

## INTRODUCTION

### QUESTIONS AND ANSWERS

**Question 1:** What is Real Estate? What does it mean to obtain a Real Estate license?

**Answer:** Real Estate is Land, what's attached to it permanently, the air space above it and the subsurface underneath such as water, oil and gas, other minerals, etc.

**A license enables you to collect compensation for:**

1. Negotiating for the sale or purchase of property.
2. Managing property, including locating tenants for empty space and rent collection.
3. Negotiate for construction and development of property.
4. The sale of businesses including the name, goodwill, and equipment associated with the sale of the business.

**Question 2:** Who issues the license?

**Answer:** The Department of Licensing & Regulatory Affairs (The Department i.e. LARA) will issue a license after verifying that you have met licensing requirements such as attending class, passing the state test, filing the proper application for license with the fee.

**Question 3:** Do I work alone or does someone else supervise me?

**Answer:** You will probably be an independent contractor and set your working hours on your own but you need an employing broker to provide you supervision.

**Question 4:** Is there a difference between a salesperson and a Broker and are there any other levels of licensing available in the Real Estate industry?

**Answer:** The state gives two different types of tests--one for a salesperson and another for a Broker.

1. A Broker is a person who has had enough experience and education and who has passed the Broker's test to become a Real Estate Broker. This person does not need "supervision" by another broker. S/he can operate his/her own practice and hire salespeople to work for him/her. **ALL DECISIONS AND POLICY ARE MADE BY THE BROKER.**
2. A salesperson must be employed by a Broker who will supervise his/her activities.
3. As far as negotiating transactions, both Salespersons and Brokers can conduct the same activity. However, the Broker has more responsibilities as far as record keeping, closings, and an overall supervision of the operation. If another Broker employs a Broker, the broker must obtain an "Associate Broker" license.

## INTRODUCTION

**Question 5:** How do I exactly work and get paid?

**Answer:**

1. All business is conducted in the name of the Broker.
2. After conducting a service, compensation is paid to the Broker who will then pay the salesperson a portion of that compensation. This is known as the "split".
3. The commission split may vary from one Broker to another based on what the Broker provides for the salesperson such as an office, clerical help, advertising, etc.
4. Although a salesperson usually works as an independent contractor, sometimes s/he may be hired as an employee.

**Example:** An owner calls you to help her sell property. You visit the property, analyze its value and ask her to sign an employment contract (listing agreement) in order to officially employ your company to sell. When property is sold, owner pays Broker directly, then Broker pays you a portion of the money (unless, of course, you were on salary or wages which is less common than being on a commission split). The bottom line is that the Broker and nobody else can pay the salesperson.

**Note: Earning a commission –** If a listing agreement indicates that the broker earns a commission if s/he provides a **buyer willing, able and ready to buy**, then a broker who procures a "mirror offer" i.e. full price and terms has earned a commission.

**Question 6:** How does cooperation with other Brokers take place?

**Answer:** After a property has been listed, your company may be contacted by a competing real estate company indicating they have a buyer for your listing and asking if your company will cooperate and split fees with them. (There is no need to ask if a company cooperates as long as both are members in the same **Multiple Listing Service** where Brokers invite cooperation through a computerized network.) If your company cooperates and the competing company brings a buyer and the deal is closed, your company is paid by the seller and in turn will pay a commission split to the selling company.

