a property is known as a lis pendens.
19. The tax rate must be sufficient to provide the amount of revenue to accomplish the budgetary requirements of the local government.
20. If a property owner is delinquent in paying property taxes, his taxing jurisdiction may impose a lien against the property.
Multiple Choice

CH 15

1. Which of the following is NOT an assessing unit for tax purposes?
   a. school districts
   b. special districts
   c. villages
   d. circuit courts

2. Which of the following properties are most likely NOT subject to taxation?
   a. private office building
   b. county municipal building
   c. retail store
   d. discount outlet

3. In New York, properties may NOT be assessed at which of the following percentages of market value?
   a. full market value
   b. 15% of market value
   c. 50% of market value
   d. 110% of market value

4. A proceeding that protests assessments in New York Supreme Court is called a(n):  
   a. tax evasion proceeding
   b. small claims hearing
   c. article 78 proceeding
   d. tax certiorari proceeding

5. An in rem legal proceeding:
   a. is a legal action against the real property only
   b. is a legal action against the property owner personally only
   c. is a legal action which may include both the property owner and the property
   d. has nothing to do with legal actions concerning real property

6. After the assessment roll is filed and made public, which of the following can make changes to the roll? The:
   a. assessor
   b. property owner
   c. board of assessment review
   d. assessing unit
7. Which of the following is NOT nonhomestead property?
   a. industrial properties
   b. commercial properties
   c. utility properties
   d. 2- to 4-family apartment units

8. The only true and impartial standard for setting assessments is:
   a. market value
   b. income value
   c. mortgage value
   d. sales price

9. If property owners believe that the assessed value of a property is greater than its full value, they have grounds to protest because of:
   a. unequal assessment
   b. excessive assessment
   c. unlawful assessment
   d. misclassification

10. With some exceptions, most types of property within a municipality will pay taxes using the same:
    a. tax levy
    b. tax rate
    c. tax share
    d. assessed value
True or False Multiple Choice

1. T     1. d
2. T     2. b
3. T     3. d
4. F     4. d
5. T     5. a
6. T     6. c
7. F     7. d
8. F     8. a
9. T     9. b
10. T    10. b
11. T
12. T
13. T
14. T
15. F
16. T
17. T
18. F
19. T
20. T
CHAPTER 16
CONDOMINIUMS AND COOPERATIVES
CLASSROOM HOURS: 4

RATIONALE FOR CHAPTER
High-rise apartment buildings, garden apartments, two- or three-family dwellings, townhouses, senior citizen housing, and even mobile home parks may have condominium or cooperative ownership. This chapter defines the cooperative and the condominium. It discusses their organization, title transfer, and ownership rights.

FOCUS OF PRESENTATION
1. First, define a cooperative and explain how ownership of this type of property differs from other forms of real estate ownership.
2. Next, discuss the importance of a financial statement, and the key issues to review in a cooperative's minutes.
3. Review the documents needed for the sale/purchase of a cooperative.
4. Explain what a board package means, who reads it, and what a board looks for in a prospective buyer. Then lead the discussion into financing for a cooperative.
5. The real estate agent plays a big role in the board application process, so review this section carefully. Emphasize the role of timing as well as familiarizing the purchaser with the package and the need for disclosure.
6. Briefly discuss subletting.
7. Define a condop. This should lead into the next subject, condominiums. Define a condominium, bylaws, and sponsor roles. Discuss the ways condominiums differ from cooperatives.
8. Discuss the factors in buying a newly developed condo.
9. Review the what the letter of intent means, and how to submit it. Also discuss the rules provided in the CPS1 phase.
10. Discuss why and how the prices often change on condominium offerings, and include flipping in the discussion of price change.
11. Review the title issues and the closing costs when purchasing a condominium. Use the closing statement in Table 16.1 that shows condo closing costs.

LEARNING ACTIVITIES
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill in sentences (10)
Multiple Choice (20)

CHAPTER 16 OUTLINE
I. COOPERATIVES
   A. people join to own or control housing and related facilities they live in
   B. cooperative corporation owns land, buildings, and property rights and interests
      1. on title-name of corporation
   C. shareholders own proportionate number of shares of stock
      1. entitle shareholder to lease
      2. shareholders pay monthly maintenance fee-rent
   D. board of directors-manages cooperative
II. DUE DILIGENCE ISSUES
   A. know financial health of cooperative before purchase
   B. review annual financial statement
   C. understanding financial statement
      1. should describe assets and liabilities, income and expense and cash flow statement
III. KEY ISSUES TO REVIEW IN CO-OP BOARD’S MINUTES
   A. maintenance and assessment history
      1. maintenance, common charges, or assessments in excess of operating expenses
   B. underlying mortgage
      1. long-term mortgage favorable to shareholder
   C. reserve fund
      1. invested monies used for repairs or capital improvements
2. should equal one-third of annual maintenance income

IV. OWNERSHIP FEE-SIMPLE OR LEASEHOLD?
   A. leasehold estate gives right to possession of apartment and use of common areas

V. DOCUMENTS NEEDED FOR THE SALE/PURCHASE OF COOPERATIVES
   A. include articles of incorporation, bylaws, proprietary lease or occupancy agreement, subscription agreement, and house rules
   B. cooperative sponsor prepares subscription agreement when he sells each cooperative unit

VI. PROPRIETARY LEASE—WHAT DOES IT MEAN TO OWNERS?
   A. rights and obligations included in proprietary lease and corporation bylaws
   B. receive proprietary lease-long-term lease or estate for years
   C. receives stock certificates

VII. OFFERING PLAN
   A. includes declaration and disclosure statement with New York Attorney General’s office
   B. once attorney general accepts prospectus-known as black book or offering plan

VIII. HOUSE RULES—WHY ARE THEY IMPORTANT TO THE AGENT?
   A. cover issues-garbage disposal, maintenance, noise, and conflict resolution
   B. shared with purchaser

