



Instructor

Cees Halcombe

SELLER'S WORLD

&

BUYER'S WORLD

When we talk about working with a seller or a buyer, what are we talking about selling or buying? Are we selling real property or personal property?

If it is Real Property the salesperson listing or selling it must be licensed by the state and they are known as licensees. If it is personal property normally no licensing is required. For example, car salesmen are not licensed to sell cars.

Licensees need to understand the legal definitions of land, real estate, and real property and their responsibilities in marketing them.

This chapter is designed to help licensees understand these things.

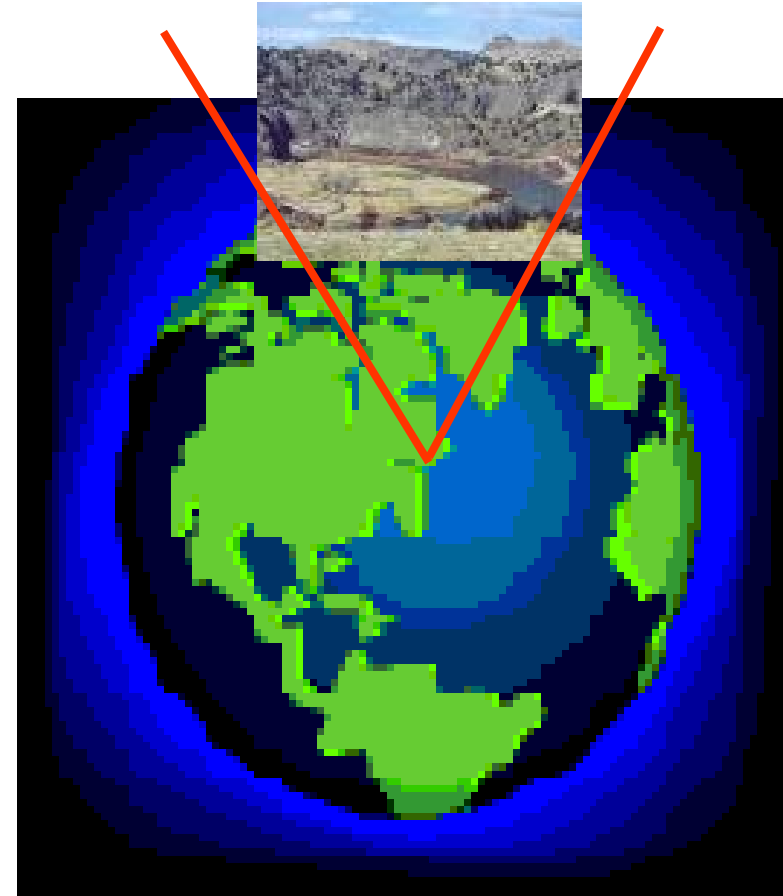


NATURE OF REAL PROPERTY

LAND NATURAL – NO MANMADE CHANGES - NO IMPROVEMENTS

A defined area of the earth's surface - down to the center of the earth - up to infinity. This includes all permanent natural objects – i.e. trees & rocks

Things that are *naturally attached to the land's surface* (boulders, plants), plus the underlying soil - including minerals below the surface (subsurface – for example gold ore in the ground), the air above the earth (airspace or air lot – elevated train tracks above the surface, or a building blocking sunlight, for example may require payment to the land owner for the use of the airspace – airplanes are excluded).



REAL ESTATE =

LAND

+

IMPROVEMENTS



IMPROVEMENTS

Man made attachments to the earth (fences, buildings, sewer lines, streets, utilities). They are artificial. Changed land is considered to be improved land (real estate). *Improvements on land* are usually privately owned, (homes, fences, etc.), *Improvements to land* are usually publicly owned (curbs, gutters, etc.)



**IMPROVEMENTS
ARE NOT
NECESSARILY
BETTER JUST
MAN MADE
CHANGES FROM
THE NATURAL**

REAL PROPERTY =

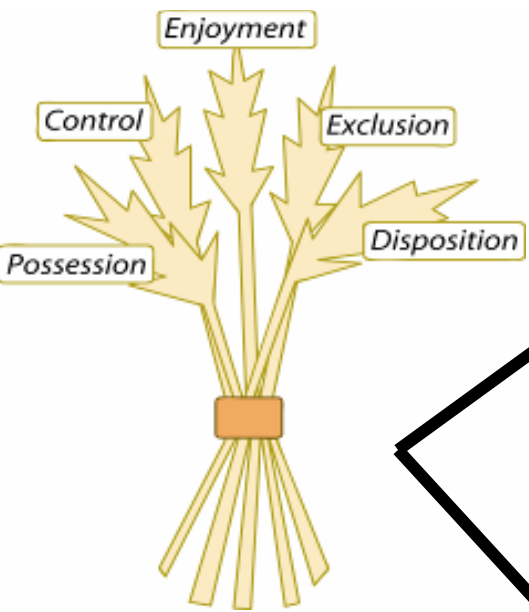


LAND



IMPROVEMENTS

RIGHTS
FOR SALE
For Rent
No Trespassing
Deed
Will



BUNDLE OF RIGHTS

Old English Law

Possession

Right To Own & Possess Property Within The Law

Control

Right To Control Property Within The Law

Enjoyment

Right To Use The Property In Legal Ways

Exclusion

Right To Keep Others Out

Disposition

Right To Transfer, Lease or Will The Property

RIGHTS OF OWNERSHIP

Can be transferred individually just like stalks of wheat out of a bundle

Real Property is not Movable & Includes Rights, Interests & Benefits

Real property can be a divided interest; that is, one party can own the air and surface rights while another party owns the subsurface or mineral rights.

CONVEYANCE OF REAL PROPERTY is by DEED
(RECORDING NOT NECESSARY TO BE VALID)



CHARACTERISTICS OF REAL ESTATE

PHYSICAL (H.I.D.)

Heterogeneity-Non Homogeneity No Two Parcels Of Land Are Exactly The Same.
(Uniqueness)

Immobility The Geographic Location Of A Parcel Of Land Can Never Be Changed.

Durability Land is indestructible. It's appearance can change. For example; a hill of gravel can be removed and the hole that is left filled with water. The hill becomes a lake but legally it is still the same property.
(Indestructibility)

ECONOMIC (D.U.S.T.)

Demand is the buyers' willingness and ability to buy a home. A big part of demand is caused by the desire to own a home that has been ongoing throughout our history.

Utility How the improvement is being used, can it be used for buyer's desired purpose?

Scarcity Usable (Habitable) Land Is Limited, land that can be developed with utilities

Transferability There must be good and marketable title that allows the transfer of ownership to the property occur.

REAL PROPERTY

Real Property is NOT normally Movable & Includes Rights, Interests & Benefits

Types of Real Property

IMPROVEMENTS ATTACHED TO THE SURFACE OF THE EARTH ARE REAL PROPERTY (Buildings, Roads, Fences, Those Items Attached To or In Buildings)

FIXTURES (Items That Were Personal Property That Have Become Real Property - Go With The Land)

There are times when real property does not appear to fit the definition. House keys, garage door openers are real property even though they are mobile because they fit a door lock that is real property or work with a garage door opener that is real property.

FRUITS OF NATURE (Fructus Naturales)



Crops That Do Not Require Annual Planting (Trees, Grass, Wild Fruit Bushes) are considered real property.



Rights, Interests & Benefits

APPURTENANCES, EASEMENTS, AND SHORELINE WATER RIGHTS



PERSONAL PROPERTY

Personal property to be sold to the buyer or that is going with the seller must be identified in the listing contract and buy/sell agreement.

Below is part of a listing contract showing the blanks that are completed describing the personal property.

19 The following items are to be left upon the premises as part of the property purchased; electrical, plumbing,
20 and heating fixtures, wood stoves, built-in appliances, screens, storm doors, storm windows, curtain rods,
21 and hardware, attached floor coverings, T.V. antenna, air cooler or conditioner, garage door openers and
22 controls, attached fireplace equipment, mailbox, trees, shrubs, and all fixtures except:

23 _____
24 _____
25 _____

26 The following personal property is leased/rented: water softener water conditioning propane tank
27 satellite dish satellite control alarm system other _____

28 _____

29 The following personal property is also included as part of the property offered for sale for said price:

30 _____
31 _____
32 _____
33 _____

PERSONAL PROPERTY

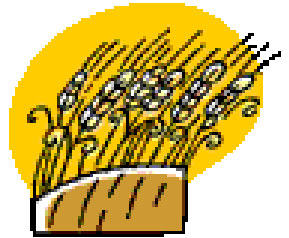
Personal Property is also known as: PERSONALITY Or CHATTELS

PERSONAL PROPERTY IS ALWAYS MOVEABLE even though items can be very large and attached in a semi-permanent manner they are still personal property

Examples Of Personal Property (1) Furniture (2) Money (3) Stock Certificates
(4) **Mobile Homes** (5) Water Use Rights (6) Oil Wells (7) Gas Wells

(8) **Emblements (Fructus Industriales)** Annually Planted Crops
That Are Fertilized, Sprayed for Disease, etc. (Wheat, Orchards,
Vineyards, etc.)

(9) **Trade Fixtures**



Personal Property Items That Are Necessary In The Operation Of A Business –
May be Tenant's Personal Property

*NOTE: If it doesn't fit the definition of
Real Property it's Personal Property*

CONVEYANCE OF PERSONAL PROPERTY IS BY BILL OF SALE
AND MUST BE RECORDED TO BE VALID



**Some Materials Will Be Both Real Property and
Personal Property During The Course Of Time.*

HOW THE COURTS DETERMINE IF AN ITEM IS REAL OR PERSONAL PROPERTY

(M. A. R. I. A.)

- (1) **METHOD OF ANNEXATION** - **How Permanent? Can it be removed without damage?**
- (2) **ADAPTATION TO REAL ESTATE** - **How Is The Item Used?** Is It Used As Real Property or Personal Property? House keys are real because of adaptation
- (3) **RELATIONSHIP TO THE PARTIES** - Emblements can be personal property of a tenant. In the purchase of a farm the emblements could belong to the buyer or seller **depending on the contract agreement.**
- (4) **INTENT** - Used By The Court To Determine If An Item Is Personal Property Or Real Property. It is **Based On The Intent Of The Party That Attached It.** **Was The Intent For It To Remain As Part Of The Real Property Or Not?**
- (5) **AGREEMENT** - **Do The Parties Agree That An Item Is Real Property or Personal Property In The Offer To Purchase?**

Examples Of Fixtures – Heating Systems, Elevators, Fences, Light Fixtures.

Almost Any Personal Property Item That Has Been Added To A Permanent Part Of A Building.

FIXTURES & TRADE FIXTURES

Personal property can be converted to fixtures and fixtures can be changed to personal property. Personal property is converted to fixtures by Annexation – Real Property is converted from fixtures to personal property by Severance.

Annexation

CONVERSION OF PERSONAL PROPERTY TO REAL PROPERTY



converting or changing personal property to real property by attaching it to land or a building. A hot water heater in the store is personal property, when it is attached to the plumbing system in the building it becomes real property.

CONVERSION OF REAL PROPERTY TO PERSONAL PROPERTY

Severance

change real property to personal property by detaching it from the land or building. A growing tree is real property until it is chopped down – severed. Apples are personal property when they are removed from a tree.

TRADE FIXTURES (*CHATTEL FIXTURES*)

Personal Property Items That Are Used In The Operation Of A Business – May Be A Tenant's Personal Property

An Item Of Property – May be Owned By The Tenant - Attached In A Semi-Permanent Manner – If Rented, Authorized In The Lease – For Business Use (Necessary to Run the Business) – That The Owner or Tenant Has The Right To Remove Prior To The Transfer Of Ownership or End Of The Lease

(NOTE: Trade Fixtures not removed prior to the end of the lease become the property of the landlord.) Examples: Bowling Alleys, Store Shelves, Restaurant Equipment,

COMPARISON OF FIXTURES AND TRADE FIXTURES

FIXTURES

Real Property

Belong To Owner

Permanent

Transfer With Real Property

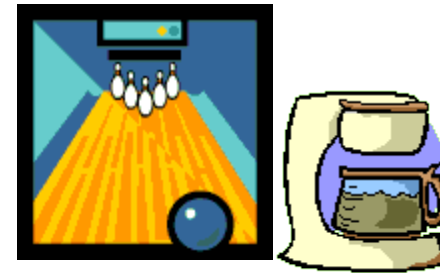
TRADE FIXTURES

Personal Property

Belong To Tenant

Removable

Do Not Transfer With Real Property



NOW THAT WE KNOW ABOUT REAL AND PERSONAL PROPERTY WE NEED TO KNOW WHO WE WILL BE DEALING WITH TO SIGN A LISTING AND LATER A DEED ?

- **WHO OWNS THE PROPERTY?**
- **HOW LONG DO WE HAVE TO FIND A BUYER?**
- **WHAT WILL THE PROPERTY SELL FOR?**
- **WHERE IS THE PROPERTY LOCATED?**
- **WHAT IS GOING TO BE SOLD WITH THE PROPERTY?**
- **WHAT IS NOT GOING TO BE SOLD WITH THE PROPERTY?**
- **WHAT IS THE CONDITION OF THE PROPERTY?**

WHO OWNS THE PROPERTY?

STANDARD LISTING CONTRACT Exclusive Right to Sell



- 1 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT.
- 2 IF NOT UNDERSTOOD, SELLER IS ADVISED TO SEEK THE ADVICE OF COMPETENT LEGAL COUNSEL.
- 3 PARTIES:
- 4 Seller(s) _____
- 5 Listing Firm _____

OWNERSHIP OF RECORD

When a property is purchased, most buyers record their deed and title at the courthouse, or at the Torrens office if the property is registered land. Recording the deed in public records gives notice to the world of ownership of the property but it is not necessary for ownership.

OWNERSHIP (Freehold Estate)

- (1) In Severalty Title held by one individual (a natural person or legal entity).
Ownership is severed or cutoff from others.
- (2) In Co-ownership Title held by two or more individuals - co-ownership or concurrent ownership.
- (3) In Trust A third individual holds title for the benefit of another

ESTATE

INTEREST
A share or right in some property

TENANCY
An estate in “fee”, such as a lease, “joint tenancy”, or “tenancy in common”

Legal interest or rights to a property. It must be possessory or may become possessory in the future. Measured in terms of duration.