**Example:** As a salesperson with Sunshine Realty you list a house and try to sell it. The sales associates in your company also try to no avail. Eventually a salesperson from Green Valley Realty calls you and says that they have a buyer who would like to look at your listing. Your company decides to cooperate with the competition. Assuming a 50/50 split between your company and the competing company, a 50/50 split between you and your Broker, and providing that the seller has agreed to pay an \$8,000 commission to your company, your Broker (listing broker) will receive an \$8,000 commission from the seller and immediately pay \$4,000 out of it to Green Valley Realty (selling broker). The Broker in Green Valley Realty who is also on a 50/50 split with his salesperson (selling salesperson) will retain \$2,000 and pay the salesperson \$2,000. Your Broker will retain \$2,000 and pay you (listing salesperson) \$2,000. Should this property have been sold by you, your Broker would have kept the \$8,000 commission and given you \$4,000 out of it (\$2,000 for listing the house and \$2,000 for selling it) and your Broker would have kept \$4,000. If this house is sold by another salesperson working for your Broker, then your Broker would keep \$4,000 and pay you \$2,000 for listing the house and pay the other salesperson \$2,000 for selling it. Remember that all commissions charged to the clients, as well as commission splits, are negotiable and not set by anyone other than the parties involved.

**Note:** Although a broker is not required by law to cooperate, s/he could be disciplined by the Department if s/he indicated or implied to the seller that s/he in fact would, and later refused.

## INTRODUCTION

**Question 7:** What if the house does not sell?

**Answer:** There are no guarantees given and the listing agreement usually promises a fee if a buyer has been procured. But, if a buyer is not found before expiration of listing agreement, no fee is paid. For this reason, and in the interest of expediting the sale, it is a good idea for the listing broker to cooperate.

**Question 8:** What is the reason for establishing licensing rules? What law regulates the real estate industry in Michigan?

**Answer:** Real estate professionals are regulated for “**consumer protection**”. The law that sets all rights and obligations of licensees is the “**Michigan Occupational Code**”. It provides for the following:

1. Establishes the powers and duties of the Department of Licensing & Regulatory Affairs (the Department) and creates a **Board** for each occupation.
2. Provides for certain rules, fees, and fines.

Example of consumer protection:

1. All listing agreements must have an anti-discrimination clause and a definite expiration date
2. Brokers must keep buyer's deposit in a separate trust account.
3. Signed offers must be promptly presented to seller.
4. Agents must recommend title insurance to the buyer, etc.

**Question 9:** How long is the license good for and are there any temporary or permanent licenses?

**Answer:** Licenses expire on October 31st of a 3-year renewal cycle. No permanent licenses are issued. A TEMPORARY LICENSE may be issued at the sole discretion of the Department such as in the case of a license transfer.

## DESCRIPTION OF EXAMINATION

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#### EXAMINATION SUMMARY TABLE

Examination	# of Questions	Passing % Score	Passing Raw Score	Time Allowed
Salesperson	115 (115 points)	70	80	180 minutes
Broker	115 (120 points)	75	90	210 minutes

Note: National broker exams include questions that are scored up to two points.

#### EXPERIMENTAL QUESTIONS

A small number of “experimental” questions (i.e., 5 to 10) may be administered to candidates during the examinations. These questions will not be scored and the time taken to answer them will not count against testing time. The administration of such unscored, experimental questions is an essential step in developing future licensing exams.

#### SAMPLE BROKER QUESTIONS (SCENARIO-BASED)

##### Scenario:

You are hosting an open house. Mr. and Mrs. Charles Martin come into the house. You greet them and show them the house. The Martins tell you the house is exactly what they are looking for and they are very interested in purchasing it. You then give them information showing the various types of financing available with down payment options and projected payments.

Mr. Martin tells you they have been working with Mary Hempstead of XX Realty, a competing real estate company. Before leaving, you thank them for coming and give them your business card.

- A. The first thing on Monday morning, Mrs. Martin calls and indicates they have tried to reach Mary and cannot. They indicate they have a written buyer’s agent agreement with Mary’s broker. They are afraid someone else is going to buy the house. Which of the following should you do? Select the best answer.
1. Seek advice from your supervising broker.
  2. Tell them to come to your office.
  3. Ask them to bring the buyer’s agency agreement to you for your interpretation.
  4. Tell them to be patient and continue trying to reach Mary.
  5. Tell them to call Mary’s supervising broker or branch manager.
  6. Tell them you are really sorry, but there is nothing you can do.