IX. ALTERATION AGREEMENTS
   A. permission corporative gives shareholder before making changes to unit

X. BOARD PACKAGES
   A. financial documents like tax returns; verification of employment; etc
   B. managing agent of cooperative reviews package
   C. board wants full financial picture of purchaser

XI. FINANCING
   A. share loan-type of loan in which shares of stock serve as collateral
   B. proprietary lease-conditionally assigned to lender as additional security
   C. conducts a cooperative lien search so title policy on unit can be issued
D. Lender/Co-op Recognition Agreements Recognition agreements-understanding between cooperative and lender that provides share loans to cooperative’s shareholders

X. COOPERATIVE BOARD APPLICATION AND INTERVIEW PREPARATION
A. cooperative board application-attorney for seller draws cooperative contract of sale
B. interview scheduling-package submitted to managing agent for review and submit for next scheduled interview meeting
C. familiarize purchaser package for discussion purposes
D. need for total disclosure by purchaser during interview

XI. PRIMARY RESIDENCY VERSUS SUBLETTING ISSUES IN THE COOPERATIVE
A. primary resident-owner of cooperative
B. subletting discouraged in co-op
   1. shareholders-owners take better care of property than subtenants do
C. shareholder-still responsible for maintenance payments

XII. SUBLETTING ISSUES
A. board may limit time tenant shareholder can sublet
B. may adopt ceiling on number of sublets permitted

XIII. SPONSOR SHARES, HOLDER OF UNSOLD SHARES, AND SOLD SHARES
A. if sponsor owns shares-may be permitted to sublet or rent unit even though owner cannot
B. rules for sponsor subletting generally part of offering plan.

XIV. 80-20 RULE CONCERNING PASSIVE INCOME ACTIVITIES
A. passive investment activity can be rental activity
B. for tax benefits at least 80 percent of coop’s gross revenues must be from shareholders

XV. CONDOMINIUMS
A. condominium declaration-includes certain provisions required by statute
B. condominium-structure of two or more units; interior space individually owned
C. common elements—remaining property owned in common by owners of individual units

XVI. CONDO ISSUES

A. bylaws—shareholder’s rights and obligations
B. sponsor—owner or developer of the condominium

XVII. NEW DEVELOPMENT

A. reading offering plan—read “Description of Property” to determine sponsor’s obligations
B. special risks—what sponsor promises not always what purchaser receives
C. real estate tax validation—difficult to validate property taxes unless project completed
D. hidden costs—reading offering plan should determine upgrades
E. delays in construction hold up closing
F. letter of intent—written offer to reserve specific unit under construction
   1. legal issues—clause may state letter not legally binding obligation
   2. letters of intent forwarded to sponsor; purchaser shows letter to his attorney
G. CPS1 phase
   1. cooperative policy statement
   2. how developer may test market for new development

XVIII. PRICE CHANGES

A. offering plan amendments—building conversion
   1. tenants have 90-day exclusive right to buy their apartment
   2. during this period sponsor cannot negotiate separate prices
B. offering plan amendment—new development
   1. sponsor can separately negotiate price of apartment
C. why and when developers raise prices
   1. developer sells few apartments at once—if units sell quickly developer raises prices
D. current market practice
   1. price increases in new buildings when units initially marketed

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XIX. CERTIFICATE OF OCCUPANCY (CO)

A. certificate of occupancy (CO) documents legal use and/or occupancy of building.

B. requirements for obtaining CO

1. when completed work complies with submitted plans and applicable laws
2. must be final or temporary CO before new building can be legally occupied.

C. temporary certificate of occupancy (TCO) can be issued

XX. FLIPPING/SIMULTANEOUS CLOSING— DEVELOPER’S POLICY

A. flipping-buying property at one price and immediately selling at higher price

B. can drive up prices

C. to prevent-sales contract may require investors to live in project before they can rent or sell

XXI. TITLE ISSUES IN THE PURCHASE OF CONDOMINIUMS

A. purchaser receives deed to unit plus undivided interest in common areas

B. needs title insurance policy

C. covenants, conditions, and restrictions (CCRs)-incorporated in deed

1. CCRs-rights, duties, and obligations of unit owners

XXII. CLOSING COSTS

A. buyers’ concerns-inquiries about buyer’s credentials and bank references before purchase

B. common charges-upkeep, insurance, and salaries of building staff

C. real estate tax-condos assessed for tax purposes; owners responsible for paying real property taxes

D. tax deductions-mortgage interest tax-deductible

E. right of first refusal

F. mortgage recording tax

G. mansion tax-1 percent tax from buyers who purchase condo worth $1 million or more
XXIII. BUYER’S FINANCIAL ABILITY TO PURCHASE A COOPERATIVE OR CONDOMINIUM RESIDENCE

A. two parties who look deeply into finances of purchaser:
   1. lender with loan
   2. board of directors (or managers) of condo or co-op
SUPPLEMENTAL LEARNING ACTIVITIES   CH 16

True or False

1. Cooperatives are located in the same types of buildings that house condominiums.
2. A cooperative ownership is a fee simple ownership.
3. The sponsor manages the cooperative.
4. The only real property interest the shareholders have in the cooperative is a leasehold estate.
5. The proprietary lease is generally a long-term lease or estate for years.
6. The developer who constructs a cooperative or converts a building into a cooperative corporation must file an offering plan with the New York NYS Department of Financial Services.
7. A board package includes mostly financial documents.
8. Subletting is discouraged in a co-op.
9. A condop is a building that includes condominium and cooperative ownership in the same structure.
10. Condominiums may be residential, industrial, or commercial.
11. Condominium statutes are called horizontal property acts.
12. The sponsor is the owner or developer of the condominium.
13. A letter of intent is an agreement to purchase a condominium.
14. Price changes rarely occur in condominium offerings.
15. Generally, the price of a new condominium is based on the price per square foot of the unit.
16. A certificate of occupancy (CO) documents the legal use and/or occupancy of a building.
17. Flipping can be a problem because it devalues the real estate.
18. A condominium purchaser receives a deed to his own unit plus an undivided interest in the common areas.
19. The condominium documents, including the covenants, conditions, and restrictions (CCRs), are normally incorporated into the letter of intent.
20. Condominium properties are not assessed for tax purposes.
1. The alteration agreement:
   a. is between the tenant and the sponsor
   b. describes the terms under which the cooperative gives permission to a shareholder before making any changes or improvements to the unit the shareholder occupies
   c. is the house rules
   d. allows the cooperative to make improvements to a unit without the permission of the shareholder occupying the unit

