

Florida Salesperson PLE

UNIT II: Property Management, Appraisals & Technology

MODULE 1: Property Management

TYPES OF PROPERTY

Learning Objectives

- Define real property based on the definition in Chapter 475, F.S.
- List and explain the physical components of real property
- Explain the four test courts used to determine if an item is a fixture
- Distinguish between real and personal property
- Describe the bundle of rights associated with real property ownership
- Identify the development and construction process
- Explain the three phases of development and construction

Real Property

In this section, we will discuss the two broad classes of property—real property (land and improvements) and personal property (goods and intangible interests).

Real Property. The terms real estate and real property are often used interchangeably, although real property is the broader concept. Real property includes land, improvements, and the bundle of legal rights associated with ownership.

Land, however, has a narrower meaning. It includes the surface of the earth (surface rights), the space above (air rights), and the area below (subsurface rights), as well as natural items such as trees, minerals, and water.

Physical Characteristics of Land

The physical characteristics of land include immobility, indestructibility, and heterogeneity.

Land is fixed and cannot be moved, it is considered permanent (indestructible in an economic sense), and it is heterogeneous—meaning each parcel is unique and differs in composition and value.

Real property includes not only land, but also any improvements or fixtures, such as buildings and infrastructure. Unlike personal property, **real property is not movable.**

Water Rights

A property owner's **legal** right to use, access, or control water for agricultural, recreational, or personal purposes. Water rights are especially important in areas where water is scarce. Most states follow one of three legal doctrines to determine who may use or divert water and in what amount:

- **Riparian Rights** – Reasonable use doctrine for properties bordering moving water (e.g., rivers and streams). States such as Florida follow a regulated riparian system.
- **Littoral Rights** – Reasonable use rights for properties bordering non-moving water (e.g., lakes and oceans).
- **Prior Appropriation** – “First in time, first in right”; the first person to divert water for a beneficial use has priority over later users.

Changes to Land

- **Accretion** – Gradual addition of land by the deposit of soil (alluvion) from water
- **Alluvion** – This is the soil deposited by water that results in new land formation (Accretion)
- **Erosion** – Gradual loss of land caused by water wearing it away
- **Reliction** – Gradual recession of water, exposing previously submerged land

Components of Real Property

Real property includes:

- ✓ Land
- ✓ Improvements (valuable additions such as buildings and infrastructure)
- ✓ Bundle of legal rights associated with ownership

"Real estate" refers specifically to land and improvements.

Natural Attachments

Naturales – Naturally occurring or perennial plantings such as trees, grasses, and bushes. The term means “fruits of nature.”

These are considered real property and typically transfer with the land unless otherwise agreed.

Fructus Industriales (Emblements)

Growing crops produced annually through labor and cultivation, such as corn, wheat, fruits, and vegetables. The term means “fruits of industry.” These items are considered **personal property**, even while growing, due to the labor involved in producing them. Unlike fixtures (which become real property when attached to land), these crops remain personal property.

Tenant Rights (Doctrine of Emblements):

If a lease is terminated through no fault of the tenant, the tenant has the right to re-enter the land to harvest crops.

Example:

A landlord cannot terminate a lease early and deny a tenant farmer the right to return and harvest crops if the termination was not the tenant’s fault.

Public controls (e.g., zoning, building codes, environmental regulations) and **private controls** (e.g., deed restrictions, CC&Rs) limit how property may be used and influence its value.

Common property uses include:

1. Residential
2. Commercial
3. Industrial
4. Agricultural
5. Recreational
6. Special Purpose (churches, hospitals, colleges, cemeteries)
7. Public Use (government-owned land at the local, state, or federal level)
8. Mixed-Use (combination of uses, such as residential and commercial)

Personal Property

Personal property consists of items that are movable and not permanently affixed to land. Personal property is also known as *personalty* or *chattel*. It may be:

- Tangible – physical items such as cars, boats, jewelry, livestock
- Intangible – non-physical rights such as stocks, bonds, notes, and other financial interests

Personal property includes:

- ✓ Trade fixtures (installed for business use)
- ✓ Leasehold interests (the right to possess and use property without ownership)
- ✓ Fructus industriales (emblemments) (annual crops produced through labor)

Rights in Personal Property

Personal property rights may include:

- Intellectual property (patents, copyrights)
- Goodwill (business reputation and customer base)
- Partnership interests (ownership in a business entity)
- Contractual rights (such as leasehold interests)

Real estate contracts should **clearly identify** which items are real property and which personal property are included in the transaction.

Fixtures

A fixture is an item that was once personal property but is now legally considered real property because it has been attached or affixed to land or a building.

Examples include items such as fences, built-in appliances, or bricks in a wall.

Once affixed, these items generally become part of the real property and transfer with the property upon sale.

When a property is sold, the seller retains the right to remove personal property, while fixtures **remain with the real estate** unless otherwise agreed.

Severance

Severance is the act of removing a fixture from real property, which converts it back into personal property. Whether an item may be removed depends on agreements between the parties and the nature of the item, not just whether it is physically removable.

Example

A farm fence is considered real property once installed because it is affixed to the land. However, the fencing materials (such as posts and wire) are personal property before installation.

Fixture Disputes

In the event of a dispute—when one party claims an item is a fixture (real property) and another claims it is personal property—courts apply a **four-part test** to determine the item's classification.

◆ **Method of Attachment:** The degree of permanence with which an item is attached to real property is a key factor. The more permanently an item is attached (e.g., built-ins), the more likely it is considered a fixture.

Example

A built-in dishwasher that is permanently installed is more likely to be considered a fixture, whereas a freestanding appliance may be considered personal property.

◆ **Adaptation:** If an item is specially adapted or custom-made for a particular property, it is more likely to be considered a fixture.

Examples:

Custom-built bookcases, built-in cabinetry, or bay windows are typically considered fixtures because they are designed specifically for the property.

◆ **Agreement:** The agreement of the parties controls whether an item is treated as real or personal property.

A written agreement (such as a purchase contract) may:

- Allow a seller to remove an item that would otherwise be a fixture, or
- Specify that certain personal property will remain with the property

Clear written agreements are the best way to avoid disputes, as court outcomes can be uncertain.

◆ **Relationship of the Parties:** The relationship between the parties (e.g., owner vs. tenant) affects whether an item is considered a fixture.

Tenants are generally given more flexibility to remove items they install, especially when used for business purposes (trade fixtures), provided they do not cause damage and restore the property.

Examples

In a residential sale, a permanently attached chandelier is likely considered a fixture and transfers with the property (unless otherwise agreed).

In a rental, if a tenant installs a chandelier, it is generally considered personal property and may be removed before the lease ends, provided the tenant restores the original fixture.

Trade fixtures

Despite the general rule that attached items become real property, trade fixtures are an exception. Trade fixtures are items of **tangible personal property installed by a tenant for use in a trade or business**. Even if firmly affixed, they remain the personal property of the tenant.

To retain ownership, trade fixtures must generally be **removed before the lease expires**, unless the parties agree otherwise. If not timely removed, they may become part of the real property and belong to the landlord. The tenant is responsible for **repairing any damage** caused by the installation or removal of trade fixtures.

Example: A tenant leasing space for an auto repair business installs a hydraulic car lift bolted to the floor. The lift is a trade fixture and remains the tenant's personal property, provided it is removed before the lease ends and any damage is repaired.

Advanced Note:

If a tenant replaces an existing fixture (rather than adding a new one), the replacement may become the property of the landlord, unless otherwise agreed.

Examples:

- *Replacing an existing HVAC system*
- *Installing a new bar to replace an old one in a tavern*

Basic Property Rights

Bundle of Legal Rights

A phrase used to describe the intangible legal rights of property ownership. Along with the physical components (land, improvements, fixtures), these rights transfer to a new owner in whole or in part when property is conveyed.

The bundle of rights is commonly described as including:

- a. Possess – The right to occupy and possess the property
- b. Control – The right to use the property within legal limits
- c. Enjoy – The right to use the property without interference

- d. Exclude – The right to keep others from entering the property
- e. Encumber – The right to place a lien or claim on the property (e.g., mortgage, easement)
- f. Dispose – The right to sell, transfer, or will the property

Example: Bundle of Legal Rights (Lease): A property owner who leases her property transfers the right of possession and use to a tenant for a specified period, while retaining other rights such as the right to dispose of or encumber the property.

When thinking about the bundle of rights, it may help to imagine a bundle of sticks—each right can be separated and transferred independently. When certain rights are transferred, the value of the property may be affected.

Separate rights

The three physical components of land—**air, surface, and subsurface rights**—can be separated and owned by different parties. For example:

- An owner may sell or lease air rights above a property while retaining surface and subsurface rights
- An owner may sell subsurface (mineral) rights without transferring ownership of the surface or air rights

Example: Bundle of Legal Rights (Air Rights): The Museum of Modern Art in New York City sold the air rights above one of its buildings to developers, who constructed a residential condominium thereon.

Development and Construction

Land development and construction involve creating the real estate “product” that is ultimately marketed and sold.

The typical development process includes:

- **Land Acquisition** – Identifying and purchasing suitable land
- **Zoning Review** – Confirming the property is zoned for the intended use (residential, commercial, etc.)

- **Feasibility Analysis** – Evaluating whether the land can be developed (soil conditions, topography, environmental concerns, utilities, drainage, etc.)
- **Surveying & Engineering** – Conducting surveys and consulting engineers to design the project
- **Government Approvals** – Submitting subdivision plats or site plans for local government approval
- **Construction** – Building residential or commercial improvements
- **Dedication of Improvements** – Transferring certain improvements (e.g., streets, sidewalks, utilities) to local government for public use

Types of Residential Construction

- **Speculative (Spec)** – Built before a buyer is found
- **Custom** – Built under contract for a specific buyer
- **Tract** – Multiple homes built from model plans; buyers choose lot and design

Subdivision Development Process

1. Survey & Layout – Land is surveyed and prepared for development
2. Plat Creation – A subdivision plat (map) shows lots, blocks, and streets
3. Legal Description – Based on metes and bounds or government survey system
4. Government Approval – Must be approved by local authorities (zoning/ planning)
5. Recording – Plat must be recorded to have legal effect

Subdivision developers often dedicate land for public use, such as roads, sidewalks, and sometimes parks or schools.

Dedication is the **transfer of privately owned land to a governmental entity** for public use (e.g., streets or utilities). This is a form of **voluntary** transfer, but it is a distinct legal concept specifically associated with land development.

Progress Check - Types of Property

1. Which of the following does not describe a type of residential construction?
 - A. Constructing homes prior to having a buyer
 - B. Using constructed homes as models and buyers pick floor plans
 - C. Vacant lots and buyers choose contractors to build
 - D. Constructing homes under contract with a buyer

2. Regarding water rights, reliction is:
 - A. The gradual recession of water leaving land permanently uncovered
 - B. The force of water on land causes land to gradually accumulate
 - C. The action of the sea or a river in forming new land by deposition
 - D. The gradual destruction or diminution of land caused by water

3. Which if the following is not part of the four part severance test?
 - A. Method of Attachment
 - B. Adaptation
 - C. Relationship of parties
 - D. Potential for litigation

PROPERTY OWNERSHIP

Learning Objectives

- Differentiate between freehold estates and non-freehold (leasehold) estates.
- Explain the characteristics of fee simple absolute, defeasible fee estates, and life estates.
- Recognize life estate limitations, duties, and pur autre vie interests.

- Identify future interests including remainder and reversion estates.
- Distinguish ownership in severalty from concurrent ownership.
- Compare tenancy in common, joint tenancy, and tenancy by the entirety.
- Explain right of survivorship and the four unities required for joint tenancy.
- Recognize creditor, transfer, and probate implications of common co-ownership forms.
- Identify the major leasehold estates: estate for years, periodic tenancy, tenancy at will, and tenancy at sufferance.
- Differentiate assignment of lease from sublease and recognize partition remedies among co-owners.

Property Ownership (Estates)

An estate refers to the interest or ownership rights a person has in real property. Anyone with a **legal interest in real property**—whether full ownership or a temporary right to use—holds an estate. Rather than owning land outright, a person owns an estate (interest) in land, which may be bought, sold, or transferred.

Categories of Estates

There are several broad categories of estates and each category includes multiple variations. These include:

- *Freehold estates* (ownership interests of uncertain duration)
- *Leasehold* (non-freehold) estates (possessory interests for a specified period)
- *Future interests* (rights to ownership at a later time)

Freehold Estates

Estates are divided into two general groups: freehold estates and leasehold estates. These categories describe the type and duration of a person's interest in real property.

Freehold Estates: Freehold estates are ownership interests in real property of indefinite duration, meaning they do not have a fixed expiration date. These estates include both the right of possession and ownership rights in the property.

Persons holding freehold estates are said to be “**seised**” (or **seized**) of the land, meaning they have legal possession and ownership. This concept is known as seisin, which refers to the legal possession of a freehold estate.

Types of Freehold Estates: There are two primary types of freehold estates: **fee estates and life estates**.

Leasehold (Non-Freehold) Estates

Leasehold estates, also known as non-freehold estates, are interests in real property that provide the **right of possession without ownership** for a definite period of time. This differs from freehold estates, which have an indefinite duration.

The most common example is the **landlord-tenant relationship**. Under a lease agreement, the tenant (lessee) receives the right of exclusive possession and use of the property for a specified term. However, the landlord (lessor) retains ownership of the property along with a reversionary interest, meaning the right to regain possession when the lease ends.

Although leaseholds involve real property, they are generally classified as personal property interests. As a result, a **lease may continue to bind future owners** of the property, depending on its terms.

Types of Freehold Estates

Freehold estates include fee estates and life estates. Fee estates represent the highest form of ownership interest in real property.

A fee estate is an inheritable ownership interest that may last indefinitely. The most complete form is the fee simple absolute, which provides the greatest bundle of rights and has no conditions or limitations on ownership.

A fee simple estate may also be defeasible (qualified), meaning it is **subject to certain conditions**. A defeasible fee estate continues only as long as a specified condition is met or not violated.

Most real property ownership in the United States is held in **fee simple absolute**.

EXAMPLE: Fee Estate Patty, a property owner, transfers undeveloped land to her son Sammy “so long as alcohol is not served on the premises.” Sammy holds a defeasible fee estate, specifically a fee simple determinable, because his ownership continues only while the stated condition is met. If alcohol is served on the property, Sammy’s ownership automatically terminates, and the property reverts to the original owner (or the owner’s heirs).

Life Estates (Basics)

A life estate is a freehold estate that lasts for the **duration of a person’s life**. The measuring life may be the life tenant or another designated person.

A life estate is created by a grantor and commonly used in estate planning, often with a **remainderman** who receives the property upon the life tenant’s death.

Life Tenant Rights & Limitations

The life tenant has the right to possess, use, and benefit from the property, but only for the duration of the life estate.

However:

- The life tenant cannot transfer ownership beyond their lifetime
- The life tenant must not commit waste (must preserve the property’s value for future interest holders)

When the life estate **ends**, the property passes to the remainderman (or reverts to the grantor, depending on the estate).

EXAMPLE: Life Estate Harry wants to buy a hunting cabin from Sam. However, Sam only owns a life estate in the property. Harry decides to proceed with the purchase. Because Sam can only transfer the interest he owns, Harry receives an interest that lasts only for Sam’s lifetime.

Sam dies unexpectedly two years later. At that point, Harry’s interest automatically ends, and the property either:

- *Reverts to the original grantor, or*
- *Passes to a remainderman, if one was named*

Life Tenant Duties

A life tenant is the holder of a life estate for the duration of a specified life.

The life tenant has the right to possess and use the property, but also has important responsibilities:

1. Must not commit waste (damage or neglect the property)
2. Must maintain the property for future interest holders
3. Must pay property taxes and interest on any mortgage
4. May not encumber or transfer rights beyond the duration of the life estate

Pur Autre Vie

Pur autre vie is a French term meaning “for another’s life.” It describes a life estate that is **measured by the life of a third party**, rather than the life of the life tenant.

Example: Sam is granted a life estate measured by the life of his uncle. Sam is the life tenant, but the duration of the estate is based on the uncle’s life. Sam may transfer his interest to Harry; however, Harry’s interest will last only for the duration of the uncle’s life. When the uncle dies, the life estate terminates, and the property passes to the next designated party.

Future Estates

A future estate is an ownership interest in real property that gives a person present rights to future possession, but not the current right to possess the property.

At some point, the future estate may become a possessory estate (such as a fee simple or life estate). Until then, the holder has an interest in the property without the right of possession.

The principal types of future estates are **remainder estates** and **reversion estates**.

Remainder Estate

A remainder estate is a future estate that **becomes possessory automatically upon the termination of a prior estate** (such as a life estate).

The remainderman is the person designated to receive the property after the prior estate ends.

Example: Remainder Estate

Sam Brown owns a family cabin in fee simple. He conveys the property to Uncle Bert for life, with the remainder to his sister Emily. Uncle Bert holds a life estate and has the right to possess and use the property during his lifetime. Emily is the remainderman, meaning she has a future ownership interest but no right to possess the property until Bert's death. When Bert dies, ownership automatically passes to Emily in fee simple. Because Emily has a future interest, she may take legal action to prevent waste and protect the value of the property.

Reversion Estate

A reversion estate is a future interest retained by the grantor when a lesser estate (such as a life estate) is conveyed to another person. When the prior estate ends, ownership automatically returns (reverts) to the grantor or the grantor's heirs. A reversion estate is similar to a remainder estate; however, with a reversion, the future interest is held by the grantor, not a third party.