TYPES OF CO-OWNERSHIP

Tenancy in Common

2 or more individuals - Co-owners have unity of possession (entitled to total access to the property). The division is in the ownership interest. Each owner has a fraction of ownership based on the deed. For example one owner may own $\frac{1}{2}$, a second one $\frac{1}{4}$ and the third $\frac{1}{4}$. This has right of Inheritance

NOTE: Termination of co-ownership may be by partition (court order) if owners cannot agree on selling the property

Joint Tenancy with Rights of Survivorship (JTROS)

Two or more individuals hold title. It requires the unities of:

Possession

All joint tenants have undivided rights to possession.

Interest

All joint tenants hold equal ownership interests

Time

All joint tenants acquired their interests at the same time

Title

All joint tenants acquired their interests by the same document (same Deed)

NO
INHERITANCE

Tenancy By The Entirety

Husband and wife ownership – same requirements as JTROS – only for husbands and wives.

NOT IN MONTANA.

Community Property (California)

Husband and wife – separate property (real or personal) - property owned prior to marriage, things gifted or inherited during marriage.

All other property acquired during the marriage (real or personal) is community property.

OWNERSHIP (Freehold Estate)

In Severalty

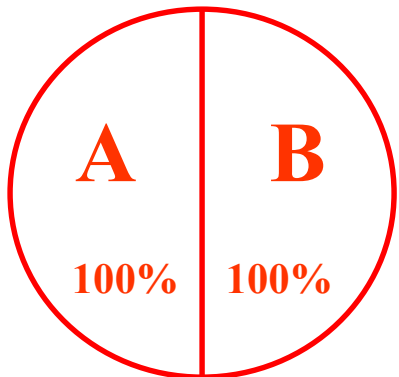
(One Individual)

**100%
Ownership**

One Owner - Severed
From All Others

Tenancy By The Entirety

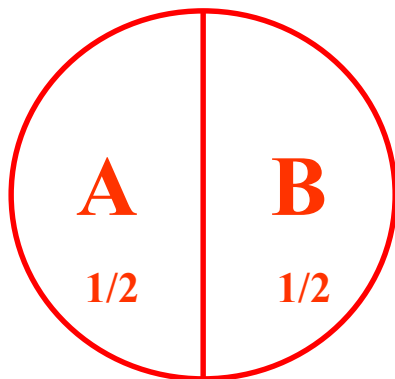
**Husband & Wife Are
100% Each Owners**



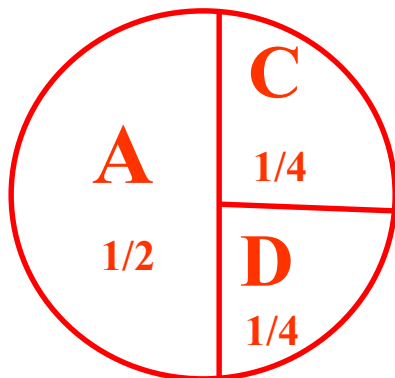
In Co-Ownership

Tenants In Common

A & B Are 50% Owners
As Tenants In Common



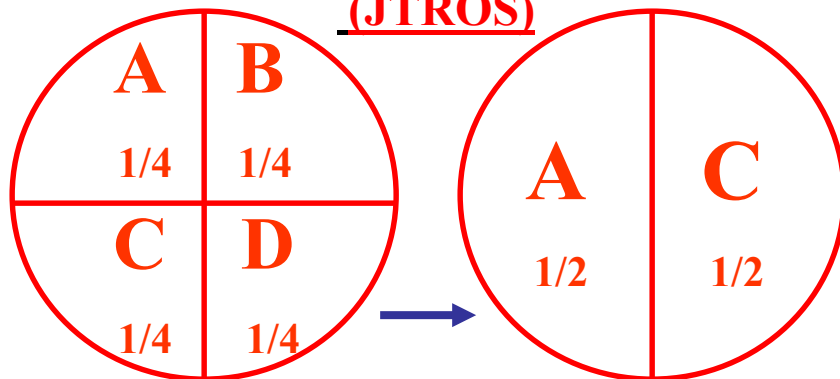
B dies & wills his 1/2
interest equally to C & D



A, C & D Are Tenants In
Common

Joint Tenants (Right Of Survivorship)

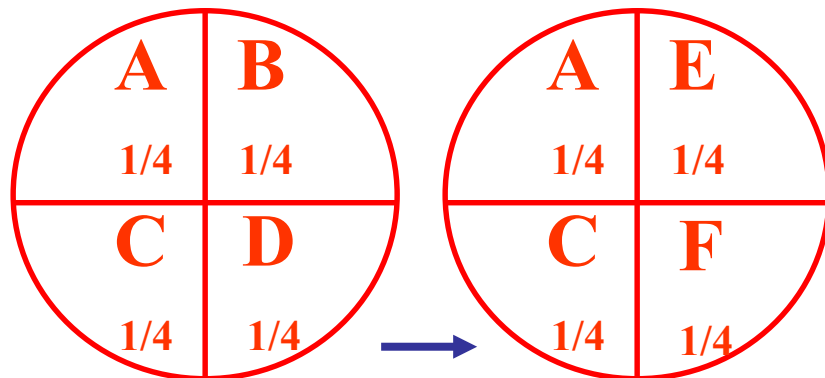
(JTROS)



A, B, C & D Are
Joint Tenants

B & D die – A owns 1/2
& C owns 1/2 As JTROS

A, B, C & D Are Joint Tenants



B & D - Sell Their
Interests To E & F

A & C Are JTROS -
E & F Are Tenants In
Common

OWNERSHIP (Freehold Estate)

Interest

Tenancy

Estate

Fee Simple
(Interest In Property)

One Owner

Severalty

**Control During Your Life
& After Death**

Corporation, LLC, Business

Co-Ownership

**Tenancy in
Common**

**If Deed Does
Not State
Type Of
Ownership It
Is Tenancy In
Common –**



**Joint Tenancy
with Rights of
Survivorship**

(JTROS)

Possession

Interest

Time

Title

**Tenancy By The
Entirety**

**Automatic Right
Of Survivorship**

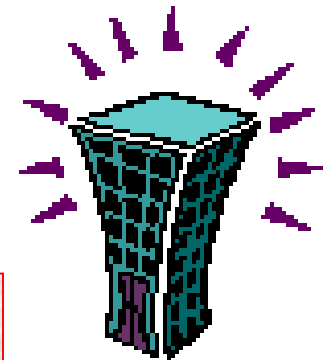
Last Survivor Owns It All

Life Estate

**1% Of Property
Owned In Life Estate**

**Conventional
Life Estate
(Traditional)**

**Legal Life
Estate
(Legislated)**



**99% Of All
Property Owned**





Deed In Trust



Trust where property owner (Trustor) transfers ownership to someone else (Trustee) to hold or manage for the benefit of a 3rd party (Beneficiary).

Trustor Property owner who transfers real or personal property to a trustee (usually a corporate trustee) to manage and invest income from the property for the benefit of a 3rd party (beneficiary).

Trustee Party who has legal title to the property in the trust and is entrusted to carry out the trustor's instructions. The trustee is a fiduciary, who acts in trust or confidence which creates a special legal relationship with the beneficiary.

Beneficiary The person who benefits from the trust.

Living Trusts A trust created during the property owner's lifetime.

Testamentary Trusts A trust created by a will after the property owner's death.

Land Trust A trust in which the only asset is real estate. Title is transferred to trustee, trustor and beneficiary are normally the same person. It has a definite term.



Business Organization Ownership

Partnerships

An association of two or more persons, as co-owners, who carry on business for profit. There are two types of partnerships - General and Limited. General partnerships are managed by all partners. Limited Partnerships are managed by one or more general partners and the limited partners are considered investors. Liability attaches to general partners. Governed by Uniform Partnership Act (UPA). Profits and losses pass through the partnership to the partners.

Business Organization Ownership (continued)



Corporation

A **legal entity** – **artificial person** – created by state law in which it is chartered – **managed & operated by a board of directors**. Charter defines corporation limits. As a legal entity it can own property in severalty (by itself). It ends by dissolution. Stock is personal property. The corporation protects the investor from liability. The investor can only lose their investment. One problem is double taxation. Corporation is taxed on profits and stockholders are taxed for dividends they receive. Sub Chapter S Corp (***S Corporation***) is another type of corporation where the profits are passed through to stockholders taxed only once.

Syndicates & Joint Ventures

Syndicate **Two or more** people or firms **joined together** to make and operate a **real estate investment**. It can be Tenancy In Common, Joint Tenancy, Partnership, Trust, or Corporation. **Joint Venture** Is a **form of partnership** in which two or more people or firms join together to carry out a **specific business project**. It usually has a time limitation.

Limited Liability Companies (LLC)

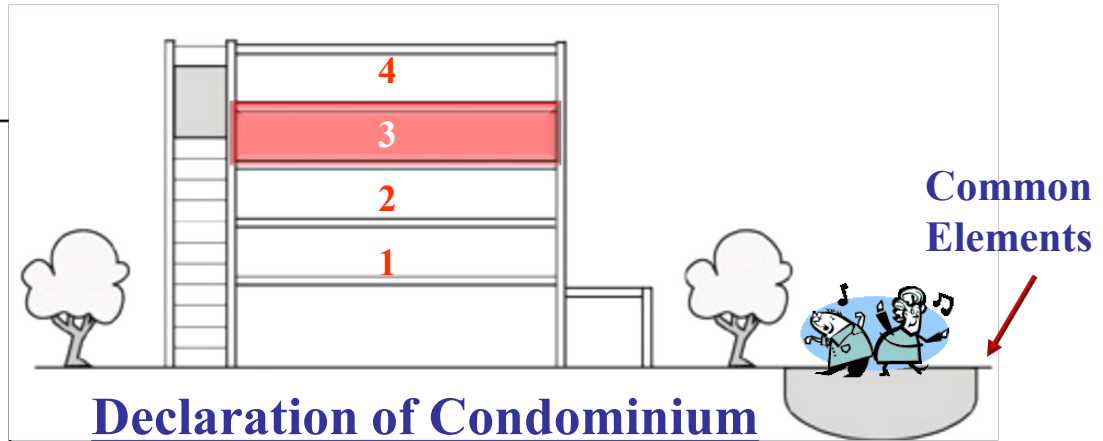
A newer type of business organization. It **combines** the **good aspects** of **partnerships & corporations** without the expense. Members have corporation's **limited liability** and **tax advantages** of a partnership. It is not as complicated to manage as corporations.

Condominium

Ownership is sometimes known as horizontal property acts (half way through the floor, ceiling and side walls defines the area that is the condominium. **IT IS A CHUNK OF AIR**) – each unit owner receives a tax bill for their unit and have fee simple title to their unit and a fractional interest in co-ownership of the common elements (building exterior, recreation facility, land, etc.)

These common elements are owned as tenants in common and the condo association pays taxes on these items.

The Uniform Condominium Act (UCA) determines how a developer is to execute and record the *declaration of condominium*.



Must include: Legal Description – Condo Bylaws – Survey – Architectural Drawings Showing Unit Boundaries – Restrictive Covenants

Condominium Operation -Administration

Is done by an association of unit owners. Condo Fees are determined by the association. Each unit owner has a vote. Assessments for special expenses (roof or exterior paint) may be required from each unit owner.



Cooperative

A **corporation holds title to the property**. Individual owners purchase a share of stock. The **shareholders receive not only stock but also a “proprietary lease” to the apartment** or unit for as long as the corporation exists.

Apartment house is changed to Cooperative by conversion.

There is **no real estate ownership** but **ownership of personal property (stock)** in a corporation that owns real estate. The owners do not get a deed or do not receive property tax bills. **Operation -Administration Based on the corporation bylaws.**



What do you actually own?

The main distinction between a housing co-op and other forms of homeownership is that in a housing co-op you don't directly own real estate. You are buying shares or a membership in a cooperative housing corporation. The corporation owns or leases all real estate. As part of your membership (being a shareholder) in the cooperative you have an exclusive right to live in a specific unit (this is established thorough a occupancy agreement or proprietary lease) for as long as you want, as long as you don't break any of the rules or regulations of the cooperative. As part of your membership, you also have a vote in the affairs of the corporation.

TIME SHARE OWNERSHIP

Ownership permits multiple owners to have an interest in real estate (resort property) that gives them the right to use the facility **for a specific time**. This right allows the owner to use a property for an identified reoccurring time period (the 1st through the 8th of January each year). The developer owns the property. The corporation is selling a use interest.



Time Share Sales In Some States

In some state for a salesperson to sell time share units they are required to have a specific license (a securities license).

Securities – (In Real Estate – Syndication)

Those Selling Shares of Stock or Limited Partnership Interests to passive investors (investors who are not actively involved in the operation of the property or business) – must be licensed. Licensing is controlled by State and Federal Regulation .

State “Blue Sky” Laws – Regulate the sale of securities within the state (**intrastate**) and license security dealers.

Federal Regulation – SEC (Securities Exchange Commission) – regulates the sale of securities between states (**interstate**) and licenses securities dealers



Ownership Terminology



Estate In Land

Degree, quantity, nature & extent of **owner interest in real property**. Must allow possession and for a time that can be measured. Own or lease.

In property law, the rights and interests associated with an estate in land may be conceptually understood as a "**bundle of rights**" because of the potential for different parties having different interests in the same **real property**

Freehold Estate

FREEHOLD - An interest in land which permits the owner to enjoy possession of **REAL PROPERTY** during his life without interference from others. **Lasts for an indeterminable length of time** – for a lifetime – forever – by inheritance. Includes fee simple (indefeasible fee), defeasible fee, and life estates. Ownership of Property.

Fee Simple Estate

(fee simple absolute) – highest interest in real estate. Absolute ownership, owner has all rights – limited only by public (zoning) or private (covenant) restrictions, there are no deed restrictions. Estate of inheritance – fee ownership. Heirs can own the property forever. An estate limited absolutely to an owner and his or her heirs in perpetuity and without limitation, entitling the owner to all of the property involved as well as having unlimited ability to divide it among his heirs.

Fee Simple Defeasible

A defeasible estate is created when a grantor transfers land conditionally. Upon the happening of the event or condition stated by the grantor, the transfer may be void or at least subject to annulment. Historically, the common law has frowned on the use of defeasible estates as it interferes with the owners' enjoyment of their property and as such has made it difficult to create a valid future interest. Unless a defeasible estate is clearly intended, modern courts will construe the language against this type of estate. Two types of defeasible estates are the fee simple determinable and the fee simple subject to condition subsequent.