2. The real estate agents duties before the board interview include:
   a. preparing the purchaser to answer the questions of the cooperative board
   b. familiarizing the purchaser with the package for discussion purposes
   c. helping the purchaser to assemble the package
   d. all of the above

3. A residential condominium is NOT:
   a. a structure of two or more units
   b. a structure in which the interior space is individually owned and the common elements are owned in common by the owners of the individual units
   c. a structure which may be residential, industrial, or commercial
   d. a structure that is a not-for-profit organization

4. A sponsor is NOT:
   a. the owner of the individual unit
   b. responsible for appointing the board of directors
   c. the owner of the condominium
   d. responsible for placing a limit on sponsor control of the board

5. The practice of buying property at a certain price and then immediately selling the property at a higher price is called:
   a. CPS1 Phase
   b. building conversion
   c. flipping
   d. right of first refusal
True or False/ Multiple Choice

1. T    1. b
2. F    2. d
3. F    3. d
4. T    4. a
5. T    5. c
6. F
7. T
8. T
9. T
10. T
11. T
12. T
13. T
14. F
15. T
16. T
17. T
18. T
19. F
20. F
CHAPTER 17
COMMERCIAL AND INVESTMENT REAL ESTATE
CLASSROOM HOURS: 10

RATIONALE FOR CHAPTER
Residential brokerage often leads to commercial or investment opportunities whether or not this is the focus of the office. Commercial and investment brokerage are very different from residential brokerage. Agents must have specific training to serve the public properly. The New York salesperson or broker real estate license covers the practice of residential and commercial real estate.

FOCUS OF PRESENTATION
1. This chapter, in particular, has many terms that students who have been primarily involved in residential single family home sales may not be familiar. You may first want to take a look at the key terms with students and briefly review them.
2. The investment principles in this chapter are not extremely complex but they may be new to your students. Take advantage of the many figures in the chapter which illustrate these concepts. You may want to utilize these figures to create your own examples as well.
3. Begin your presentation with the advantages of real estate investment and how one might break into the investment field.
4. Explain how statistical data must be analyzed first to discover if the investment will be profitable. Include a brief discussion of the time value of money and leverage.
5. Review the different types of investment properties emphasizing the different skills and knowledge required for each.
6. Discuss cash flow, rate of return, income and expense analysis, and cash on cash return and give examples of each.
7. Discuss the commercial leases, covering square footage, terminology, and the clauses that a lease contains.
8. Conclude with marketing investment properties, and the requirements for advertising. Emphasize the real estate agents role in advertisement. This also may be a good time to discuss the compensation, using the examples provided at the end of the chapter.

LEARNING ACTIVITIES
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill in sentences (10)
Multiple Choice (20)

CHAPTER 17 OUTLINE
I. REAL ESTATE INVESTMENT
   A. investment-outlay of money for income or profit.
   B. objectives of investment property ownership
      1. hedge against inflationary economic trend
      2. tax savings
      3. long-term, low-risk
II. CHARACTERISTICS OF REAL ESTATE INVESTMENTS
   A. risk-greater risk of loss=greater potential rate of return
   B. rate of return-
      1. evaluation: determining percentage of return wanted and examine return on actual investment
      2. technique for evaluating property investments: property’s income divided by desired rate of return
      3. rate of return relates net operating income to investment
   C. time value of money-calculates value of asset in past, present, or future; original investment increases in value over time
   D. special risks-downturn in real estate market or investment not liquid.
   E. liquidity-real estate not liquid -not be transferred as easily as stocks or cash
   F. leverage-use of borrowed funds
      1. used by tax-exempt and taxable investors
2. improves profit and purchase property when capital not available
3. using other people’s money (OPM) investor’s buying power increases
4. expenses and mortgage costs may exceed returns when too much leverage used

G. debt to equity ratio and leveraging
1. leverage-ratio of debt to equity
2. debt-what investor owes
3. equity-investor’s interest in property
4. ratio-percentage of capital invested
5. higher debt-more reliance on borrowed money

III. TYPES OF INVESTMENT PROPERTIES
A. unimproved land-more risky form of investment
   1. longer time to realize land’s potential
   2. difficult to obtain lender financing for this type of investment.
   3. while investor waits to see profits realized he loses money
B. office buildings-may consist of one-story structure or skyscraper
   1. high rise—typically over 20 stories
   2. midrise—1 to 15 stories
   3. low-rise—1 to 3 stories
   4. in business districts, suburbs, neighborhoods, and business parks
C. residential building-single-family and multifamily
   1. involves services of resident manager or on-site management team.
   2. requires drive and personality to deal with tenant issues and maintenance.
D. mixed-use buildings-combine number of different uses under one roof
E. retail centers
   1. strip mall centers
   2. neighborhood centers
   3. outlet centers
   4. shopping malls vary in size.
5. regional malls and mega centers
6. specialty centers

F. industrial (manufacturing) properties
   1. land use-specific industrial areas, industrial parks, or business parks
   2. function and building type—include warehouses, distribution centers, manufacturing facilities, research and development
   3. investment—requires specialized knowledge of tenant needs

G. fee simple versus leaseholds
   1. can be owned (fee simple) by business or owner or have long-term lease on land
   2. long-term lease commonly used for commercial property—ground lease