Example

Whitehead conveys a life estate to his Aunt Katherine but does not name a remainderman. Upon Katherine's death, the property automatically reverts to Whitehead (the grantor) or his heirs. This occurs because Whitehead retained a reversion estate by not designating a remainderman.

How Ownership Can Be Held

Severalty (Sole Ownership) refers to ownership by a single person or legal entity. The owner holds title alone and may own the property in any type of estate (such as fee simple or life estate). Because there is only one owner, only that owner typically signs the deed. (Note: Some states may require a spouse's signature for homestead property.)

Upon the owner's death, property held in severalty generally passes to heirs and is subject to probate, unless other estate planning arrangements are in place.

Co-ownership, or concurrent ownership, occurs when two or more persons hold title to real property at the same time. The three primary forms of co-ownership are joint tenancy, tenancy in common, and tenancy by the entirety.

Tenancy in Common

Tenancy in common is the **most common** form of co-ownership and is presumed unless another form of ownership is clearly stated. Co-tenants may hold **equal or unequal ownership interests**, and each may transfer their interest independently. While co-tenants often hold fee simple interests, each owner holds title in their own name.

Tenancy in common requires **only one unity**—the unity of possession—meaning all co-tenants have an equal right to possess and use the entire property. No co-tenant may exclude another or claim ownership of a specific portion of the property. Even when ownership shares are unequal, each owner’s interest represents a proportionate share of the whole property, not a specific physical portion. Tenants in common hold an undivided interest in the entire property, meaning each co-owner has the right to possess and use the whole.

A key difference between tenancy in common and joint tenancy is that there is **no right of survivorship**. Upon death, a tenant in common’s interest passes to their heirs or devisees, rather than to the other co-owners. Because there is no right of survivorship, each owner may transfer their interest by will or during their lifetime.

Example: Tenancy in Common (Conversion from Joint Tenancy)

Guyon, Donald, Walton, and Katherine own farmland as joint tenants. Guyon sells his interest to Farmer Brown. Farmer Brown now owns a 1/4 interest as a tenant in common. Donald, Walton, and Katherine continue to own their 3/4 interest as joint tenants with each other, with a right of survivorship among themselves.

Example: Tenancy in Common (Unequal Ownership)

Jones and Smith purchase a house and two acres as tenants in common. Jones contributes 3/4 of the purchase price and owns a 3/4 interest, while Smith owns a 1/4 interest. Although their ownership shares are unequal, both have an equal right to possess and use the entire property. If the property is sold, proceeds are divided according to their ownership percentages.

Example: Tenancy in Common (Transfer & Partition)

Jones, Smith, and Brown own investment property as tenants in common. Jones dies and leaves his interest to multiple heirs. As a result, ownership becomes fragmented among several parties, each holding a share of Jones’s interest. When Smith and Brown attempt to sell the property, they must obtain the consent of all

co-owners, including the heirs. If co-owners cannot agree on the sale or use of the property, a partition action may be required to divide or sell the property.

Joint Tenancy (with Right of Survivorship)

Joint tenancy is a form of co-ownership in which two or more persons hold **equal and undivided interests** in the same property. Each joint tenant has the right to possess and use the entire property, along with identical ownership rights.

A defining feature of joint tenancy is the **right of survivorship**, meaning that when one joint tenant dies, their interest automatically passes to the surviving joint tenants, rather than to heirs or devisees.

Joint tenancy requires the **four unities** of time, title, interest, and possession.

Creating a Joint Tenancy

To create a joint tenancy, four elements—known as the four unities—must be present **at the time the ownership is created**. These are time, title, interest, and possession.

- The **unity of title** means that all joint tenants acquire their interest through the same instrument, such as the same deed or will.
- The **unity of time** requires that all interests vest at the same time.
- The **unity of interest** means that all joint tenants hold equal and undivided ownership interests for the same duration.
- The **unity of possession** gives each joint tenant the right to possess and use the entire property.

The right of survivorship means that when one joint tenant dies, their interest automatically passes to the surviving joint tenants, rather than to heirs or devisees. As joint tenants die, the surviving tenants acquire a larger share of the property. When only one joint tenant remains, that person becomes the sole owner (in severalty) and may freely transfer the property by deed or will.

A joint tenant generally **cannot transfer their interest by will**, because the right of survivorship controls—provided the joint tenancy has not been severed prior to death.

A joint tenancy may be terminated by mutual agreement of the parties or by the sale (conveyance) of a joint tenant's interest.

Joint tenants cannot transfer their interest by will, but they **may sell their interest** during their lifetime. When a joint tenant sells their interest to a third party, the joint tenancy is severed as to that share. The new owner does not become a joint tenant because the four unities (time, title, interest, and possession) are no longer present. Instead, the **new owner holds title as a tenant in common** with the remaining joint tenants. Although the new owner is a tenant in common, they still have the right to possess and use the entire property. However, they do not have the right of survivorship.

Tenancy by the Entirety

Tenancy by the entirety is a form of co-ownership similar to joint tenancy that is **available only to married couples**. It is based on the common law concept that a married couple is a single legal entity.

Like joint tenancy, it **includes the right of survivorship**, meaning that when one spouse dies, full ownership automatically passes to the surviving spouse. This form of ownership continues as long as the couple remains married. Each spouse is considered to own the entire property, rather than a divisible share. As a result, neither spouse may sell, transfer, or encumber the property **without the consent** of the other.

Tenancy by the entirety may be terminated by mutual agreement, divorce, or joint conveyance (such as a sale). It is not recognized in all states.

Tenancy by the entirety is often **used to avoid probate**, because when one spouse dies, ownership automatically passes to the surviving spouse by right of survivorship.

In many states, property held as a tenancy by the entirety is protected from creditors of only one spouse, meaning a creditor generally cannot force the sale of the property to satisfy the debt of just one spouse. (This protection varies by state.)

Some states, including Florida, recognize tenancy by the entirety as a form of ownership.

Leasehold (Non-Freehold) Estates

Leasehold Estates

A leasehold estate is an interest in real property for a definite period of time, typically measured in calendar terms, such as a lease. A lease transfers the right of exclusive possession and use (but not ownership) of real property from the landlord (lessor) to the tenant (lessee) for a specified period.

Although a lease creates a legal interest in real property, it is generally **classified as a personal property** interest because it does not convey ownership.

Lease agreements may be written or oral (subject to state law, often limited by the Statute of Frauds), and are typically bilateral and executory contracts. Depending on the type of tenancy, a lease may be for a fixed term or a periodic duration.

Like any contract, a lease must include the essential elements of offer and acceptance, consideration, and legal capacity, and must be free from valid defenses.

The parties to a lease are the **lessor** (owner/landlord) and the **lessee** (tenant). If a lessee transfers less than their full interest—either part of the lease term or a portion of the premises—they have created a sublease. The sublessee pays rent to the original tenant and generally has no direct contractual relationship with the landlord. Most leases require the landlord’s prior consent before subleasing.

An assignment transfers the lessee’s entire interest in the lease to another party (the assignee). The assignee becomes the new tenant and is typically primarily liable to the landlord, while the original tenant (assignor) remains secondarily liable unless released by the landlord.

Types of leasehold estates:

Estate for Years

An estate for years (also called a tenancy for years) is a lease with a **definite beginning and ending date and does not automatically renew**. Despite the name, the term “years” is a misnomer—this type of tenancy may last for **any fixed period** of time, such as days, weeks, or years.

Because the lease has a fixed termination date, no notice is required from either party to end the tenancy. An estate for years does not terminate upon the sale of the property or the death of the owner, and the tenant generally retains the right to possession for the remainder of the lease term.

Estate from Year to Year (Periodic Tenancy)

An estate from year to year, also known as a periodic tenancy, is a leasehold that runs for a specified period and **automatically renews** from one period to the next unless properly terminated by either party.

Unlike an estate for years, which ends on a fixed date, a periodic tenancy **continues indefinitely until notice is given**. The term “year to year” is misleading—this type of tenancy may be month-to-month, week-to-week, or any recurring period. A periodic tenancy requires proper notice to terminate, and will continue from period to period until such notice is given.

Tenancy at Will (Estate at Will)

A tenancy at will is a leasehold in which a tenant is in lawful possession of real property with **no definite term and no periodic rent schedule** (such as month-to-month). This type of tenancy may be terminated by either party at any time, typically with proper notice. A tenancy at will may also end upon events such as the sale of the property or the death of either party, depending on state law.

Tenancy at Sufferance (Estate at Sufferance)

A tenancy at sufferance occurs when a tenant remains in possession of real property after their lawful right to occupy has expired. This situation typically arises with a **holdover tenant**. This is the least desirable form of leasehold estate, as the tenant has limited rights and remains in possession without the landlord’s consent. The tenancy continues until the tenant vacates or the landlord takes action, such as eviction or consenting to a new tenancy. Depending on the landlord’s actions and state law, notice may or may not be required.

Progress Check - Property Ownership

1. Which type of property ownership is held by married couples to avoid probate?

- A. Tenancy in common
- B. Joint tenancy
- C. Tenancy by the entirety
- D. Remainder estate

2. Which of the following is the best example of someone who holds ownership as a non-freehold estate?

- A. A renter
- B. A life tenant
- C. A remainderman
- D. Concurrent owners

3. Which type of leasehold estate automatically continues from one period to the next?
- A. Tenancy at will
 - B. Estate from Year to Year
 - C. Tenancy at sufferance
 - D. Estate for years

COMMON INTEREST OWNERSHIP IN REAL ESTATE

Learning Objectives

- Distinguish between cooperatives, condominiums and time-shares and describe the four main documents associated with condominiums
- Understand the rules and requirements of a Homeowner's Association

Overview

Real estate ownership can take several different forms, each with its own legal structure, rights, and responsibilities.

In this lesson, we will explore cooperatives, condominiums, time-shares, and homeowners' associations, which are commonly referred to as common-interest ownership arrangements.

Understanding how these ownership types differ is essential for real estate professionals, as they impact title, financing, disclosures, governance, and client expectations in residential transactions.

Cooperatives

A form of property ownership governed by state law, consisting of individual units within a multi-unit development. Although cooperatives and condominiums may appear similar in physical design, their ownership structures differ significantly. In a cooperative, **individuals own shares in a corporation** that holds title to the property, along with a proprietary lease granting the right to occupy a specific unit.

In Florida, cooperatives are governed by Chapter 719, Florida Statutes, known as the Florida Cooperative Act, which establishes rules for the creation, operation, and management of cooperatives.

Before the sale or transfer of a cooperative unit, the prospective buyer must receive certain statutory disclosures. These include, but are not limited to, the cooperative's governing documents, estimated operating budget, and other required association information.

The contract for sale must also include the buyer's right of cancellation (rescission period), allowing the buyer a limited time to review the documents and withdraw from the contract.

In a cooperative, individuals do not own real estate. Instead, they own stock in a corporation that holds title to the land and improvements. When a purchaser buys into the cooperative, they receive shares of stock (personal property) along with a **proprietary lease**, which grants the right to occupy a specific unit.

The proprietary lease gives the shareholder a long-term right of possession, and because the occupant is also a shareholder, this arrangement reflects a unique form of combined ownership and occupancy. When a unit is transferred, the seller's stock and proprietary lease are assigned to the buyer.

In a cooperative, **real estate taxes and mortgages are liens against the entire property**, rather than individual units. As a result, if there is a foreclosure, it may affect the entire cooperative property.

The cooperative corporation pays the property taxes and underlying mortgage, and shareholders pay their pro rata share of these expenses through fees or assessments. Because there is no individual ownership of real property, liens do not attach to specific units. Instead, ownership interests are transferred through the sale of stock, along with the assignment of the proprietary lease.

Management. The corporation that holds title to the entire cooperative property (units and common areas) manages the property according to its articles of incorporation, bylaws, and rules and regulations. The governing body is typically a board of directors, which oversees operations and may approve or reject prospective purchasers. Assessments. Instead of paying rent, the shareholder pays a monthly assessment, which represents their **pro rata share of the cooperative's operating expenses**. These expenses may include property taxes, insurance, mortgage payments, management fees, maintenance, and repairs.

Disclosures and Cancellation. Under the Florida Cooperative Act, contracts for the sale of a cooperative unit (and certain long-term leasehold interests) must include required statutory disclosures and a cancellation (rescission) provision.

For developer sales, the contract must contain a statutory legend giving the buyer a **15-day right to cancel** after receiving all required documents or after receipt of a material amendment.

Here is a link to the statutory disclosure: https://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0719/0719.html

Condominiums

A form of real property ownership governed by state law, consisting of **individually owned units** within a multi-unit development, along with an undivided interest in the common elements. Condominium laws are often referred to as “Condominium Acts” or “Horizontal Property Acts.”

In Florida, condominiums are governed by the Florida Condominium Act (FS 718), which establishes rules for the creation, operation, and sale of condominium units. The key legal document is the declaration of condominium, which establishes the units, common elements, ownership interests, and rights and obligations of unit owners.

Ownership. An individual or other entity (such as a corporation) **holds title to a condominium unit in fee simple.** Each unit owner has exclusive ownership of their unit and may sell, mortgage, lease, or transfer it independently of other units. In addition to the unit, each owner also holds an undivided interest in the common elements as a tenant-in-common, sharing rights and responsibilities with other unit owners.

Common Elements. Unit owners share unity of possession in the condominium’s common elements, which may include the land, structural components of the building, hallways, stairways, elevators, lobbies, and recreational facilities such as pools or courts. The specific boundaries between the unit and common elements are defined in the condominium declaration.

Taxes and Assessments. Condominium units are individually assessed and taxed. Each unit is valued as a whole, including its proportionate interest in the common elements. If a unit is subject to a mortgage or lien foreclosure, the foreclosure affects only that individual unit, not the entire property.

Transfer of condominium ownership is accomplished by deed, since condominium units are real property.

Before the sale of a condominium unit, the buyer must receive certain required disclosures, including the condominium's governing documents and estimated operating budget. The contract must also include the buyer's right of cancellation (rescission period).

Condominiums are created by recording certain legal documents (condominium instruments) in the public records of the county where the property is located. These documents establish the legal structure and operation of the condominium.

Condominium instruments include, but are not limited to, the:

- ✓ Declaration of condominium
- ✓ Plats and plans
- ✓ Bylaws (governing the unit owners' association)
- ✓ Prospectus or offering documents (provided to prospective buyers)

The declaration of condominium establishes the condominium and must include:

- A statement submitting the property to condominium ownership
- The name of the condominium
- A legal description of the property
- Identification of each unit
- A description of the units and common elements

The declaration may also include covenants and restrictions governing the use, occupancy, and transfer of units.

Association Governance

The condominium is operated by a unit owners' association, which is governed by:

1. Articles of incorporation (if incorporated)
2. Bylaws, which outline how the association is run

The association is responsible for:

- Managing the common element
- Enforcing rules and restrictions
- Collecting assessments

The bylaws establish procedures for governance and decision-making, including:

- A. **Quorum requirements** (determines minimum number of owners needed to conduct business)
- B. **Voting procedures** for association decisions
- C. **Regular meetings**, including annual meetings of unit owners

Board meetings are generally open to unit owners, and the association must provide advance notice of meetings.

FAQ Sheet Requirement

Under Florida law, condominium associations must prepare and maintain a Frequently Asked Questions (FAQ) sheet in accordance with the Florida Condominium Act and Florida Administrative Code 61B-23.002. The FAQ sheet:

- Provides key information about the condominium
- Helps inform prospective buyers and unit owners
- Must be updated regularly (at least annually)

Typical topics include:

- Voting rights of unit owners
- Assessments and fees
- Reserves and financial obligations
- Restrictions and rules
- Pending legal issues, if any

Associations may use a standard form or create their own, but it must be similar in content and format to the state-approved version.

Time-Share (FS 721)

A form of real estate ownership, also known as interval ownership, where the right to use property is **divided into specific time periods** (such as weeks or months). Time-shares are most commonly used for vacation properties.

In Florida, time-shares are governed by the Florida Vacation Plan and Timesharing Act, which regulates the development, marketing, sale, and management of time-share plans.

Types of Time-Share Ownership

Time-share interests may be structured as:

- Fee simple ownership (tenant-in-common)
- Leasehold interests (tenancy for years)
- License or right-to-use arrangements

Owners typically have an undivided interest in the property, but their use is limited to specific time periods.

Time-Share Disclosures

Before purchase, buyers must receive disclosures including:

- ✓ The nature and duration of the interest
- ✓ Purchase price and additional costs
- ✓ Estimated annual assessments and expenses
- ✓ Any future construction or completion timelines

Cancellation (Rescission Rights)

Buyers may cancel a time-share contract:

- Within 10 calendar days
- Starting from the date the contract is signed or when all required documents are received (whichever is later)

Cancellation must be made in writing.

Time-Share Resales

When a time-share is resold:

- Contracts must include required resale disclosures
- Sellers must disclose:
 - There is no guarantee of resale price or timing
 - The buyer may lose ownership rights if assessments are not paid

If required disclosures are not provided, the contract may be **voidable**.

Time-Share Considerations (Practical)

Time-share buyers should understand:

- Participation in exchange programs is optional and may involve fees and limited availability
- Many time-share interests are long-term or perpetual, with ongoing financial obligations
- Annual assessments and fees may increase, and special assessments may be imposed
- Reselling a time-share may be difficult, and there is no guarantee of resale value or timing

Homeowner's Association (HOA)

A homeowners' association (HOA) is a legal entity, typically a nonprofit corporation, created by a developer to manage a residential community. It is composed of all property owners, who elect a board of directors to oversee the operation of the association.