Because a defeasible estate always grants less than a full fee simple, a defeasible estate will always create one or more future interests.

Defeasible fee - estate with qualifications – Two types of defeasible estates - subject to a condition subsequent *“on the condition that”* (can't sell alcohol on site) – or with limited use *“so long as”* (must use for a park). Estate ends automatically if land use changes. Original owner/heir's can take the property back (right of re-entry).

Conventional Life Estate

Intentionally created by owner – occurs by deed or will (after death)

A life estate is a concept that designates the ownership of land for the duration of a person's life. In legal terms it is an estate in real property that ends at death. The owner of a life estate is called a "life tenant" who has possession, use & profits – similar to fee owner – may sell, mortgage, or lease property for a lifetime – subject to the Life Estate terms. Cannot damage (waste) the property

A land owner of an estate cannot give a "greater interest" in the estate than he or she owns. That is, a life estate owner cannot give complete and indefinite ownership (fee simple) to another person because the life tenant's ownership in the property ends when the person who is the measuring life dies.

Life Estate is based on "for the life of another" (a 3rd party) not on the life of the life tenant. Pur Autre Vie It can be inherited if the life tenant dies before the 3rd party dies. When the 3rd party dies the life estate ends.

For instance, if Bob gives a life estate to Ashley for the life of Brenda then Ashley's life estate interest only lasts until Ashley dies. Then Brenda's interest conveys to the remainder interest or reverts to the original grantee. Once Ashley dies, however, whoever possesses the land loses it (with the land likely reverting to its original grantor). This is a life estate "pur autre vie," or the life of another. Such a life estate can also be conveyed originally, such as "to sister until mom (who is moved to a nursing home) dies.

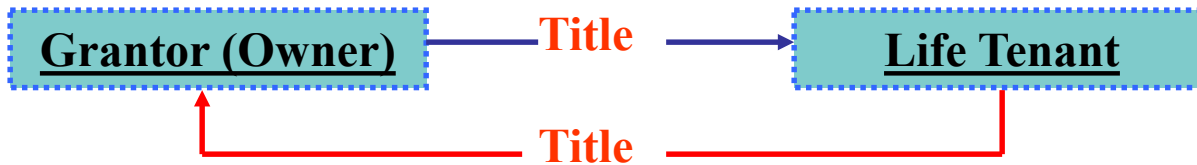
Remainder
&
Reversion

As life estate ends ownership becomes a fee simple estate – fee simple owner is either a Remainder (the owner of the property when the life estate ends who was not the original owner) – or Reversion (original owner or heirs become owner when the life estate ends)

Remainder Interest



Reversionary Interest



Legal Life Estate

is created by state law - Dower automatic when husband dies – wife's interest in husband's real estate) or when wife dies - Curtesy – husband's interest in wife's real estate - surviving spouse automatically gets a 1/3 to 1/2 of the property even if there is a will that says no. Homestead A legal life estate in real estate occupied as a family home.

✓ *Homestead Act* can provide protection from some judgments (credit cards)
no protection from mortgages or real estate taxes



OWNERSHIP Freehold Estates

(Ownership For an **Indefinite Time**)

Fee Simple Estate

Life Estate

Fee Simple Absolute (Best)

Fee Simple Defeasible or Determinable

Conventional Life Estate (Traditional)

Legal Life Estate (Legislated)

Special Limitation With Possibility of Reverter – Can Only Be Used For A Specific Purpose As Stated In The Deed - (Determinable)

Condition Subsequent With Right Of Reentry – Cannot Be Used For A Certain Purpose – (Defeasible)

Ordinary With Reversion – Conveyed To Life Tenant – When Life Tenant (In Possession) Dies Ownership Goes To Another

Pur Autre Vie With Remainder Or Revision – Based On The Life Of Another – Not The One In Possession

Dower – Life Estate A Wife Has In Husband's Property

Curtesy – Life Estate A Husband Has In Wife's Property

Homestead – Life Estate In Family Home

LEASING Non Freehold Estates

LEASE AGREEMENTS USED IN PROPERTY MANAGEMENT

A lease is an agreement that transfers exclusive possession and use of real estate from the landlord/owner to the tenant/lessee. The lease agreement can be oral or written. The owner has a reversionary right to retake the property on the expiration to the terms of the lease.

RENTAL AND LEASE AGREEMENTS

The lessor's interest is called a leased fee interest, and the lessee's interest is called a leasehold interest. Owner's are responsible for keeping the property habitable.

Sublease

A transfer of less than all the leasehold interest by subleasing them to a new tenant. There are two landlord-tenant relationships. The sublessor's interest is called a sandwich lease.

Lease Novation

Replacing one tenant with another with the consent of the landlord. The new tenant is obligated for the lease, the old tenant is secondarily liable.

Lease Option

The tenant has the option to renew the lease at the end of the lease period. Lease rate can be predetermined or agreed to in original lease.

Lease Purchase

The tenant agrees to purchase the property at specified price, within a certain period, which is usually at the end of the lease. Lease payments may apply to purchase.

Sale Leaseback

The grantor sells the property to the grantee, and then leases it back.

Termination of Leases

Leases may be terminated by the expiration of the term of the lease, proper notice as defined in the lease, surrender and acceptance, abandonment, merger, or destruction or condemnation of the property. Death of the lessor or lessee does not terminate a lease. If the property is sold, the grantee takes the title subject to all existing leases and cannot make any changes until each lease expires, unless the leases indicate otherwise.

PROPERTY ADDRESS

**WE KNOW WHO OWNS THE PROPERTY,
HOW DO WE IDENTIFY IT?**

- **IS A STREET ADDRESS OKAY?**
- **WHAT IS A LEGAL DESCRIPTION?**
- **HOW IMPORTANT IS THE LEGAL DESCRIPTION?**
- **WHERE DO WE GET THE LEGAL DESCRIPTION?**
- **LET'S TALK ABOUT THESE THINGS**





LEGAL DESCRIPTIONS – are needed to identify real property that is being sold. Deeds, Mortgages, etc. must have a description (one that can be used to locate the property) that does not change. Listing form blanks (as shown below) must be filled out concerning the legal description so a licensee needs this information.

12 _____
13 PROPERTY: Legal Description _____
14 _____
15 _____
16 _____
17 Commonly known as _____
18 City of _____, County of _____, ST MT, Zip 59404
19 _____

Subdivision is the act of dividing land into pieces that are easier to sell or otherwise develop, usually via a plat. The former single piece as a whole is then known as a subdivision; it can be a housing subdivision or housing development, although some developers tend to call these areas communities. Subdivisions be for commercial or industrial development, and the results vary from retail malls with independently owned out parcels to industrial parks.

Economists state that the 2.3 Billion acres of land in the USA's organized system of land identification and recording creates the underlying wealth of our country.

When large tracts of land are subdivided and sold in smaller parcels each one is given a legal description. Depending on the geographic area, size of the parcels, etc. different types of legal description may be used.

What controls or influences subdivision? There are public (government) and private (nongovernment) restrictions and public ownership of land by federal, state and local governments. Government or public controls are used to *protect the public, health, safety and welfare* in the physical division of land.

Private controls occur when a developer places *private restrictions on real estate to control and maintain the desirable quality and character of a subdivision or property*. This is *done through the use of deed restrictions and restrictive covenants*.

The legal description (also referred to as land description, property description, or land boundary description) is “a written statement recognized by law as to the definite location of a tract of land by reference to a survey, recorded map or adjoining property.” (from: Glossaries of BLM Surveying And Mapping Terms, Second Edition, 1980.) Legal descriptions also can include background information and statement of purpose, detailed recital of the property description, and the qualifying clauses such as exclusions or inclusions of certain rights or areas. A valid land description unambiguously identifies only one location on the ground, and describes boundaries accurately, briefly, clearly and completely.

Most descriptions use one or more of the three following methods

Metes & Bounds

Lot & Block

Rectangular or Government Survey

Metes and Bounds (Measures & Boundaries, or Distance & Direction)

The oldest type of legal description. Metes is distance. Bounds is compass direction using angles - used primarily for irregular parcels. Boundary survey. Metes and bounds is a system or method of describing land, 'real' property (in contrast to personal property) or real estate. The system has been used in England for many centuries, and is still used there in the definition of general boundaries. By custom, it was applied in the original 13 colonies that became the United States, and in many other land jurisdictions based on English Common Law.

Metes and Bounds descriptions have a physical marker, of some type, as a point of beginning (POB). The boundary uses distances, compass directions and natural and artificial physical features (monuments) to establish the area of the parcel. The description starts at the POB and ends by coming back to the POB, enclosing the parcel. It is the basis of a land survey showing encroachments, if any.

Monuments A visible **fixed** natural (tree) or artificial (iron pipe) **object, used to identify the POB.**



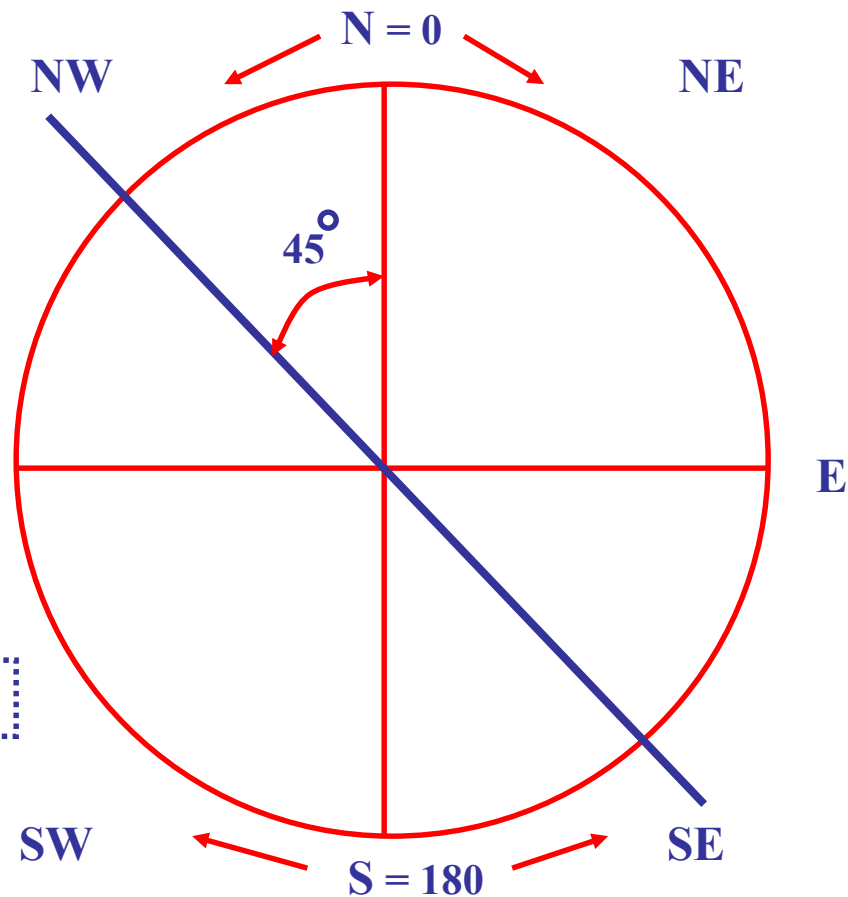
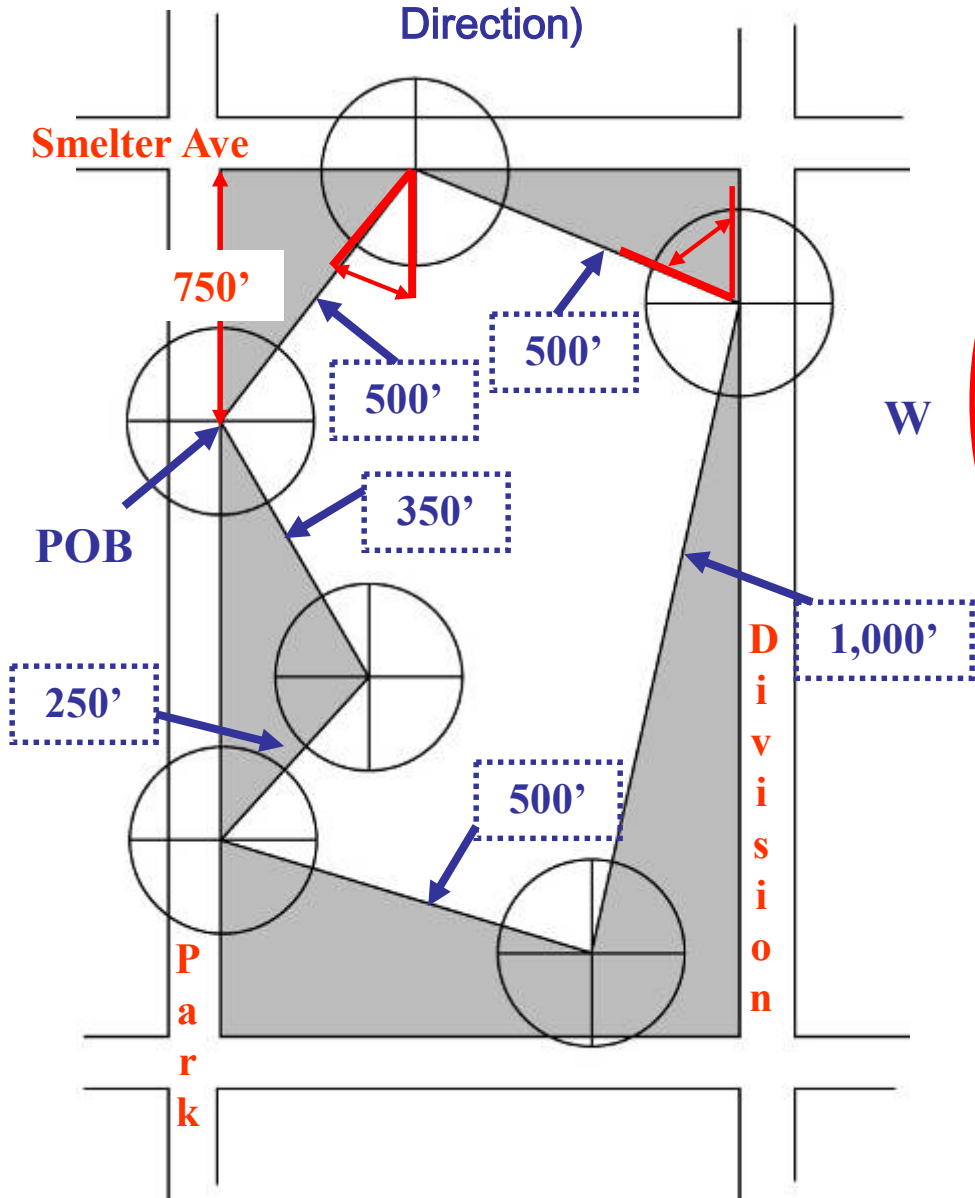
Benchmark An official reference point that **establishes elevations & altitudes** above mean sea level in the U.S.

