"Real Estate Law".

In Section 1 of this course you will cover these topics:

- The Reality Of Real Estate
- The Real Estate Transaction: Listings, Disclosure, And Agency

Topic : The Reality Of Real Estate

Topic Objective:

At the end of this topic the student would be able to:

- Understand the term Etymology
- Discuss Real estate terminology and practice outside the United States
- Relate Real estate in Mexico and Central America
- Have a better understanding about Mortgages in real estate

Definition/Overview:

Reality of real estate: Reality of real estate is a legal term (in some jurisdictions, notably in the USA, United Kingdom, Canada, and Australia) that encompasses land along with anything permanently affixed to the land, such as buildings, specifically property that is fixed in location. Real estate law is the body of regulations and legal codes which pertain to such matters under a particular jurisdiction. Real estate is often considered synonymous with real property (also sometimes called realty), in contrast with personal property (also sometimes called chattel or personalty under chattel law or personal property law).

Key Points:

1. Etymology

In law, the word real means relating to a thing (res/rei, thing, from O.Fr. reel, from L.L. realis "actual," from Latin. res, "matter, thing"), as distinguished from a person. Thus the law broadly distinguishes between "real" property (land and anything affixed to it) and "personal" property (everything else, e.g., clothing, furniture, money). The conceptual difference was between immovable property, which would transfer title along with the land, and movable property, which a person would retain title to. The oldest use of the term "Real Estate" that has been preserved in historical records was in 1666.

2. Real estate terminology and practice outside the United States

In British usage, real property, often shortened to just property, generally refers to land and fixtures as such while the term real estate is used mostly in the context of probate law, and means all interests in land held by a deceased person at death excluding interests in money arising under a trust for sale of or charged on land.

3. Real estate in Mexicoand Central America

The real estate business in Mexico and Central America is different from the way that it is conducted in the United States. Some similarities include a variety of legal formalities (with professionals such as real estate agents generally employed to assist the buyer); taxes need to be paid (but typically less than those in U.S.); legal paperwork will ensure title; and a neutral party such as a title company will handle documentation and monies in order to smoothly make the exchange between the parties. Increasingly, U.S. title companies are doing work for U.S.buyers in Mexico and Central America. Prices are often much cheaper than most areas of the U.S., but in many locations prices of houses and lots are as expensive as the U.S., one example being Mexico City. U.S.banks have begun to give home loans for properties in Mexico, but, so far, not for other Latin American countries. One important difference from the United Statesis that each country has rules regarding where foreigners can buy. For example, in Mexico, foreigners cannot buy land or homes within 50 km of the coast or 100 km from a border unless they hold title in a Mexican Corporation or a Fideicomiso (a Mexican trust). In Honduras, however, they may buy beach front property directly in their name. There are also different special rules regarding certain types of property: ejidal land communally held farm property can only be sold after a lengthy entitlement process, but that does not prevent them from being offered for sale. Many websites advertising and selling Mexican and Central American real estate exist, but they may need to be researched. In Costa Rica, real estate agents do not need a license to operate, but the transfer of property requires a lawyer.

4. Business sector

With the development of private property ownership, real estate has become a major area of business. Purchasing real estate requires a significant investment, and each parcel of land has unique characteristics, so the real estate industry has evolved into several distinct fields. Specialists are often called on to valuate real estate and facilitate transactions. Some kinds of real estate businesses include:

- Appraisal: Professional valuation services
- Brokerages: A fee charged by the mediator who facilitates a real estate transaction between the two parties.
- Development: Improving land for use by adding or replacing buildings
- Property management: Managing a property for its owner(s)
- Real estate marketing: Managing the sales side of the property business
- Real estate investing: Managing the investment of real estate
- Relocation services: Relocating people or business to a different country
- Corporate Real Estate: Managing the real estate held by a corporation to support its core businessunlike managing the real estate held by an investor to generate income

Within each field, a business may specialize in a particular type of real estate, such as residential, commercial, or industrial property. In addition, almost all construction business effectively has a connection to real estate.

"Internet Real Estate" is a term coined by the internet investment community relating to ownership of domain names and the similarities between high quality internet domain names and real-world, prime real estate.

5. Residential real estate

The legal arrangement for the right to occupy a dwelling is known as the housing tenure. Types of housing tenure include owner occupancy, Tenancy, housing cooperative, condominiums (individually parceled properties in a single building), public housing, squatting, and co-housing.

Residences can be classified by if and how they are connected to neighboring residences and land. Different types of housing tenure can be used for the same physical type. For example, connected residents might be owned by a single entity and leased out, or owned separately with an agreement covering the relationship between units and common areas and concerns. Major physical categories in North America and Europeinclude:

- Attached / multi-unit dwellings
  - Apartment ("flat" outside North America) - An individual unit in a multi-unit building. The boundaries of the apartment are generally defined by a perimeter of locked or lockable doors. Often seen in multi-story apartment buildings.
  - Multi-family house - Often seen in multi-story detached buildings, where each floor is a separate apartment or unit.

- Terraced house (a.k.a. townhouse or rowhouse) - A number of single or multi-unit buildings in a continuous row with shared walls and no intervening space.
- Condominium - Building or complex, similar to apartments, owned by individuals. Common grounds are owned and shared jointly. There are townhouse or rowhouse style condominiums as well.
- Semi-detached dwellings
- Duplex - Two units with one shared wall.
- Single-family detached home
- Portable dwellings
- Mobile homes - Potentially a full-time residence which can be (might not in practice be) movable on wheels.
- Houseboats - A floating home
- Tents - Usually very temporary, with roof and walls consisting only of fabric-like material.

The size of an apartment or house can be described in square feet or meters. In the United Statesthis includes the area of "living space", excluding the garage and other non-living spaces. The "square meters" figure of a house in Europe reports the area of the walls enclosing the home, and thus includes any attached garage and non-living spaces.
It can also be described more roughly by the number of rooms. A studio apartment has a single bedroom with no living room (possibly a separate kitchen). A one-bedroom apartment has a living or dining room, separate from the bedroom. Two bedroom, three bedroom, and larger units are also common. (A bedroom is defined as a room with a closet for clothes storage.)

6. Market sector value

According to The Economist, "developed economies" assets at the end of 2002 were the following:

- Residential property: $48 trillion;
- Commercial property: $14 trillion;
- Equities: $20 trillion;
- Government bonds: $20 trillion;
- Corporate bonds: $13 trillion;
- Total: $115 trillion.

That makes real estate assets 54% and financial assets 46% of total stocks, bonds, and real estate assets. Assets not counted here are bank deposits, insurance "reserve" assets, and human assets; also it is not clear if all debt and equity investments are counted in the categories equities and bonds. For U.S. asset levels see FRB: Z.1 Release- Flow of Funds Accounts of the United States.

7. Mortgages in real estate

In recent years, many economists have recognized that the lack of effective real estate laws can be a significant barrier to investment in many developing countries. In most societies, rich or poor, a significant fraction of the total wealth is in the form of land and buildings. In most advanced economies, the main source of capital used by individuals and small companies to purchase and improve land and buildings is mortgage loans (or other instruments). These are loans for which the real property itself constitutes collateral. Banks are willing to make such loans at favorable rates in large part because, if the borrower does not make payments, the lender can foreclose by filing a court action which allows them take back the property and sell it to get their money back. For investors, profitability can be enhanced by using an off plan or pre-construction strategy to purchase at a lower price which is often the case in the pre-construction phase of development. But in many developing countries there is no effective means by which a lender could foreclose, so the mortgage loan industry, as such, either does not exist at all or is only available to members of privileged social classes.

Topic : The Real Estate Transaction: Listings, Disclosure, And Agency

Topic Objective:

At the end of this topic student would be able to:

- Understand the Nature of Real Estate Transactions
- Learn about Real Estate property and Internal Revenue code
- Understand the Starker Tax Deferred Exchange
- Learn about the basics in Sale of Property

Definition/Overview:

Overview: This topic provides a clear introduction to the concepts of the Real Estate Transaction: Listings, Disclosure, and Agency. Under Section 1031 of the United States Internal Revenue Code (26 U.S.C. 1031), the exchange of certain types of property may defer the recognition of capital gains or losses due upon sale, and hence defer any capital gains taxes otherwise due.