In Florida, HOAs are governed by the Florida Homeowners' Association Act (FS 720), which establishes rules for the operation of the association and protections for its members.

HOA Powers and Responsibilities

An HOA manages the community in accordance with its governing documents, including the declaration and bylaws. The association regulates the use of property and common areas, enforces community rules, and maintains shared amenities.

This often includes restrictions related to property appearance, use, and maintenance, as well as the collection of mandatory assessments to fund operations.

If assessments are not paid, the association may impose a lien against the property and take further enforcement action.

HOA Disclosure Requirement

When a property is subject to an HOA, the **buyer must receive** a disclosure summary prior to contract execution. This disclosure informs the buyer that membership in the HOA is mandatory and that the owner will be responsible for paying assessments and complying with association rules.

If the disclosure is not provided, the **buyer has the right to cancel the contract within 3 days of receipt or prior to closing**, whichever occurs first. This cancellation right cannot be waived.

Community Development District (CDD)

Some communities are also subject to a Community Development District Act, which creates a local government entity responsible for infrastructure and services within the community.

Unlike an HOA, a CDD has the authority to levy taxes and assessments to fund improvements such as roads, water management systems, and recreational facilities. These charges are in addition to HOA fees, and buyers must receive a disclosure informing them of these obligations.

HOA Summary

Property owners in an HOA should understand that:

- Membership is mandatory with ownership
- The association may require approval for property changes
- Assessments may increase and special assessments may be imposed
- Failure to comply with rules or pay assessments may result in fines, liens, or loss of privileges

Comparison Overview

💡 Quick Memory Trick

- Co-op → “You own shares” 📄
- Condo → “You own space” 🏢
- Time-share → “You own time” ⌚
- HOA → “You own property with rules” 🏠

Progress Check - Common Interest Ownership in Real Estate

1. A buyer enters into a contract to purchase a time-share in Florida. How long does the buyer have to cancel the contract without penalty?

- A. 3 business days
- B. 5 calendar days
- C. 7 business days
- D. 10 calendar days

2. If a property is subject to a homeowners’ association, when must the buyer receive the required HOA disclosure summary?

- A. Before execution of the sales contract
- B. Within 10 days after contract execution
- C. Only upon request by the buyer
- D. At closing

3. In a condominium, what type of ownership interest does a unit owner have?

- A. License to use the unit
- B. Fee simple ownership of the unit
- C. Leasehold interest only
- D. Personal property interest

TITLES

Learning Objectives

- Differentiate between voluntary and involuntary alienation
- Explain the various methods of acquiring title to real property and describe the conditions necessary to acquire real property by adverse possession
- Distinguish between actual notice and constructive notice
- Distinguish between an abstract of title and a chain of title
- Explain the different types of title insurance

Concept of Title

Transfer of Title

The transfer of property, **known as alienation**, may be voluntary (such as a sale or gift) or involuntary (such as foreclosure, eminent domain, or escheat). Alienation refers to any method by which ownership of real property is transferred from one party to another.

The right to transfer property is one of the fundamental rights included in the bundle of legal rights. Although property owners generally have the freedom to transfer their property, restraints on alienation are typically not enforceable unless they are reasonable and limited in duration.

A fundamental rule of property transfer is that a person cannot convey a greater interest than they possess.

Title

Title refers to a person's **legal ownership interest** in real property. It represents the rights associated with ownership, which may include the rights to possess, control, enjoy, exclude, encumber, and dispose of the property (the bundle of rights).

A deed is the written **instrument used to transfer title**, and serves as evidence of ownership.

A title search is conducted to determine the exact ownership interest held by a seller and to identify any defects, claims, or encumbrances affecting the title.

Title may be limited by the type of estate (such as a life estate) or by the rights of others, including encumbrances.

Types of Title

Marketable Title. Title that is reasonably **free from significant defects** or reasonable doubt and is acceptable to a prudent buyer. Title defects may include competing claims, liens, or encumbrances.

Equitable Title. The **right to obtain legal title** upon completion of specified performance, such as fulfilling the terms of a purchase contract. The buyer under a valid contract is said to hold equitable title. Unless restricted by the contract, equitable title may be assigned to another party.

Legal vs. Equitable Title

Legal title refers to formal ownership of real property, as evidenced by public records. The holder of legal title has the right to control, use, and transfer the property, subject to any encumbrances or limitations.

Equitable title refers to the buyer's right to obtain legal title after fulfilling the terms of a purchase contract. The holder of equitable title has a recognized ownership interest and may enjoy certain benefits of ownership prior to closing. Although equitable title does not provide full legal ownership, it is enforceable in court, such as through an action for specific performance.

Transfer of Title

Transfer of Title at Death: In addition to transfers by sale or gift during the owner's lifetime, title to real property may be transferred upon death by will (testate succession) or by intestate succession if no will exists.

However, if property is held as joint tenants with right of survivorship, the deceased owner's interest automatically passes to the surviving owner(s) by operation of law. This transfer occurs regardless of the terms of a will or the laws of intestate succession.

Transfer of Title by Will

A person who creates a will is called a testator. A will directs how the testator's estate (real and personal property) is to be distributed upon death. A will has no legal effect until the death of the testator.

Under a will:

- Real property is transferred by devise to a devisee
- Personal property is transferred by bequest

After the testator's death, the will is filed with the court and goes through probate, the legal process used to validate the will and administer the estate. During probate, the court ensures the will is valid and that the executor (personal representative) carries out its instructions and settles the decedent's debts.

Common types of wills include:

- A simple will, which provides for the direct distribution of assets
- A testamentary trust will, which creates one or more trusts upon the testator's death
- A pour-over will, which transfers assets into a previously established trust

Some states also recognize holographic wills (handwritten wills), though their validity varies by jurisdiction.

Probate

Probate is the legal process used to validate a will and administer a decedent's estate. It typically occurs in the jurisdiction where the decedent resided at the time of death, although ancillary probate may be required for property located in another state.

During probate, the court:

- ✓ Validates the will
- ✓ Identifies and settles debts and claims
- ✓ Distributes the remaining estate to the heirs or devisees

If an executor is named in the will, the court appoints that individual to administer the estate. If no executor is named, the court appoints a personal representative (administrator).

Probate may be avoided if property passes by operation of law (such as joint tenancy with right of survivorship) or is held in a trust.

Transfer by Involuntary Alienation

Transfer by Descent (Intestate Succession)

If a person dies without a will, they are said to die **intestate**. The distribution of the decedent's estate (after payment of debts) is governed by state laws of descent and distribution, also known as **intestate succession**.

These laws establish classes of individuals (heirs) who are entitled to inherit the estate. A court appoints an administrator (personal representative) to manage the estate and carry out its distribution.

If no legal heirs can be identified, the estate **escheats**, meaning it passes to the state. This is considered a form of **involuntary alienation**, since the state determines the final disposition of the property.

Escheat

Escheat is a government power by which unclaimed property passes to the state by operation of law. It occurs when a person dies intestate and has no identifiable heirs entitled to inherit the property.

Escheat prevents property from becoming ownerless by ensuring that ownership is transferred to the state.

Eminent Domain

Eminent domain is the right of government (federal, state, or local) to take private property for public use, provided that just compensation is paid to the owner. The process by which property is taken is called condemnation.

In some cases, private entities authorized by law, such as utility companies or railroads, may also exercise this power for public purposes, including the construction of utility lines, pipelines, or transportation routes.

All private property is subject to eminent domain, provided the taking is for a legitimate public use and the owner receives just compensation.

Adverse Possession (FS 95.18)

Adverse possession is a method of acquiring ownership of real property by possessing it in a manner that is:

- Actual

- Open and notorious
- Hostile (without permission)
- Exclusive
- Continuous

In Florida, adverse possession may occur with or without color of title. Under Florida Statutes 95.18, a person claiming adverse possession without color of title must:

- ✓ Possess the property for at least 7 years
- ✓ Pay property taxes on the property
- ✓ File a return with the county property appraiser

Unlike an easement by prescription, adverse possession results in ownership, not just a right of use.

Notice of Legal Title

Actual Notice. Actual notice occurs when a person has direct knowledge of a fact, such as being told, shown, or otherwise made aware of a legal interest or encumbrance affecting property.

Constructive Notice. Constructive notice is created when documents are properly recorded in the public records. The law presumes that all persons have notice of recorded interests, whether or not they actually review the records.

Inquiry Notice. Inquiry notice arises when visible or known facts would lead a reasonable person to investigate further. The law presumes notice of any information that such an investigation would have revealed.

Example – Inquiry Notice

If a dirt road runs across the corner of an empty lot, a prospective purchaser is expected to inquire further as to whether an easement exists. Even if no easement appears in the public record, the visible presence of the road places the buyer on inquiry notice that another party may have a claim to the property.

Acknowledgment. An acknowledgment is a declaration made before a notary public that a signature on a document is voluntary and that the person signing is properly

identified. The notary certifies the identity of the signer and that the signature is their act.

Lis Pendens. A lis pendens (Latin for “action pending”) is a recorded notice indicating that a **lawsuit affecting title or possession of real property has been filed**. It provides constructive notice to prospective purchasers and creditors that the property is subject to litigation.

If the lawsuit is successful, any resulting interest or lien may take priority from the date the lis pendens was recorded.

Title Companies

In Florida, real estate **closings are typically conducted by a title company or an attorney**, as agreed upon by the parties in the contract. The closing agent is responsible for handling the transaction, including recording the deed and mortgage, disbursing funds, and ensuring that any existing liens (such as the seller’s mortgage) are properly satisfied.

Title companies also issue title insurance, which protects the policyholder against losses resulting from title defects, liens, or claims not discovered during the title search.

Title Searches

A title search is an examination of the public records conducted by a title examiner or abstractor to **determine the condition of title**. The purpose is to identify any defects, liens, encumbrances, or competing claims affecting the property. Based on this search, the title company issues a title commitment, which outlines the conditions under which title insurance will be provided.

Procedures. As part of the closing process, the title examiner conducts a final title update (bring-down search) to ensure that no new liens, judgments, or claims have been recorded since the initial title search. At closing, the seller may also provide an affidavit of title, confirming that no new issues have arisen affecting the property.

Title searches rely on public records, including indexes of:

- Deeds (grantor-grantee index)

- Wills and probate records
- Liens, judgments, and other recorded documents

In Florida, title examinations are generally based on a search of the public records going back at least 30 years, in accordance with the Marketable Record Title Act, although specific requirements may vary.

Chain of Title vs. Abstract of Title

An abstract of title is a **condensed history of the title** to a property, summarizing all relevant recorded documents, including transfers, conveyances, encumbrances, and other matters affecting title. A major component of the abstract is the chain of title, which traces ownership from the present owner back through prior owners.

The chain of title **establishes a continuous record of ownership** and is used to identify any gaps or defects in title.

Note: In modern practice, abstracts of title are rarely used, and most transactions rely on title searches and title insurance.

Title Opinion and Title Commitment

A title opinion is a professional opinion (often by an attorney) regarding **whether title is marketable** and free from defects, based on a title search.

In Florida, title companies typically issue a title commitment, which **outlines the conditions under which title insurance will be provided** and identifies any defects, liens, or encumbrances affecting the property.

Recording

Recording Acts

Recording acts are state laws that establish procedures for recording real estate documents, including what must be recorded, how, and where. These laws also determine the priority of competing claims or interests in real property.

Recording acts create a system of public records that provides constructive notice to property owners, prospective purchasers, and the general public of recorded interests affecting title.

Title Insurance

Title insurance is a risk management tool that **protects policyholders against covered title defects, liens, or encumbrances** that existed prior to the transfer of property but were not discovered during the title search.

It provides protection against issues such as forged documents, undisclosed heirs, recording errors, or defective transfers, and reimburses the insured for covered losses.

Types of Title Insurance Policies

There are two types of title insurance:

1. A lender's policy, which protects the lender's interest in the property and is generally required as a condition of financing
2. An owner's policy, which protects the property owner's interest and is optional

Each policy protects only the party named in the policy and only against covered risks affecting title prior to closing.

Exclusions and Exceptions

Title insurance policies contain exclusions and exceptions, which identify matters not covered by the policy.

Exclusions are risks that are never covered, such as government regulations, zoning laws, or eminent domain

Exceptions are specific items listed in the policy that are not covered unless addressed, such as:

- Rights of parties in possession
- Unrecorded easements
- Matters that would be revealed by a survey
- Current taxes and assessments not yet due

Survey

A survey is a measurement of a property's boundaries and the location of improvements such as buildings, fences, and driveways. Surveys may reveal encroachments, easements, or boundary issues.

While not always required, a current survey is often necessary to remove certain exceptions from a title insurance policy.

Subrogation

Most title insurance policies include a subrogation clause, which allows the insurer to step into the shoes of the insured after paying a claim.

If the policyholder suffers a loss due to a covered title defect or claim, the insurer acquires the same legal rights and remedies the insured would have had against a third party. This allows the insurer to pursue recovery from the party responsible for the defect.

Progress Check - Titles

1. _____ title is the actual ownership of the property.
 - A. Legal
 - B. Marketable
 - C. Equitable
 - D. Merchantable

2. Escheat typically occurs when a person dies without a will, also known as:
 - A. Testate
 - B. Bequeath
 - C. Succession
 - D. Intestate

3. A lis pendens provides constructive notice that a property:
 - A. Has legal action pending
 - B. Was the site of a murder
 - C. Has a cloud on the title
 - D. Has been abandoned

DEEDS

Learning Objectives

- Identify the essential elements, clauses, and legal requirements of a valid deed.
- Explain the difference between acknowledgment, witnessing, execution, delivery, and acceptance.
- Explain present and future covenants of title commonly associated with warranty deeds.
- Differentiate among general warranty, special warranty, bargain and sale, and quitclaim deeds.
- Recognize deeds used for special purposes, including guardian's deeds, personal representative's deeds, sheriff's deeds, tax deeds, and deeds in lieu of foreclosure.
- Explain when title transfers through delivery and acceptance of a deed.
- Learning Objectives
- Recognize the function of escrow closings and the relation-back doctrine.
- Explain the legal purpose of recording deeds and constructive notice.
- Recognize how recording statutes may determine priority between competing interests.
- Identify common title issues corrected through correction deeds or quitclaim deeds.

Overview

A deed is the legal instrument used to transfer ownership (title) of real property from one party (the grantor) to another (the grantee). In this lesson, we will explore the essential elements required for a valid deed, including proper execution, delivery, and acceptance, as well as the different types of deeds commonly used in real estate transactions—such as general warranty deeds, special warranty deeds, and quitclaim deeds.

Understanding how deeds function is critical for ensuring clear title, protecting client interests, and avoiding costly legal disputes in both residential and commercial transactions.

Deed Elements

A deed **must be in writing in accordance with the statute of frauds** and is the legal instrument used to transfer title to real property. Any reservations (rights retained by the grantor, such as an easement), exceptions, restrictions, encumbrances, or other limitations to title should be noted in the deed.

There are several elements required for a **valid, legally enforceable deed**, including:

- Names of the grantor and grantee
- Grantor must have legal capacity
- Granting clause (words of conveyance)
- Adequate legal description of the property
- Execution (signature) of the deed by the grantor
- Delivery and acceptance of the deed

Property Description

Real property must be described using a legal description in the deed (not just a street address). This ensures the property can be uniquely identified and avoids boundary disputes.

The three most common methods include **metes and bounds**, the **government survey system**, and the **lot, block, and subdivision** method.

Clauses in a Deed

Deeds often contain several traditional clauses that help define the transfer of ownership:

Premises Clause (Granting Clause): Most important clause - it contains the words of conveyance (e.g., “grant,” “convey,” “transfer”), identifies the grantor and grantee, may reference consideration, and includes the legal description of the property.

Habendum Clause: The “to have and to hold” clause, it follows the granting clause and defines the type of estate or interest being conveyed (such as fee simple or life estate). If there is a conflict between this clause and the granting clause, the granting clause prevails.

Testimonium Clause: This clause appears at the end of the deed and signals formal execution. It typically includes language such as, “In witness whereof...” and precedes the grantor’s signature, confirming the intent to convey the property.

Covenants

Deeds may also contain covenants, which are legally binding promises made by the grantor regarding the quality of title being conveyed. These covenants are most commonly found in warranty deeds and provide protection to the grantee.

Seisin: This covenant is the grantor’s assurance that they own the estate or interest they claim to convey. In other words, the grantor promises they have the legal right and degree of ownership stated in the deed. This covenant is breached if the grantor does not actually hold full title, or if a third party holds superior ownership.

Example: Larry Lifer holds a life estate in a cozy cabin, with the remainder going to his sister, Lisa. Larry sells the cabin to Trusting Fool and represents that he is conveying fee simple ownership. Because Larry only owns a life estate—not full ownership—he has breached the covenant of seisin by claiming a greater interest than he actually possesses.

Quiet Enjoyment: This covenant is the grantor’s **promise that the grantee will have peaceful possession of the property**, without disturbance from superior (lawful) claims to title. It does not guarantee perfect title (like seisin), but instead assures that the grantee will not be evicted or disturbed by someone with better title. A breach occurs only when there is an actual or constructive eviction due to a superior claim.