Point Of Beginning (POB) **The starting and ending point in a Metes & Bound survey.** This is the true point of beginning. The survey description goes clockwise or counterclockwise from the point of beginning.

Datum In the U.S., New York Harbor's mean (or average) sea level is considered to be zero "0" datum.

Metes and Bounds

(Measures & Boundaries, or Distance & Direction)



Compass - N = 0° - E = 90°
 S = 180° - W = 270°
 1 degree = 60 minutes
 1 minute = 60 seconds

Lot & Plat Subdivision (Recorded Plat)

Plat – a map of a town, section, or subdivision indicating the location and boundaries of individual properties is the **most common land description**. This is obtained from a **licensed surveyor's plat map, approved by city or county** where the subdivision is to be located. It must show the **lot and block number, subdivision name, county & state** in which it is located to have a correct legal description.

Use Restrictions should be **placed on the use of subdivided land at the time of subdivision**. An example is **land set aside for parks**.

Lot & Block Terminology

Subdividing A large tract of land divided into any number of smaller lots based on a surveyor's approved and recorded plat map by a **Subdivider** (Owner of the property). Total value of the individual lots plus improvement costs is greater than the value of the larger tract.

Recorded Plat Land divided into lots & blocks in an approved subdivision and plat map filed.

Plottage - Assemblage Combining 2 or more adjacent lots into one parcel or tract. The value of the one tract is higher than the combined values of the individual lots.

Easement Right of ingress (entry) or egress (to leave) another's property. The **right to use another's property, either above or below ground, for a special purpose**.
For example a right-of-way for utility lines or phone lines.

Amenities Physical features that enhance and add value to a property.

Dedication Privately owned land transferred to public ownerships without compensation to the owner. Subdivider gives land for streets.

Government, Rectangular, or Geodetic Survey

Government Survey Established 1785 & used in 30 states – Has 36 U.S. Principal Meridians.
MERIDIANS & BASELINES – Used mostly for agriculture property

Principal Meridians **Imaginary lines running vertically from the North Pole to the South Pole** assigned to land masses.

Correction Lines Compensate for the earth's curvature.

Ranges **6 mile wide vertical columns counted East or West of the Principal Meridian**

Base Line **Imaginary horizontal line** perpendicular to the Principal Meridian

Tiers **6 mile wide horizontal columns counted North or South from the Baseline**

Acre A parcel of land that contains 43,560 Square Feet

Mile 5,280 Linear Feet

Section An area **1 x 1 Mile Square** that contains 640 acres

Township An area **6 x 6 Miles Square** that contains 36 Sections

Check An area **24 x 24 Miles Square** that has **16 Townships** in it.

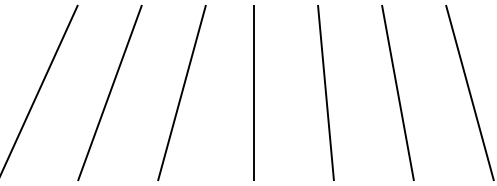
Fractional Sections Oversized or undersized sections.

Quadrant A section of land is divided into quarters. The quarters or **quadrants or NE, SE, NW, & SW**. Each quadrant has a compass reading or angle of **90 degrees**.

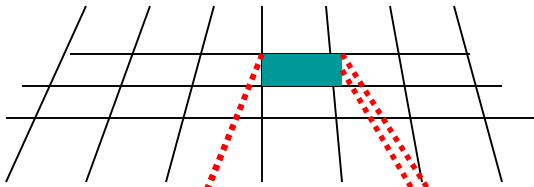
U.S. Government Survey Method

Township Lines

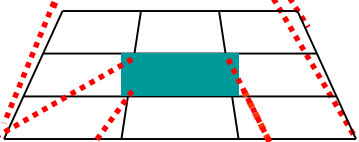
Range Lines



Township

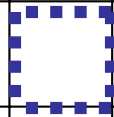


Sections
In A
Township



Section

Township 2 N, Range 2 W



N

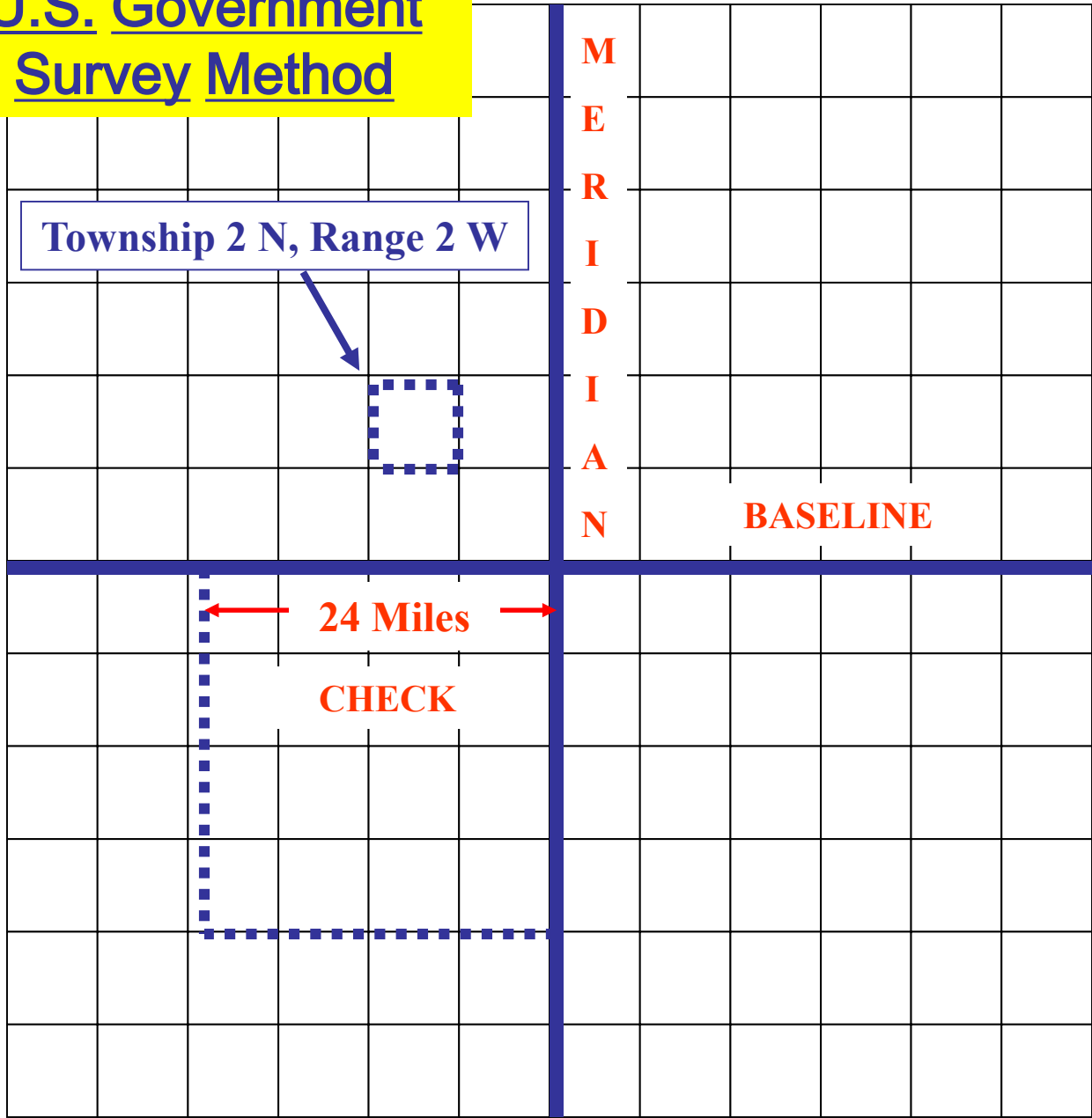
M
E
R
I
D
I
A
N

BASELINE

24 Miles

CHECK

S



Township 2 N, Range 2 W



Sections 1 - 36

Section 16
School Section

6 Miles

6 Miles

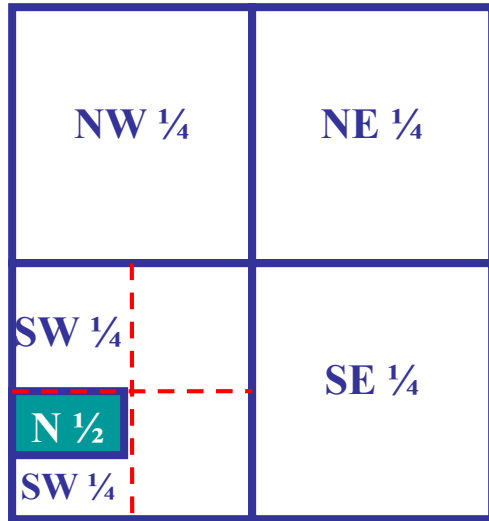
6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36



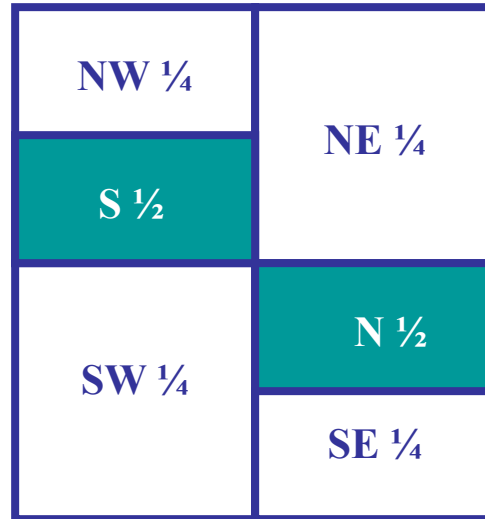
Reading A Governmental Survey Description

Read The Survey Description From Right To Left –

The N ½ of the SW ¼ of the SW ¼ of Sec 12, Township 4 N, Range 4 E of the Fifth Principal Meridian



Easy Way To Calculate Acreage
- Multiply The Denominators
(Bottom Numbers In The
Fractions) and Divide The
Answer Into 640



The N ½ of the SE ¼ &
S ½ of The NW ¼

Using The Above Survey
Multiply The Denominators
of ½, ¼, & ¼
 $2 \times 4 \times 4 = 32$
 $640 / 32 = 20$ Acres

For the most part the longer the description the smaller the parcel of land. This does not apply when *and* or a *semi-colon* (“;”) is used. When this occurs more than one parcel is described. The parcels can be contiguous, but they do not have to be.

LOT SIZE

The accuracy of the size of the lot is vitally important in both residential and commercial properties. Discrepancies between the deed and the actual lot size the actual lot size found by the survey will prevail.

Floor Area Ratio The **ratio of the floor area to the land area** on which the building sits.

Livability Space Ratio Is a minimum **square footage of non-vehicular outdoor area** in a development **for each square foot of total living area.**

Front Footage **Linear measurement of a property along the street curb or water shore line**, always given first when dimensions are stated. (100' x 200' – 100ft is front footage)

Set Back The amount of **space required between the lot line and the building line.**

PHYSICAL DIMENSIONS OF STRUCTURE

The foundation walls are masonry or concrete wall below the ground level that serve as the main support for the frame structure. If the house has a basement, the foundations walls form the basement.

Gross Living Area (GLA)

external dimensions of the building of the above ground level only are measured excluding the garage, porch or patio. The basement square footage area value is NOT calculated the same way as the main level.

Now we need to address the condition of the property. This requires information from the seller and preferably in the form of a [Property Disclosure Statement](#) as well as a visual inspection of the property by the Licensee.

Regardless of the seller's information on the Property Disclosure Statement or what they may say in conversations, the Licensee is legally responsible for determining the condition of the property both in things that are easily seen, (exposed cracks in the foundation) and things that are not easily seen (hidden defects).

The Property Disclosure Statement information reveals material facts that the buyer should know about prior to purchase.

Montana Statutes are clear that real estate agents cannot fill out any sellers' home disclosures unless the agent is the seller or a party to the transaction. However, that doesn't stop some naive agents from completing disclosures on behalf of their clients and opening themselves up for potential lawsuits. After all, it's mostly lawsuits that have prompted the creation of many of the disclosure forms agents ask sellers to complete. Every state has its own laws regarding disclosures, so the forms will vary from state to state.

PROPERTY CONDITION

33

34 **CONDITION AND STATUS OF PROPERTY:** TO THE BEST OF SELLER'S KNOWLEDGE, the following
35 items are in good repair and working condition and Seller is unaware of anything wrong with appliance(s),
36 foundation, roof, siding, wiring, drainage, heating, plumbing, sanitation, or water systems except:

37

38

39

40

Latent Defects **Hidden structural defects** that cannot be discovered by ordinary inspection and could adversely effect the integrity of the structure and or safety of the inhabitants.

Patent Defects **Visible defects** that are easily seen when inspecting the property.

Negligent Misrepresentation When a broker or salesperson should have known that a statement about a material fact is false. The result may be **compensatory damages (actual damages)** and the **sales contract rescinded**. Agent may be responsible for not disclosing the defects **“he/or she should have known about”** **Not saying something is the same thing.**

Fraud When a broker or **salesperson knowingly makes a statement about a material fact that is false**, even if it is just a misstatement, with the intent to deceive or made with reckless regard of the truth and that actually deceives. The result may be **compensatory damages (actual damages)** and the **sales contract rescinded, and jail time.**

Material Facts

are commonly referred to as anything that would affect the buyer's decision to purchase or the price and terms the buyer offers. In other words, if a Licensee has knowledge about a defect, it should be disclosed. In California, sellers are to notify buyers if a death has occurred on the property within the last 3 years. Some buyers are creeped out by knowledge that a seller died in the house.