IV. PROPERTY ANALYSIS AND TERMINOLOGY

A. cash world—deriving net operating income (NOI)
   1. deductible expenses—costs of operating property held for business use or investment
   2. gross income—received without deducting expenses
   3. net operating income—result of deducting operating expenses
   4. debt service—mortgage principal and interest payments
   5. operating statement—includes income, vacancy rates, and expenses

B. reconstructing the income and expense statement
   1. pro forma statement—operating statement adjusted to reflect potential change in income and expenses

C. cash world—deriving before-tax cash flow (BTCF)
   1. cash flow—net proceeds or cash remaining after all expenses and debt services are paid
   2. before-tax cash flow—measured before income taxes are considered
   3. formula for equity dividend rate—cash-on-cash return
      \[
      \text{Cash-on-cash return} = \frac{\text{Annual before – tax cash flow}}{\text{Total cash invested}}
      \]

D. disadvantage of cash-on-cash return formula
   1. does not account for investor’s tax situation
2. does not include appreciation or depreciation
3. does not account for other risks associated with underlying property
4. ignores effect of compounding interest

E. deriving the after-tax cash flow (ATCF)
   1. profit from income producing property, less income taxes if any
   2. positive after-tax cash flow indicates profit

F. cash-flow income shelter
   1. after-tax cash flow can provide an income or tax shelter for investor
   2. tax shelter-paper loss
   3. income shelters-deductible allowances from net income to arrive at taxable income

V. TAX WORLD—FORMULA FOR DERIVING THE INCOME TAX
   A. formula for federal income taxes for investment property:
      Total property income – Deductions, allowable credits, and exemptions = Taxable income

VI. VALUE OVERVIEW BY INCOME CAPITALIZATION
   A. capitalization rate-annual return investor expects to receive
   B. value of property-estimated by converting net annual income into indication of present value by application of capitalization rate
   C. capitalization, or cap rate-what other investors achieve on like investments in area
   D. capitalization formula is value × capitalization rate = annual net income
   E. estimating value of property-divide annual net income by capitalization rate

VII. analysis of income, rate, and value (IRV)
   A. income (I)-monies received
   B. rate (R)-percentage-common application of rate-interest rate, capitalization rate, or commission rate
   C. value (V)-total amount of worth or cost of unit

VIII. COMMERCIAL LEASES
    A. square footage
1. rentable square footage—entire space including usable square footage and tenant’s pro rata share of building’s common areas
2. usable square footage—area contained within space tenant occupies
3. carpetable area—space walked upon within interior walls of space
4. effective rent—tenant’s cost per square foot after concessions are considered

B. loss and add-on factors
   1. loss factor—difference between rentable and usable area in commercial space
   2. tenant pays rent according to square footage including lost area
   3. from tenant’s point of view, loss factor = add-on factor

IX. COMMON AREAS
   A. include the lobby, elevators, corridors, restrooms, and utility closets.
   B. common area maintenance (CAM) charges—amounts charged to tenants

X. COMMERCIAL LEASES TERMINOLOGY
   A. gross lease, net lease, percentage lease, operating stop or expense stop lease
   B. natural break-even point defines when investment will generate positive return
   C. loft lease—rental of floor space not generally divided into rooms
   D. lease clauses:
      1. lease duration
      2. the tenant mix in the building
      3. on-site management
      4. building amenities
      5. type of lease
   E. standard lease clauses include:
      1. use clause
      2. subordination, nondisturbance, and attornment agreement (SNDA)
      3. estoppel certificate
   F. sublease/assignment
      1. most leases do not permit assignment or sublease unless landlord consents
2. original tenant may still be responsible for lease unless landlord agrees to release him
3. with sublease tenant may vacate all or part of leased premise
4. sublessee uses all or part of leased premises and pays lessee (who pays landlord)

XI. ELECTRIC SERVICE
   A. direct meter-property owner may include fee for electric service in rent building
   B. submeter-building owner buys electric service from public utility service; sells service at retail rates to tenants; billed directly to tenant

XII. THE PURPOSE OF LEASE ESCALATION CLAUSES
   A. lease escalation clauses-call for increased costs to tenant
   B. protects property owner against increases in operating costs
   C. clauses:
      1. proportionate shares of occupancy
      2. base year
      3. operating stop/tax stop clause
      4. real property tax clause
      5. direct operating costs
      6. porter’s wage escalation formula
      7. fixed percentage increase-indexed escalation
      8. ground lease—long term lease of unimproved land
      9. graduated lease—rent changes from period to period over lease term

XIV. THE ROLE OF THE REAL ESTATE AGENT IN ACQUIRING DISCOUNTED INVESTMENT PROPERTY
   A. below market value properties
   B. foreclosed property
   C. short sales-lender accepts less than the indebtedness and agrees to sale of the property
   D. other distressed properties

XIII. MARKETING INVESTMENT PROPERTIES
A. advertising may include:
   1. aerial photographs of site
   2. detailed brochures
   3. more than one for sale sign on property
   4. multiple listing services only for commercial and industrial real estate
   5. websites that list commercial and industrial properties

B. interest in property: agent presents package includes:
   1. capital improvement budget
   2. cash flow analysis and projections
   3. engineering review
   4. feasibility study
   5. income and expense analysis
   6. lease review
   7. legal review and compliance verification
   8. marketing analysis and/or appraisal
   9. review of existing and proposed financing
  10. title history

C. commercial lease may be structured differently from residential lease

D. broker may be compensated over term of lease
1. An investment in real estate should not be considered as a means of providing regular cash flow.

2. A detailed statistical study of a proposed real estate investment is known as a sensitivity analysis.

3. The determination of what investment would bring the greatest return for a given period of time is known as the time value of money.

4. Expenses in the cost of maintaining personal property are tax deductible.

5. The result of deducting operating expenses produces a net operating income figure.

6. A pro-forma schedule is an operating statement adjusted to reflect a potential change in expense or income for a given property.