In addition, the concept of quiet enjoyment is commonly seen in leases, where the **landlord guarantees the tenant the right to possess and use the property without interference**. The landlord retains fee title (leased fee estate) but conveys the right of possession to the tenant for a specified period. The landlord also retains a reversionary interest, meaning the right of possession returns to the landlord when the lease term expires.

Example - Quiet Enjoyment: Using Larry from the previous example, the covenant of quiet enjoyment would not be breached at the time of sale. Instead, it would be breached only if and when the remainderman (Lisa) asserts her superior title—such as upon Larry’s death—and evicts Trusting Fool from the property.

Against Encumbrances: This covenant is the grantor’s **promise that there are no undisclosed encumbrances** (such as liens, easements, or restrictions) affecting the property. Encumbrances that are disclosed in the deed or are open and obvious (visible) generally do not create a breach. The grantor is liable for damages if a hidden or undisclosed encumbrance exists at the time of conveyance.

Example: A seller conveys property but fails to disclose a recorded utility easement that is not visible. The buyer later discovers it limits development. The grantor has breached the covenant against encumbrances because the encumbrance was neither disclosed nor obvious.

Further Assurances: This covenant is the grantor’s **promise to take any additional actions necessary in the future to perfect or correct the title** conveyed to the grantee. While less common, it is important in situations involving errors or omissions in the original deed. A breach occurs if the grantor refuses to cooperate when further action is required.

Example: After closing, a minor error is discovered in the legal description. The buyer requests the seller to sign a correction deed, but the seller refuses. This refusal is a breach of the covenant of further assurances.

Warranty Forever: This covenant is the grantor’s **promise to defend the grantee’s title against all lawful claims and to compensate the grantee for any loss sustained.** It is similar to quiet enjoyment, but goes further by requiring the grantor to bear the cost of defending title against third-party claims.

Example: A third party later claims ownership of the property and files a lawsuit. The grantor must defend the title and cover related costs. Failure to do so would be a breach of the covenant of warranty forever.

Execution

For a deed to be valid:

- ✓ The grantor and grantee must be identified, and both must have legal capacity
- ✓ The grantor must sign the deed (the grantee is not required to sign)

Many states require the deed to be acknowledged before a notary public for recording

Important Clarification:

Acknowledgment is not the same as witnessing. It is the formal declaration by the signer (usually before a notary public) that the signature is voluntary and genuine. Witness requirements vary by state, but acknowledgment is what typically allows the deed to be recorded.

Delivery and Acceptance

A deed must be delivered by the grantor and accepted by the grantee for title to transfer.

Assuming all other elements have been satisfied, title passes upon delivery and acceptance, which is determined by the intent of the grantor to immediately transfer ownership, not merely by physical transfer of the document.

If the deed is subsequently lost or destroyed, ownership is not affected, because the deed itself is evidence of title, not the title itself. Delivery typically occurs at or after closing, but may occur at any time the grantor intends to convey the property.

Deeds may also be delivered to a third party (escrow agent) rather than directly to the grantee. In this case, the escrow agent is instructed to deliver the deed to the grantee upon the occurrence of a specified condition or event (such as closing or full payment). This is known as **conditional delivery**.

Closing

In-Person Closing

The parties complete the necessary acts (performance) to transfer title at a specified time and place (the closing). The grantor/seller delivers the deed to the grantee/buyer,

and title transfers upon delivery and acceptance, assuming all other elements are satisfied.

Escrow Closing

In an escrow closing, the grantor/seller delivers the deed to an escrow agent, who holds it until all specified conditions (such as payment or loan funding) are satisfied. The escrow agent then delivers the deed to the grantee/buyer—or returns it to the grantor if conditions are not met.

The escrow agent owes fiduciary duties to both parties, including the duty to follow instructions strictly and impartially.

If a deed is properly delivered into escrow, the subsequent death of the grantor does not invalidate the transfer, provided the conditions are later satisfied. Under the relation-back doctrine, once the conditions are fulfilled and the deed is delivered, title is treated as having passed on the date the deed was originally placed into escrow.

Relation-Back Doctrine

The relation-back doctrine is a legal rule providing that when a properly executed deed is placed in escrow with valid instructions, the subsequent death of the grantor does not terminate the escrow. The escrow agent retains the authority to deliver the deed according to the agreed-upon instructions once the conditions are satisfied.

In effect, once the conditions of the escrow are fulfilled and the deed is delivered, the transfer of title is treated as relating back to the date the deed was originally deposited into escrow. This allows the transaction to be completed as intended, even if the grantor is no longer living at the time of final delivery.

Types of Deeds

Warranty Deeds

A warranty deed is a deed in which the grantor makes legally binding promises (covenants) about the quality of title being conveyed (such as freedom from undisclosed encumbrances). A warranty deed offers the **greatest level of protection** to the grantee and is the most common type of deed used in residential real estate transactions.

Title protection is provided through express or implied covenants of title. These covenants are legally enforceable promises made by the grantor regarding ownership and the condition of title.

Covenants of title may be expressly stated in the deed or implied through specific wording, such as “convey and warrant,” “warrant generally,” or “warrant specially.” While covenants can appear in other real estate documents (such as leases or mortgages), covenants of title are specifically associated with deeds.

A full warranty deed typically includes both present covenants (such as seisin, right to convey, and against encumbrances) and future covenants (such as quiet enjoyment, warranty forever, and further assurances), all of which provide ongoing protection to the grantee.

Special Warranty Deed

A special warranty deed is used to convey real property where the grantor warrants title **only against defects that arose during the grantor’s period of ownership**, and makes no guarantees about defects existing prior to that time. This limitation is often identified by language such as “by, through, or under the grantor, but not otherwise.”

Special warranty deeds typically include the covenant against grantor’s acts, meaning the grantor promises that they have not done anything to impair or encumber the title during their ownership.

This type of deed is commonly used when the grantor is acting in a fiduciary capacity, such as an executor, trustee, or guardian. In these situations, the grantor will warrant the title only against their own actions, and will not assume liability for any defects caused by prior owners.

Example: A trustee selling property from a trust may use a special warranty deed, promising that they have not impaired the title during their administration, but making no guarantees about defects that existed before they took control of the property.

Bargain and Sale Deed

A bargain and sale deed is a deed that contains **no express covenants (promises) regarding the quality of title**. Instead, it implies that the grantor has an interest in the property and the right to convey it, but provides no guarantees against encumbrances or title defects.

Unlike a warranty deed, the grantor does not promise to defend title, and the grantee receives limited protection.

Quitclaim Deeds

A quitclaim deed is a deed in which the grantor makes **no covenants or promises regarding the quality of title**. The grantor transfers whatever interest (if any) they may have in the property, without guaranteeing that they actually own any interest at all.

The grantee receives title “as is,” subject to any defects or encumbrances, and the grantor does not agree to warrant or defend the title in any way.

Quitclaim deeds are **commonly used to clear clouds on title**, resolve title defects, or release potential claims (such as between family members, divorcing spouses, or neighboring property owners).

Example: Jane purchases a home and later discovers through a survey that her fence encroaches onto her neighbor’s property. To resolve the issue, she asks the neighbor to sign a quitclaim deed transferring any interest the neighbor may have in the disputed strip of land. If the neighbor agrees, the boundary issue can be resolved by transferring whatever interest the neighbor has to Jane. The quitclaim deed is then recorded, helping to clarify title and eliminate the potential claim.

Deeds for a Specific Purpose

Personal Representative’s Deed: Used to transfer property from a decedent’s estate. A personal representative (executor or administrator), appointed under Florida Probate Code Chapter 733, has the authority to convey real property as part of administering the estate. The personal representative must act in accordance with the will (if any) and state law, and owes fiduciary duties to the estate and its beneficiaries.

Guardian’s Deed: Used to transfer property owned by a minor or legally incapacitated person. A guardian, appointed under Florida Statutes Chapter 744, may convey real property only with court approval and must act in the best interests of the ward. The guardian does not own the property, but manages and transfers it under court supervision. Historically, the term ‘committee’ was used for a court-appointed fiduciary; today, this role is performed by a guardian or conservator.

Tax Deed: A tax deed is issued when real property is sold due to delinquent property taxes. If the property owner fails to pay taxes as required, the government may initiate a process to recover the unpaid taxes.

In many states, this process begins with the sale of a tax lien certificate. If the owner does not redeem the property within the statutory period, the property may then be sold at a tax deed sale (auction). The successful bidder receives a tax deed, which conveys title to the property, often with limited or no warranties, depending on state law.

Sheriff's Deed: A sheriff's deed is issued to a purchaser when property is sold at a judicial sale, typically to satisfy a court judgment or foreclosure. The deed is executed by a sheriff or other court-appointed official and transfers whatever interest the debtor had in the property.

A sheriff's deed generally conveys title without warranties, and the purchaser receives only the interest held by the prior owner. If the sale is conducted properly, junior liens may be extinguished, while senior liens remain attached to the property.

Deed in Lieu of Foreclosure: A deed in lieu of foreclosure is a voluntary transfer of property from a delinquent borrower to the lender **to satisfy a defaulted loan**. Both parties must agree to the transfer, allowing them to avoid the time, expense, and publicity of a foreclosure proceeding.

In many cases, the lender agrees to cancel the debt, though this is not automatic and depends on the agreement (a deficiency may still be possible unless expressly waived).

Unlike a foreclosure sale, a deed in lieu of foreclosure **does not eliminate junior liens**. As a result, lenders will often decline this option if junior liens exist, because they would take title subject to those liens. A deed in lieu may also avoid statutory redemption periods, depending on state law.

Deed in Partition: A deed issued as a result of a court-ordered partition action, which divides or disposes of property held in joint tenancy or tenancy in common. If the property cannot be physically divided, it may be sold at a partition sale, and the proceeds are distributed among the co-owners.

Patent Deed (Land Patent): A deed that conveys property from the government to a private individual. It is the original source of title for land transferred out of public ownership.

Correction Deed: A deed recorded to correct an error in a previously recorded deed, such as a misspelled name or an incorrect legal description. It does not convey new title but clarifies or fixes the original conveyance.

Gift Deed: A deed used to transfer real property without valuable consideration, often based on love and affection. While generally valid, gift deeds may be subject to greater scrutiny. A transfer made with the intent to defraud creditors may be set aside under fraudulent transfer laws. Additionally, because there is no consideration, certain protections (such as bona fide purchaser status) may not apply.

Recording

A deed is valid between the parties **even if it is not recorded.**

However, an unrecorded deed provides limited protection against competing third-party claims to ownership. Recording a deed creates a public record of ownership and encumbrances affecting real property. This allows interested parties to verify title and helps determine whether title is marketable. Recording also provides constructive notice to the world of the grantee's interest.

This protects the purchaser and establishes priority of claims, which is especially important for creditors and subsequent purchasers.

Failing to record an interest in property may result in that interest being subordinate to a later interest recorded by another party, depending on the state's recording statute (notice, race, or race-notice).

Progress Check - Deeds

1. The following are all elements of a valid deed, except?
 - A. Granting clause
 - B. Legal description
 - C. Execution
 - D. Expiration date

2. Which type of deed is used to transfer property when the owner (grantor) is mentally incompetent and unable to sign the deed?

- A. Deed in Partition
- B. Sheriff's deed
- C. Quitclaim deed
- D. Guardian's deed

3. Title passes to the new owner when the deed has been:

- A. Recorded
- B. Executed
- C. Delivered and accepted
- D. Notarized

OWNERSHIP LIMITATIONS & PROPERTY MANAGERS

Learning Objectives

- List and describe the various types of governmental and private restrictions on ownership of real property
- Distinguish among the various types of leases and liens
- Identify the role of property managers
- Distinguish between Community Association Manager (CAM) and property manager

Ownership Limitations and Restrictions

Government Restrictions

Police Power: The authority of state and local governments to enact laws that promote the public health, safety, morals, and general welfare. The United States Constitution reserves this power to the states, which then delegate it to counties and municipalities.

Police power is exercised through public controls, such as zoning, building codes, environmental regulations, and land-use restrictions.

Eminent Domain: The right of government (federal, state, or local) to take private property for public use, provided that just compensation is paid to the owner. This power is derived from the Takings Clause of the Fifth Amendment to the United States Constitution.

Quasi-public entities (such as utility companies and railroads) may also exercise this power when authorized by law. Eminent domain is commonly used to acquire property for roads, schools, parks, public utilities, and rights-of-way. When property is taken, the legal process is called **condemnation**.

Taxation: The power of government to levy and collect taxes to fund public services and activities. This includes the power to impose ad valorem taxes (based on property value) and special assessments (charges for specific improvements that benefit particular properties, such as sidewalks or sewer systems).

Government also has the authority to place tax liens (including property tax liens, special assessment liens, and federal tax liens) on property when taxes are unpaid. If these liens remain unpaid, the government may force the sale of the property through a tax sale to satisfy the debt.

Private Restrictions

An **encumbrance** is a non-ownership interest in real property held by someone other than the owner that may limit the use, value, or transferability of the property. Encumbrances include items such as liens, easements, and deed restrictions, and they can affect both the right to use and the right to convey property.

Encumbrances are typically created by private parties, but some (such as tax liens) arise by government action. To protect all parties, encumbrances should be disclosed in the deed (when applicable) and are often reflected in the public record through recording.

Restrictive Covenants (CC&Rs): These are private contractual agreements that limit how property may be used. Commonly imposed by developers in subdivisions, they often address use restrictions (e.g., residential-only) and aesthetic standards (e.g., architectural controls).

Restrictive covenants “run with the land,” meaning they are binding on subsequent owners and remain in effect even after the property is sold.

Compared to Easements: Both restrictive covenants and easements can run with the land (bind subsequent owners). However, they differ in function:
Easements grant a right to use another person’s land (e.g., a right-of-way)
Restrictive covenants limit how an owner may use their own land

👉 In short: easements = use rights; covenants = use restrictions

Compared to Zoning: Both restrictive covenants and zoning laws limit how property may be used. However:

- Zoning is a form of government regulation (police power)
- Restrictive covenants arise from private contractual agreements (developer → owners)

Restrictive covenants are often more restrictive than zoning, and both must be followed. If there is a conflict, the **more restrictive rule generally prevails.**

Enforcement: Restrictive covenants may be enforced by homeowners’ associations (HOAs) or other affected property owners. Enforcement is typically through legal action, such as an injunction (court order to stop or remove a violating use), and may also include damages in some cases.

Easements

An easement is a non-possessory **right to use the land of another** for a specific purpose. It is an encumbrance on the burdened property and may be created voluntarily or involuntarily. When a landowner grants an easement, they retain ownership but limit their bundle of rights in the affected portion of the property.

There are two primary categories of easements:

Easement Appurtenant: Benefits a particular parcel of land (dominant estate) and runs with the land, transferring automatically to subsequent owners

Easement in Gross: Benefits a person or entity, rather than a parcel of land (commonly used by utility companies)

Both private parties and government entities may hold easements. Easements may be created in several ways, including:

1. Express grant or reservation
2. Implication
3. Necessity
4. Prescription (through adverse, open, and continuous use)
5. Condemnation (government action under eminent domain)

Because many easements run with the land, a purchaser may take title subject to existing easements, even if they did not create them.

Easement Appurtenant: A limited right attached to land that allows one parcel (dominant estate) to use another parcel (servient estate) for a specific purpose. While many appurtenant easements involve adjoining parcels, adjacency is not strictly required.

Appurtenant easements run with the land, meaning both the benefit and burden transfer automatically to subsequent owners.

- **Dominant Estate:** The parcel that benefits from the easement (has the right to use another's land)
- **Servient Estate:** The parcel that is burdened by the easement (subject to use by another)

***EXAMPLE: Easements Appurtenant** Farmer Brown wants to sell a portion of his back pasture that has no access to a public road. Jones wants to buy the back pasture if Brown will include an easement to a nearby county road across the property that Brown will retain. An easement appurtenant attaches to the back pasture and the back pasture becomes the dominant estate. Farmer Brown's remaining land, including the portion Jones will use, becomes the servient estate.*

The easement appurtenant remains in force and is unaffected when either parcel is sold, given away, or willed to heirs.

Easement in Gross: A limited right held by a person or entity to use the land of another.

Unlike an easement appurtenant, an easement in gross benefits a person or company, not a parcel of land. Therefore, it has a servient estate, but **no dominant estate**. The burden of the easement runs with the land, meaning it binds future owners of the servient estate.


With and easement in gross, transferability of the benefit depends on the type of easement:

Personal easement in gross:

- Held by an individual
- Not transferable (not assignable)
- Typically terminates upon death of the holder


Commercial easement in gross:

- Held by a business (e.g., utility company)
- Transferable and assignable
- Often runs with the land and continues indefinitely

 *Example: Smith grants Jones a personal easement in gross to cross his pasture to reach a stream. Jones holds the easement personally, and Smith's land is the servient estate. The easement will terminate upon Jones's death, but it remains binding on future owners of Smith's land while Jones is alive.*

Easement by Prescription: A prescriptive easement is a right to use another's land acquired through adverse use—that is, use without permission and in conflict with the owner's rights. To establish a prescriptive easement, the use must generally be:

- ✓ Open and notorious (visible)
- ✓ Hostile (without permission)
- ✓ Continuous and uninterrupted
- ✓ For the statutory period (which varies by state, often ranging from several years to decades)

 Unlike adverse possession, exclusivity is not required, and the user does not gain ownership, only a right of use.