A seller once asked if she should tell the buyer that her husband died in their bedroom five years ago. Although the law doesn't require it, because the death occurred outside of the three-year window and because the buyer did not ask about it, it was suggested she disclose this to the buyers, and she did. Moreover, if she had chosen to withhold this information from the buyer, the licensee may have had to disclose it because they considered it knowledge of a material fact.

Causes of Death

Many home buyers are fine with news of a death occurring in the house as long as it wasn't violent or gruesome. There are also buyers who believe homes are haunted by former occupants who died in the house. If a Licensee has specific details, they might want to consider sharing it with the buyer unless it pertains to AIDS. Check with local laws and a real estate lawyer for advice about deaths surrounding AIDS because in some states, AIDS falls into a protected class and could be subject to discrimination claims as well. There are times Licensees are darned if they do and darned if they don't.

External Disclosures

Some states require disclosures about items that affect or could affect the property such as:

Earthquakes

Natural Hazards

Zoning Changes

Flood Zones

Fire Hazards

Noise Pollution

Ground Pollution

Air Pollution, among others.

Due to the volume of lawsuits, the California Association of Realtors publishes a number of disclosure forms for buyers, some of which tell a buyer that if she purchases a home on a golf course, errant golf balls might break her windows. Why? Because a homeowner who bought on a golf course once sued for non-disclosure when golf balls smashed her picture window. Do You Need to Disclose Every Home Repair?

Sellers are advised if personally disclosing the condition of their own home to a buyer, that they not use the term "repair," because it could be deemed to imply that the defect was permanently corrected. But if they had called a plumber to fix a leak under the sink, they would disclose:

The pipes once leaked. ABC Plumbers were paid \$175 to stop the leak. The pipes have not leaked since.

Are the pipes good as new? Who knows. Probably not. No one should guarantee it, however. In lots of cases, home buyers feel a sense of relief if they know certain things have been repaired. It brings a security to buyers if they know a seller has:

Replaced a roof

Upgraded electrical & plumbing

Bolted the foundation

Foundation Problems are discussed

In areas with basements, this is a huge issue, as are problems surrounding wet basements. But so are defective slabs. If a seller's newer wood floor shows discoloration in spots. Was it due to moisture? The sellers may not know. A solution is to simply removed the rugs, disclosing the discoloration to the buyer and offering a \$5,000 credit for new floors. More than likely the buyers will accept the offer without further discussion or fuss.

What About Rumors?

Generally speaking, unless a state or local law is violated by disclosing, if a Licensee has knowledge of a defect or material fact, then disclose it. If a neighbor repeated a rumor, and the Licensee did not verify nor disprove the rumor, the Licensee might want to consider telling the buyer about the rumor. Follow the Golden Rule. If you would like to know, a buyer probably does as well. Typically, buyers aren't upset by receipt of negative information. They get upset and call a lawyer when they feel they have been duped, deceived or lied to.

MATERIAL FACTS



When listing a property, it is important for an agent to verify zoning, property taxes, building codes, building permits, certificates of occupancy and other land use restrictions that may apply. **In Montana, to be a material fact it must affect the use, the value or the health and safety of the owner.**

OTHER REQUIRED DISCLOSURES

A property may be **stigmatized** if the past history of the property makes it **undesirable**. This could be a murder, suicide, shooting, illegal drug sales or if the house is “haunted” **Few states have laws requiring the disclosure of stigmatized properties.**

PHYSICAL CONDITION OF PROPERTY CONCERNING ENVIRONMENTAL ISSUES

Urea-Formaldehyde

Is an insulating foam that can release a harmful gas. At one time was used to insulate older homes by putting it in exterior walls.

UFFI (or Urea Formaldehyde Foam Insulation) is a thermal insulation material that is no longer used because of formaldehyde gas emission. At one time, UFFI insulation was blown into the walls of older homes to improve insulation qualities. Because of the problems, UFFI insulation has not been used since 1980. Since formaldehyde gas emissions from UFFI decrease with time, most houses insulated with UFFI no longer have significant source of formaldehyde gas.

Radon

A radioactive gas from the decay of other radioactive materials present in most rocks & soil. Seeps into buildings through cracks in the ground floor.

According to a 1997 study 10,000 Montana homes have an average of 7.3 picocuries (pCi/L) per liter of air, much higher than the national average of 1.3. Any reading over 4.0 should have additional testing according to the EPA. A reading of over 10 should have mitigation. 47% of Montana homes have Radon levels that require mitigation. The most common form of Radon is Radon 222. It attaches to dust particles, which are then inhaled by people and gathers in the lungs. Each year approximately 15,000 people die from Radon exposure in US. Mitigation - move the air.

Asbestos A fibrous insulation material used prior to 1978 for fire protection. Can create air borne contaminants. Encapsulation (sealing material off). Friable or non friable.

Asbestos is a mineral with long, thin fibrous crystals. The word *asbestos* comes from the a Greek adjective meaning inextinguishable. The Greeks termed asbestos the *miracle mineral* because of its soft and pliant properties, as well as its ability to withstand heat.

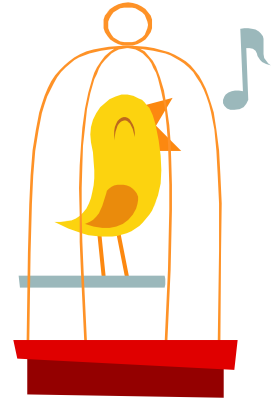
Asbestos is known to have toxicity. The inhalation of toxic asbestos fibers can cause serious illnesses, including malignant mesothelioma, lung cancer, asbestosis (also called pneumoconiosis), calcifications in the lung, pleural plaques and a rare condition called pneumothorax. Since the mid 1980s, many uses of asbestos have been banned in several countries.

Asbestos became increasingly popular among manufacturers and builders in the late 19th century due to its resistance to heat, electricity and chemical damage, its sound absorption and tensile strength. When asbestos is used for its resistance to fire or heat, the fibers are often mixed with cement or woven into fabric or mats. Asbestos was used in some products for its heat resistance, and in the past was used on electric oven and hotplate wiring for its electrical insulation at elevated temperature, and in buildings for its flame-retardant and insulating properties, tensile strength, flexibility, and resistance to chemicals.

Today, asbestos is most commonly found in older homes, in pipe and furnace insulation materials, asbestos shingles, millboard, textured paints and other coating materials, and floor tiles.

Asbestos (continued)

Elevated concentrations of airborne asbestos can occur after asbestos-containing materials are disturbed by cutting, sanding or other remodeling activities. Improper attempts to remove these materials can release asbestos fibers into the air in homes, increasing asbestos levels and endangering people living in those homes.



Carbon Monoxide (CO)

Carbon monoxide is an **odorless, colorless and toxic gas**. Because it is impossible to see, taste or smell the toxic fumes, CO can kill you before you are aware it is in your home. At lower levels of exposure, CO causes mild effects that are often mistaken for the flu. These symptoms include headaches, dizziness, disorientation, nausea and fatigue. The effects of CO exposure can vary greatly from person to person depending on age, overall health and the concentration and length of exposure. Unvented kerosene and gas space heaters; leaking chimneys and furnaces; back-drafting from furnaces, gas water heaters, wood stoves, and fireplaces; gas stoves; generators and other gasoline powered equipment; automobile exhaust from attached garages; and tobacco smoke. Incomplete oxidation during combustion in gas ranges and unvented gas or kerosene heaters may cause high concentrations of CO in indoor air. Worn or poorly adjusted and maintained combustion devices (e.g., boilers, furnaces) can be significant sources, or if the flue is improperly sized, blocked, disconnected, or is leaking. Auto, truck, or bus exhaust from attached garages, nearby roads, or parking areas can also be a source.

Polychlorinated Biphenyls

PCBs – insulating material used in hydraulic oil in older equipment

Polychlorinated biphenyls (PCBs) are a mixture of individual chemicals which are no longer produced in the United States, but are still found in the environment. Health effects that have been associated with exposure to PCBs include acne-like skin conditions in adults and neurobehavioral and immunological changes in children. PCBs are known to cause cancer in animals. PCBs have been found in at least 500 of the 1,598 National Priorities List sites identified by the Environmental Protection Agency (EPA).

Mold

Usually comes from moist conditions – it is a problem as well after it dries and turns to dust.

The key to mold control is moisture control. If mold is a problem in your home, you should clean up the mold promptly *and* fix the water problem.

It is important to dry water-damaged areas and items within 24-48 hours to prevent mold growth.

Molds are usually not a problem indoors, unless mold spores land on a wet or damp spot and begin growing. Molds have the potential to cause health problems. Molds produce allergens (substances that can cause allergic reactions), irritants, and in some cases, potentially toxic substances (mycotoxins). Inhaling or touching mold or mold spores may cause allergic reactions in sensitive individuals.

Allergic responses to mold include hay fever-type symptoms, such as sneezing, runny nose, red eyes, and skin rash (dermatitis). Allergic reactions to mold are common. They can be immediate or delayed. Molds can also cause asthma attacks in people with asthma who are allergic to mold. In addition, mold exposure can irritate the eyes, skin, nose, throat, and lungs of both mold-allergic and non-allergic people. Symptoms other than the allergic and irritant types are not commonly reported as a result of inhaling mold. Research on mold and health effects is ongoing.

Severe mold problems have been known to make a home uninhabitable and require the home to be burned.

Underground Storage Tanks

Commonly found where gas stations, auto repair shops, printing and chemical plants, dry cleaners, etc. For the storage of chemicals, if used to store toxic wastes and the tanks are neglected, they leak hazardous substances into the environment; this can contaminate the soil and groundwater. An **Underground Storage Tank (UST), in United States environmental law, is a tank and any underground piping connected to the tank that has at least 10 percent of its combined volume underground. USTs, used to store petroleum, are regulated in the United States to prevent release of petroleum and contamination of groundwater.**

USTs are used throughout [North America](#) at [automobile filling stations](#) and many have leaked, allowing petroleum to contaminate the [soil](#) and [groundwater](#).

Many USTs installed before [1980](#) consisted of bare [steel](#) pipes, which [corrode](#) over time, and may eventually result in leakage. Faulty installation and inadequate handling may also cause leaks.

In [1984](#), in the [United States](#), the [Congress](#) developed laws to minimize and prevent environmental damage, by charging owners with the task of verifying, maintaining and, if necessary, cleaning up sites damaged by petroleum contamination.

Legislation requiring owners to locate, remove, upgrade, or replace underground storage tanks became effective December 24, [1989](#). Each State was given authority to establish a program within its own jurisdiction to set up a program to compensate owners for the cleanup of underground petroleum leaks, to set standards and licensing for installers, and to register and inspect underground tanks.

Most upgrades to USTs consisted of the installation of corrosion control ([cathodic protection](#)), overfill protection (to prevent overfills of the tank during tank filling operations), [spill containment](#) (to catch spills when filling), and [leak detection](#) for both the tank and piping.

Many USTs were removed without replacement during the 10-year program and many thousands of old underground tanks were replaced with newer tanks made of corrosion resistant materials (such as [fiberglass](#)) and constructed as double walled tanks to catch leaks from the inner tanks and to give an interstitial space to accommodate leak detection sensors. Piping was replaced during the same period with much of the new piping being double wall construction and made of fiberglass or [plastic](#) materials.

Tank monitoring systems capable of detecting leaks as small as 0.1 gallons-per-hour were installed and other methods were adopted to alert the tank operator of leaks and potential leaks.

Regulations included a requirement that UST cathodic protection systems be tested by a cathodic protection expert (minimum every 3 years) and that systems be monitored to ensure continued compliant operation.

Many owners, who previously stored fuel in underground tanks, went to above ground tanks to enable closer environmental monitoring of fuel storage and to reduce costs.

Many states, however, do not permit above ground storage of motor fuel for resale to the public.

The U.S. [EPA](#) Underground Storage Tank Program is generally considered to have been very successful - with the national inventory of underground tanks reduced by more than half and most of the rest having been replaced or upgraded to much safer standards.

But of the approximately 1 million underground storage tanks in the United States as of 2008, most of which are filled with some type of fuel, an estimated 500,000 were leaking. ^[1]

Lead Based Paint

A federal **Lead-Based Paint disclosure is required for all transactions if the home was built before 1978.** The disclosure also gives the buyer 10-days to conduct inspections for lead-based paint, unless that time period contingency is waived in writing. It's considered good practice, however, to give every buyer, regardless of where she lives and regardless of the type of property she is under contract to purchase, the disclosure regarding lead-based paint. The potential for a lawsuit is too great to do otherwise. Besides, even though it's prohibited, there are still places where lead paint is sold.

New JUD/EPA rules - as of December 6, 1996 buyer must sign "Lead Disclosure" form before signing a sales contract to purchase a home built before 1978. The rules include:

Sellers Must Disclose Any Known Lead Based Paint Hazards In Homes

Sellers & Landlords must furnish a pamphlet on protection of families concerning lead.

A 10 Day period for home buyers to conduct a lead based paint inspection

Sales & lease agreements must include provisions ensuring disclosure & notification

Seller, Landlords & Real estate agents are responsible to insure compliance

Housing Not Covered

Rental housing that has been inspected by certified inspector and found to be free of the problem

Foreclosure Sales

Houses Built After 1977

Efficiencies, lofts, etc. (no bedrooms)

Leases Less Than 100 Days - Vacation Use

Elderly Housing (no children live there)

Handicapped Housing (no children live there)



SPECIAL PROVISIONS



60 SPECIAL PROVISIONS: _____

61 _____

62 _____

- (1) DEED RESTRICTIONS
- (2) COVENANTS
- (3) APPURTENANCE
- (4) EASEMENTS
- (5) LICENSES
- (6) ADDITIONAL INFORMATION THAT IS A MATERIAL FACT

DEED RESTRICTIONS AND COVENANTS

Deed Restrictions Provisions in a deed that limit future use of a property. Deed Restrictions are either conditions or covenants. They normally *“run with the land” – that transfer from owner to owner.*

A Condition Creates a **conditional fee (ownership) estate** – if the condition is breached the title may convert to the grantor or grantor’s heirs.

A Covenant A **promise between two or more parties that agree to perform or not perform specified acts on the property.** If the act is breached there can be a suite for monetary damages or injunctive relief.