7. A sole proprietorship is not often used for investment purposes.

8. A consideration in holdings period planning is the borrowing power of the investor.

9. Large investment projects generally do not have a projected timetable for disposition.

10. A portfolio presentation to a lender generally does not include a pro-forma statement.

11. Because there are no improvements to vacant land, the property cannot be depreciated for tax purposes.

12. The rate of return should generally be considered a risk factor.

13. A lender may require an investor to apply other investment projects as security for a current project.

14. Capital gains taxes are payable when a property sells.

15. Portfolio income includes salaries earned by a business owner.

16. Real estate is not a liquid asset.

17. Leverage is the use of borrowed funds.

18. Unimproved land is the least risky form of investment.

19. The result of deducting operating expenses is net operating income.

20. The after-tax cash flow is the profit from income producing property.
1. Which of the following is NOT a type of business organization for investment purposes?
   a. partnerships
   b. corporations
   c. proformas
   d. syndicates

2. A type of retail establishment that draws people to a shopping area is known as a(n):
   a. PUD
   b. anchor store
   c. leader store
   d. department store

3. Which of the following is NOT a type of risk associated with real estate investment?
   a. downturn in the real estate market
   b. environmental problems
   c. a favorable supply and demand economy
   d. inability to obtain financing

4. An apartment building contains 30 units. Each unit rents for $200 per month. The vacancy rate is 4%. Annual expenses are $3,000 for maintenance, $1,100 insurance, $1,600 taxes, $1,200 utilities, $13,000 interest, and 15% of the effective gross income for management fees. What is the investor’s net rate of return for the first year if he paid $260,000 for the property?
   a. 6.69%
   b. 14.94%
   c. 11.64%
   d. 19.94%
True or False  Multiple Choice

1. F                   1. c
2. F                   2. b
3. T                   3. c
4. F                   4. b
5. T
6. T
7. F
8. T
9. F
10. F
11. T
12. T
13. T
14. T
15. F
16. T
17. T
18. F
19. T
20. T
CHAPTER 18
INCOME TAX ISSUES IN REAL ESTATE TRANSACTIONS
CLASSROOM HOURS: 3

RATIONALE FOR CHAPTER
A number of federal and state statutes regulate income taxes. This chapter discusses certain tax deductions associated with real estate ownership and transfer. It also discusses tax depreciation and tax-deferred exchange. Real estate licensees should refer clients and customers who have tax questions to a professional such as a tax attorney or an accountant.

FOCUS OF PRESENTATION
1. Discuss federal income tax brackets. This can then lead into the use of IRA funds, and the permitted tax deductions from mortgage interest.
2. Explain short-term capital gain vs. long-term capital gains, and then review the $250,000/$500,000 rule.
3. Briefly cover the three classifications of income: active, portfolio, and passive.
4. Use the real estate example to discuss the tax rate on recaptured depreciation, and review the formula for calculating federal tax on income derived from operations.
5. The tax-deferred exchange is a longer topic, so take time to explain it clearly. Emphasize the eligibility of the property, the taxable realized gain, and the boot.
6. The federal tax rules on acquisition financing and subsequent financing are important. As you review this section, use the real estate examples to clarify the topics they fall under. The most important message to get across is what is and what is not deductible under each heading.
7. Discuss the Mortgage Forgiveness Debt Relief Act of 2007 and the extensions to the Act.
8. Finish this chapter by making sure your students understand tax depreciation and the straight line method for income-producing residential property.
LEARNING ACTIVITIES
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill in sentences (11)
Multiple Choice (20)

CHAPTER 18 OUTLINE
I. FEDERAL INCOME TAX
   A. law gave people certain tax breaks
   B. income tax-progressive; not all taxpayers taxed at same rate.
   C. six tax brackets for federal income tax -10, 15, 25, 28, 33, and 35 percent
II. FEDERAL INCOME TAX TREATMENT
   A. use of IRA funds toward down payment without penalty
      1. “Age 59‰ Rule” allows first-time homebuyers to use IRA distributions to
         fund up to $10,000 of their new home cost
   B. permitted deductions
      1. incentive to purchase real estate
   C. property taxes
      1. deductible for any type of real property
   D. mortgage interest-taxpayer can deduct home mortgage interest
      1. qualified home-main home or second home
      2. secured debt-taxpayer signs legal document such as mortgage or land contract
   E. other mortgage interest deductions
      1. interest on mortgage other than qualified home deductible unless deemed
         personal
III. CAPITAL GAINS
   A. profit from sale of capital including real estate; sells asset for more than basis
   B. short-term capital gains-assets held less than one year
   C. long-term capital gains-assets held for longer than 12 months
   D. capital loss-when investment or other types of property sold at loss
IV. SALE OF A PRIMARY/PRINCIPAL RESIDENCE—$250,000/$500,000 RULE
A. exclusion in IRS law-gives home sellers tax break on capital gains when selling home
B. up to $250,000 if single
C. up to $500,000 if married
D. must have owned and resided in home for at least two of last five years

V. SECOND HOME CAPITAL GAINS EXCLUSION
A. second home-if used as primary residence, law requires total of four years to qualify either or both homes
B. taxpayer can take exclusion on one home every two years if he meets the qualifications

VI. CAPITAL GAIN ON THE SALE OF INVESTMENT PROPERTY
A. gain/loss from sale/exchange of property recognized as gain/loss for tax purposes
B. recognized gain- taxpayer must pay taxes on gain or profit
C. basis of property usually cost
D. adjusted basis-original cost or other basis plus certain additions and minus certain deductions such as depreciation and casualty losses

VII. THREE CLASSIFICATIONS OF INCOME
A. active income: earned through salaries or business
B. portfolio income: interest, annuities, dividends, and royalties
C. passive activity income: invested funds, rental activities and limited partnerships