Easement by Necessity: An easement that arises by operation of law when a parcel is landlocked and requires access over another property. It typically requires that the parcels were once under common ownership and that the easement is strictly necessary for reasonable use of the land.

This type of easement exists even without an express grant or reservation, and it continues only as long as the necessity exists (for example, it terminates if legal access is later obtained by another route).


Party Wall Easement: A type of easement involving a shared structure located on or near a property boundary, such as a wall, fence, driveway, or walkway, that benefits adjoining landowners. Each owner has mutual rights of use and a duty not to interfere with the other's use of the shared structure.

Rather than being a “negative easement,” a party wall arrangement is better understood as a mutual easement agreement (often appurtenant) that allows shared use and maintenance responsibilities between neighboring owners.

Implied Easement (Easement by Implication): An easement that arises from the conduct or circumstances of the parties, rather than a written agreement. It typically occurs when:

- A larger parcel is divided into smaller parcels
- The use existed prior to the division (called prior use)
- The easement is reasonably necessary for the continued use of the property (less strict than “necessity”)

Unlike an easement by necessity, an implied easement does not require strict necessity, only reasonable necessity, and is based on the presumed intent of the parties at the time of division.

 ***Example Implied Easement: A landowner sells a portion of property that has historically used a shared driveway for access. Even if not written in the deed, the buyer may acquire an implied easement to continue using the driveway, based on prior use.***

Encroachments: An unauthorized physical intrusion onto the land of another, such as a fence, driveway, or structure that crosses a boundary line. Encroachments are typically considered a form of trespass.

Encroachments may be discovered through a survey and can affect marketable title. If an encroachment continues for a long period of time and meets legal requirements (such as open, hostile, and continuous use), it may potentially lead to a prescriptive easement or, in some cases, adverse possession, depending on the circumstances and state law.

License: A license is a revocable, non-transferable permission to use another person's land for a specific purpose. Unlike an easement, a license does not create an interest in land and is typically temporary and informal.

A license usually terminates upon death of either party, sale of the property, or revocation by the owner.

Example: A property owner allows a neighbor to use a tennis court on their property. This is a license, and it may be revoked at any time by the owner.

Leases

A lease transfers the right of exclusive possession and use (but not ownership) of real estate for a specified period of time from the landlord (lessor) to the tenant (lessee). This creates a leasehold estate, which is an interest in real property. However, in many legal contexts, a leasehold interest is treated as personal property of the tenant.

If a lessee transfers less than their full interest—such as part of the lease term or a portion of the premises—they are creating a sublease. The sublessee pays rent to the original tenant (sublessor) and generally has no direct contractual relationship (privity of contract) with the landlord. Most leases require the landlord's consent before subleasing or assigning the lease.

An assignment transfers all remaining rights and interest of the original tenant (assignor) to a new tenant (assignee). The assignee typically becomes primarily liable to the landlord (privity of estate), while the assignor may remain secondarily liable, unless released by the landlord.

Types of Leases

Gross Lease: In a gross (full-service) lease, the tenant pays a fixed rent, and the landlord covers most operating expenses, including taxes, insurance, maintenance, and repairs. In practice, many commercial gross leases include an expense stop or base year provision, where the tenant may be responsible for increases in operating expenses

above a certain baseline. This is important when advising tenants on long-term cost exposure.

Net Lease: In a net lease, the tenant pays a base rent plus some or all operating expenses, such as taxes, insurance, and maintenance, as defined in the lease. These expenses are typically allocated based on the tenant's pro-rata share of the property. Net leases are standard in commercial transactions, and understanding the structure is critical when evaluating true occupancy cost and comparing lease options. Common variations include:

- Single Net (N): Taxes
- Double Net (NN): Taxes and insurance
- Triple Net (NNN): Taxes, insurance, and maintenance

The tenant's total financial obligation (base rent + additional expenses) is often referred to as the effective rent, though in practice agents should carefully review how expenses are calculated, reconciled, and adjusted over time.

Percentage Lease: Requires a base rent plus a percentage of the tenant's gross sales above a specified breakpoint. Common in retail leasing, allowing landlords to participate in tenant success. Often combined with gross or net lease structures.

Graduated / Index Lease: Provides for periodic rent adjustments over time. In an index lease, rent is tied to an external measure such as the Consumer Price Index (CPI). These leases are used to hedge against inflation and may include caps on increases.

Ground (Land) Lease: A long-term lease (often 50–99 years) where the tenant leases land and constructs improvements at their own expense. Common in commercial development, these leases are typically structured as net leases, with the tenant responsible for most expenses. At lease expiration, improvements usually revert to the landlord.

Liens

A lien is an **encumbrance that secures payment of a debt** using real property as collateral. It does not transfer ownership, but it impairs title and may lead to forced sale if unpaid.

Liens arise either: Voluntarily (e.g., mortgage), or Involuntarily by law (e.g., taxes, judgments)

They may be: Specific (attach to one property), or General (attach to all property of the debtor)

A lien attaches to property and remains until released (satisfied). If not resolved before transfer, the property is typically conveyed subject to the lien.

Property Tax Lien: Specific, statutory, involuntary lien that attaches automatically each tax year.

👉 Typically highest priority and does not require recording.

Special Assessment Lien: Specific, statutory lien for public improvements (e.g., sidewalks, sewer).

Mortgage (Deed of Trust): Specific, voluntary lien securing a loan.

👉 Most common lien encountered in transactions.

Mechanic's Lien: Specific, statutory, involuntary lien for labor or materials that improve property.

👉 Often relates back to when work commences (important for risk/closing).

Judgment Lien: General, involuntary lien from a court judgment.

👉 Typically attaches to property in the county where recorded.

Federal Tax Lien: General, statutory lien attaching to all property of the taxpayer.

👉 Priority can vary—requires careful title review.

Attachment Lien: Court action that seizes property pre-judgment to secure a potential claim.

Vendor's Lien: Equitable lien for unpaid purchase price (less common in modern practice).

Enforcement & Practical Impact: If a debt is unpaid, a creditor may seek to enforce the lien, typically through a court-ordered sale (e.g., foreclosure). Proceeds are used to pay debts in order of priority (covered earlier in your course).

Satisfaction (Release of Lien): A lien is removed when the debt is paid in full and the creditor records a release/satisfaction of lien.

 **Important:**

- This is not typically a quitclaim deed
- It is a separate recorded instrument clearing title

Property Management

Property Managers

Property management involves the leasing, operation, and oversight of real property on behalf of an owner. Because leasing and renting are considered real estate activities, Florida generally requires a real estate license for those managing property for others. A broker's license (or working under a broker) is required unless an exemption applies. Common exemptions include:

- Managing one's own property
- An on-site salaried employee of the owner (not paid by commission or transaction)

A property manager acts as an agent of the owner under a property management agreement and is responsible for protecting the asset and maximizing return on investment. In practice, this includes duties such as tenant procurement, rent collection, maintenance oversight, and financial reporting.

Property Management Operations A property manager must maintain consistent communication with the owner regarding the condition of the property, tenant issues, vacancy rates, and overall financial performance (ROI)—especially when working with absentee owners.

In practice, the manager typically handles:

- ✓ Rent collection and security deposits
- ✓ Tenant screening, leasing, and renewals

- ✓ Maintenance and repairs
- ✓ Handling disputes and evictions
- ✓ Accounting and financial reporting

Management Agreement (Authority & Duties)

A property management agreement defines the scope of authority and responsibilities of the manager. The manager acts as an agent of the owner and cannot exceed the authority granted in the agreement. The agreement should clearly outline authority to:

- Collect rents and manage deposits
- Execute leases and screen tenants
- Authorize repairs and hire contractors
- Maintain records and provide accounting

Compensation: Property managers are typically compensated through a percentage of rents collected (most common), though some agreements provide for a flat fee or other negotiated structure depending on the scope of services.

Owner's Responsibilities: The owner is responsible for funding and reimbursing expenses, maintaining the property overall, and indemnifying the manager for actions taken within the scope of the manager's authority.

Termination: Management agreements are typically established for a defined term and include provisions for early termination, such as breach, non-performance, or required notice by either party.

Trust Funds (Rents & Deposits): The agreement must specify whether security deposits and prepaid rents will be held by the broker/property manager or the owner. In practice, this is a high-risk compliance area, as funds held by a licensee are subject to trust account regulations and strict handling requirements.

Community Association Managers (CAM)

In Florida, individuals who manage condominiums, cooperatives, or homeowners' associations may be required to hold a Community Association Manager (CAM) license issued by the Florida Department of Business and Professional Regulation.

While salaried employees managing property may not require a real estate license, a CAM license is required when a person performs certain management services for compensation for an association with **more than 10 units or an annual budget exceeding \$100,000.**

Activities requiring a CAM license include: controlling or disbursing association funds; preparing budgets or financial documents; assisting with meetings (including notices and agendas); determining amounts due; completing required forms; and coordinating or performing maintenance and other routine services.

Community association managers and firms act on behalf of associations under a written management contract and must comply with professional standards under Florida Statutes 468.4334. These duties include acting loyally, skillfully, and diligently; dealing honestly and fairly; acting in good faith; providing full disclosure; properly accounting for funds; and avoiding excessive or unreasonable fees.

Florida law prohibits any person from managing or offering to manage a community association without proper licensure. CAM firm licenses must be renewed biennially, and expiration typically occurs on September 30 of odd-numbered years.

The Regulatory Council of Community Association Managers consists of **seven members appointed by the Governor and confirmed by the Senate.** Five members must be licensed CAMs (including at least one timeshare manager), and two must be public members with no ties to the profession.

The Council advises DBPR on matters such as licensing, examinations, continuing education, fees, and professional standards.

Progress Check - Ownership Limitations & Property Managers

1. The effective date of a mechanic's lien is:
 - A. The day the work contract was signed
 - B. The day the work estimate was provided
 - C. The day the work actually began
 - D. The day the reason for the lien arose

2. Which type of property is exempt from the power of eminent domain?
- A. Residential rental property
 - B. The estate of a deceased person
 - C. A residential property undergoing foreclosure
 - D. No private property is exempt from eminent domain
3. A property owner discovers that a neighbor has been using a portion of their driveway for many years without permission. If the use meets legal requirements over time, which of the following is MOST likely to occur?
- A. The use may become a prescriptive easement
 - B. The use becomes an implied easement
 - C. The use automatically becomes a license
 - D. The neighbor acquires title to the property through adverse possession

ZONING & ZONING GUIDELINES

Learning Objectives

- Describe the composition and authority of the local planning agency
- Explain the purpose of land-use controls and the role of zoning ordinances
- Identify the provisions of Florida's comprehensive plan and the Growth Management Act
- Distinguish among the five general zoning classifications
- Differentiate between zoning ordinances, building codes and health ordinances
- Explain the purpose of a variance, special exception and a nonconforming use

Overview

Zoning is a fundamental exercise of a government’s police power, allowing state and local authorities to regulate how land is used in order to protect the public health, safety, and welfare. In real estate practice, zoning determines what can be built, how property can be used, and the intensity of that use—directly impacting property value, development potential, and marketability.

In Florida, zoning is guided by a coordinated framework that includes local zoning authorities, regional planning influences, and state-level oversight through agencies such as the Florida Department of Economic Opportunity (DEO), as well as statutes like the Florida Growth Management Act. Real estate professionals must understand how zoning classifications, building codes, and administrative tools—such as variances, nonconforming uses, and bulk zoning—interact within the broader planning process to ensure compliance, properly advise clients, and avoid costly legal or development issues.

Planning and Zoning

According to the Florida Planning and Zoning Association, early efforts to establish formal planning and zoning in Florida began around 1920. Leaders such as George W. Simons Jr. of Jacksonville and General Vivian B. Foster of St. Augustine recognized the need for legislation that would allow local governments to regulate land use, adopt subdivision regulations, and implement zoning controls.

These early advocates worked to promote laws that would support orderly development and managed growth across the state. Although initial legislative efforts were unsuccessful and the original organization (then known as the Florida Planning Association) became inactive, their work laid the foundation for the modern system of local planning and zoning authority used throughout Florida today.

By 1939, with support from Senator John J. Sinclair of Polk County and the Florida League of Cities, the Florida Legislature adopted the state’s first general zoning enabling act. This law granted local governments the authority to regulate land use, but it provided only broad guidance and limited uniform standards. Over the following decades, cities and counties relied on this enabling legislation to adopt their own local zoning laws through special acts. As a result, zoning regulations varied widely across jurisdictions, leading to inconsistent application and increased legal challenges and court interpretation issues.

By the late 1940s, renewed statewide interest in planning and zoning led to the formation of the “Florida State Federation of Planning and Zoning Boards” in 1948.

Although short-lived, this organization ultimately served as a precursor to the modern Florida Planning and Zoning Association (FPZA).

Florida Planning Legislation

The Florida Planning and Zoning Association (FPZA) has played a key role in supporting the development of Florida's modern planning and growth management system, including:

Florida Environmental Land and Water Management Act of 1972: Established the Critical Areas Program and the Development of Regional Impact (DRI) review process to address large-scale developments affecting multiple jurisdictions.

Local Government Comprehensive Planning Act of 1975 (LGCPA): Florida's first mandatory planning law, requiring all cities and counties to adopt comprehensive plans to guide future growth and development.

Growth Management Act of 1985: Strengthened the 1975 Act by creating a coordinated state, regional, and local planning framework and introducing stricter requirements for consistency and concurrency (ensuring infrastructure is available to support development).

Environmental and Land Management Study (ELMS) Revisions – 1993: Based on recommendations from the ELMS Committee (ELMS III), these amendments to Chapters 163 and 380, Florida Statutes:

- Improved intergovernmental coordination between state, regional, and local entities
- Added flexibility to concurrency requirements (timing of infrastructure and development)
- Began restructuring and phasing changes to the DRI review process

The Florida Planning and Zoning Association (FPZA) is a statewide organization made up of professionals involved in land use and development, including planners, engineers, attorneys, appraisers, and real estate licensees.

FPZA supports education, collaboration, and the advancement of effective planning and zoning practices throughout Florida.

A **Local Planning Agency (LPA)**—often called a planning commission—serves as an advisory board to local government on land use decisions.

- Members are appointed by elected officials and represent a broad cross-section of the community
- Reviews proposed development for: Infrastructure capacity (roads, schools, utilities) and Consistency with the comprehensive (master) plan
- Supported by professional planning staff
- Makes recommendations only—final decisions are made by elected officials

The Planning Process

Each local jurisdiction in Florida adopts a comprehensive plan to guide land use and development decisions.

Key planning goals include:

- Promoting highest and best use of land
- Managing growth to reduce public costs
- Preventing incompatible land uses (e.g., residential next to heavy industrial without buffers)
- Limiting urban sprawl by encouraging efficient development patterns
- Ensuring adequate public services (water, sewer, schools, emergency services)
- Providing for road right-of-way and appropriate setbacks
- Protecting against flooding, drainage, and environmental hazards
- Reducing conflicts related to undesirable land uses (e.g., landfills, prisons)

Role of Planners

Planners evaluate multiple factors when guiding future land development, including:

- ✓ Population trends
- ✓ Economic conditions
- ✓ Transportation infrastructure
- ✓ Existing land uses

The Local Planning Agency (LPA) typically reviews and makes recommendations on:

- Subdivision plats

- Site plans
- Sign regulations

Subdivision Plat & Site Plan Approval

Subdivision Plat Approval

- A subdivision plat is a detailed map showing the division of land into lots and blocks
- Prepared by a licensed surveyor and must meet recording requirements
- Must receive local government approval before being recorded

Site Plan Approval

- A site plan is a “bird’s-eye view” of a proposed development
- Shows structures, layout, access, and major features of the property
- Used to evaluate compliance with zoning and development standards

Sign Control & Development Standards

Sign Control

Sign regulations are used to:

- Promote public safety along highways
- Protect aesthetic and scenic value
- Support tourism and economic activity

In Florida, sign control is closely tied to protecting highway corridors and community appearance.

Development Standards (FHA Context)

While the Federal Housing Administration (FHA) does not directly regulate zoning, its standards influence development by encouraging:

- Quality construction
- Adequate infrastructure
- Marketable and sustainable neighborhood design

Concurrency

Concurrency is a key growth management policy in Florida that requires public infrastructure and services to be available at the time development impacts occur. This ensures that essential facilities—such as roads, schools, and utilities—can adequately support new development. In practice, concurrency often places responsibility on developers to address the impacts of their projects, which may include funding or constructing necessary infrastructure improvements.

For example, a developer may be required to add turn lanes, upgrade roadways, or expand utility systems to accommodate increased demand created by a new development.

Florida’s Growth Policy and Community Planning Act (CPA) (FS 163.3161)

The Community Planning Act, adopted by the Florida Legislature in 2011, reshaped the state’s approach to growth management by emphasizing the primary role of local governments in planning and development decisions. The Act is designed to protect Florida’s traditional economic base—such as agriculture, tourism, and military presence—while strengthening local authority to adopt and implement comprehensive plans that guide future land use and development.

The Act also encourages more flexible and innovative planning strategies, including tools such as sector planning, rural land stewardship, urban service areas, urban growth boundaries, and mixed-use development. Importantly, the Act reduced many prior state-level mandates by eliminating state-mandated concurrency requirements for transportation, schools, and parks, allowing local governments greater discretion in how they manage infrastructure and growth.

Department of Economic Opportunity

The Florida Department of Economic Opportunity (DEO) plays a central role in coordinating economic development and community planning efforts across Florida. Its mission is to promote economic opportunity by working with the Governor, Legislature, state agencies, and local governments to develop consistent strategies for job creation, business growth, and sustainable communities.