Key Points:

1. Nature of Real Estate Transactions

Real properties generally are of like-kind, regardless of whether the properties are improved or unimproved. However, real property in the United States and real property outside the United Statesare not like-kind properties. Taxpayers may wonder whether items such as equipment used on a property are included in the lump-sum sale of the property, and if they are able to be deferred. Under Treasury regulation 1.1031(k)-1(c)(5)(i), property that is transferred together with the larger item of value will not exceed 15% of the fair market value of the larger property. So for equipment with a fair market value of $15,000, as long as the qualified like-kind property sells for >$100,000, the equipment can be included in the exchange of property and any gain realized can be deferred. Cash to equalize a transaction cannot be deferred under Code Section 1031 because it is not like-kind. This cash is called "boot" and is taxed at a normal capital gains rate. If liabilities assumed by the buyer exceed those of the seller (taxpayer), the realized gain of the seller will be not only realized, but recognized as well. If however, the seller assumes a greater liability than the buyer the realized loss cannot offset any realized and recognized gain of receiving boot such as cash or other personal property considered boot. Originally, 1031 cases needed to be simultaneous transfers of ownership. But since Starker vs. U.S.(602 F.2d 1341), a contract to exchange properties in the future is practically the same as a simultaneous transfer. It is under this case that the rules for election of a delayed 1031 originated. To elect the 1031 recognition, a taxpayer must identify the property for exchange before closing, identify the replace property within 45 days of closing, and acquire the replacement property within 180 days of closing. A Qualified Intermediary must also be used to facilitate the transaction.

2. Real Estate property and Internal Revenue code

Section 1031(a) of the Internal Revenue Code (26 U.S.C. 1031) states the recognition rules for realized gains (or losses) that arise as a result of an exchange of like-kind property held for productive use in trade or business or for investment. It states that none of the realized gain or loss will be recognized at the time of the exchange. It also states that the property to be exchanged must be identified within 45 days, and received within 180 days.1031(b) states when like-kind property and boot can be received. The gain is recognized to the extent of boot received.1031(c) covers cases similar to those in 1031(b) except when the transaction results in a loss. The loss is not recognized at the time of the transaction, but must be carried forward in the form of a higher basis on the property received.1031(d) defines the basis calculation for property acquired during a like-kind exchange. It states that the basis of the new property is the same as the basis of the property given up, minus any money received by the taxpayer, plus any gain (or minus any loss) recognized on the transaction. If the transaction falls under 1031(b) or (c), the basis shall be allocated between the properties received (other than money) and for purposes of allocation, there shall be assigned to such other property an amount equivalent to its Fair Market Value at the date of the exchange.1031(e) stipulates that livestock of different sexes do not qualify for like kind exchange.1031(h)(1) stipulates that real property outside the United States and real property located in the United States are not of like kind.The sale of the relinquished property and the acquisition of the replacement property do not have to be simultaneous. A non-simultaneous exchange is sometimes called a

3. The Starker Tax Deferred Exchange

The Starker Tax Deferred Exchange (named for an investor who challenged and won a case against the IRS). Ref: Starker v. United States, 602 F.2d 1341, 79-2 U.S. Tax Cas. (CCH) paragr. 9541, 44 A.F.T.R.2d 79-5525 (9th Cir. 1979). For a non-simultaneous exchange, the taxpayer must use a Qualified Intermediary, follow guidelines of the Internal Revenue Service, and use the proceeds of the sale to buy more qualifying, like-kind, investment or business property. The replacement property must be identified within 45 days after the sale of the old property and the acquisition of the replacement property must be completed within 180 days of the sale of the old property.

Section 1031 is most often used in connection with sales of real property. Some exchanges of personal property can qualify under Section 1031. Exchanges of shares of corporate stock in different companies will not qualify. Also not qualifying are exchanges of partnership interests in different partnerships and exchanges of livestock of different sexes. However, as of 2002 IRS ruling (see Tenants in common 1031 exchange), Tenants in Common (TIC) exchanges are allowed. For real property exchanges under Section 1031, any property that is considered "real property" under the law of the state where the property is located will be considered "like-kind" so long as both the old and the new property are held by the owner for investment, or for active use in a trade or business, or for the production of income.

In order to obtain full benefit, the replacement property must be of equal or greater value, and all of the proceeds from the relinquished property must be used to acquire the replacement property. The taxpayer cannot receive the proceeds of the sale of the old property; doing so will disqualify the exchange for the portion of the sale proceeds that the taxpayer received. For this reason, exchanges (particularly non-simultaneous changes) are typically structured so that the taxpayer's interest in the relinquished property is assigned to a Qualified Intermediary prior to the close of the sale. In this way, the taxpayer does not have access to or control over the funds when the sale of the old property closes.

4. Sale of Property

At the close of the relinquished property sale, the proceeds are sent by the closing agent (typically a title company, escrow company, or closing attorney) to the Qualified Intermediary, who holds the funds until such time as the transaction for the acquisition of the replacement property is ready to close. Then the proceeds from the sale of the relinquished property are deposited by the Qualified Intermediary to purchase the replacement property. After the acquisition of the replacement property closes, the Qualifying Intermediary delivers the property to the taxpayer, all without the taxpayer ever having "constructive receipt" of the funds.

The prevailing idea behind the 1031 Exchange is that since the taxpayer is merely exchanging one property for another property(ies) of like-kind there is nothing received by the taxpayer that can be used to pay taxes. In addition, the taxpayer has a continuity of investment by replacing the old property. All gain is still locked up in the exchanged property and so no gain or loss is "recognized" or claimed for income tax purposes.

5. Boot

Boot is an old English term meaning Something given in addition to. Boot received is the money or fair market value of Other Property received by the taxpayer in an exchange. Money includes all cash equivalents, debts, liabilities or mortgages of the taxpayer assumed by the other party, or liabilities to which the property exchanged by the taxpayer is subject. Other Property is property that is non-like-kind, such as personal property, a promissory note from the buyer, a promise to perform work on the property, a business, etcThere are many ways for a taxpayer to receive Boot, even inadvertently. It is important for a taxpayer to understand what can result in boot if taxable income is to be avoided.

The most common sources of boot include the following:

- Cash boot taken from the exchange. This will usually be in the form of "Net cash received", or the difference between cash received from the sale of the relinquished property and cash paid to acquire the replacement property(ies). Net cash received can result when a taxpayer is "Trading down" in the exchange (i.e. the sale price of replacement property(ies) is less than that of the relinquished.)

- Debt reduction boot which occurs when a taxpayers debt on replacement property is less than the debt which was on the relinquished property. As is the case with cash boot, debt reduction boot can occur when a taxpayer is "Trading down" in the exchange.

- Sale proceeds being used to pay non-qualified expenses. For example, service costs at closing which are not closing expenses. If proceeds from the sale are used to service non-transaction costs at closing, the result is the same as if the taxpayer had received cash from the exchange, and then used the cash to pay these costs. Taxpayers are encouraged to bring cash to the closing of the sale of their property to pay for the following: Non-transaction costs: i.e. Rent prorations, Utility escrow charges, Tenant damage deposits transferred to the buyer, and any other charges unrelated to the closing.

- Excess borrowing to acquire replacement property. Borrowing more money than is necessary to close on replacement property will not result in the taxpayer receiving tax-free money from the closing. The funds from the loan will be the first to be applied toward the purchase. If the addition of exchange funds creates a surplus at the closing, all unused exchange funds will be returned to the Qualified Intermediary, presumably to be used to acquire more replacement property. Loan acquisition costs (origination fees and other fees related to acquiring the loan) with respect to the replacement property should be brought to the closing from the taxpayers personal funds. Taxpayers usually take the position that loan acquisition costs are being paid out of the proceeds of the loan. However, the IRS may take the position that these costs are being paid with Exchange Funds. This position is usually the position of the financing institution also. Unfortunately, at the present time there is no guidance from the IRS on this issue which is helpful.

- Non-like-kind property which is received from the exchange, in addition to like-kind property (real estate).

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6. Difficulties involved in meeting limits

Frequently, the most difficult component of a 1031 exchange is identifying a replacement property within the first 45 days following the sale of the relinquished property. The IRS is strict in not allowing extensions. A 1031 exchange is similar to a traditional IRA or 401(k) retirement plan. When someone sells assets in tax-deferred retirement plans, the capital gains that would otherwise be taxable are deferred until the holder begins to cash out of the retirement plan. The same principle holds true for tax-deferred exchanges or real estate investments. As long as the money continues to be re-invested in other realestate, the capital gains taxes can be deferred. Unlike the aforementioned retirement accounts, rental income on real estate investments will continue to be taxed as net income is realized.

An alternative to a 1031 exchange for someone who wants to defer capital gains tax, but who does not want to continue to hold property is a structured sale. This method offers both buyer and seller many benefits and is regarded as ideal for those looking to retire from or exit from the real estate or business market.