VIII. CALCULATING THE GAIN OR LOSS
A. tax rate on recaptured depreciation
   1. recapture means to be included as taxable income
   2. because of depreciation, adjusted tax basis of rental property decreases.
   3. gain-difference between selling price and adjusted basis
   4. depreciation part of gain taxed as capital gain
B. formula for calculating federal tax on income derived from operations
   1. simplified formula for calculating net income for tax purposes is:
      Income – Expenses = Net income

IX. LIKE-KIND EXCHANGES
A.1031 tax-deferred exchange allows individual to defer capital gains taxes on real estate bought and sold for investment purposes

B. eligible property for an exchange
   1. properties must be “like-kind”
   2. personal residences and foreign property do not qualify for exchanges
   3. property held for personal use does not qualify

X. BASIS
   A. basis of property exchanger receives = basis of property exchanged plus new expenditures or debt incurred.
   B. taxable realized gain
      1. if price of replacement property does not have equal or greater level of debt than original property, exchangor must pay taxes on amount of decrease
      2. any cash exchangor retains taxable.
   C. qualified intermediary (QI)
      1. accepts funds from sale and handles contracts
      2. no licensing requirements for qualified intermediaries

XI. BOOT
   A. cash in the exchange in addition to like-property
   B. transaction may still partially qualify as tax-deferred exchange

XII. FEDERAL TAX RULES ON ACQUISITION AND SUBSEQUENT FINANCING
   A. interest deductions
      1. home acquisition financing mortgage taken after October 13, 1987, to buy, build, or greatly improve a qualified home (a main home or second home).
   B. home acquisition debt limit
      1. cannot be more than $1 million ($500,000 if married and filing separately)
   C. refinancing rules and limitations
      1. secured debt used to refinance home acquisition debt treated as home acquisition debt for tax purposes.
      2. new debt qualifies as home acquisition debt up to amount of balance of old mortgage principal before refinancing
      3. additional debt not home acquisition debt, but may qualify as home equity debt
D. Home Equity Financing
   1. home equity loan-mortgage that uses qualified home as collateral
   2. debt incurred to buy, build, or greatly improve home (more than home acquisition debt limit) may qualify as home equity debt.
   3. home equity debt-mortgage after October 13, 1987:
      a. does not qualify as home acquisition debt or grandfathered debt, and
      b. secured by qualified home.
E. Home Equity Debt Limit
   1. $100,000 ($50,000 if married and filing separately), or
   2. total of each home’s fair market value (FMV) reduced (but not below zero) by amount of home acquisition debt and grandfathered debt.
   3. taxpayer can fully deduct in year paid, points paid on home improvement loan
   4. interest can be deductible on construction financing.

XIII. POINTS
   A. describes certain charges that borrower pays to obtain mortgage.
   B. called loan origination fees, maximum loan charges, loan discounts, or discount points
   C. IRS rules for points
      1. buyer cannot deduct full amount of points in year paid

XI. POINTS PAID TO REFINANCE A MORTGAGE
   A. not deductible in full in year that points are paid, unless
   B. taxpayer uses part of refinanced mortgage proceeds to improve main home
   C. can deduct remaining points over life of loan.
   D. closing costs
      1. notary fees
      2. preparation costs for the mortgage note or deed of trust
      3. mortgage insurance premiums
      4. VA funding fees

XV. PREPAYMENT PENALTIES
   A. if homeowner pays off mortgage before time may have to pay penalty to lender
   B. homeowner can deduct penalty as home mortgage interest
C. The Mortgage Forgiveness Debt Relief Act of 2007
   1. Mortgage Debt Forgiveness
   2. PMI Tax Deduction
   3. Capital Gain Exclusion
D. Low-Income Housing Incentives
   1. created under Tax Reform Act of 1986
   2. promote private involvement in production of housing for low-income households

XVI. TAX DEPRECIATION
A. economic depreciation-results from physical deterioration of property
B. tax depreciation-provision of tax law applicable to certain types of assets
C. land and building value separated to arrive at basis for determining depreciation
D. tax depreciation permits owner to recover cost or other basis of asset
E. adjusted basis includes price paid for property and expenses incurred in acquiring property
F. appreciation-refers to increase in value due to economic or other reasons
G. straight-line method for income-producing residential property
   1. straight-line depreciation-portion allocated to building is divided by 27.5 to determine equal amount of depreciation allowance each year.
      a. 3.636 percent (1% divided by 27.5 = .03636) for each full year
   2. method for income producing nonresidential
H. calculating depreciable basis
   1. depreciation value-when depreciable asset sells, basis of asset used to compute taxable gain from sale
True or False

1. Thirty percent is an tax bracket for federal income tax purposes.

2. There are four tax brackets for federal income tax.

3. The "Age 59 1/2 Rule" allows first-time homebuyers to use IRA distributions to fund up to 10,000 of their new home cost.

4. Property taxes are deductible for any type of real property.

5. A qualified home for tax purposes is the main home or second home.

6. The interest paid on a mortgage debt is generally deductible.

7. Capital gain is the profit realized from the sale of any capital investment including real estate.

8. Recognized gain means that the taxpayer must pay taxes on the gain or profit.

9. The basis of a property is usually its cost.

10. Active income is income earned through salaries.

11. Over the life of an investment property, a property owner may take certain tax deductions known as depreciation.

12. A 1031 tax-deferred exchange allows an individual to defer capital gains taxes on real estate bought and sold for investment purposes.