Restrictive Covenants Set standards of use for all parcels within a defined subdivision



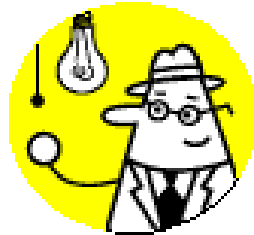
APPURTENANCES



Listing and sale contracts usually include the appurtenances which are sold with the property. **The word appurtenant in real estate means attached to the land or deed.**

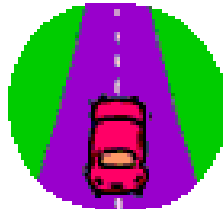
Tangible (Touchable) Property

Is any physical improvement on the property, and fixtures such as lighting, heating, and plumbing equipment are appurtenances. **Listing contracts should identify the fixtures that “go with the property” and what goes with the seller.**



Intangible (Untouchable) Property

This includes rights and privileges that belong to and pass in the deed from the grantor to the grantee. Easements and water usage rights are intangible appurtenances.



Appurtenant
Easement

Easement In
Gross

Easement By
Necessity

Easement By
Prescription

License

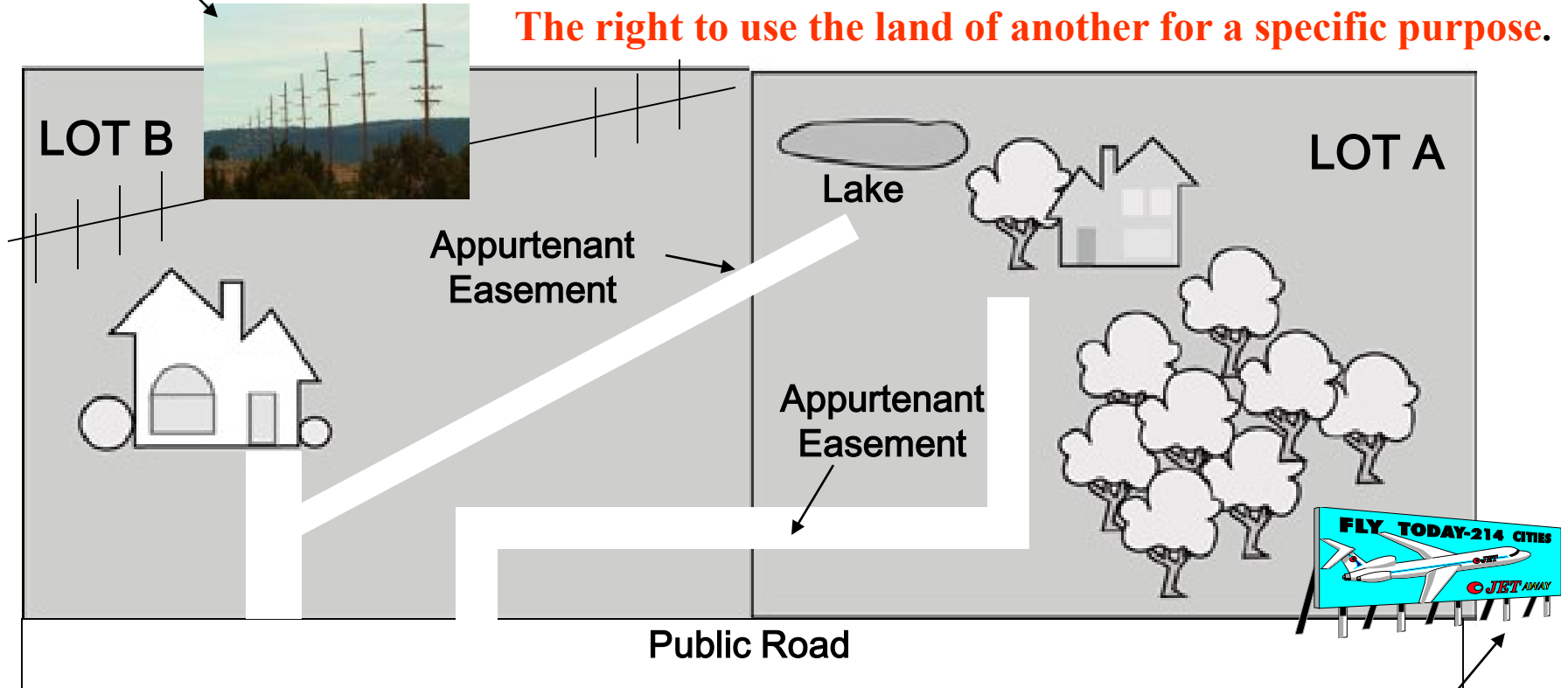
Commercial Easement in Gross



Easements



The right to use the land of another for a specific purpose.



Appurtenant Easement

Personal Easement in Gross

- (1) Benefits a parcel of real estate
- (2) 2 tracts of land - separate owners

- (3) Dominant estate benefits from the easement
- (4) Servient estate is burdened by the easement

Easement In Gross

- (1) Benefits a person/legal entity
- (2) One tract of land

- (3) Personal (Sign)– terminates on sale or death
- (4) Commercial (Utilities) – usually assignable

Easements (Continued)

Easement By Necessity

- (1) Created when a purchaser is land locked
- (2) Buyer must be given access to ingress (enter) & egress (exit) the property

Easement By Prescription

- (1) Created when a claimant use a property for a statutory period
- (2) Use must be open notorious, continuous, exclusive & without approval



License

Personal privilege to enter the land of another and use it of a specific reason – hunting – football game revoked at any time & terminates on death of either party or the sale of the land

Creating An Easement A **written agreement**. Can be done by owner to keep (reserve) a use of the property being sold or to give (grant) an easement to the new buyer.

Terminating An Easement

When **purpose** that caused the easement **no longer exists**

When **two properties are owned by the same person** or they become one legal description.

By **release of the easement** to the servient tenement owner.

By **abandonment**

By **non use of a prescriptive easement**

By **adverse possession** by the servient tenement owner.

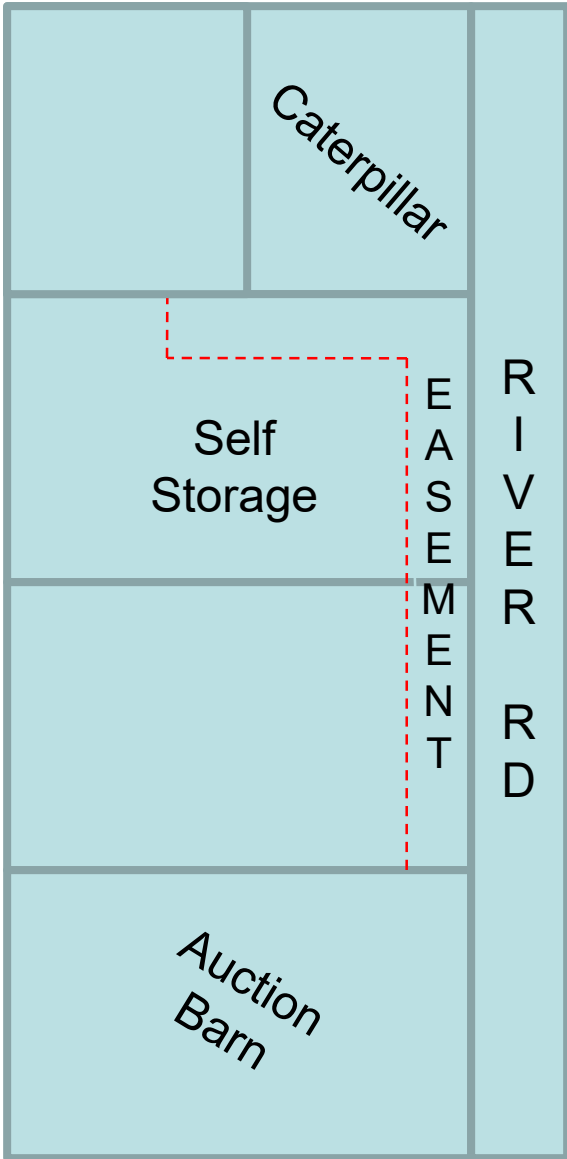
By **destruction of the servient tenement**

By **lawsuit** (an action to quiet title)

By **excessive use** as when a residential use is changed to a commercial use.

UTILITIES

A utility is a service provided to a property, such as supplying gas, electricity, telephone, etc.



When **purpose** that caused the easement **no longer exists**

By **abandonment**

By **lawsuit** (an action to quiet title)

TYPES OF CONSTRUCTION

Agents need to have a working knowledge of construction to help determine the quality, upkeep and flaws of as property.

Claims, liens, charges or liability that affect value or use of property.

ENCUMBRANCES

Encumbrances that affect the title: *liens, mortgages and judgments.*

Encumbrances that affect the use: *deed restrictions, encroachments and easements.*

COMPLIANCE WITH HEALTH, SAFETY AND BUILDING CODES

To ensure health, safety and welfare of homeowners, there are local, state or municipal building and constructions standards that must be met.

Building Permit

issued for construction of new buildings or other improvement, any substantial repair of an existing structure or demolition of a building. **Purpose is to ensure compliance with the building code, or minimum standards of construction.**
When the building “meets code,” a certificate of occupancy is issued.

NOTICE

Constructive

or *legal notice* give the buyer protection by preventing a previous owner from selling the property to a third party.

Actual

is *express or direct knowledge acquired because the information has been read, heard or seen.*

HOMEOWNERS' ASSOCIATION BYLAWS AND FEES

Bylaws are established by condominiums and subdivisions for the administration and management of the community.



WATER RIGHTS



RIPARIAN WATER RIGHTS

OWNERS OF PROPERTY ADJACENT TO A NONNAVIGABLE STREAM OR RIVER (TO SMALL FOR COMMERCIAL SHIP TRAFFIC) CAN USE THE STREAM FOR IRRIGATION, FISHING, BOATING & HAVE THE RIGHTS TO ALLUVIAL DEPOSITS THAT MAY OCCUR. OWNERS HAVE POSSESSION TO THE MIDDLE OF THE STREAM. (NOT IN MONTANA!)

LITTORAL WATER RIGHTS

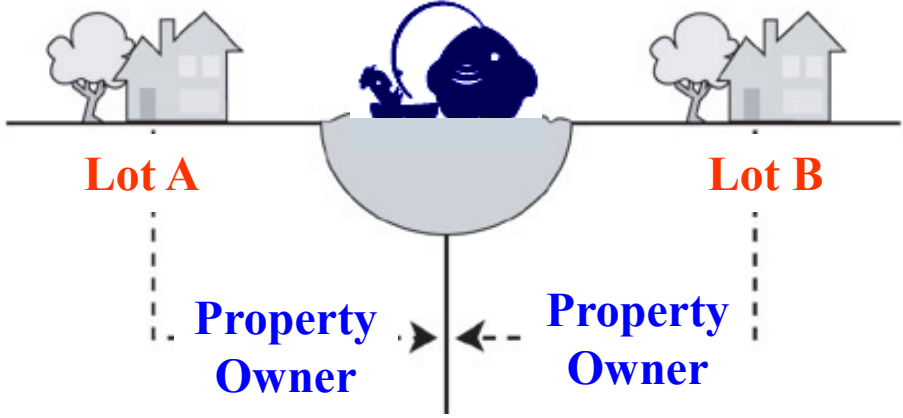


THE RIGHTS OF THE OWNERS OF THE PROPERTIES THAT BORDER LAKES, PONDS OR OCEANS & NAVIGABLE RIVERS. PROPERTY OWNER OWNS TO THE AVERAGE HIGH WATER MARK. HAS THE SAME RIGHTS OF USAGE AS RIPARIAN RIGHTS.

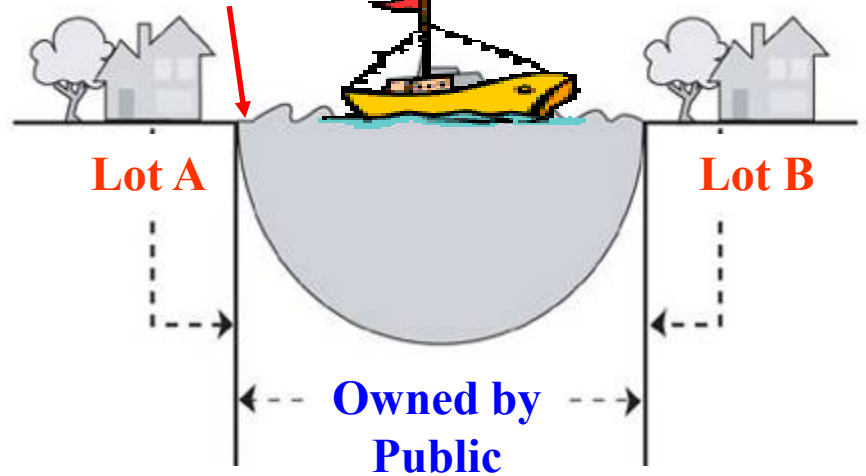
THE RIGHT TO USE THE PROPERTY "RUNS WITH THE LAND" IT CANNOT BE SOLD SEPARATELY.

OWNERSHIP OF LAND ADJACENT TO WATER

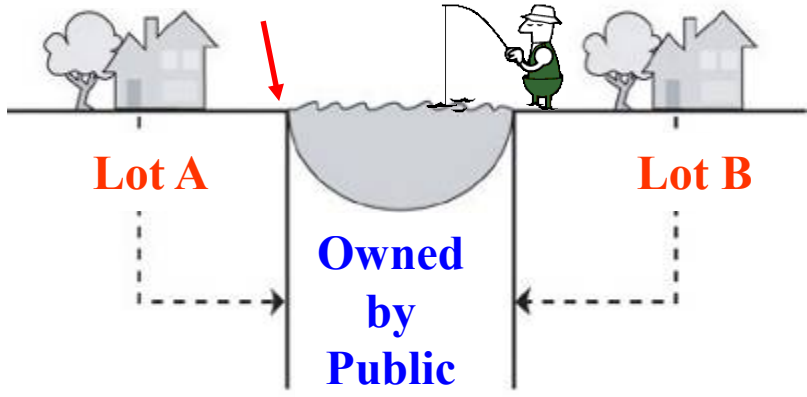
USA Nonnavigable Stream (Riparian)



Avg High Water Mark Navigable River (Littoral)



Avg High Water Mark Middle Of River



Montana Nonnavigable Streams (Littoral)

Avg High Water Mark Lake Or Ocean



LOSS OF LAND

EROSION - Gradual Loss Of Soil (land) due to water currents, tides or winds. The land owner loses title to the land that disappears due to erosion.