In Section 2 of this course you will cover these topics:

- Agreements Of Sale
- Conditions, Contingencies, And Other Qualifications

Topic : Agreements Of Sale

Topic Objective:

At the end of this topic student would be able to:

- Understand the meaning of Written Terms
- Learn about Offer and acceptance
- Understand the concept of Deeds in sale

Definition/Overview:

Overview: This topic gives a comprehensive view about sale agreements in Real Estate Property. Sale agreements in Real Estate typically do not result in recordable deeds. Freehold ("More permanent") conveyances of real estate are covered by real estate contracts, including conveying fee simple title, life estates, remainder estates, and freehold easements. They should have the legal requirements specified by contract law in general and should also be in writing to be enforceable.

Key Points:

1- Written Terms

In many countries, real estate contracts must be in writing to be enforceable. In the United States the Statute of Frauds require real estate contracts to be in writing to be enforceable. In South Africa, the Alienation of Land Act specifies that any agreement of sale of immovable property must be in writing.

Additionally, a real estate contract must:

- **Identify the parties:** The full name of the parties must be on the contract. In a sales contract, the parties are the seller(s) and buyer(s) of the real estate, who are often called the principals to distinguish them from real estate agents, who are effectively their intermediaries and representatives in negotiation of the price. If there are any real estate agents brokering the sale, they are typically listed also as the real estate brokers/agents who would earn the commission from the sale.
- **Identify the real estate (property):** At least the address, but preferably the legal description must be on the contract.
- **Identify the purchase price:** The amount of the sales price or a reasonably ascertainable figure (an appraisal to be completed at a future date) must be on the contract.
- **Include signatures:** A real estate contract must be entered into voluntarily (not by force), and must be signed by the parties, to be enforceable.
- **Have a legal purpose:** The contract is void if it calls for illegal action.
- **Involve Competent parties:** Mentally impaired, drugged persons, etc. cannot enter into a contract. Contracts in which at least one of the parties is a minor are voidable by the minor.
- **Reflect a meeting of the minds:** Each side must be clear and agree as to the essential details, rights, and obligations of the contract.
- **Include Consideration:** Consideration is something of value bargained for in exchange of the real estate. Money is the most common form of consideration, but other consideration of value, such as other property in exchange, or a promise to perform (i.e. a promise to pay) is also satisfactory.

Notarization by a notary public is normally not required for a real estate contract, but many recording offices require that a seller's or conveyor's signature on a deed be notarized to record the deed. The real estate contract is typically not recorded with the government, although statements or declarations of the price paid are commonly required to be submitted to the recorder's office. Sometimes real estate contracts will provide for a lawyer review period of several days after the signing by the parties to check the provisions of the contract and counterpropose any that are unsuitable. If there are any real estate brokers/agents brokering the sale, the buyer's agent will often fill in the blanks on a standard contract form for the buyer(s) and seller(s) to sign. The broker commonly gets such contract forms from a real estate association he/she belongs to. When both buyer and seller have agreed to the contract by signing it, the broker provides copies of the signed contract to the buyer and seller.

2. Offer and acceptance

As may be the case with other contracts, real estate contracts may be formed by one party making an offer and another party accepting the offer. To be enforceable, the offers and acceptances must be in writing (Statute of Frauds, Common Law)and signed by the parties agreeing to the contract. Often, the party making the offer prepares a written real estate contract, signs it, and transmits it to the other party who would accept the offer by signing the contract. As with all other types of legal offers, the other party may accept the offer, reject it - in which case the offer is terminated, make a counteroffer - in which case the original offer is terminated, or not respond to the offer - in which case the offer terminates by the expiration date in it. Before the offer (or counteroffer) is accepted, the offering (or countering) party can withdraw it. A counteroffer may be countered with yet another offer, and a counteroffering process may go on indefinitely between the parties. To be enforceable, a real estate contract must possess original signatures by the parties and any alterations to the contract must be initialed by all the parties involved. If the original offer is marked up and initialed by the party receiving it, then signed, this is not an offer and acceptance but a counter-offer.

3. Deed specified

A real estate contract typically does not convey or transfer ownership of real estate by itself. A different document called a deed is used to convey real estate. In a real estate contract, the type of deed to be used to convey the real estate may be specified, such as a warranty deed or a quitclaim deed. If a deed type is not specifically mentioned, "marketable title" may be specified, implying a warranty deed should be provided. Lenders will insist on a warranty deed. Any liens or other encumbrances on the title to the real estate should be mentioned up front in the real estate contract, so the presence of these deficiencies would not be a reason for voiding the contract at or before the closing. If the liens are not cleared before by the time of the closing, then the deed should specifically have an exception(s) listed for the lien(s) not cleared.

The buyer(s) signing the real estate contract are liable (legally responsible) for providing the promised consideration for the real estate, which is typically money in the amount of the purchase price. However, the details about the type of ownership may not be specified in the contract. Sometimes, signing buyer(s) may direct a lawyer preparing the deed separately what type of ownership to list on the deed and may decide to add a joint owner(s), such as a spouse, to the deed. For example, types of joint ownership (title) may include tenancy in common, joint tenancy with right of survivorship, or joint tenancy by the entireties. Another possibility is ownership in trust instead of direct ownership.

4. Earnest money deposit

Although, it is not absolutely required for a valid real estate offer or a contract, an earnest money deposit from the buyer(s) customarily accompanies an offer to buy real estate. The amount, a small fraction of the total price, is listed in the contract, with the remainder of the cost to be paid at the closing.

5. Financial qualifications of buyer(s)

The better the financial qualification of the buyer(s) is, the more likely the closing will be successfully completed, which is typically the goal of the seller. Any documentation demonstrating financial qualifications of the buyer(s), such as mortgage loan pre-approval or pre-qualification, may accompany a real estate offer to buy along with an earnest money check. When there are competing offers or when a lower offer is presented, the seller may be more likely to accept an offer from a buyer demonstrating evidence of being well qualified than from a buyer without such evidence.

Topic : Conditions, Contingencies, And Other Qualifications

Topic Objective:

At the end of this topic student would be able to:

- Understand the concept of Contingencies in Real Estate
- Learn about examining the Condition of property
- Learn about possession details.

Definition/Overview:

Overview: This topic gives clear and detailed information about Conditions, Contingencies, and Other Qualifications in real estate.

Key Points:

1. Contingencies

Contingencies are conditions which must be met if a contract is to be performed. Contingencies that suspend the contract until certain events occur are known as "suspensive conditions". Contingencies that cancel the contract if certain event occur are known as "resolutive conditions". Most contracts of sale contain contingencies of some kind or another, because few people can afford to enter into a real estate purchase without them. But it is possible for a real estate contract not to have any contingencies.

Some types of contingencies which can appear in a real estate contract include:

- Mortgage contingency - Performance of the contract (purchase of the real estate) is contingent upon or subject to the buyer getting a mortgage loan for the purchase. Usually such a contingency calls for a buyer to apply for a loan within a certain period of time after the contract is signed. Since most people who buy a house get a mortgage loan to finance their purchase, mortgage contingencies are one of the most common type of contingencies in real property contracts.
- Seller contingency, in which the seller accepts a contract from a buyer with a contingency (typically a home sale or rent contingency where the buyer conditions the sale on their ability to find a buyer or renter for their current property prior to settlement). The seller retains the right to sell the property to another party if he so chooses after giving the buyer 72 hours notice to remove their contingency. The buyer will then either remove their contingency and provide proof that they can consummate the sale or will release the seller from their contract and allow the seller to move forward with the new contract.

2. Condition of property

A real estate contract may specify in what condition of the property should be when conveying the title or transferring possession. For example, the contract may say that the property is sold as is, especially if demolition is intended. Alternatively there may be a representation or a warranty (guarantee) regarding the condition of the house, building, or some part of it such as affixed appliances, HVAC system, etc. Sometimes a separate disclosure form specified by a government entity is also used. The contract could also specify any personal property (non-real property) items which are to be included with the deal, such as washer and dryer which are normally detachable from the house. Utility meters, electrical wiring systems, fuse or circuit breaker boxes, plumbing, furnaces, water heaters, sinks, toilets, bathtubs, and most central air conditioning systems are normally considered to be attached to a house or building and would normally be included with the real property by default.

3. Date of closing and possession

A typical real estate contract specifies a date by which the closing must occur. The closing is the event in which the money (or other consideration) for the real estate is paid for and title (ownership) of the real estate is conveyed from the seller(s) to the buyer(s). The conveyance is done by the seller(s) signing a deed for buyer(s) or their attorneys or other agents to record the transfer of ownership. Often other paperwork is necessary at the closing. The date of the closing is normally also the date when possession of the real estate is transferred from the seller(s) to the buyer(s). However, the real estate contract can specify a different date when possession changes hands. Transfer of possession of a house, condominium, or building is usually accomplished by handing over the key(s) to it. The contract may have provisions in case the seller(s) hold over possession beyond the agreed date.

The contract can also specify which party pays for what closing cost(s). If the contract does not specify, then there are certain customary defaults depending on law, common law (judicial precedents), location, and other orders or agreements, regarding who pays for which closing costs.