13. There are no licensing requirements for qualified intermediaries.

14. A mortgage uses a qualified home as collateral.

15. Points paid to refinance a mortgage may be deductible in full in the year paid if certain conditions are met.

16. If a homeowner pays off the home mortgage before the time set out in the mortgage contract, he may have to pay a penalty to the lender.
Multiple Choice  
CH 18

1. Under IRS regulations, the following is NOT tax deductible:
   a. property taxes
   b. interest on personal loans
   c. mortgage interest on second home
   d. interest on loans to improve a home

2. When the taxpayer must pay taxes on a gain or profit, it is called:
   a. basis
   b. adjusted basis
   c. depreciation
   d. capital gain

3. Which is NOT a classification of income?
   a. active income
   b. passive activity income
   c. inherited income
   d. portfolio income

4. A deductible allowance from net income of property used to arrive at taxable income is called:
   a. adjusted basis
   b. tax depreciation
   c. taxable realized gain
   d. interest deduction
5. The basis on which taxable gain is computed is the original cost:
   a. of the property
   b. plus any points paid at time of purchase
   c. plus improvements increasing property value
   d. plus the cost recovery

6. Tax-deferred exchanges:
   a. are no longer permitted
   b. can now be between residential and commercial properties
   c. can involve no more than two properties
   d. are allowable only for investment or business property
True or False/ Multiple Choice

1. F 1. b
2. F 2. d
3. T 3. c
4. T 4. b
5. T 5. c
6. T 6. d
7. T
8. T
9. T
10. T
11. T
12. T
13. T
14. T
15. T
16. T
CHAPTER 19
PROPERTY MANAGEMENT
CLASSROOM HOURS: 2

RATIONAL FOR CHAPTER
The field of property management is an interesting and challenging specialty of the real estate business. It is an area in which a real estate agent can provide a valuable service to an owner and where hard work in managing daily challenges can lead to substantial rewards. Special certifications and designations are available for real estate agents wanting to develop a property management career.

FOCUS OF PRESENTATION

1. It is not possible to cover all of the principles and procedures of property management in a two-hour presentation. In teaching this subject, always keep in mind that you are presenting an overview of the profession.

2. Emphasize that the relationship of the agent to the owner is an agency relationship creating a fiduciary duty. The agent is bound to act in the best interests of the client (the landlord or owner) with duties established by a property management agreement in place of the listing contract.

3. Generally explain the types of properties that are managed. A fuller discussion will take place later in the presentation.

4. Explain the relationship between the management proposal and the management agreement. If possible provide students with a sample agreement used in your market area.

5. A short discussion of the theory of risk management and types of insurance should be included next.

6. The obligations that a property manager owes the owner is an important topic in this presentation. Explain the difference between preventative and corrective maintenance and the types of budgets that a property manager must create.
Figures 19.5 (sample annual maintenance schedule) and 19.2 (sample property/building inspection report) can be used to illustrate types of maintenance duties. Other useful forms which are required by the syllabus include Figure 19.1 (outline of a management proposal), 19.4 (a sample building report), and 19.6 (a sample marketing plan outline).

7. Tie your discussion of the skills of a property manager to the management of different types of property. Explain each type with an emphasis on the different aspects of each. Include a discussion on the eviction process and eviction remedies.

8. Briefly discuss the operation of a property management office including the dual role of public relations and reporting issues. Instructors who are also property managers may want to supplement the discussion in the textbook.

9. Finally, give an overview of the management profession. The textbook gives several names of institutions with names and phone numbers to help students access further information about property management education.

LEARNING ACTIVITIES
How Would You Respond?: typical scenarios to analyze (2)
Key Terms: fill in sentences (8)
Multiple Choice (20)

CHAPTER 19 OUTLINE
I. INTRODUCTION—WHAT IS PROPERTY MANAGEMENT?
   A. oversight of property by individual or team for owner
   B. tasks include: leasing, selling, rent collection, etc.

II. WHAT ARE THE FUNCTIONS OF A PROPERTY MANAGER?
   A. strives to produce greatest net return for owner
   B. must protect and increase value of owner’s investment
   C. acts as owner’s agent and fiduciary

III. WHAT TYPES OF PROPERTY ARE MANAGED?
A. various types of income-producing properties
B. residential, commercial, or industrial

IV. WHEN IS A LICENSE REQUIRED?
A. works for one owner, real estate license not required
B. works for more than one owner should have real estate license
C. people working for company-have minimum of salesperson license

V. THE MANAGEMENT AGREEMENT AND PROPOSAL
A. property manager must submit management proposal
B. proposal includes:
   1. complete description of land and all improvements
   2. list of all maintenance required and existing curable obsolescence
   3. information regarding maintenance records and accounting procedures
   4. schedules of property inspections and owner conferences
   5. operating budget, capital improvement budget, and stabilized budget
   6. document citing management fee

VI. THE MANAGEMENT AGREEMENT
A. creates agency relationship: owner-principal; property manager-agent for purposes specified in agreement
B. provisions of typical property management agreement include:
   1. beginning date and names of parties
   2. property location and description of premises
   3. duration of management agreement
   4. scope of agent’s management authority
   5. manager’s covenants
   6. manager’s fee
   7. accounting responsibilities
   8. insurance and risk management
   9. owner’s covenants that include owner’s responsibility and objectives
   10. method of termination by either party
   11. signing of agreement by owner-principal and agent-manager

C. insurance and risk management
1. risk management-describes concern for controlling and limiting risk in property ownership
2. manager-should find competent insurance agent familiar with type of property to be insured
3. public liability insurance-covers risks owner assumes when public enters premises

VII. SKILLS REQUIRED OF PROPERTY MANAGER
A. must be able to:
   1. supervise others
   2. understand (GAAP); prepare and interpret monthly and yearly reports
   3. understand building systems
   4. handle landlord-tenant relations
   5. lease space and have knowledge of space planning, area design, and building layout
   6. know basic advertising and marketing principles
   7. know government regulations
   8. know how to negotiate with union labor to obtain best price
   9. understand how to purchase quality goods and materials at best prices
  10. apply understanding of appraisal, finance, money markets, etc.
  11. possess general knowledge of construction
  12. be aware of any environmental issues and problems
  13. hire personnel

VIII. DIFFERENCES BETWEEN THE MARKETS
A. office building management
   1. analyzing demographics to attract tenants
   2. negotiating leases
   3. developing competitive rent schedule
   4. marketing to certain target professions that best utilize space
   5. enhancing and rearranging space to best serve tenant needs