DEO’s responsibilities include coordinating statewide initiatives to avoid duplication among agencies, supporting business recruitment and expansion, and promoting areas such as tourism, workforce development, rural development, and small business growth. The agency also develops long-term strategic plans and provides technical assistance, grants, and guidance to local governments on growth and development issues.

In the planning context, DEO helps ensure that local comprehensive plans are consistent with state policies and coordinated with surrounding jurisdictions. These plans typically address key elements such as future land use, transportation, water and sewer systems, solid waste, conservation, housing, and intergovernmental coordination. Local governments implement these plans through land development regulations and capital improvement programs, which help ensure that infrastructure and services are available to support growth.

Zoning, Land Use Restrictions and Building Codes

Zoning is a valid exercise of a government's police power, used to divide a city or county into districts that regulate permitted land uses and development intensity. These zoning classifications—such as residential, commercial, industrial, and agricultural—determine how land may be used while restricting incompatible uses in certain areas.

Zoning ordinances regulate key factors including building height, density, lot size, setbacks, structural design, and permitted activities, making them the primary tool for implementing a locality's comprehensive (master) plan. Because zoning controls what can be built and how property can be used, it has a direct impact on property value and marketability.

A comprehensive (master) plan is a long-term planning document that outlines current and future land use patterns within a jurisdiction, providing the foundation for zoning decisions.

One specific approach, bulk zoning (area zoning), focuses on controlling density and building size rather than land use by regulating elements such as setbacks, building height, and open space. In addition to public controls like zoning, private land use restrictions—such as deed restrictions—also limit how property may be used and can further influence value.

Common land use categories include residential, commercial, industrial, agricultural, recreational, special purpose, and public uses.

Zoning Classifications

A *special-purpose property* is one with a unique design or limited utility, making it difficult to adapt to other uses.

These properties are typically built for a specific function and may include uses such as churches, schools, theaters, utility facilities, or refineries.

Because of their specialized construction and layout, they often have a limited market and are sometimes referred to as limited-market or special-design properties. This limited adaptability can impact both marketability and value, especially if the original use is no longer viable.

A **buffer zone** is a type of land use control designed to separate incompatible uses, such as residential and industrial areas. Buffers may include parks, green space, or low-intensity uses that reduce noise, traffic, or visual impact.

For example, a developer of an industrial project may be required to include a buffer area—such as landscaped open space—between the development and a nearby residential neighborhood to minimize negative effects and maintain property values.

Building Codes

Building codes are a valid exercise of the state's police power, designed to protect the public health, safety, and welfare by **establishing minimum standards for construction**. These standards typically address areas such as structural integrity, electrical systems, plumbing, fire safety, and building materials. While many codes are based on national model standards, they are often modified to address local conditions, such as hurricanes, flooding, or other environmental risks in Florida.

Building codes are **enforced at the local level through a system of building permits** and inspections conducted at various stages of construction. Before a property can be legally occupied, a local authority must issue a certificate of occupancy (CO), confirming that the structure complies with applicable codes at the time of inspection.

Zoning Administration

Zoning ordinances are created and enforced at the local level by entities such as building departments, zoning commissions, and boards of zoning appeals.

Although local governments administer zoning, their authority is limited by constitutional principles, including police power, due process, equal protection, and the takings clause.

To ensure fairness and flexibility, zoning systems include administrative tools that allow property owners to seek relief or approvals in specific situations.

A *variance* provides relief from strict application of a zoning ordinance when a property owner can demonstrate an undue hardship due to unique property characteristics. The hardship cannot be self-created, and granting the variance must not substantially alter the character of the neighborhood.

For example, a property owner with a lot smaller than current zoning requirements may need a variance to build.

A *conditional use permit* (also called a special use permit) allows a use that is not normally permitted within a zoning district but is considered beneficial to the community, subject to specific conditions. Unlike a variance, which addresses hardship, a conditional use focuses on compatibility and public benefit—such as allowing a hospital or school in a residential area.

A *nonconforming use* is a use that does not comply with current zoning but was legally established prior to a zoning change (often referred to as being “grandfathered”). These uses are typically allowed to continue but may be restricted from expansion or rebuilding if destroyed.

In contrast, an *illegal nonconforming use* (one that began after the zoning restriction) is not permitted and may be subject to enforcement action.

Planned Unit Developments

A Planned Unit Development (PUD)—also known as a master planned community—is a development designed and constructed as a single, unified project, rather than on a lot-by-lot basis.

In a PUD, zoning and subdivision regulations are applied to the entire development as a whole, allowing for a mix of uses such as residential, commercial, and recreational spaces within one coordinated plan. This approach provides greater flexibility in design, often resulting in features like open space preservation, clustered housing, and integrated amenities, while still meeting overall planning objectives.

Development of Regional Impact

A Development of Regional Impact (DRI) refers to a large-scale development that, due to its size, location, or intensity, is likely to have a significant effect on the health, safety, or welfare of residents across more than one county.

Historically, DRIs were subject to additional review to evaluate regional impacts, such as transportation, environmental concerns, and infrastructure demands.

While the DRI process has been largely scaled back and restructured under modern planning laws, the concept remains important for understanding how major developments can affect multiple jurisdictions.

Progress Check - Zoning

1. Based on which zoning exception would a convenience store built in 1965 be allowed to remain in an area zoned for residential property in 2010?

- A. A variance
- B. A legal non-conforming use
- C. A conditional use/special permit
- D. An illegal non-conforming use

2. Which of the following serves as an advisory board to local governments and reviews any plans for development to manage growth?

- A. The Florida Department of Economic Opportunity (DEO)
- B. The Federal Housing Administration
- C. The Florida Planning and Zoning Association
- D. The Local Planning Agency

3. Which of the following is not something regulated by zoning ordinances?

- A. Lot sizes
- B. Height of buildings
- C. Pollution density
- D. Business activities

Module 2 - Appraisals

DETERMINING LEGAL PROPERTY DESCRIPTIONS & APPRAISAL REGULATION

Learning Objectives

- Describe the purpose for legal descriptions
- Understand the licensee's role and responsibilities as it pertains to legal descriptions
- Explain and distinguish among the three types of legal descriptions
- Describe the process of creating a legal description using the metes-and-bounds method
- Locate a township by township line and range
- Locate a particular section within a township
- Understand how to subdivide a section
- Calculate the number of acres in a parcel based on the legal description, and convert to square feet
- Explain the use of assessor's parcel numbers
- Apply the measurements associated with checks, townships and sections
- Describe federal and state regulations pertaining to appraising
- Identify the appraisers fiduciary relationship
- Explain what the Uniform Standards of Professional Appraisal Practice (USPAP) is and how it affects the appraisal process of real property

Purpose of Legal Descriptions

A legal description is a method of locating real estate that is sufficiently precise to be used in a deed, mortgage, or other formal legal instrument and to be accepted by a court of law. A property description is legally sufficient if a **competent surveyor can locate and identify the parcel based on the description.**

The three principal methods of legally describing real property are:

1. Metes and bounds
2. Government survey (rectangular survey system)
3. Lot, block, and subdivision (recorded plat)

Purpose of Legal Descriptions

In some cases, land may also be described by reference to another publicly recorded document, such as a deed. This is known as incorporation by reference and is legally valid only if the referenced document itself contains a complete and accurate legal description.

Legal descriptions are essential for deeds, mortgages, and other title documents, but are generally not required in listing agreements, which may use informal descriptions such as street addresses.

The principal methods of legally describing real property include the following:

Metes and Bounds

The oldest method of legally describing land. This method identifies the boundaries of a parcel by **starting at a designated point, called the point of beginning (POB)**, and then describing the direction and distance of each boundary line until the description returns to the POB.

The POB may be identified by reference to natural monuments (such as rivers or trees) or artificial monuments (such as survey stakes or iron pins). A valid metes and bounds description must “close,” meaning it must start and end at the POB, or the description is considered defective.

Metes and bounds is especially useful for describing **irregularly shaped parcels** because it allows movement in any direction, unlike the grid-based government survey system.

The term “**mete**” means measure, and “**bound**” refers to a boundary.

Metes: Refers to the distance of each boundary line, typically measured in feet (and sometimes other units such as yards or miles).

Bounds: Refers to the boundaries, which are identified using natural monuments (such as lakes, trees, or boulders) or artificial monuments (such as iron pins, concrete markers, or road intersections).

Compass Directions (Bearings): Surveyors describe the direction of each boundary line using compass bearings, expressed in degrees (°), minutes (′), and seconds (″), measured from north or south toward east or west. These directions, combined with distances and monuments, define the exact boundaries of a parcel.

EXAMPLE: Metes and Bounds

Commence at the Northeast Corner of Section 6, Township 2 South, Range 4 East, and run west along the north line of said Section a distance of 1,411 feet to the east right-of-way boundary of State Road 91; thence run south along the east right-of-way boundary of said road a distance of 968 feet to the point of beginning; thence continue south along said right-of-way a distance of 1,316 feet; thence run N 89° E a distance of 863 feet, more or less, to the western shoreline of Smith Lake; thence run northeasterly along the meandering shoreline of said lake a distance of 310 feet; thence run N 01° 42' 16" W a distance of 374 feet, more or less; thence run west a distance of 1,201 feet to the point of beginning.

Government Survey

Government Survey (Rectangular Survey System) is a method of surveying land developed by the United States under the Land Ordinance of 1785 to facilitate the sale and **settlement of western lands**.

This system is also known as the rectangular survey system or Public Land Survey System (PLSS) and is used in most states west of the original thirteen colonies. This method is **most effective for describing large parcels of land** but is less suitable for irregularly shaped tracts, where metes and bounds is more commonly used.

The system is based on a grid formed by **principal meridians** (north–south lines) and **baselines** (east–west lines). These intersecting lines create a checkerboard pattern that divides land into increasingly smaller units.

Principal Meridians: Imaginary north–south lines established by the government as reference lines for surveying land under the rectangular survey system. Each principal meridian intersects with a base line at an initial point, which serves as the starting reference for land descriptions.

Base Lines: Imaginary east–west lines that intersect principal meridians at an initial point and are used as reference lines for measuring land north or south.

Further Divisions:

- **Townships:** Square parcels measuring 6 miles on each side (36 square miles), formed by township lines (running east–west) and range lines (running north–south)
- **Sections:** Each township is divided into 36 sections, each 1 square mile (640 acres)

A township is formed by the intersection of township lines (east–west, parallel to base lines) and range lines (north–south, parallel to principal meridians), each spaced 6 miles apart. The strip between two range lines is called a range, and the strip between two township lines is called a tier.

The resulting square is a township, measuring 6 miles on each side (36 square miles). Townships are identified by their position relative to the base line and principal meridian (e.g., north or south, east or west).

Each township contains 36 sections, each 1 square mile (640 acres). Sections are numbered in a back-and-forth (serpentine) pattern **beginning in the northeast corner with Section 1**. Sections may be further divided into halves, quarters, and smaller fractions.

Survey monuments are typically placed at section corners to mark boundaries.

Example: Township 4 South, Range 3 East is written as T4S, R3E.

Correction Lines (Standard Parallels) and Guide Meridians

Because the earth is curved, the rectangular survey system must be adjusted periodically to maintain accuracy. These adjustments are made using correction lines (also called standard parallels) and guide meridians.

Correction lines (standard parallels) are east–west lines placed at regular intervals (approximately every 24 miles) to correct for the convergence of meridians.

Guide meridians are north–south lines inserted at similar intervals to maintain the accuracy of the grid.

These lines help ensure that the township and section system remains as uniform as possible despite the curvature of the earth.

Geodetic Surveys

Geodetic surveys are highly accurate methods of **measuring the earth's surface that account for its curvature**. They rely on a system of permanent ground markers (monuments or benchmarks) and reference frameworks called **datums**, which serve as the basis for horizontal and vertical measurements.

While **not a legal land description method**, geodetic surveys provide the underlying measurement framework that supports systems such as the government survey (rectangular survey system).

Lot, Block, and Subdivision (Recorded Plat)

A method of legally describing property that refers to a recorded subdivision plat. A subdivision is created by dividing a large tract of land into smaller parcels, which are shown on a detailed map called a **plat**.

Subdivision plats are typically **based on either the metes and bounds system or the government survey system**. The plat shows the layout of streets, blocks, and lots, with each lot assigned a specific number.

Before a plat may be **recorded**, it must be approved by the appropriate local governmental authority (such as a planning commission) in accordance with subdivision and zoning regulations.

Once recorded, the plat becomes part of the public record.

Each recorded plat is assigned a reference (such as a book and page or instrument number) and is available for public inspection. When property is described by reference to a recorded plat, the legal description need only include the lot number, block number (if applicable), subdivision name, plat reference, and location (county and state).

A subdivision plat has legal effect **only after it has been recorded** in the appropriate public records office of the jurisdiction in which the property is located.

A block is a group of contiguous lots, typically bounded by streets or other rights-of-way. A lot is generally the smallest unit in this system and is intended to be conveyed as a whole parcel.

Subdivisions may be modified after the original plat is recorded. Such changes require the preparation and recording of a new plat, commonly referred to as a replat or amended plat, reflecting the revised layout. When this occurs, the legal description may reference the most current plat and, when necessary, prior plats to accurately reflect the parcel's history.

Calculating Area in Acres

Nature of Area: Area is a measure of space in a bounded shape, as in the square footage of carpet required for a square room.

Units of Measure: The most difficult task of an area question is converting units of measure. However, most problems will identify the conversion factor, if any. Still, consider the following common conversions.

- **Feet per Acre:** 1 acre = 43,560 square feet, or 208.71 feet by 208.71 feet.
- **Yards per Acre:** 1 acre = 4,840 square yards.
- **Acres per Square Mile:** 1 square mile = 640 acres.

Common Formulas: $\text{Area} = \text{Length} \times \text{Width}$ or $\text{Width} = \text{Area} \div \text{Length}$

Example 1: Finding Area: A rectangular lot measures 80 feet by 20 feet. What is the area of the lot?

Solution: Area = Length \times Width $80 \times 20 = 1,600$ square feet

Example 2: Finding Width: The area of a lot is 1,600 square feet, and the lot is 80 feet in length. What is the width?

Solution: Width = Area \div Length. $1,600 \div 80 = 20$ feet

Assessor's Parcel Number (APN)

An Assessor's Parcel Number (APN) is a system used by local tax authorities to **identify property for taxation purposes**. Each parcel is assigned a unique number, which is used to locate and track the property on tax maps and within the assessment roll.

The assessment roll typically includes the parcel number, property location, assessed value, and the owner's name and address of record.

An APN is **not a legal description** and is not sufficient by itself for use in deeds, mortgages, or other legal instruments. However, it may be included in addition to a legal description for reference purposes.

Usage of Legal Property Descriptions

Documents that affect title to or an interest in real property and are recorded in the land records must identify the property using a legal description, rather than an informal description such as a street address.

Examples include deeds, mortgages or deeds of trust, easements, and other instruments affecting real property.

Uses of Surveys

Surveys provide valuable information in real estate and are also used in fields such as mapping, engineering, and construction. Surveys help:

- Locate property boundaries and easements
- Verify the location of improvements (such as buildings, fences, and driveways)
- Identify encroachments
- Assist with determining setbacks and flood zone considerations
- Measure elevations and topography
- Locate utilities

Regulation of Appraising - FIRREA

An appraisal is a professional opinion of the value of a property as of a specific date. This opinion is commonly relied upon by lenders in the mortgage underwriting process to support lending decisions and to ensure that the property provides adequate collateral for the loan.

Appraisers typically analyze value using three approaches:

- ◆ Cost approach,
- ◆ Income approach,
- ◆ Sales comparison approach

The appraiser reconciles these approaches by **weighing their applicability to arrive at a final opinion of value**. An appraisal is a formal, independent, and regulated valuation, in contrast to informal estimates such as comparative market analyses (CMAs) prepared by real estate agents.

Appraiser Regulatory Overview

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is a federal law that regulates the appraisal profession, particularly in connection with federally related transactions.

Under this framework, appraisal regulation involves coordination among federal agencies, state licensing authorities, and private standard-setting organizations.

Under Financial Institutions Reform, Recovery, and Enforcement Act of 1989, federal financial institution regulators determine which federally related transactions require a state **licensed or certified** appraiser and may establish threshold amounts below which an appraisal is not required.

However, if an appraisal is performed for a **federally related transaction**, it must comply with USPAP standards established by the Appraisal Standards Board (ASB).

Role of Appraisal Boards

The Appraisal Foundation is a nonprofit organization that establishes appraisal standards and qualifications through two key boards:

- ***The Appraisal Standards Board (ASB)***, which develops the Uniform Standards of Professional Appraisal Practice (USPAP)
- ***The Appraisal Qualifications Board (AQB)***, which sets minimum education, experience, and examination requirements for appraisers

At the state level, the Florida Real Estate Appraisal Board regulates appraisers, including licensing, discipline, and enforcement. The board is appointed by the Governor and oversees appraisal practice within the state.

Role of the States (FS 475.612)

States are responsible for licensing, certifying, and regulating appraisers, as well as enforcing appraisal standards.

In Florida, a person may not prepare an appraisal report or use the title of licensed, certified, or trainee appraiser unless properly credentialed through the Department of Business and Professional Regulation (DBPR). Only a licensed or certified appraiser may issue an appraisal report and receive direct compensation for appraisal services.