4. Riders

Riders (or addenda) are special attachments (separate sheets) that become part of the contract in certain situations.

In Section 3 of this course you will cover these topics:

- Title Abstraction
- The Nature Of A Deed

Topic : Title Abstraction

Topic Objective:

At the end of this topic student would be able to:

- Understand the Prime usage of a title abstraction
- Learn about Jurisdiction application

- Learn about Contingency factors

Definition/Overview:

Overview: This topic deals with title abstraction and explains important terms and concepts about title abstracts. In simple terms brief history of the transfers of a piece of land, including all claims that could be made against it.

Key Points:

1- Prime usage

An abstract of title is the condensed history of title to a particular parcel of real estate, consisting of a summary of the original grant and all subsequent conveyances and encumbrances affecting the property and a certification by the abstractor that the history is complete and accurate.

2- U.S.Jurisdiction application

In the United States, the abstract of title furnishes the raw data for the preparation of a policy of title insurance for the parcel of land in question.

An abstract of title should be distinguished from an opinion of title. While an abstract states that all of the public record documents concerning the property in question are contained therein, an opinion states the professional judgment of the person giving the opinion as to the vesting of the title and other matters concerning the status of the chain of title. Many jurisdictions define the giving of an opinion of title as the practice of law, thus making it unlawful for a non-attorney to do so.

3. Contingency factors

Purchase of the real estate is contingent upon a satisfactory inspection of the real property revealing no significant defects. Contingencies could also be made on the satisfactory repair of a certain item associated with the real estate.

- Another sale contingency - Purchase or sale of the real estate is contingent on a successful sale or purchase of another piece of real estate. The successful sale of another house may be needed to finance the purchase of a new one.
- Appraisal contingency - Purchase of the real estate is contingent upon the contract price being at or below a fair market value determined by an appraisal. Lenders will often not lend more

than a certain percentage (fraction) of the appraised value, so such a contingency may be useful for a buyer.

4. A property abstract

A property abstract is a collection of legal documents which chronicles activities associated with a particular parcel of land. Generally included are references to deeds, mortgages, wills, probate records, court litigations and tax sales. Basically, any essential legal documents that affect the property. The abstract will also show the names of all property owners and how long a particular holder owned it for as well as showing the price the land was exchanged for when it changed owners. Rarely an abstract will mention capital improvements to the property. Property abstracts are considered good starting places for research on historical buildings.

5. An abstract of title

An abstract of title is the condensed history of title to a particular parcel of real estate, consisting of a summary of the original grant and all subsequent conveyances and encumbrances affecting the property and a certification by the abstractor that the history is complete and accurate. In the United States, the abstract of title furnishes the raw data for the preparation of a policy of title insurance for the parcel of land in question.

An abstract of title should be distinguished from an opinion of title. While an abstract states that all of the public record documents concerning the property in question are contained therein, an opinion states the professional judgment of the person giving the opinion as to the vesting of the title and other matters concerning the status of the chain of title. Many jurisdictions define the giving of an opinion of title as the practice of law, thus making it unlawful for a non-attorney to do so.

The term "abstract of judgment" may be used in a generic sense to describe a condensed summary of a court case, but it is chiefly used in a technical sense to describe a document produced by a court which describes the judgment rendered in a case.

6. Criminal law

An abstract of judgment is a clerical document containing a summary of court proceedings which may be useful though not conclusive in proving a prior conviction for the purposes of enhancement. United States v. Gutierrez-Ramirez, 405 F.3d 352, 357 - 58 (5th Cir. 2005) (finding a sentencing court could not rely on an abstract of judgment to determine whether a prior conviction qualifies to enhance a sentence); United States v. Navidad-Marcos, 367 F.3d 903, 908 - 09 (9th Cir. 2004) (holding an abstract of judgment did not "unequivocally" establish that a defendant entered a guilty plea).

7. Property law

In some states, such as Texas, an abstract of judgment is a specific type of document provided either by the court clerk or by an attorney which is used to prove that a judgment has been rendered. The abstract may then be filed in another jurisdiction, where it constitutes notice of a "judgment lien" on the debtor's real property, thereby preventing the transfer of that property until the judgment has been paid. This process was described by the Supreme Court of the United States in 1987:

Code Ann. 52.002 (1984) (directing clerk to issue an abstract of the judgment "on application of a person in whose favor a judgment is rendered"; no exception for superseded judgments); Thulemeyer v. Jones, 37 Tex.560, 571 (1872). The bond's only effect would be to prevent Pennzoil from executing the judgment and obtaining Texaco's property.

Topic : The Nature Of A Deed

Topic Objective:

At the end of this topic student would be able to:

- Understand the Significance of a deed
- Learn about the Types of deeds
- Learn about the Recording of deeds

Definition/Overview:

Deed: Deed is defined as a legal instrument used to grant a right. Deeds are part of the broader category of documents under seal. Deeds can be described as contract-like, as they require the mutual agreement of more than one person. Deeds can therefore be distinguished from covenants, which being also under seal, are unilateral promises. The deed is best known as the method of transferring title to real estate from one person to another, often using a description of its "metes and bounds." However, by the general definition, powers of attorney, commissions, patents, and even diplomas conferring academic degrees are also deeds.

Key Points:

1. Significance

Historically at common law, for an instrument to be a valid deed it needed six things:

- It must indicate that the instrument itself conveys some privilege or thing to someone. This is indicated by using the word hereby or the phrase by these presents in the sentence indicating the gift.
- The grantor must have the legal ability to grant the thing or privilege.
- The person receiving the privilege or thing must have the legal capacity to receive it.
- A seal must be affixed to it. Most jurisdictions have eliminated this requirement and replaced it with the signature of the grantor with some number of signing witnesses. Most jurisdictionsalso require that the deed be acknowledged before a notary public or a civil law notary.
- It must be delivered to and accepted by the recipient.

2. Types

2.1 General and special warranty

In the transfer of real estate, a deed conveys ownership from the old owner (the grantor) to the new owner (the grantee), and can include various warranties. The precise name of these warranties differ by jurisdiction. However the basic difference between them is the degree to which the grantor warrants the title. The grantor may give a general warranty of title against any claims, or the warranty may be limited only to claims which occurred after the grantor obtained the real estate. The latter type of deed is usually known as a special warranty deed. While a general warranty deed is normally used for residential real estate sales and transfers, special warranty deeds are more commonly used in commercial transactions.

2.2 Bargain and sale deed

A third type of deed, known as a bargain and sale deed, implies that the grantor has the right to convey title but makes no warranties against encumbrances. This type of deed is most commonly used by court officials or fiduciaries that hold the property by force of law rather than title, such as properties seized for unpaid taxes and sold at sheriff's sale, or an Executor.

2.3 Quitclaim deed

A so-called quitclaim deed is (in most states) actually not a deed at all--it is actually an estoppel disclaiming rights of the person signing it to property.

2.4 Deed of trust

In some jurisdictions, a deed of trust is used as an alternative to a mortgage. A trust deed is not used to transfer property directly. It is commonly used in some states, California, for example, to transfer title to land to a trustee, usually a trust or title company, which holds the title as security ("in escrow") for a loan. When the loan is paid off, title is transferred to the borrower by recording a release of the obligation, and the trustee's contingent ownership is extinguished. Otherwise, upon default, the trustee will liquidate the property with a new deed and offset the lender's loss with the proceeds.

3. Recording

Usually the transfer of ownership of real estate is registered at a cadastre in the United Kingdom. In most parts of the United States, deeds must be submitted to the Recorder of deeds, who acts as a cadastre, to be registered. An unrecorded deed may be valid proof of ownership between the parties, but may have no effect upon third-party claims until disclosed or recorded. A local statute may prescribe a period beyond which unrecorded deeds become void as to third-parties, at least as to intervening acts.

3.1 Joint ownership

Ownership transfer may also be crafted within deeds to pass by demise, as where a property is held in concurrent estate such as "joint tenants with right of survivorship" (JTWROS), "tenants by the entirety", or as a life estate. In each case, the title to the property immediately and automatically vests in the named survivor(s) upon the death of the other tenant(s).

3.2 Pardon as deed

In the United States of America, a pardon of the President was once considered to be a deed and thus needed to be accepted by the recipient. This made it impossible to grant a pardon posthumously. However, in the case of Henry Ossian Flipper, this view was altered when President Bill Clinton pardoned him in 1999.

3.3 Title deed

In the United Kingdom, England and Wales operate a 'property register'. Title deeds are documents showing ownership, as well as rights, obligations, or mortgages on the property. Since around 2000, compulsory registration has been required for all properties mortgaged or transferred. The details of rights, obligations, and covenants referred to in deeds will be transferred to the register, a contract describing the property ownership.