AVULSION – The sudden loss of land due to violent acts of nature such as earthquakes. The ground may drop in elevation and water cover it. The owner keeps title to the land under the water.

GAINING LAND

ACCRETION – Process of gaining land by deposits of sand or soil caused by the slowing of flowing water. Deposits are Alluvial Deposits. Example - Mississippi Delta

DERELICTION – The gradual receding of water leaving additional land. It's a process. An example is a stream or river water level that recedes and stays down over time.

RELICTION – Permanent recession of water adds to the land. The change of a streambed from its original location.

OWNERSHIP RIGHTS TO WATER USAGE

DOCTRINE OF PRIOR APPROPRIATION – Laws governing water usage by owners adjacent to streams. It identifies the state's method of determining the rights of landowners to use flowing water that they are adjacent to, with the exception of limited domestic use. The water use must be considered beneficial (crop irrigation). In Montana it is based on time not location

Measuring Water Volume – In irrigation the volume of water used is normally measured in acre feet - amount of water needed to cover 1 acre of ground 1 foot deep.

THE PROPERTY'S SALE PRICE

The next step in the listing process is to determine the property's Market Value. This can be done by an appraiser **but normally the owner expects a Real Estate Professional to furnish a price the property should sell for know.**

The process is similar to the appraiser's methods but **the final product is a market value not an appraisal of value.**

LOCATION

The **location** of a property is **one of the major factors determining its value second only to the price.** *Location or situs*, is the preference people have for a certain area. Remember the 3 most important things in real estate is **LOCATION, LOCATION, LOCATION**

WHAT CAUSES A PROPERTY'S VALUE

ANTICIPATED CHANGES

The principle of anticipation say that the **value of a property will adjust with any anticipated change.** **Positive change**, zone change from residential to commercial, **increases value.** **Negative change**, airport expansion, **value decreases.** The anticipation is that real property increases in value over time and is a good investment

DEPRECIATION

The **loss of property value due to any cause.** Ordinary wear & tear, fire or vandalism, floods or earthquakes, etc. Three types of depreciation.

Physical

Functional

External

REMEMBER land does not normally depreciate; only the improvements.

Terms Associated with Depreciation

Depreciation

Causes a **loss of property value**

Curable Depreciation

Is reasonable and **economically feasible to correct**

Incurable Depreciation

Is **not economically feasible to correct**

Physical Depreciation

May be curable or incurable – caused by lack of maintenance –
wear & tear

Functional Obsolescence

May be curable or incurable and occurs because of poor
design or changes in technology

External Obsolescence

Is **incurable and occurs because of factors located OFF OF the property.**
It may be referred to as **economic, locational, or environmental
obsolescence.**

DETERIORATION

Depreciation of the property can occur through deterioration, which is the effect of normal wear and tear or of natural elements.

OBSOLESCENCE

To be *obsolete* is to be *outdated*; thus obsolescence can occur due to functional or external depreciation of the property.

IMPROVEMENTS

Are added to the land for the purpose of increasing the value of the property.

Improvements of land include buildings, additions such as a family room, or the replacement of a roof. *Improvements to land* include streets, sidewalks and utilities.

ECONOMIC TRENDS

The *life cycle of a community includes growth, stability, decline and restoration (gentrification)*. Each part of the cycle affects the value of property in the community.

Appraisal

An **objective estimate of value** based on supported information and using different approved methods for different types of properties. Its purpose is to determine the market value.

Appraiser A **trained person who furnishes an unbiased opinion** of a property's value.

Market Value The **most probable price** a property will bring. **Not an average – Not the highest – Buyer & Seller are unrelated and do not have undue pressure (arm's length transaction) – Well informed – Has a reasonable market exposure time – Payment in cash or equivalent – No special financing**

Market Price The **actual selling price** of a property.

Cost The **actual dollars spent to produce an asset**. Market Value and Cost and Market Price may be the same, but they are usually different.

Appraisal Methods

Sales Comparison Method



Cost Approach Method



Income Approach Method



APPRAISAL TERMS

The principles of value that an appraiser will use in the appraisal process are:

- Competition The *interaction of supply and demand* wherein excess profits attract competition
- Conformity The *maximum value* is achieved when the *property is in harmony with its surroundings*
- Highest & Best Use The *most reasonable, probable and profitable use* of the property
- Increasing Returns When *money spent* on an improvement *increases the property value*
- Decreasing Returns When *adding improvements* to the land *does not produce a proportional increase* in property value

Plottage

The value that is created when *two or more tracts of land are merged into a single, larger one*; *assemblage is the process of merging the parcels of real estate*

Progression

When a *small structure is placed in an area of larger more expensive structures, the value of the smaller structure will increase*

Regression

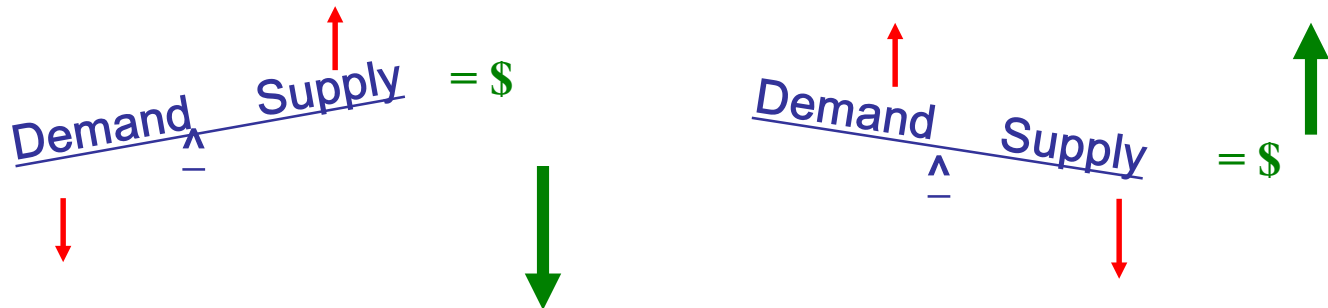
When a *large structure is placed in an area of smaller less expensive structures, the value of the larger structure will decrease*

Substitution

The *foundation for all approaches to appraising; the maximum value of a property tends to be set by the cost of purchasing an equal substitute property*

Supply & Demand

The *amount of goods available in the market to be sold and the demand or need for the goods.*



1. State the Problem.

2. List the data needed and the sources.

3. Gather, record, and verify the necessary data.

General Data

Nation

Region

City

Neighborhood

Specific Data

Subject site

improvements

Data for Each Approach

Sales Data

Cost Data

Income and expense data

4. Determine the highest and best use.

5. Estimate the land value.

6. Estimate value by each of the three approaches

7. Reconcile the estimated values for the final value estimate.

8. Report the final value estimate.



Sales Comparison Method or Approach

Subject Property		Comp 1	\$130,000	Comp 2	\$146,000	Comp 3	\$162,000
Financing	None	None		None		None	
Date of Sale			6 mos. ago		6 mos ago		6 mos ago
Location	good	good		good		good	
Age	5 years	6 yrs	+ \$1,000	4 yrs	- \$1,000	3yrs	- \$2,000
Size of lot	15,000 sf	20,000sf	- \$5,000	15,000sf		20,000sf	- \$5,000
Landscaping	good	avg	+ \$2,500	good		good	
Construction	brick	wood	+ \$10,000	brick		brick	
Style	ranch	ranch		ranch		ranch	
No. bdrms	3	2	+ \$10,000	3		3	
No. of baths	2	2		2		2	
Sq. ft.	1,500	1,600	- \$1,000	1,500		1,500	
Basement	Full	no	+ \$25,000	Full		Part	+ \$15,000
Condition-ext	avg	good	- \$10,000	fair	+ \$5,000	avg	
Condition-int	good	good		fair	+ \$10,000	avg	+ \$ 5,000
Garage	2-car	1-car	+ \$10,000	no	+ \$25,000	2-car	
Net Adjustments			+ \$42,500		+ \$39,000		+ \$13,000
Adjusted Value			\$172,500		\$185,000		\$175,000

Sales Comparison Approach

(Market Data Approach) is an estimate of value using sales of comparable property with (+) or (-) \$ adjustments for differences. This is the most reliable in appraising single family homes.



Cost Approach to Value

Subject Property: 155 Potter Drive

Land Valuation: Size 10,000 sq ft @ \$ 2.50 sq ft foot **\$25,000**
 Plus site improvements: driveway, walks, landscaping **\$15,000**
 Total: **\$40,000**

Building Valuation: Replacement Cost
 1,500 sq. ft @ \$90 per sq. ft. = **\$135,000**

Less Depreciation: Bldg Is 10 yrs Old

Physical Depreciation (20% due to age)	\$27,000
Curable	
(items of deferred maintenance)	\$2,000
exterior painting	\$2,000
Incurable (structural deterioration)	
Functional obsolescence	
External depreciation	
Total Depreciation	<u>\$ 31,000</u>
Depreciation Value of Building	\$104,000
Indicated Value by Cost Approach	<u>\$144,000</u>

Depreciation Is A Loss Of Value

Physical Deterioration (Curable) – Wear & Tear (Incurable) - Structural

Functional Obsolescence (Curable) – Outmoded (Incurable) – Design Problem

External Obsolescence (Incurable) – Off Property Used In New Construction – Specialty Property - & Victorian Homes

<u>Cost Approach</u>	based on the principle of substitution.	<u>SF Method</u>	Most Common – Avg SF of Bldg Costs
<u>Reproduction Cost</u>	Exact duplicate	<u>Unit In Place</u>	Cost of Material – Labor
<u>Replacement Cost</u>	Similar item	<u>Quantity Survey</u>	Detailed Cost Of Each Item
		<u>Index Method</u>	% Increase of Construction Costs

Income Approach



Used In Income Producing Property

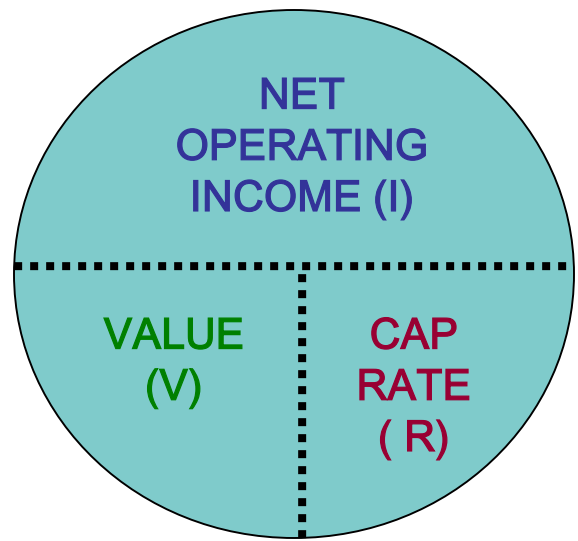
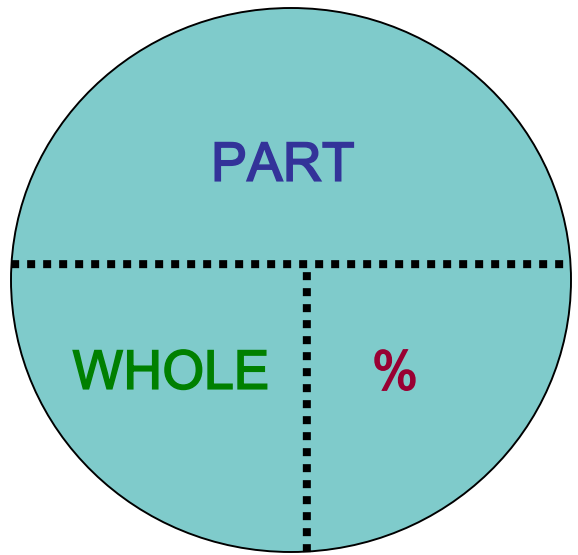
Potential Gross Annual Income		
Market rent (100% capacity) 15 Units @ \$1,000/Mo		\$ 180,000
OTHER INCOME (vending machines and pay phone)		\$ 5,000
		<u>\$ 185,000</u>
Less vacancy & collection losses (estimated) @ 4%		<u>\$ 7,200</u>
Effective Gross Income		\$ 177,800

Annual Expenses:		
Real estate taxes	\$ 10,000	
Insurance	\$ 6,000	
Maintenance	\$ 6,000	
Utilities, electricity, water, gas	\$ 12,000	
Repairs	\$ 5,000	
Decorating	\$ 500	
Replacement of equipment	\$ 0	
Legal and accounting	\$ 12,500	
Advertising	\$ 500	
Management	<u>\$ 1,200</u>	
Total		<u>\$ 53,700</u>
Annual Net Operating Income		\$ 124,100

Capitalization rate = 10% (overall rate)

Capitalization of annual net income: $\$124,100 / .10 = \$1,241,000$

Indicated Value by Income Approach = **\$1,241,000**

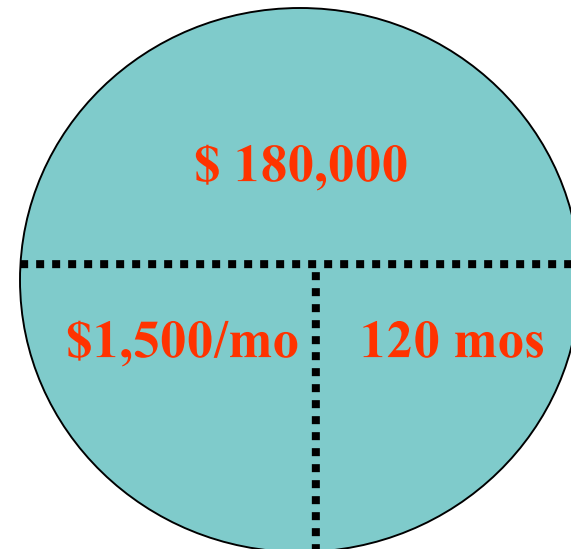
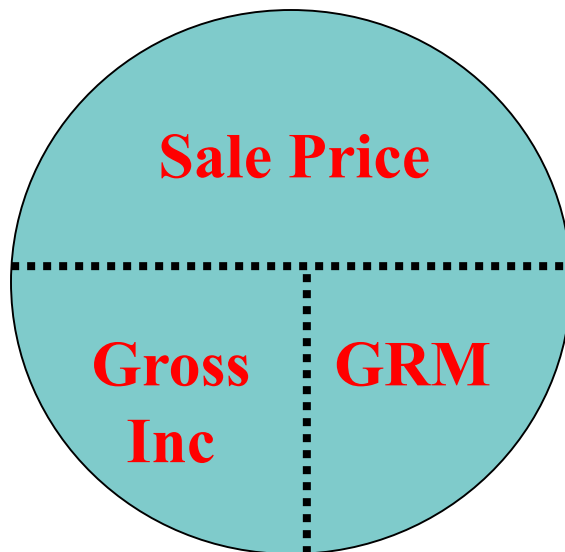


Gross Rent Multiplier

Comps	Sales Price	Monthly Rent	GRM (m)	GIM (y)
1	\$110,000	\$800	137	11.46
2	\$89,000	\$600	148	12.36
3	\$120,000	\$800	150	12.50
4	\$95,000	\$855	111	9.25
Subject	\$ 180,000	\$1,500	120	10

GRM = Sales Price (Value)/Monthly Gross Income

GIM = Sales Price (Value)/Annual Gross Income



We have established who owns the property, it's address and set the value. We have discussed what is being sold with the property and what is not and have talked about water rights. We have talked about encumbrances and easements.