Real estate licensees may provide valuation services for compensation; however, they may not represent themselves as licensed or certified appraisers.

Division of Real Estate

The Division of Real Estate is a sub-agency of the Florida Department of Business and Professional Regulation (DBPR). It provides administrative support to the Florida Real Estate Commission and the Florida Real Estate Appraisal Board in the examination, licensing, and regulation of real estate and appraisal professionals.

While the DRE performs administrative functions, regulatory authority is exercised by FREC and FREAB.

Role of the Appraisal Subcommittee (ASC)

The Appraisal Subcommittee (ASC) was established under Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to provide federal oversight of the appraisal regulatory system. The ASC is composed of representatives from federal financial and housing agencies.

The ASC monitors state appraiser regulatory programs and the activities of The Appraisal Foundation to ensure compliance with federal requirements. It also maintains a national registry of state-licensed and state-certified appraisers eligible to perform appraisals in federally related transactions.

Certified Appraisals

Under Financial Institutions Reform, Recovery, and Enforcement Act of 1989, federal regulators establish when a state-licensed or certified appraiser is required for federally related transactions.

For most residential real estate transactions, an appraisal by a state-licensed or certified appraiser is generally required when the **transaction value exceeds \$400,000**. Below this threshold, an appraisal may not be required; however, lenders must still obtain an evaluation of the property's value in accordance with federal guidelines. If an appraisal is performed for a federally related transaction, it must comply with USPAP standards.

Certain loan programs (such as those involving HUD or VA) may impose additional or different appraisal requirements.

- A certified **general** appraiser is qualified to appraise all types of real property, including residential, commercial, and income-producing properties.
- A certified **residential** appraiser is qualified to appraise one-to-four unit residential properties, regardless of transaction value, subject to federal guidelines.

Appraisal Report

An appraisal is a professional opinion of value that may be communicated orally or in writing. An appraisal report, however, is the written communication of an appraiser's analysis, opinions, and conclusions regarding the value of identified real property.

For federally related transactions, appraisal reports must be in writing and comply with USPAP standards.

Comparative Market Analysis (CMA)

A comparative market analysis (CMA) is an **informal estimate** of market value prepared by a real estate licensee. It is used to assist clients in pricing property but is not an appraisal.

Licensees performing CMAs may not represent themselves as appraisers or present a CMA as an appraisal.

Appraisal vs. CMA or BPO

Contrast: CMA, BPO, and Appraisal

A Comparative Market Analysis (CMA) is prepared by a **real estate licensee** to assist a client in pricing a property for sale or evaluating an appropriate offer price. It is an informal estimate of market value based primarily on comparable sales.

A Broker Price Opinion (BPO), also known as a Broker Opinion of Value (BOV), is typically prepared **for** a lender or third party, often in situations such as short sales or foreclosures. Like a CMA, it is an informal estimate of value based on comparable data, but it is generally more detailed and may include additional analysis.

An appraisal is a formal opinion of value performed by a **state-licensed or certified appraiser**. It involves a more comprehensive analysis and must comply with USPAP standards.

Real estate licensees may perform CMAs and BPOs but may not represent these services as appraisals. **USPAP standards apply only when a person is acting as an appraiser.**

Progress Check - Appraisals

1. Regarding surveys, imaginary markers that serve as baselines for horizontal and vertical measures are called?

- A. Datums
- B. Monuments
- C. Metes
- D. Benchmarks

2. Which of the following best describes a key difference between a Comparative Market Analysis (CMA) and an appraisal?

- A. A CMA is more detailed and formal than an appraisal
- B. A CMA must comply with USPAP standards, while an appraisal does not
- C. A CMA may be used in place of an appraisal in all federally related transactions
- D. A CMA may be performed by a real estate licensee, while an appraisal must be performed by a state-licensed or certified appraiser

3. Which survey method must always begin and end at a POB?

- A. Geodetic
- B. Metes and Bounds
- C. Government
- D. Lot, Block and Subdivision

APPROACHES TO VALUE

Learning Objectives

- Differentiate among the three approaches to estimating the value of real property
- Estimate value of subject property using Comparable Sales Approach
- Estimate value of subject property using Cost Approach
- Estimate value of subject property using Income Approach
- Reconcile three approaches to establish final value estimate
- Calculate value using gross multiplier analysis

Introduction to the Three Approaches to Value

When determining the value of real property, appraisers don't rely on guesswork—they rely on structured, proven methodologies. The foundation of modern appraisal practice is built on three primary approaches to value: the sales comparison (market data) approach, the cost approach, and the income approach.

Each approach looks at value from a different perspective, and the appraiser selects and applies the most appropriate method(s) based on the type of property and the purpose of the appraisal. In many cases, more than one approach is used to ensure a well-supported and credible opinion of value.

The Appraisal Process

An appraisal is based on analytical procedures that involve collecting and analyzing the facts necessary to estimate the value of real property. Appraisers generally follow six (6) key steps when developing a formal appraisal:

◆ **Step 1 – Define the Problem:** To determine the appropriate appraisal methods, the appraiser must first identify:

1. The subject property (including its legal description)
2. The property rights being appraised (such as fee simple or leased fee)
3. The purpose and intended use of the appraisal (e.g., market value for financing)

◆ **Step 2 – Gather Data:** The appraiser collects relevant data based on the intended appraisal approach(es), including:

1. A physical inspection of the property
2. Market data (comparable sales, rental data, cost information)
3. Analysis of economic, social, governmental, and environmental factors affecting value at the national, regional, and neighborhood levels

◆ **Step 3 – Identify Highest and Best Use:** The appraiser determines the use of the property that results in the highest value. This use may or may not be the property's current use and must be:

1. Legally permissible
2. Physically possible
3. Financially feasible
4. Maximally productive

◆ **Step 4 – Estimate Value:** The appraiser applies one or more of the three approaches to value:

1. Sales Comparison (Market Data) Approach
2. Cost Approach
3. Income Approach

While not every approach is applicable to every property, it is generally most desirable to apply multiple approaches when possible to support a well-reasoned opinion of value.

◆ **Step 5 – Reconcile the Value Estimates:** After applying the applicable approaches to value, the appraiser reviews and compares the results. Rather than simply averaging the values, the appraiser reconciles them by analyzing the reliability and relevance of each approach based on the type of property and the quality of the data available. For example:

1. The sales comparison approach is typically given the most weight for residential properties.
2. The income approach is often most relevant for investment properties.
3. The cost approach may be most useful for newer or special-purpose properties.

The appraiser then develops a final opinion of value that is best supported by the data and analysis.

◆ **Step 6 – Report the Final Value:** The final step is to communicate the appraiser's opinion of value in a written appraisal report. The report must clearly present:

1. The appraiser's final value conclusion
2. The methods and approaches used
3. The data and analysis supporting the conclusion

Appraisal reports must comply with the standards set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), which establish ethical and performance requirements for appraisers. Reports may be presented in different formats (such as a standardized form report or a narrative report), depending on the type of property and the intended use of the appraisal.

Sales Comparison Approach (Market Data Approach)

The sales comparison approach estimates value by comparing a property to similar properties that have recently sold. This is the same concept agents use every day when preparing a CMA or advising a client on pricing or offer strategy.

Core Idea (What agents need to remember): A buyer will not pay more for a property than the cost of a similar substitute (principle of substitution).


When It's Most Useful

- Residential properties (especially single-family homes)
- Vacant land
- Active markets with sufficient comparable sales

This is typically the most relied-upon approach in residential real estate—and the one your clients will expect you to understand.

How It Works: Select Comparable Sales (“Comps”) Choose recently sold properties that are similar in:

- Location
- Size and design
- Age and condition

 **Agent Tip:** The best comps are recent, nearby, and similar—not just the “closest match” in the MLS.


Adjust the Comparables: Because no two properties are identical, the appraiser adjusts the comparable properties (not the subject) to reflect differences. Key adjustment categories include:

Market conditions (changes in prices over time)

Location (neighborhood, street, external influences)

Physical features (square footage, upgrades, lot size, amenities)

Financing terms (e.g., seller financing vs. conventional loan)

 **Agent Tip:** Think in terms of “If this comp were exactly like my subject, what would it have sold for?”

Example

If a comparable property sold for \$400,000 but has a garage and your subject does not, the appraiser will adjust the comparable downward to reflect that difference (reduce the monetary value of a garage as if the comparable did not have a garage).

Reconcile to a Value: After adjustments, the appraiser weighs the comparables and selects the most supported value—not an average, but a reasoned judgment.

💡 Agent Tip: Not all comps are equal—some carry more weight based on similarity and reliability.

👉 *Practical Application for Agents*

- Supports listing price recommendations (CMA)
- Helps justify offer prices in negotiations
- Explains appraisal gaps or challenges to clients
- Aligns closely with how lenders' appraisers evaluate residential property

Cost Approach

The cost approach estimates value based on what it would cost to build the property today, minus depreciation, plus the value of the land.

Formula (what to remember): Replacement Cost – Depreciation + Land Value = Property Value

When It's Most Useful:

- New or newer construction
- Unique or special-purpose properties (e.g., churches, schools, civic buildings)
- Situations where there are few or no comparable sales

💡 Agent Tip: This approach often shows up in appraisals for new construction or properties that are hard to compare.

How It Works:

Estimate Land Value: Land is valued as if vacant and put to its highest and best use using the sales comparison approach.

💡 Key Point: Land does not depreciate.

Estimate Construction Cost: The appraiser estimates the cost to build the improvements today:

- **Replacement Cost (most common):** Build a similar property with modern materials and standards
 - 💡 Agent Tip: Replacement cost is typically used because it reflects modern construction and market expectations.
- **Reproduction Cost:** Exact duplicate using the same materials and design

Estimate Construction Cost: Common estimation methods:

- Square Foot Method (most common in practice)
- Unit-in-place method
- Quantity survey method (rare, highly detailed)

Subtract Depreciation: Depreciation is the loss in value of the improvements (not land) over time.

Three types to know:

- Physical Deterioration → wear and tear (roof, foundation, paint)
- Functional Obsolescence → outdated design or features (poor layout, no garage)
- External (Economic) Obsolescence → outside influences (location, zoning, nearby development)

1. Subtract Depreciation: Types of Deterioration and Obsolescence
2. Curable = worth fixing (adds value equal to or greater than cost)
3. Incurable = not worth fixing
4. External obsolescence is ALWAYS incurable
5. Calculate Final Value: The appraiser determines value by applying the formula:
6. $\text{Replacement Cost} - \text{Accrued Depreciation} + \text{Land Value} = \text{Total Property Value}$

Example

A newer home may appraise close to its construction cost, while an older home—even if well maintained—may show lower value due to accumulated depreciation.

Practical Application for Agents

- Explains why new homes often appraise close to construction cost
- Helps justify value when comps are limited or inconsistent
- Useful in conversations about insurance (replacement cost vs. market value)
- Helps explain why older homes may appraise lower due to depreciation


Income Approach (Income Capitalization Approach)

The income approach estimates value based on a property's ability to generate income. In simple terms, value is driven by what the property earns.

Formula (what to remember): Net Operating Income (NOI) ÷ Capitalization Rate (Cap Rate) = Property Value

When It's Most Useful:

- Income-producing properties
- Apartment buildings
- Office buildings
- Retail centers
- Industrial properties

 **Agent Tip:** This is the go-to approach for investors—they care more about income than comparable sales.

Core Idea (What drives value)

This approach is based on the principle of anticipation—buyers are purchasing the future income stream the property is expected to produce.

How It Works:

1. **Estimate Income:** Start with Potential Gross Income (PGI)—the total income the property could generate if fully occupied at market rent. Then adjust for reality:
2. **Subtract vacancy and collection losses**
3. **Result** = Effective Gross Income (EGI)

💡 Agent Tip: EGI is what the property is actually expected to bring in—not the “perfect world” number.

4. **Calculate Net Operating Income (NOI):** Subtract operating expenses from EGI:
 $NOI = EGI - \text{Operating Expenses}$

Typical operating expenses include: Property taxes, Insurance, Maintenance and repairs and Property management.

🚫 **Do NOT include:** Mortgage payments (financing), Income taxes or Capital improvements.

💡 Agent Tip: NOI reflects the property’s performance before financing—this is key for comparing investments.

5. **Apply a Capitalization Rate (Cap Rate):** The cap rate reflects the expected rate of return for similar properties in the market.

Appraisers derive cap rates by analyzing comparable income properties:
 $Cap\ Rate = NOI \div Sale\ Price$

Then apply it to the subject property:
 $Value = NOI \div Cap\ Rate$

💡 Agent Tip:
Higher cap rate = higher risk, lower value
Lower cap rate = lower risk, higher value

Example

If a property produces \$20,000 in NOI and the market cap rate is 8%:

$Value = \$20,000 \div 0.08 = \$250,000$

Alternative: Gross Rent Multiplier (GRM)

A GRM is a simpler, less precise method:

$$\text{GRM} = \text{Sale Price} \div \text{Gross Rent}$$

Then:

$$\text{Value} = \text{Gross Rent} \times \text{GRM}$$

💡 Agent Tip: GRM is useful for quick estimates, but it does NOT account for expenses—so it's less reliable than the cap rate method.

👉 Quick estimate only—does NOT consider expenses or vacancies. Used for fast screening; serious analysis uses NOI & Cap Rate.

Formula: $\text{Value} = \text{Rent} \times \text{GRM}$

Example:

Rent = \$700

GRM = 120

👉 *Value ≈ \$84,000*

Side Note: A Gross Income Multiplier (GIM) works the same way as GRM but uses annual income instead of monthly rent.

👉 *Practical Application for Agents*

- Helps advise investor clients on whether a property is a good deal
- Supports discussions about cash flow and return on investment
- Explains why two similar buildings can have very different values based on income
- Useful for multifamily and small rental property analysis

Step 5 – Reconciliation (Final Value Judgment)

In this step, the appraiser reviews all approaches and determines a final opinion of value based on the most reliable data—not an average.

The appraiser gives more weight to:

- The approach most appropriate for the property type
- Comparables with the fewest and smallest adjustments

The appraiser gives less weight to:

- Approaches with limited or weaker data
- Comparables requiring significant adjustments

💡 Agent Takeaway: If an appraisal seems “off,” look at which comps were used and how heavily they were adjusted—that’s often where the issue lies.

Step 6 – Appraisal Report (Communicating Value)

The appraiser then prepares a report that explains the final value conclusion and the data supporting it.

Most residential appraisals use the Uniform Residential Appraisal Report (URAR), which includes:

- A. Property details and condition
- B. Comparable sales and adjustments
- C. Final reconciled value

💡 Agent Takeaway: This is the document lenders rely on —agents should be comfortable reading it, explaining it to clients, and identifying potential issues (like questionable comps or adjustments).

Progress Check - Approaches to Value

1. Which of the following is typically the most difficult step in the income approach?
 - A. Accurately calculating operating expenses
 - B. Calculating Net Operating Income (NOI)
 - C. Estimating the Capitalization Rate (Cap Rate)
 - D. Determining vacancy rates and collection losses

2. Which of the following is not an action an appraiser would take during Step 1 of the appraisal process?

- A. Determine the purpose of the appraisal
- B. Perform an economic analysis of the neighborhood
- C. Identify the subject property location
- D. Identify property rights issues

3. The cost approach, like the market data approach to appraisal, relies substantially on the principle of _____.

- A. Marketability
- B. Anticipation
- C. Substitution
- D. Competition

PREPARING A COMPARATIVE MARKET ANALYSIS (CMA)

Learning Objectives

- Explain the purpose, legal limitations, and appropriate uses of a Comparative Market Analysis (CMA).
- Prepare a CMA using subject property data, comparable sales, adjustments, and neighborhood analysis.
- Explain the principle of substitution and its role in market pricing.
- Identify appropriate comparable properties based on recency, proximity, and similarity.
- Apply basic adjustment methods when comparables are superior or inferior to the subject property.
- Use price-per-square-foot calculations as a supporting valuation tool.
- Differentiate between a CMA, Broker Price Opinion (BPO/BOV), Automated Valuation Model (AVM), and formal appraisal.

- Recognize the strengths and limitations of computer-generated CMAs and AVMs.
- Identify situations in which referral to a licensed appraiser may be appropriate.
- Communicate CMA results effectively to buyers and sellers as part of pricing strategy.


Comparative Market Analysis (CMA)

A comparative market analysis (CMA)—sometimes called a competitive market analysis—is an informal estimate of a property’s market value prepared by a real estate licensee. It is commonly used to help sellers set a listing price or to help buyers determine an appropriate offer.

Unlike an appraisal, a CMA is not a formal opinion of value and is based on less detailed analysis. It is a practical, market-driven tool that reflects what similar properties have recently sold for, are currently listed for, or failed to sell for.

Role of the Licensee

Real estate licensees advise and assist clients, which includes recommending pricing strategies. A CMA is the primary tool used to support those recommendations in everyday practice.

 **Agent Application:** Your CMA is often the foundation of your pricing conversation—how well you prepare and explain it directly impacts client trust and outcomes.

How a CMA Works

A CMA relies on the sales comparison approach by analyzing comparable properties (comps). Adjustments are made informally based on differences in location, condition, features, and market trends. Unlike an appraisal, a CMA:

- Uses less formal adjustments
- Relies more on agent judgment and market knowledge
- Is designed for practical decision-making, not lending purposes

Key Principle

A CMA is based on the principle of substitution—a buyer will not pay more for a property than the cost of a similar alternative.