At common law, ownership was proven via an unbroken chain of title deeds. The Torrens title system is an alternative way of proving ownership. First introduced in South Australia in 1858 by Sir Robert Torrens and adopted later by the other Australian states and other countries, ownership under Torrens title is proven by possession of a certificate of title and the corresponding entry in the property register. This system removes risks associated with unregistered deeds and fraudulent or otherwise incorrect transactions. It is much easier and cheaper to administer, lowering transaction costs. Some Australian properties are still conveyed using a chain of title deeds - usually properties that have been owned by the same family since the nineteenth century - and these are often referred to as 'Old System' deeds.

In Section 4 of this course you will cover these topics:

- Mortgages
- Closing And Settlement

Topic : Mortgages

Topic Objective:

At the end of this topic student would be able to:

Understand the term Mortgage lender
Learn about the legal situation of a Borrower
Learn about Borrowing for investment purposes

Definition/Overview:

Mortgage:A mortgage is the transfer of an interest in property (or the equivalent in law - a charge) to a lender as a security for a debt - usually a loan of money. While a mortgage in itself is not a debt, it is the lender's security for a debt. It is a transfer of an interest in land (or the equivalent) from the owner to the mortgage lender, on the condition that this interest will be returned to the owner when the terms of the mortgage have been satisfied or performed. In other words, the mortgage is a security for the loan that the lender makes to the borrower.

Key Points:

1. Participants and variant terminology
Legal systems in different countries, while having some concepts in common, employ different terminology. However, in general, a mortgage of property involves the following parties.
2. Mortgage lender
Mortgagee is a party to whom property is mortgaged, usually a lender. Mortgage provides security to the lender. Given the large sum of money involved in financing a property, a mortgage lender will usually want security for the loan that will provide a claim upon that security and will take precedence over other creditors. A mortgage accomplishes this security. The lender loans the money and registers the mortgage with the title to the property. The borrower gives the lender the mortgage as security for the loan, receives the funds, makes the required payments and maintains possession of the property. The borrower has the

right to have the mortgage discharged from the title once the debt is paid. If the mortgagor fails to repay the loan according to the conditions set forth by the lender, then the mortgagee reserves the right to foreclose on the property.

3. Borrower

Mortgagor is a party who mortgages property. A mortgagor owes the obligation secured by the mortgage. Generally, the debtor must meet the conditions of the underlying loan or other obligation and the conditions of the mortgage. Otherwise, the debtor usually runs the risk of foreclosure of the mortgage by the creditor to recover the debt. Typically the debtors will be the individual home-owners, landlords or businesses who are purchasing their property by way of a loan. Most buyers of real property would have difficulty saving enough money to make an outright purchase of real estate. The use of debt increases a buyer's ability to buy through a combination of down payment and debt. As a result a real estate transaction seldom occurs without buyers relying on borrowed funds.

4. Borrowing for investment purposes

Aside from the absence of large amount of available money, there are several reasons why an investor (including a buyer of real estate) might borrow funds. Some of these include:

To diversify investments and reduce overall risk by using only part of the available funds for any one investment. However the mortgage loan enables him to purchase more assets than he would otherwise been able to, and therefore in general increases investment risk rather than reducing it.

To invest the borrowed funds at a higher rate of interest (yield) than the borrowing rate; for example, a sum is borrowed at an annual interest rate of 7% per year and used to invest in a project that returns 10% per year. This is likely to be speculative and there is usually a possibility that the project may turn out to return less than 7% per year or to lose money.

To free up equity for other purposes; for example, a commercial enterprise may prefer to use funds to purchase inventory or equipment instead of investing only in land and buildings.

To obtain a tax benefit. In some countries (such as Canada), mortgage interest is not tax deductible, but loans made for investment purposes are.

5. Default on divided property

When a tract of land is purchased with a mortgage and then split up and sold, the "inverse order of alienation rule" applies to decide parties liable for the unpaid debt.

When a mortgaged tract of land is split up and sold, upon default, the mortgagee first forecloses on lands still owned by the mortgagor and proceeds against other owners in an 'inverse order' in which they were sold. For example, A acquires a 3-acre (12,000 m^2) lot by mortgage then splits up the lot into three 1-acre (4,000 m^2) lots (A, B, and C), and sells lot B to X, and then lot C to Y, retaining lot A for himself. Upon default, the mortgagee proceeds against lot A first, the mortgagor. If foreclosure or repossession of lot A does not fully satisfy the debt, the mortgagee proceeds against lot C, then lot B. The rationale is that the first purchaser should have more equity and subsequent purchasers receive a diluted share.

6. Legal aspects

Mortgages may be legal or equitable. Furthermore, a mortgage may take one of a number of different legal structures, the availability of which will depend on the jurisdiction under which the mortgage is made. Common law jurisdictions have evolved two main forms of mortgage: the mortgage by demise and the mortgage by legal charge.

7. Mortgage by demise

In a mortgage by demise, the mortgagee (the lender) becomes the owner of the mortgaged property until the loan is repaid or other mortgage obligation fulfilled in full, a process known as "redemption". This kind of mortgage takes the form of a conveyance of the property to the creditor, with a condition that the property will be returned on redemption. Mortgages by demise were the original form of mortgage, and continue to be used in many jurisdictions, and in a small minority of states in the United States. Many other common law jurisdictions have either abolished or minimised the use of the mortgage by demise. For example, in England and Wales this type of mortgage is no longer available, by virtue of the Land Registration Act 2002.

8. Mortgage by legal charge

In a mortgage by legal charge or technically "a charge by deed expressed to be by way of legal mortgage", the debtor remains the legal owner of the property, but the creditor gains sufficient rights over it to enable them to enforce their security, such as a right to take possession of the property or sell it. To protect the lender, a mortgage by legal charge is usually recorded in a public register. Since mortgage debt is often the largest debt owed by the debtor, banks and other mortgage lenders run title searches of the real property to make certain that there are no mortgages already registered on the debtor's property which might have higher priority. Tax liens, in some cases, will come ahead of mortgages. For this reason, if a borrower has delinquent property taxes, the bank will often pay them to prevent the lienholder from foreclosing and wiping out the mortgage.

This type of mortgage is most common in the United Statesand, since the Law of Property Act 1925, it has been the usual form of mortgage in England and Wales. In Scotland, the mortgage by legal charge is also known as Standard Security.

In Pakistan, the mortgage by legal charge is most common way used by banks to secure the financing.It is also known as registered mortgage. After registration of legal charge, the bank's lien is recorded in the land register stating that the property is under mortgage and cannot be sold without obtaining an NOC (No Objection Certificate) from the bank.

9. Equitable mortgage

In an equitable mortgage the lender is secured by taking possession of all the original title documents of the property and by borrower's signing a Memorandum of Deposit of Title Deed (MODTD). This document is an f the debtors will be the individual home-owners, landlords or businesses who are purchasing their property by undertaking by the borrower that he/she has deposited the title documents with the bank with his own wish and will, in order to secure the financing obtained from the bank.

10. History

At common law, a mortgage was a conveyance of land that on its face was absolute and conveyed a fee simple estate, but which was in fact conditional, and would be of no effect if certain conditions were met usually, but not necessarily, the repayment of a debt to the original landowner. Hence the word "mortgage" (a legal term in French meaning "dead pledge"). The debt was absolute in form, and unlike a "live pledge" was not conditionally dependent on its repayment solely from raising and selling crops or livestock or simply giving the crops and livestock raised on the mortgaged land. The mortgage debt remained in effect whether or not the land could successfully produce enough income to repay the debt. In theory, a mortgage required no further steps to be taken by the creditor, such as acceptance of crops and livestock in repayment.

The difficulty with this arrangement was that the lender was absolute owner of the property and could sell it or refuse to reconvey it to the borrower, who was in a weak position. Increasingly the courts of equity began to protect the borrower's interests, so that a borrower came to have an absolute right to insist on reconveyance on redemption. This right of the borrower is known as the "equity of redemption".

This arrangement, whereby the lender was in theory the absolute owner, but in practice had few of the practical rights of ownership, was seen in many jurisdictions as being awkwardly artificial. By statute the common law's position was altered so that the mortgagor would retain ownership, but the mortgagee's rights, such as foreclosure, the power of sale, and the right to take possession, would be protected. In the United States, those states that have reformed the nature of mortgages in this way are known as lien states. A similar effect was achieved in England and Wales by the Law of Property Act 1925, which abolished mortgages by the conveyance of a fee simple.

Topic : Closing And Settlement

Topic Objective:

At the end of this topic student would be able to:

Understand the concept of Consideration of a closing date
Learn about Mortgage essentials in settlements
Importance of other participants

Definition/Overview:

Closing& Settlement: Closing (or settlement as it is known in some parts of the US) is the final step in executing a real estate transaction.