There are additional items that control the use of the property. The seller must furnish information about this and the buyer must understand them.

Limits To The Rights Of Ownership

The use of real estate is limited by private and public restrictions. One owner's use cannot interfere with another owner's use. The limitations are imposed for the *“general welfare”* of the public. They are in said to be in *“the public interest”* – *“to protect the public health and safety and promote general welfare of it's citizens”* of the community. **WHAT DOES THIS MEAN??** The answer can vary from community to community.

Government Powers

The United States Congress was given rights (authority or power), to do certain things, by enabling acts provided for in the Constitution Of The United States. The federal government passed these rights on to states and local governments. There are four types of government powers:

Police Eminent Domain Taxation Escheat (P.E.T.E.)

Police Power

The power to create rules (laws) to preserve order, protect the citizens, and promote general welfare.

The government has the right to establish police forces, sheriffs departments, building inspectors, etc. because of this power.

This is used to enact Environmental Protection Laws Zoning Ordinances Building Codes

Zoning

Master Plan -

Land Use Present & Future Housing Needs
Community Facilities & Utilities

Movement of People & Goods
Energy Conservation

Ordinances (laws)

Individual Property Use

Lot Sizes

Types of Structures

Building Heights

Setbacks

Density – Ratio of Land To Structures

Protection of Natural Resources

Style & Appearance of Structures

Zoning (Continued)

Ordinances (laws) Classify Real Estate	<u>Residential</u> Single Family Fourplex Multi Family High Rise Apt	<u>Commercial</u> General Special Shopping Office Resort	<u>Industrial</u> Light or Heavy Manufacturing	<u>Agricultural</u> Rural – 1 Agricultural - 1	<u>Special Use</u> Car Dealerships Strip Clubs
---	--	---	---	--	--

Objectives To meet the growing demands of a community for housing & services.

PUD's

Buffer Zones

Bulk Zoning

Aesthetic
Zoning

Incentive
Zoning

Constitutional Issues & Zoning Ordinances

14th Amendment To The US Constitution

prevents the states from depriving

"any person of life, liberty or property, without due process of law".

Use of Zoning Ordinances

- Power Must Be Used In A Reasonable Manner
- Clear & Specific Provisions
- Nondiscriminatory Ordinances
- Ordinances Promote Health, Safety & Welfare
- Ordinances Apply To All Property In A Similar Manner

PLANNING AND ZONING

Municipalities and counties develop a master plan or comprehensive plan, to guide the long-term physical development of the area. Zoning ordinances are local laws that implement that plan and regulate the land use and structures. Following are terms that are associated with zoning:

Land Use Divides the land into *residential, commercial, industrial, agricultural and special use districts.*

Buffer Zone Separates two different use districts.

Aesthetic Zoning New buildings must conform to certain types of architectural styles

Sedona Arizona



San Francisco



Incentive Zoning

Requires that street floors of office buildings be used for retail space.

The use of specific properties depends on how they are zoned. In the process of master planning a community, areas are designated as certain zones. This can create problems for existing property owners who were using their property in a way not allowed under the new zone. There are times where a property owner wants to use their property for other purposes than the existing zoning allows.

Nonconforming property

Property in an area that was zoned for one use but for which the zoning has now changed.

Use existed prior to zoning change, its *“grandfathered”* into the new zoning.

Variance

May be granted in cases where the zoning creates an unnecessary hardship on the owner, but the variance must not be detrimental to zoning (setbacks, height restriction, etc.)

Conditional Use Permit

When special purpose property that benefits the public is approved for construction even though it does not fit in the zoning (hospitals, museums and libraries) Owner is given use of the property in ways that are not allowed in the existing zoning

Zoning (Continued)

Spot Zoning

Is a change of zoning for a particular a spot or lot and is generally not permitted.

Zoning Hearing Board

Holds public hearings concerning zoning matters. How a zone change will effect a neighborhood. Appeals to zoning changes are brought to the board concerning Nonconforming Use Changes and Variances

Building Permits - Certificates of Occupancy

Building Permits

Building ordinances specify construction standards that must be met in remodeling or constructing new buildings. They are enforced by building codes that state the type of materials and quality of construction that must occur.
Inspectors review building plans and periodically inspect the work.

Certificates of Occupancy

Or occupancy permit is issued when the work is completed to the satisfaction of the inspectors.

Eminent domain, another government power.

The Supreme Court has held that the federal government and each state has the power of **eminent domain**—the power to take private property for "public use". The 5th Amendment limits the power of eminent domain by requiring that "just compensation" be paid if private property is taken for public use. The just compensation provision of the 5th Amendment did not originally apply directly to the states, but the federal courts now hold that the **14th Amendment** extended the effects of that provision to the states. The federal courts, however, have shown deference to the determinations of Congress, and even more so to the determinations of the state legislatures, as to what constitutes "public use". The property need not actually be used by the public; rather, it must be used or disposed of in such a manner as to benefit the public welfare or public interest. One exception that restrains the federal government is that the property must be used in exercise of a government's enumerated powers.

The owner of the property that is taken by the government must be justly compensated. When determining the amount that must be paid, the government does not need to take into account any speculative schemes that the owner claims the property was intended for use in. Normally, the fair market value of the property determines "just compensation". If the property is taken before the payment is made, interest accrues (though the courts have refrained from using the term "interest").

Taxation

Another government power is the power of taxation that can be based on real property values, tax assessments for public work that has been completed (curbs, gutters, paved streets) sales taxes, income taxes, etc.



REAL PROPERTY TAXES (also called Ad Valorem Taxes)

Ad Valorem means (“According To Value). Each property is taxed based on its value. In some states taxes are paid twice a year (in Montana at the end of May and at the end of November) in other states the taxes are paid annually.

The method of determining property value also may vary. It may be based on current sale prices, a county appraiser’s value or a combination of methods.

Property taxes are a tax deduction, special assessments are not deductible.

Special Assessments

Additional taxes to pay for Civic Improvements, such as sidewalks, curbs, gutters, sewers, streets, or any improvement that benefits an owner’s property. Each property pays a prorated share. If special assessments are not paid they become a tax lien and could create a tax sale. Special Assessment payments are not deductible since they improve the property. You can pay cash as they are assessed or over 10 years with interest. A buy/sell agreement must state who is to pay.

Calculation Property Taxes

Market Value

X Assessment Rate

Assessed Value

X Tax Rate

Annual Property Taxes

Market Value is determined by the government (county appraisers?). Current sales may drive the new value. If the house next door is similar to yours and it sells for \$200,000 your taxes are going to be based on a \$200,000 value.

Assessment Rate is determined by the state and county. It is a fraction. For example it may be 60% of market value or .60 of market value.

Assessed Value is the product of Market Value and Assessment Rate being multiplied together.

Tax Rate is a number that is voted on by the public. It may be in mils (1/1000 of a dollar or .001 as a fraction, or \$1 per \$1,000 of assessed value).

Annual Property Taxes is the product of Assessed Value and Tax Rate being multiplied together. This is the amount of taxes the property owner owes.

The next government power is Escheat, a common law doctrine that operates to ensure that property is not left in limbo and ownerless.

The term is often now applied to the transfer of the title to a person's property to the state when the person dies intestate (without a will) without any other person capable of taking the property as heir. For example, a common-law jurisdiction's intestacy statute might provide that when someone dies without a will, and is not survived by a spouse, descendants, parents, grandparents, descendants of parents, children or grandchildren of grandparents, or great-grandchildren of grandparents, then the person's estate will escheat to the state.

In some jurisdictions, escheat can also occur when an entity (such as a bank) holds money or property (such as an account in that bank) and the property goes unclaimed. In many jurisdictions, if the owner cannot be located, such property can be irrevocably escheated to the government.

In business, it is the process of turning over unclaimed or abandoned payroll checks to a state authority (US). Every company is required to file unclaimed property reports with state annually and to make a good-faith effort to find the owners of their dormant accounts. The escheating criteria are driven by individual state regulations.

NET PROCEEDS ESTIMATION

When listing a property the seller wants to know what the net proceeds of the sale will be after the commission and expenses are paid.

SELLER'S ESTIMATED COSTS AND FEES

1	SELLER:		
2	ADDRESS:		
3	CLOSING DATE:		
4			
5	SELLER'S ESTIMATED CREDITS		
6	SALE PRICE	\$	
7	RESERVE/ESCROW ACCOUNT*	\$	
8	OTHER CREDITS	\$	
9			
10	TOTAL ESTIMATED CREDITS		\$ _____
11			
12	SELLER'S ESTIMATED COSTS AND FEES		
13	ESTIMATED MORTGAGE BALANCE	\$	
14	INTEREST TO CLOSING DATE	\$	
15	PAY-OFF PENALTY	\$	
16	PAYMENTS IN ARREARS	\$	
17	2nd MORTGAGE/HOME EQUITY	\$	
18	TITLE INSURANCE	\$	
19	SID/RSID ASSESSMENTS	\$	
20	RENT (OTHER REVENUE) PRO-RATION	\$	
21	DEPOSIT TRANSFER	\$	
22	CLOSING AGENT FEE	\$	
23	BROKERAGE FEE	\$	
24	MORTGAGE DISCOUNT	\$	
25	TAX PRO-RATION	\$	
26	DELINQUENT TAXES	\$	
27	LEGAL DOCUMENT PREPARATION	\$	
28	RECORDING FEES	\$	
29	FINAL WATER BILL	\$	
30	WELL TEST	\$	
31	WATER RIGHTS TRANSFER	\$	
32	HOME WARRANTY	\$	
33	ESCROW FEE	\$	
34	WIRE TRANSFER OR FED EX	\$	
35	OTHER	\$	
36	OTHER	\$	
37			
38	TOTAL ESTIMATED COSTS AND FEES		\$ _____
39			
40	ESTIMATED PROCEEDS		\$ _____

*Usually sent from mortgagor after closing

ALL COMPUTATIONS ARE BASED ON THE ESTIMATED CLOSING DATE ABOVE.

BROKERAGE FEE

fee an owner pays a brokerage company for securing a ready, willing and able buyer is negotiated between the broker and the seller. The **Sherman Antitrust Act is a federal law that prohibits price-fixing.** Most states also have antitrust laws.



LISTING AGREEMENT & OTHER DOCUMENTS PROVIDED TO THE SELLER



A listing agreement is an personal service contract securing the employment of a brokerage firm to find a ready, willing and able buyer. Other documents may include lead based paint, property and agency disclosures. All parties signing documents must receive copies.

Listing agreements normally include; **(a)** type of listing, **(b)** broker authority and responsibilities, **(c)** names of all parties to the contract, **(d)** brokerage firm, **(e)** listing price, **(f)** real and personal property, **(g)** term and length of agreement, **(h)** commission, **(i)** termination provisions, **(j)** broker protection clause, **(k)** warranties by the owner, **(l)** nondiscrimination wording, **(m)** antitrust wording, **(n)** authorizations for sub agency, **(o)** other provisions as provided by state law, **(p)** signatures of the parties, and **(q)** unusual deed conditions on restrictions.

Listings may be terminated by:

- (a)** expiration
- (b)** fulfillment of contract
- (c)** mutual consent or rescission
- (d)** abandonment by either party
- (e)** death of the broker or seller
- (f)** destruction of the premises
- (g)** eminent domain

LISTING AGREEMENT SIGNATURES BY ALL PARTIES

The names of all the people on the deed are required on the listing agreement. If the owner has died the executor, administrator, etc. are needed to sign the listing.

SAFEGUARDING PROPERTY **The listing agent has duties to safeguard the property.**

PROPERTY MARKETING, KEEPING THE SELLER INFORMED

- (1) Seller's responsibilities – making the property more marketable.** Exterior & interior repairs.
- (2) Broker responsibilities – marketing considerations** – internet, newspapers, flyers, mls, and open house events. Yard signs, inform the seller of comments from others who have seen the property.

Buyers

The Buy/Sell Agreement is generated by the prospective buyer.

The information furnished by the seller is critical to the buyer. That is why the term “full disclosure” is critical in all real estate transactions.

There is additional information that the Licensee is required to furnish the buyer.

One is the Relationship in Real Estate Form and another is the Buyer Agency Form

Net Listing *Has no specified sales price or commission. ILLEGAL IN MOST STATES. THE OWNER AGREES TO A NET PRICE THE REST IS COMMISSION. IT IS NOT ADDRESSED IN MONTANA STATUTES*

ADVISING BUYERS OF OUTSIDE SERVICES

Home Protection Plans (Warranty)



Insurance
80 % of value
Fire
Hazard
Liability

Inspection Reports

Structural
Well
Septic
Soil
Environmental

Surveys



QUALIFYING THE BUYER

Information Needed From Buyer
Gross Income
Living Expenses
Long Term Debt
Short Term Debt

Type of Loan
VA Loan
FHA Loan
Conventional Loan
Owner Carry

Type of Property
Construction Style
Number of Bedrooms
Number of Baths
Area Location
Schools

**CURRENT MARKET CONDITIONS
BUYER'S MARKET? SELLER'S MARKET?**

**PREVIEW &
SHOW
PROPERTY**