Important Legal Distinction: A CMA must never be represented as an appraisal. Only a licensed or certified appraiser may provide an official appraisal for lending or other regulated purposes.

Under Uniform Standards of Professional Appraisal Practice (USPAP), real estate licensees may provide valuation services (such as CMAs or BPOs) for compensation, but they must not present themselves as appraisers. USPAP standards generally apply to appraisers—not to licensees performing CMAs in their role as agents.

Locate Comparables (Comps)

A CMA begins by identifying recently sold, active, and expired listings that are similar to the subject property. These comparables (comps) form the basis for estimating value. Agents typically gather this data through the MLS, along with public records such as the property appraiser or tax assessor. A strong comparable should be similar in:

1. Location
2. Size and layout
3. Age and condition
4. Features and amenities

💡 **Agent Tip:** If truly comparable properties are not available, the client may need a formal appraisal.

Make Adjustments

No two properties are identical, so differences must be accounted for.

Adjustments are **always made to the comparable properties**—not the subject.

💡 **Simple Rule:**

👉 If the comp is better than the subject → adjust the comp down

👉 If the comp is inferior → adjust the comp up

Adjustments may reflect differences in: Square footage, Condition and updates, Lot size or location, Amenities (garage, pool, etc.)

Using Averages (With Caution)

A simple average of comparable sales can provide a quick reference point, but it should not be the sole basis for pricing.

 Agent Tip:


Averages do not account for differences between properties—your adjustments and judgment matter more.

Selecting the Best Comparables

Choosing the right comps is critical to an accurate CMA. Focus on properties that are:

- ✓ Recently sold (typically within the last 3–6 months)
- ✓ Located close to the subject (preferably same neighborhood)
- ✓ Similar in size, age, condition, and features

Avoid comps that are significantly higher or lower unless you can clearly justify the difference.

 Agent Impact: Poor comp selection can lead to overpricing (no offers) or underpricing (lost value).

Subject Property – Key Data

Before pricing, gather accurate details about the subject property, including:

- Size, age, and condition
- Bedrooms, bathrooms, and layout
- Recent updates or renovations
- Unique features or amenities

Also review prior sales and listing history to understand pricing trends and market response.

💡 Reminder: Tax assessed value is not the same as market value.

Analyze the Neighborhood

Value is influenced by surrounding conditions. Consider:

- Nearby amenities (schools, parks, shopping)
- Overall neighborhood condition
- External factors (traffic, noise, commercial uses)

💡 Agent Tip: Location adjustments can have a major impact on value.

Price per Square Foot (Common Tool)

Agents often use price per square foot as a quick comparison tool:

1. Divide each comp's sale price by its square footage
2. Find the average price per square foot
3. Multiply by the subject property's square footage

💡 Important: This is a supporting tool—not a final answer

CMA Example

Subject Property: 1,500 sq ft, 3-bed, 2-bath

Comparable Sales (adjusted):

#1 - \$100/sq ft

#2 - \$93/sq ft (after adjustment)

#3 - \$103/sq ft (after adjustment)

#4 - \$114/sq ft

Average = \$102.50 per sq ft

Estimated Value: 👉 $1,500 \times \$102.50 = \$153,750$

💡 Agent Insight: If the home is listed at \$150,000, it may be slightly under market, which could attract strong buyer interest.

CMA Example – Adjusting Comparables

Adjustment Category	Comp 1	Comp 2	Comp 3
Sale Price	\$300,000	\$310,000	\$290,000
Sq Ft Diff	+\$5,000	-\$10,000	+\$8,000
Condition	-\$3,000	+\$5,000	\$0
Amenities	+\$2,000	\$0	+\$4,000
Adjusted Price	\$304,000	\$305,000	\$302,000

Computer-Generated CMAs

Most MLS platforms provide tools that allow agents to quickly generate a CMA by analyzing the subject property and identifying comparable properties.


These tools can:


- Pull current, pending, sold, and expired listings
- Apply search filters (location, price range, size, features)
- Use mapping or radius tools to find nearby comparables
- Generate automated reports (often in PDF format)

 **Agent Application:** Computer-generated CMAs are a starting point—not the final answer.

Agents must still review the results and apply professional judgment by:

- Selecting the most appropriate comps
- Making adjustments for differences
- Interpreting market trends

 The software provides the data—you provide the expertise.

 **Important Reminder:** Automated CMAs can sometimes include poor or irrelevant comparables if filters are not carefully set.

 **Agent Tip:** Always double-check:

- ✓ Location accuracy
- ✓ Property similarity
- ✓ Recency of sales

Automated Valuation Models (AVMs)

An Automated Valuation Model (AVM) is a computer-generated estimate of a property's value based on mathematical modeling and large data sets.

AVMs use:

- Comparable sales data
- Property characteristics
- Market trends and price patterns


Common examples include online home value estimates (like “Zestimates”).

 **Key Difference from a CMA: Unlike a CMA, an AVM:**

1. Is generated entirely by software
2. Does not involve agent judgment
3. Cannot account well for condition, upgrades, or unique features

Limitations of AVMs: AVMs can be inaccurate because they may not consider:

- Interior condition or renovations
- Unique property features
- Rapidly changing market conditions

 **Agent Tip:** AVMs are useful for a quick estimate, but should never replace a CMA or professional analysis.

 **Practical Application:** Clients will often reference AVMs when discussing price.

👉 Your role is to:

- ✓ Explain why the AVM may be off
- ✓ Provide a more accurate CMA
- ✓ Help the client understand true market value

Preparing a Broker Price Opinion (BPO)

A Broker Price Opinion (BPO)—also called a Broker Opinion of Value (BOV)—is an estimate of a property’s value prepared by a licensed real estate broker or agent, typically for a third party (not a client).

These terms are generally used interchangeably in practice, although BPO is more commonly used in residential real estate.

When Are BPOs Used? BPOs are most often requested by:

1. Lenders
2. Asset managers
3. Relocation companies
4. Investors

They are commonly used for: Foreclosures and REO properties, Short sales, Portfolio valuation and/or Investment analysis

💡 **Agent Tip:** BPOs are often part of lender-driven decisions, not typical buyer/seller transactions.

How a BPO Works:

A BPO is similar to a CMA in that it uses comparable sales and market data, but it is typically:

- More structured and standardized
- Prepared for a third party, not your client
- Often requires specific forms and documentation
- May include photos, condition reports, and market commentary

There are two common types:

1. **Exterior** (Drive-By) BPO – limited inspection
2. **Interior** BPO – full property access and evaluation

Important Legal/Practice Points

- 🛑 A BPO is not an appraisal
- 🛑 Cannot be used where a licensed appraisal is required (e.g., most lending decisions)
- 🛑 Agents must not represent themselves as appraisers
- 🛑 Some states or companies may have specific rules or limitations on BPO use and compensation

💡 **Agent Awareness:** Always check state law and brokerage policy before performing BPOs.

CMA	BPO	AVM
Agent-created	Agent-created	Computer-generated
For clients	For third parties	For public/quick estimates
Uses judgment	More structured	No human judgment
Most practical for agents	Used by lenders/investors	Least reliable

Summary

- **CMA** = Your tool
- **BPO** = Third-party tool
- **AVM** = Computer estimate

👉 “If a client brings you a Zestimate... your CMA is the reality check.”

Progress Check - Preparing a CMA

1. Which of the following is a software-based tool that’s used in residential and commercial real estate to determine property value?

- A. AVM
- B. BPO
- C. CMA
- D. BOV

2. When a broker cannot locate adequate comparable properties to use for a CMA what should they do?

- A. Use property nearest the subject no matter what the differences are
- B. Base the listing price off the previous sale price or cost of construction
- C. Use comparable properties from another location
- D. Refer the seller to a licensed appraiser

3. Which of the following applies to CMAs?

- A. The principal of substitution
- B. USPAP standards of practice
- C. Required broker supervision
- D. Appraisal report

Module 3 - Technology

TOOLS AND RESOURCES

Learning Objectives

- Be familiar with common technology tools used in real estate, including platforms for communication, marketing, transaction management, and property research
- Explain how technology tools can be used to improve efficiency, enhance client communication, and support real estate transactions
- Identify common risks associated with technology in real estate, including cybersecurity threats, wire fraud, and data inaccuracies


Real Estate Tech Trends

Technology Tools & Resources for Real Estate Agents

Today's real estate agents rely on technology to analyze markets, identify opportunities, and better serve clients. While tools can provide large amounts of data quickly, an agent's value comes from interpreting that data and applying it to real-world situations.

Using Technology to Identify Opportunities

Modern tools allow agents to quickly spot trends such as buyer demand, relocation patterns, and investor activity. These insights help agents position themselves as local market experts and guide clients more effectively.

 **Agent Tip:** Technology shows you what is happening—your expertise explains why it matters.

MLS & Market Data Tools

The MLS remains one of the most powerful tools available to agents. It allows you to analyze recent sales, track pricing trends, and identify properties that failed to sell.

Agents commonly use the MLS to:

- ✓ Generate CMAs
- ✓ Track days on market and pricing patterns
- ✓ Identify expired or withdrawn listings

👉 Every pricing recommendation should be supported by current MLS data.

Property Research & Risk Tools

Agents should also be familiar with tools that provide deeper insight into a property and its surrounding area. This is especially important in markets where environmental and location factors impact value.

Examples include:

- Flood zone maps and elevation data
- Property appraiser and tax records
- Zoning and land use information

💡 In Florida, flood and insurance-related data can significantly influence buyer decisions.

New Construction & Development Resources

Technology makes it easier to stay informed about new construction and development activity in your market. Understanding builder inventory, pricing, and timelines can create additional opportunities with both buyers and sellers.

Agents who are knowledgeable about new developments can better guide clients when resale inventory is limited.

Client-Focused Technology

Technology can also enhance how agents serve clients by providing tools that simplify complex decisions. This is especially valuable for first-time buyers and investors.

For example, agents may use tools to:

- A. Compare renting vs. buying
- B. Identify down payment assistance programs
- C. Evaluate investment potential

👉 These tools help turn data into meaningful guidance for clients.

Digital Marketing & Client Management

Successful agents use technology to stay connected with clients and build long-term relationships. Digital tools help automate communication while maintaining a personal touch.

Common tools include CRM systems, email campaigns, and social media platforms to maintain visibility and generate leads.

👉 Important Reminder

Technology is a powerful resource, but it **does not replace professional judgment**. Automated data may be incomplete or misleading if not carefully reviewed.

Technology helps agents work more efficiently and identify opportunities more quickly. However, the most successful agents are those who combine technology with strong market knowledge and professional judgment.

👉 Agents must verify information, select relevant data, and apply market knowledge to provide accurate guidance.

Marketing & Communication Technology

Staying in regular contact with your database is one of the most important activities in real estate. Technology platforms can help agents communicate consistently with past clients, prospects, and their sphere of influence while saving time.

💡 **Industry Insight:** A large percentage of real estate business comes from past clients and referrals, making consistent communication essential.

Marketing Automation Platforms

Marketing platforms (such as email and text automation systems) allow agents to manage communication from one centralized system. These tools help agents stay “top of mind” without having to manually reach out to every contact.

These platforms can:

- ✓ Send scheduled emails, texts, and voicemail messages
- ✓ Store and organize contact databases
- ✓ Provide scripts and message templates

👉 The goal is consistent, personalized communication at scale

Why These Tools Are Effective

Automated marketing systems can improve engagement by making communication more frequent and consistent. Many platforms also allow customization so messages feel personal rather than automated.

💡 Agent Tip: Messages are most effective when they:

- Sound like they were written by you
- Address the client by name
- Include a clear call to action

Database Management & Integration

Most platforms allow agents to upload or sync contacts from their CRM, phone, or email accounts. This creates a centralized database that can be used for ongoing communication and relationship management.

Some systems also offer onboarding support or training to help agents get started and use the tools effectively.

Automated Follow-Up & Client Nurturing

Many platforms use scheduled campaigns to maintain contact over time. For example, agents may send:

- Regular email updates
- Periodic text messages
- Occasional voicemail messages

👉 Consistent follow-up helps build relationships and generate repeat business

Additional Features

Some marketing platforms also offer:

- Pre-written scripts for calls and messages
- Social media content ideas
- Performance tracking (open rates, responses)

These features help agents refine their communication strategy and improve results over time. Technology can automate communication—but it **should not replace genuine relationships**. Successful agents personalize their messages, respond promptly to replies and use technology to enhance, not replace, human connection

Everyday Technology Tools for Real Estate Agents

Successful agents use a combination of tools to manage communication, marketing, transactions, and client relationships. These tools are designed to save time, improve efficiency, and enhance the client experience.

Rather than relying on one system, most agents build a “toolbox” of apps and platforms that support different aspects of their business.

Communication Tools

Maintaining consistent communication is critical in real estate. Tools like virtual phone systems allow agents to separate personal and business communication while staying accessible to clients.

For example, platforms such as Google Voice provide a dedicated business number that can be used for calls and text messaging.

💡 **Agent Tip:** Using a separate business number helps maintain professionalism and protects your personal privacy.

Consumer & Lead Generation Platforms

Many buyers begin their search online, so agents should be familiar with major real estate platforms and ensure their profiles are accurate and up to date.

Platforms such as Zillow allow agents to:

- ✓ Connect with potential clients
- ✓ Track listing activity
- ✓ Stay visible where consumers are actively searching

👉 Clients are already using these platforms—you should be too.

Transaction Management & E-Signature Tools

Real estate transactions rely heavily on digital document management. E-signature platforms allow contracts to be signed quickly and securely from any device.

Tools like DocuSign help agents:

- Send and sign documents remotely
- Reduce paperwork errors
- Keep transactions moving efficiently

💡 Speed and convenience can make a big difference in competitive markets.

Marketing & Design Tools

High-quality marketing materials are essential for attracting buyers and promoting listings. Design platforms make it easy for agents to create professional content without needing graphic design experience.

Tools such as Canva allow agents to quickly create:

- Social media graphics
- Flyers and postcards
- Listing presentations

👉 Strong visuals help listings stand out in a crowded market.

Photo & Visual Enhancement Tools

Presentation matters. Photo editing tools can improve listing photos and make properties more appealing to buyers.

Apps like Lensa can enhance lighting, adjust backgrounds, and improve overall image quality.

💡 Better photos = more views = more interest

Social Media Management Tools

Consistent social media presence is important but can be time-consuming. Scheduling tools help agents stay active without posting manually every day.

Platforms such as Buffer allow agents to:

- Schedule posts in advance
- Track engagement
- Manage multiple platforms in one place

Real Estate Industry Resources

Professional organizations also provide tools to support agents. For example, Florida Realtors offers downloadable infographics, marketing materials, and educational resources that can be shared with clients.

Some tools, like Photofy, allow agents to quickly customize branded social media content using pre-built templates.

👉 These resources help agents maintain a consistent and professional brand.

Technology & Compliance in Florida Real Estate

Technology is widely used in real estate transactions, but agents must ensure they are using it in a way that complies with Florida law and brokerage policies.

Agents should be mindful of:

1. Advertising rules (firm name, accuracy, no misleading content)

2. Record retention requirements
3. Proper handling of client information

💡 Agent Tip: Always follow your broker's policies when using apps, social media, and communication tools.

Cybersecurity & Wire Fraud Awareness

Real estate transactions are a common target for fraud, especially during the closing process. Hackers may attempt to intercept emails and provide false wire instructions. Agents should:

- Never send wire instructions via unsecured email
- Encourage clients to verify instructions directly with the closing agent
- Be cautious of unexpected changes in communication

👉 Protecting your client's funds is a critical responsibility.

Electronic Transactions & Remote Closings

Florida allows for widespread use of electronic signatures and digital transactions, making it possible to complete much of the process remotely. Agents should be comfortable with:

- E-signatures and digital document platforms
- Virtual showings and video tours
- Remote communication with clients and vendors

💡 Convenience is expected—clients often prefer digital-first experiences.

Online Reputation & Reviews

Today's clients often research agents online before making contact. Your digital presence can directly impact your business. Agents should actively manage:

- ✓ Online profiles (MLS, brokerage website, major platforms)
- ✓ Client reviews and testimonials
- ✓ Social media presence

👉 Your online reputation is often your first impression.

Artificial Intelligence (AI) in Real Estate

AI tools are increasingly being used to assist with marketing, communication, and data analysis.

Examples include:

- Writing listing descriptions or emails
- Generating social media content
- Analyzing market trends

💡 Agent Tip: AI can save time, but always review and personalize content before using it with clients.

🛑 Technology Pitfalls to Avoid

While technology is helpful, misuse can create problems. Common mistakes include:

- Relying too heavily on automated valuations (AVMs)
- Posting inaccurate or outdated listing information
- Over-automating communication with clients

👉 Technology should support your expertise—not replace it.

Progress Check - Technology

1. Which of the following best describes the primary purpose of technology tools in real estate?

- A. To improve efficiency and support decision-making
- B. To guarantee accurate property values
- C. To replace the role of the real estate agent
- D. To eliminate the need for client communication

2. Which of the following is the BEST example of a communication tool used by real estate agents?

- A. DocuSign
- B. Canva
- C. Google Voice
- D. Buffer

3. Which of the following BEST describes the agent's role when using technology tools?

- A. Always give clients an opportunity to interpret all data independently
- B. Use technology to support decisions while applying professional judgment
- C. Trust the technology and don't waste time reviewing the data
- D. For best results rely entirely on automated systems