Key Points:

1- Consideration of a closing date

The closing date is set during the negotiation phase, and is usually several weeks after the offer is formally accepted. On the closing date, the parties consummate the purchase contract, and ownership of the property is transferred to the buyer. In most jurisdictions ownership is officially transferred when the contract is registered at the cadastre, or, in most USstates, at the office of the CountyRecorder of the county in which the property is located.

2- Mortgage essentials in settlements

Several things happen during closing:

The buyer (or his bank) delivers a cheque (generally in the US, a Cashier's check or wire transfer) for the balance owed on the purchase price.
The seller signs the deed over to the buyer, and gives him the keys.

A title company, lawyer or civil law notary registers the new deed with the local land registry office.
The seller receives a cheque for the proceeds of the sale, less closing costs and mortgage payouts.

Closing in escrow usually occurs in the western half of the US states. A title company (rather than a lawyer) or other trusted party holds the money and the signed deed, and arranges for the transfer. This is primarily so that the seller can give up ownership of the property, and the buyer can hand over the payment, without both parties having to be present at the same time. Escrow ensures an orderly transaction, or if something goes wrong, an orderly termination of the agreement. On the Eastern side of the US, settlement (as closing is called) takes place on a specified date and time during which all parties (usually including the agents involved) meet at a settlement company presided over or supervised by a lawyer or settlement agent. At which time, the settlement agent disburses all funds listed on the settlement statement (in form of certified or wired funds) and the property takes place, and the deed is then recorded by the company.

3. Other participants

Because of the complicated legal exchange, or conveyance, of the property, one or both of the main participants are likely to require legal representation. The terminology varies with legal jurisdiction; see lawyer, solicitor and conveyancer. The debt is, in civil law jurisdictions, referred to as hypothecation, which may make use of the services of a hypothecary to assist in the hypothecation. Because of the complex nature of many markets the debtor may approach a mortgage broker or financial adviser to help them source an appropriate creditor, typically by finding the most competitive loan.

4. Closing

Closing is a sales term which refers to the process of making a sale. The sales sense springs from real estate, where closing is the final step of a transaction. In sales, it is used more generally to mean achievement of the desired outcome, which may be an exchange of money or acquiring a signature. Salespeople are often taught to think of targets not as strangers, but rather as prospective customers who already want or need what is being sold. Such prospects need only be "closed."
"Closing" is distinguished from ordinary practices such as explaining a product's benefits or justifying an expense. It is reserved for more artful means of persuasion, which some compare with confidence tricks. For example, a salesman might mention that his product is

popular with a person's neighbors, knowing that people tend to follow perceived trends. In automobile dealerships, a "closer" is often a senior salesman experienced in closing difficult deals.

In Section 5 of this course you will cover these topics:
- Leases In The Real Estate Transaction
- Resolution Of Real Estate Disputes

Topic : Leases In The Real Estate Transaction

Topic Objective:

At the end of this topic student would be able to:

Understand the Formality of a lease
Learn about Term of a lease
Understand the concept of Rent
Learn about Leasing of real property

Definition/Overview:

Leasing: Leasing is a process by which a firm can obtain the use of a certain fixed assets for which it must pay a series of contractual, periodic, tax deductable payments. The lessee is the receiver of the services or the assets under the lease contract and the lessor is the owner of the assets. The relationship between the tenant and the landlord is called a tenancy, and can be for a fixed or an indefinite period of time (called the term of the lease). The consideration for the lease is called rent.

Key Points:

1. Formality of a lease
A tenancy for years greater than 1 year must be in writing in order to satisfy the Statute of Frauds.
2. Term of a lease
The term of the lease may be fixed, periodic or of indefinite duration. If it is for a specified period of time, the term ends automatically when the period expires, and no notice needs to

be given, in the absence of legal requirements. The term's duration may be conditional, in which case it lasts until some specified event occurs, such as the death of a specified individual. A periodic tenancy is one which is renewed automatically, usually on a monthly or weekly basis. A tenancy at will lasts only as long as the parties wish it to, and be terminated without penalty by either party. It is common for a lease to be extended on a "holding over" basis, which normally converts the tenancy to a periodic tenancy on a month by month basis.

3. Rent

Rent is a requirement of leases in common law jurisdiction, but not in civil law jurisdiction. There is no requirement for the rent to be a commercial amount. "Pepper corn" rent or rent of some nominal amount is adequate for this requirement.

4. Leasing of real property

There are different types of ownership for land but, in common law states, the most common form is the fee simple absolute, where the legal term fee has the old meaning of real property, i.e. real estate. An owner of the fee simple holds all the rights and privileges to that property and, subject to the laws, codes, rules and regulations of the local law, can sell or by contract or grant, permit another to have possession and control of the property through a lease or tenancy agreement. For this purpose, the owner is called the lessor or landlord, and the other person is called the lessee or tenant, and the rights to possess and control the land are exchanged for some payment (called consideration in legal English), usually a monthly rent. The acceptance of rent by the landowner from a tenant creates (or extends) most of the rights of tenancy even without a written lease (or beyond the time limit of an expiring lease). Although leases can be oral agreements that are periodic, i.e. extended indefinitely and automatically, written leases should always define the period of time covered by the lease. In the 1930s, the British government introduced infinite leases, only to remove the power to create these in the early 1990s. A lease may be:

a fixed-term agreement, in other words one of these two:
for a specified period of time (the "term"), and end when the term expires;
conditional, i.e. last until some specified event occurs, such as the death of a specified individual; or
a periodic agreement, in other words renewed automatically
usually on a monthly or weekly basis

at will, i.e. last only as long as the parties wish it to, and be terminated without penalty by either party.

Because ownership is retained by the lessor, he or she always has the better right to enforce all the contractual terms and conditions affecting the use of the land. Normally, the contract will be express (i.e. set out in full and, hopefully, plain language), but where a contract is silent or ambiguous, terms can be implied by a court where this would make commercial sense of the transaction between the parties. One important right that may or may not be allowed the lessee, is the ability to create a sublease or to assign the lease, i.e. to transfer control to a third party. Hence, the builder of an office block may create a lease of the whole in favour of a management company that then finds tenants for the individual units and gives them control.

Under common law, a lease should have three essential characteristics:

A definite term (whether fixed or periodic)

At a rent

confer exclusive possession

5. Leasing of tangible personal property

An owner can allow another the use of a vehicle (such as vehicle leasing of a car, a truck or an airliner) or a computer either for a fixed period of time or at will. This can be a simple leasing transaction, or it can be a transaction intended to allow the user the right to buy the item at some future time.

In a simple lease (rental) of a car, P pays O a rental for the use of the car during the agreed period which may be a few days (e.g. for a holiday trip) or longer where it is more economic to pay for use rather than pay for the ownership of an asset of depreciating value. Normally, only P will be allowed to use the vehicle and, in such a case, P has possession and control. But, P could be an employer who allows C the use of the car to visit clients, and thereby gives C control.

In a lease with the possibility of purchase, O could allow P to lease the car for a specified period of time. If all the rental payments are made in full, P will then be allowed to buy the car at the contractual purchase option price. In a consumer lease subject to the federal

Consumer Leasing Act and the Truth in Lending Act, the purchase option price can not be a "bargain" purchase, that is, it cannot be less than the originally estimated fair market value. A "bargain" purchase creates an installment sale, to which the Truth in Lending Act (TILA) applies including the standardized disclosures, most importantly the Annual Percentage Rate (APR). Typically, the vehicle dealer or other personal property seller offers the leasing terms and contract of a third party finance company. Hence, O leases the vehicle to P, and upon execution of the contract simultaneously sells ownership of the car to F and assigns the lease contract to F. It is standard for the contractual terms to prohibit P from parting with possession or control of the car to another (if P does part with possession, this can be a theft of the car from F).

There are two principal types of leasing, depending upon the party taking the risk of the value of the vehicle (or other leased property) at lease end. In the U.S. this is called Closed-end leasing. In other jurisdictions, it is called hire purchase, lease purchase or finance leasing. These transactions are complicated. The most common problem arises when O makes specific representations as to the quality and reliability of the car to P during the initial negotiations. If what is said induces P to buy the car from O, those representations would usually be enforceable against O. But, in this transaction, O first sells the car to F who makes no representations to P. The laws vary from state to state on the extent to which P might be allowed a remedy if the car proves to be of poor quality.
To clarify the concept, the owner of tangible movables has the power to keep possession and only to transfer control. This may be for:

short- or long-term storage (e.g. leaving a passport with hotel staff or depositing valuable property in a bank vault a hotel or bank holding property is a bailee); or
for delivery purposes (e.g. using a carrier to transport goods to a specific destination); or
it may be a form of mortgage a pawnshop holds a pledge over the goods deposited until the money lent is repaid.