B. retail property management
   1. select tenants suitable for each type of center and consider tenant mix.
2. know desires of retail tenants regarding competition from like tenants
3. group or common advertising, and maintenance of common areas

C. residential property management
   1. concerns include credit history, past property owner references, and employment status
   2. involved with maintenance, repair, and eviction of tenants
   3. aware of local housing market

D. condominium, cooperative, townhouse, and PUD management
   1. planned unit development (PUD)-neighborhood of cluster housing or other design with supporting businesses
   2. involved in physical management of property
   3. budgeting expenses and collecting assessments

IX. MANAGEMENT OFFICE OPERATIONS
   A. acquiring new properties to manage
   B. effectively servicing existing clients
   C. negotiating management agreements with new clients
   D. distributing workload efficiently
   E. evaluating price setting policies to compensate employees
   F. maintaining comfortable margin of profit in company
   G. public relations-serves two roles
      1. property management office uses public relations to market itself
      2. used to market client properties.

X. OBLIGATIONS TO THE OWNER
   A. goals must be same as owner’s
      1. most important goal-obtain highest possible return on property
   B. budget
      1. operating budget-annual budget-income and expenses for week-to-week operations
      2. capital reserve budget -projected budget over economic life of property
      3. capital expenses-those required to improve or maintain building
4. variable expense—not predictable but subject to needs of property at any time
5. stabilized budget—forecast of income and expenses reasonably projected

C. income and expenses—operating statement
   1. operating statement—method used to project net operating income for property
   2. fixed expenses—costs that do not fluctuate with operating level of complex
   3. operating expenses fluctuate with operating level or occupancy of property

D. maintenance criteria
   1. preventive maintenance—requires periodic check of mechanical equipment to minimize excessive wear and tear from improper operation
   2. corrective maintenance—requires fixing nonfunctioning item that tenant has reported

E. marketing plan
   1. strategy shaped by demand for space, type of project, and tenant selection process
   2. include business cards, newspaper ads, signs on the building, radio, television, Internet

XI. FUTURE OF PROJECT—BUSINESS TRENDS
   A. need to stay informed about changing economic conditions
   B. trends to look at for
      1. building types and amenities available
      2. number of occupants per unit
      3. transportation volume and other available infrastructure
      4. local industrial growth
      5. population growth
      6. national economic indices
      7. community growth
      8. property taxes
9. zoning

XII. REPORTING

A. property management report-(usually monthly) account of funds received and disbursed

  1. detailed information about receipts and expenditures for period covered
  2. relates each item to operating budget for period

XIII. THE MANAGEMENT FIELD

A. how does one become a property manager?

  1. may acquire property for investment purposes, thus becoming manager
  2. first become on-site managers
  3. make specific career decision to enter field
  4. complete MBA program in asset management
  5. enter from other areas of the real estate industry
  6. self-employed
True or False

1. In New York, a resident manager who is employed directly by one owner must have a real estate license.

2. One of the first duties of a property manager is to submit a management proposal to the owner.

3. The property management agreement does not create an agency relationship.

4. Property managers are not fiduciaries under the law.

5. An insured does not have to have a financial interest in a property to be eligible for insurance coverage.

6. Work performed to fix a nonfunctioning item is known as preventative maintenance.

7. Items for week-to-week operation are included in the operating budget.

8. If a building is 98% occupied, it illustrates that the laws of supply and demand are working in favor of the property.

9. Residential property management is very similar to office building management.

10. A designation from a professional organization is required to manage property in New York.

11. A building manager always lives on the premises and is a salaried employee of the owner.

12. A planned unit development is a neighborhood of cluster housing or other design with supporting businesses.

13. The operating statement is a method that property managers use to project net operating income for a property.

14. An individual may acquire a property for investment purposes, thus becoming a manager.

15. A property management report is a periodic accounting of all funds received and disbursed.

16. Risk management describes the concern for controlling and limiting risk in property ownership.

17. The property manager must protect and increase the value of the owner's investment.

18. Public liability insurance covers the risks an owner assumes when the public enters the premises.

19. A management company uses public relations to market itself.

20. The operating budget is a projected budget over the economic life of the property.
1. Which of the following is NOT a function of the property manager? To:
   a. advertise to solicit tenants
   b. hire, train, and supervise employees
   c. maintain adequate insurance to protect the owner
   d. maintain records on the racial composition of the neighborhood

2. Which of the following is NOT a part of the property operating budget?
   a. effective gross rent
   b. debt service
   c. expenses for insurance and tax
   d. expenses for utilities and maintenance

3. The relationship between the property manager and the owner is most similar to which other relationship?
   a. seller and listing agent
   b. buyer and listing agent
   c. buyer and seller
   d. buyer and selling agent

4. Which of the following is false regarding property insurance?
   a. casualty insurance provides protection for the physical structure
   b. liability insurance protects against the financial claims of third persons
   c. casualty insurance provides protection from losses due to fire, explosion, windstorm, and smoke from friendly fire
   d. liability insurance provides protection for the physical structure
5. When a real estate broker signs a management contract with an owner, he becomes a:
   a. trustee
   b. management director
   c. fiduciary
   d. receiver

6. To save money in the management of property, a manager should:
   a. subcontract individuals for maintenance duties
   b. take a substantial cut in his fees or commission
   c. perform less preventative maintenance
   d. perform less corrective maintenance

7. To minimize legal actions for evictions, the property manager should:
   a. immediately report tenant problems to the owner
   b. call an attorney as soon as a problem arises
   c. attempt to resolve disputes before a lawsuit is initiated
   d. evict the tenant himself and put his belongings on the street
True or False/Multiple Choice

1. F       1. d
2. T       2. b
3. F       3. a
4. F       4. d
5. F       5. c
6. F       6. a
7. T       7. c
8. T
9. F
10. F
11. F
12. T
13. T
14. T
15. T
16. T
17. T
18. T
19. T
20. F