Leasing is a common method by which airlines acquire their aircraft, usually from companies specialised in the field of Commercial Aircraft Sales and Leasing. Aircraft leasing transactions are typically divided into finance leasing and operating leasing. Businesses often choose to lease rather than buy office equipment, including computers. Since office equipment depreciates rapidly, leasing can be more cost-efficient than ownership. In addition, more and more unconventional items are becoming available for lease, such as handbags and luxury watches.

6. Real leases

Whether it is better to lease or buy land will be determined by each state's legal and economic systems. In those countries where acquiring title is complicated, the state imposes high taxes on owners, transaction costs are high, and finance is difficult to obtain, leasing will be the norm. But, freely available credit at low interest rates with minimal tax disadvantages and low transaction costs will encourage land ownership. Whatever the system, most adult consumers have, at some point in their lives, been party to a real estate lease which can be as short as a week, as long as 999 years, or perpetual (only a few states permit ownership to be alienated indefinitely). For commercial property, whether there is a depreciation allowance depends on the local state taxation system. If a lease is created for a term of, say, ten years, the monthly or quarterly rent is a fixed cost during the term. The term of years may have an asset value for balance sheet purposes and, as the term expires, that value depreciates.However, the apportionment of relief as between business expense and depreciating asset is for each state to make (all that is certain is that the lessee cannot have a double allowance).

7. Private property rental

Rental, tenancy, and lease agreements are formal and informal contracts between an identified landlord and tenant giving rights to both parties, e.g. the tenant's right to occupy the accommodation for an agreed term and the landlords right to receive an agreed rent. If one of these elements is missing, only a tenancy at will or bare licence comes into being. In some legal systems, this has unfortunate consequences. When a formal tenancy is created, the law usually implies obligations for the lessor, e.g. that the property meets certain minimum standards of habitability. With a bare licence, some states do not imply any significant lessee protections

A tenancy agreement can be made up of:

express terms. These include what is in the written agreement (if there is one), in the rent book, and/or what was agreed orally (if there is clear evidence of what was said).
implied terms. These are the standard terms established by custom and practice or the minimum rights and duties formally implied by law.

8. Commercial leasehold

Generally speaking in the modern USlegal framework, commercial real property leases fall into one of just a few categories: Office, Retail, Warehouse, Ground, and a catch-all hybrid often referred to as "Mixed Use". Each has certain typical characteristics, although Ground leases may differ somewhat, taking on some characteristics of Retail leasing when associated with a retail project, like a shopping center; and although Mixed Use projects can vary greatly depending upon the various inclusions and the size of the overall project, among other things. It is widely appreciated by those who specialize in commercial leasing, including the business side and the legal side, that, other than hybrids such as Mixed Use project leasing, Retail leasing can have the most complexity.

Mixed Use projects often have elements of most or all of the other categories, not infrequently including a hotel, office building, ground floor retail with residential condominium above and a parking garage. The interplay of all these different components with each other and the underlying property documents which describe, define, and control their interactions, operation and management, as well as the division of costs for the operation of the site, are typically very complex. Retail leasing often requires the parties to address issues typically not addressed at all in other types of commercial leasing which have no retail component. These additional challenges include such topics as exclusives and restrictive covenants, radius restrictions on near-by self-competition, co-tenancy, no-build areas and visibility corridors, parking ratio assurances, signage concerns (including pylons, monuments, and criteria), CAM and CAM caps and controls (including the "cumulative" and "non-cumulative" concepts), continuous operating covenants, and much more.

9. Advantages of commercial leasing

For businesses, leasing property may have significant financial benefits:

Leasing is less capital-intensive than purchasing, so if a business has constraints on its capital, it can grow more rapidly by leasing property than it could by purchasing the property outright.

Capital assets may fluctuate in value. Leasing shifts risks to the lessor, but if the property market has shown steady growth over time, a business that depends on leased property is sacrificing capital gains.

Because of investments which are done with leasing, new businesses are formed.

Furthermore, unemployment in that country is decreased.

Leasing may provide more flexibility to a business which expects to grow or move in the relatively short term, because a lessee is not usually obliged to renew a lease at the end of its term.

In some cases a lease may be the only practical option; such as for a small business that wishes to locate in a large office building within tight locational parameters.

Depreciation of capital assets has different tax and financial reporting treatment from ordinary business expenses. Lease payments are considered expenses, which can be set off against revenue when calculating taxable profit at the end of the relevant tax accounting period.

10. Disadvantages of commercial leasing

For businesses, leasing property may have significant drawbacks:

A net lease may shift some or all of the maintenance costs onto the tenant.

If circumstances dictate that a business must change its operations significantly, it may be expensive or otherwise difficult to terminate a lease before the end of the term. In some cases, a business may be able to sublet property no longer required, but this may not recoup the costs of the original lease, and, in any event, usually requires the consent of the original lessor. Tactical legal considerations usually make it expedient for lessees to default on their leases. The loss of book value is small and any litigation can usually be settled on advantageous terms. This is an improvement on the position for those companies owning their own property. Although it can be easier for a business to sell property if it has the time, forced sales frequently realise lower prices and can seriously affect book value.

If the business is successful, lessors may demand higher rental payments when leases come up for renewal. If the value of the business is tied to the use of that particular property, the lessor has a significant advantage over the lessee in negotiations

Under normal circumstances, an owner of property is at liberty to do what they want with their property, including destroy it or hand over possession of the property to a tenant. However, if the owner has surrendered possession to another (ie the tenant) then any interference with the quiet enjoyment of the property by the tenant in lawful possession is unlawful. Similar principles apply to real property as well as to personal property, though the terminology would be different. Similar principles apply to sub-leasing, that is the leasing by a tenant in possession to a sub-tenant. The right to sub-lease can be expressly prohibited by the main lease.

Topic : Resolution Of Real Estate Disputes

Topic Objective:

At the end of this topic student would be able to:

Understand the nature of the job
Learn about the typical Dispute resolution professional expertise

Definition/Overview:

Resolution of Real Estate Dispute: Resolution of Real Estate Dispute represent the interest of buyers, rentals, or sellers of real estate, that is, of immovable property. Real estate law is simply the documentation of buying and selling properties whether commercial or residential. Real estate disputes may escalate to different levels. Whether the manner of resolution is mediation, arbitration, or traditional litigation, a real estate lawyer must be able to protect their clients' needs in the most efficient and cost-effective manner.

Key Points:

1. Federal Courts

The judicial system in the United Statesis an adversarial one in which the courts provide an arena for two parties to bring their conflict before an impartial arbiter. Most cases never reach trial because they are settled by agreements reached out of court. In a criminal law case, an individual is charged by the government with violating a specific law. Civil law involves disputes between two parties and defines relationships between them.

2. Participants in the Judicial System

Federal judges are restricted by the Constitution to deciding actual disputes rather than hypothetical ones. Two parties must bring a case to the court before it may be heard. Every case is a dispute between a plaintiff and a defendant, in which the former brings some charge against the latter. Litigants must have what is called standing to sue, that is, they must have serious interest in a case. Class action suits permit a small number of people to sue on behalf of all other people similarly situated. Conflicts must also be justiciable disputes, issues that are capable of being settled by legal methods. Because they recognize the courts ability to shape policy, interest groups often seek out litigants whose cases seem particularly strong. The National Association for the Advancement of Colored People and the American Civil Liberties Union have been particularly successful in litigation. Groups often submit amicus curiae briefs to the courts in support of their case. Lawyers are an indispensable actor in thejudicial system. The audience for the judicial drama includes interest groups, the press, and the public.

3. The Structure of the Federal Judicial System (507-512)

Aside from specifying that there will be a Supreme Court, the Constitution left it to Congress to establish lower federal courts. The Judiciary Act of 1789 created the constitutional courts. Congress has also established legislative courts for specialized purposes. Courts with original jurisdiction are those in which a case is heard first, usually in a trial. Courts with appellate jurisdiction hear cases brought to them on appeal from a lower court.

4. District Courts

The entry point for most litigation in the federal courts is 1 of the 91 district courts. These are courts of original jurisdiction and the only federal courts in which trials are held. About 98 percent of all criminal cases in the United States are heard in state and local courts. Most civil suits in the United States are also handled in state and local courts. Actors in the district courts include U.S. marshals who serve the writs, federal magistrates who issue warrants and set bail, and an U.S.attorney who prosecutes violations of federal law and represents the U.S.government in civil cases. Most of the cases handled in the district courts are routine, and few result in policy innovations.

5. Courts of Appeal

The U.S.courts of appeal are appellate courts empowered to review all final decisions of district courts. Courts of appeal also have authority to review and enforce orders of many federal regulatory agencies. There are twelve judicial circuits plus a special appeals court called the U.S. Court of Appeals for the Federal Circuit.

The most important functions of the U.S. Supreme Court are resolving conflicts among the states and maintaining national supremacy in the law. There are eight associates and one chief justice in the Supreme Court. All nine justices sit together to hear cases and make decisions. They must first decide which cases to hear. The Court does have an original jurisdiction, yet very few cases arise under it. Cases may be appealed from both federal and state courts if they involve a substantial federal question. The majority of cases heard by the Supreme Court come from the lower federal courts. Judges draw upon their backgrounds and beliefs to guide their decision-making. Presidents work diligently to place candidates sympathetic to presidential policies on the bench.

6. The Politics of Judicial Selection (512-516)

Appointing a federal judge or a Supreme Court justice is a presidents chance to leave an enduring mark on the American legal system. The president nominates persons to fill judicial slots and the Senate confirms each nomination by majority vote.

7. The Lower Courts

The customary manner in which the Senate disposes of state-level federal judicial nominations is through senatorial courtesy. Nominations for lower court positions are not confirmed when opposed by a senator of the presidents party from the state in which the nominee is to serve. Presidents usually check carefully with the relevant senator or senators ahead of time so that they will avoid making a nomination that will fail to be confirmed. The Department of Justice and the Federal Bureau of Investigation conduct competency and background checks on potential nominees. Candidates themselves are often active on their own behalf. The president usually has more influence in the selection of judges to the federal courts of appeal than to federal district courts. Individual senators are in a weaker position to determine who the nominee will be because the jurisdiction of an appeals court encompasses several states.

8. The Supreme Court

The president is vitally interested in the Supreme Court. When the chief justices position is vacant, the president may nominate either someone already on the Court or someone from outside to fill the position. The president operates under fewer constraints in nominating persons to serve on the Supreme Court than in naming persons to be judges in the lower courts. The president relies on the attorney general and the Department of Justice to identify and screen candidates for the Court. Senators play a lesser role. Candidates for nomination usually keep a low profile. The Senate Judiciary Committee may probe a nominees judicial philosophy in great detail. Since the mid-1960s six nominees have failed confirmation. Presidents whose parties are in the minority in the Senate or who make a nomination at the end of their terms face a greatly increased probability of substantial opposition. Opponents of a nomination usually must be able to question a nominees competence or ethics in order to defeat a nomination.

9. The Backgrounds of Judges and Justices (516-520)

The federal judiciary is composed of distinguished men and women. Judges serving on the federal district and circuit courts are all lawyers and overwhelmingly white males. Federal judges have typically held office as a judge or prosecutor, and often they have been involved in partisan politics. Supreme Court justices also have all been lawyers and mostly white males. Race and gender have become more salient criteria in recent years. Geography was once a prominent criterion for selection to the Court, but it is no longer very important. Justices have typically held high administrative or judicial positions before moving to the Supreme Court. Partisanship is another important influence on the selection of judges and justices. Only 13 of the 108 members of the Supreme Court have been nominated by presidents of a different party. Judgeships are also very prestigious patronage plums. Ideology is also important in the selection of judges and justices. Nominees are always questioned about their political and judicial philosophy. Members of the federal bench may try to time their retirements so that a president with compatible views will choose their successors. Presidents are usually pleased with their Court nominees. However, about one-fourth of the time they are not, as it is not easy to predict the policy inclinations of judicial nominees. Presidents do influence policy through the values of their judicial nominees. Presidents face pressures for representativeness in selecting judges. Less clear is what policy differences result when presidents nominate persons with different backgrounds to the bench. It does appear that Republican judges in general are somewhat more conservative than Democratic judges are.

10. The Courts as Policymakers (520-526)

Courts of original jurisdiction cannot refuse to consider a case. Appeals courts control their own agenda. Approximately 7,500 cases submitted to the U.S. Supreme Court must be read, culled, and sifted. Every Wednesday and Friday the nine justices meet in conference. At these conferences they decide which cases they want to discuss. If four justices agree to grant review of a case, it can be scheduled for oral argument or decided on the basis of the written record. The most common way for the Court to put a case on its docket is by issuing to a lower federal or state court a writ of certiorari (a formal document that calls up a case). Cases that involve major issues are likely to be selected by the Court. The Court has tried to avoid certain political issues. The solicitor general has an important influence on the Court. The solicitor generals functions include: 1) to decide whether to appeal cases the government has lost in the lower courts, 2) to review and modify the briefs presented in government appeals, 3) to represent the government before the Supreme Court, and 4) to submit a brief on behalf of a litigant in a case in which the government is not directly involved. Ultimately the Supreme Court decides very few cases.

11. Making Decisions

At the conferences, the justices also discuss cases actually accepted and argued before the Court. Before the justices enter the courtroom they have received prepared written briefs, including amicus curiae briefs, which attempt to influence the Courts decisions and raise additional points. The government may submit these in cases in which it has an interest. Once a tentative vote has been reached, it is necessary to write an opinion, a statement of the legal reasoning behind the decision. Broad and bold opinions have far-reaching implications for future cases. Dissenting opinions are those written by justices opposed to all or part of the majoritys decision. Concurring opinions are those written not only to support a majority decision but also to stress a different constitutional or legal basis for the judgment. The vast majority of cases reaching the courts are settled on the principle of stare decisis, meaning that an earlier decision should hold for the case being considered.

All courts rely heavily upon precedent, the way similar cases were handled in the past, as a guide to current decisions. The Supreme Court is in a position to overrule its own precedents and has done so. It is often easy to identify consistent patterns in the decisions of justices. Media coverage of the Court tends to be short and shallow.

12. Implementing Court Decisions

Judicial implementation refers to how and whether court decisions are translated into actual policy, affecting the behavior of others. Implementation of court decisions involves several elements. First, the interpreting population (lawyers and judges) understands and reflects the intent of the original decision in their subsequent actions. Second, the implementing population includes local officials. Judicial decisions are more likely to be smoothly implemented if implementation is concentrated in the hands of a few highly visible officials. Third, every decision involves a consumer population that must be aware of its newfound rights and stand up for them. Congress and presidents can also help or hinder judicial implementation. The fate and effect of a Supreme Court decision are complex and unpredictable.

13. The Courts and the Policy Agenda (526-530)

Until the Civil War, the dominant questions before the Court concerned the strength and legitimacy of the federal government and slavery. From the Civil War until 1937, questions of the relationship between the federal government and the economy predominated. From 1938 to the present, the paramount issues before the Court have concerned personal liberty and social and political equality.

14. A Historical Review

The most important development during the Marshall Court was the case of Marbury v. Madison, which established the power of judicial review; the power of the courts to hold acts of Congress, and by implication the executive, in violation of the Constitution. This case also illustrates that the courts must be politically astute in exercising their power over the other branches. Franklin Roosevelt tried to increase the number of justices on the Court to add ones who would be sympathetic to his New Deal. The Warren Courtwas very active in shaping public policy especially in the area of school segregation and rights of criminal defendants. The Burger Court followed the principal of strict constructionism. The Burger Court ordered President Nixon to turn White House tapes over to the courts, hastening his resignation (United States v. Nixon, 1974). The present Court, the Rehnquist Court, has not created a revolution in constitutional law. It has limited rather than reversed rights established by liberal decisions such as those regarding defendants rights and abortion.

15. Understanding the Courts (530-536)

In some ways, the courts are not a very democratic institution, but the courts are not entirely independent of popular preferences and are not as insulated from the normal forms of politics as one might think. Courts can also promote pluralism. When groups go to court, they use litigation to achieve their policy objectives.

16. What Courts Should Do: The Scope of Judicial Power

Courts make policy on both large and small issues. Many scholars and judges favor a policy of judicial restraint, in which judges adhere closely to precedent and play minimal policymaking roles, leaving policy decisions strictly to the legislatures. On the other side are proponents of judicial activism, in which judges make bold policy decisions, even charting new constitutional ground with a particular decision. Judicial activism or restraint is not the same as liberalism or conservatism. Federal courts have developed a doctrine of political questions as a means to avoid deciding some cases, principally those regarding conflicts between the president and Congress. Judges often attempt to avoid deciding a case on the basis of the Constitution, preferring less contentious technical grounds. From the earliest days of the republic federal judges have been politically astute in their efforts to maintain the legitimacy of the judiciary and to conserve their resources. The decisions of activist courts can be overturned through appointment powers or constitutional amendments. If the issue is one of statutory construction, in which a court interprets an act of Congress, the legislature routinely passes legislation that clarifies existing laws and, in effect, overturns the courts. Thus the description of the judiciary as the ultimate arbiter of the Constitution is hyperbolic; all the branches of government help define and shape the Constitution.