# PROPERTY OWNERSHIP

## Property Ownership (Salesperson 6 items/Broker 7 items)

- A. Real versus personal property; conveyances
  - B. Land characteristics and legal descriptions
    - 1. Types of legal descriptions; Metes and bounds, Lot and block, government survey
    - 2. Measuring structures
    - 3. Livable, rentable, and usable area
    - 4. Land Measurement
    - 5. Mineral, air, and water rights
  - C. Encumbrances and effects on property ownership
    - 1. Liens
    - 2. Easements and licenses
    - 3. Encroachments
    - 4. Other potential encumbrances of title
  - D. Types of ownership
    - 1. Tenants in common
    - 2. Joint tenancy
    - 3. Common- interest ownership Timeshares
    - 4. Condominiums Co-ops
    - 5. Ownership in severalty/sole ownership Life Estate ownership
    - 6. Property ownership held in trust (**BROKER ONLY**)
- 

## 1. CLASSES OF PROPERTY

### A - REAL VERSUS PERSONAL PROPERTY

#### 1. REAL PROPERTY:

- A. Land
  - B. Improvements on the land
  - C. Plants and trees
  - D. Air space above
  - E. Subsurface rights
  - F. Water-related rights
  - G. Anything attached permanently to the land
- Seller may sell all rights or reserve a portion such as reserving mineral rights.

#### 2. PERSONAL PROPERTY [CHATTEL]

- A. Movable goods on real property such as furniture, free standing appliances, etc.

### 1B- DEFINING FIXTURES

**FIXTURES:** Items that were once personal property (chattel) but are now attached to land permanently and are considered Real Estate.

## PROPERTY OWNERSHIP

**Example:** Mobile home located on land is chattel, but once installed on permanent foundation after removing wheels it becomes a fixture and may be sold with real estate license.

**Trade Fixtures:** Personal property used in the operation of a business such as a cooler, cash register, shelving, etc. are not to be confused with the word 'fixture' which is real estate.

**SEVERANCE:** The act of detaching a fixture from real estate turning it once again to chattel.

### HOW TO DETERMINE IF AN ITEM IS CHATTEL OR A FIXTURE

#### 1. METHOD OF ATTACHMENT AND RELATION:

A. Items attached by cement and/or nails and removal will damage property.

Example:

A *freestanding* bookshelf = Chattel

A *built in* bookshelf = Fixture

B. Item fits as part of the house although removed at times such as the door keys, storm doors and windows.

#### PLANTINGS:

A. ANNUAL PLANTINGS (CROPS, EMBLEMENTS): Are personal property. They require annual cultivation, such as corn and wheat.

B. PERENNIAL PLANTINGS: Are real estate. They continue to grow not requiring annual planting, such as trees and shrubs.

#### 2. AGREEMENT BETWEEN THE PARTIES:

A. Seller allows personal item to be included with sale such as appliances.

B. Purchaser agrees that an item, although attached, may be excluded from sale, such as a chandelier.

#### 3. INTENTION OF THE PARTIES:

A. Item attached with screws and nails for a purpose other than improving property.

B. Example is trade fixtures (such as shelving in a grocery store, equipment, etc.) are personal property although sometimes attached to Real Estate.

✓ ONCE AN ITEM IS DETERMINED TO BE A "FIXTURE", IT IS AUTOMATICALLY INCLUDED IN THE SALE OF THE REAL ESTATE UNLESS SPECIFICALLY EXCLUDED IN WRITING.

## B- TYPES AND USAGE OF LEGAL PROPERTY DESCRIPTIONS

**LEGAL DESCRIPTION:** A description of real property that gives the exact location and boundary anywhere in the world.

# PROPERTY OWNERSHIP

## METHODS OF LEGAL DESCRIPTION

### 1. METES AND BOUNDS (Measures BOUNDARIES)

- A. Property is described through a series of distances and angular measurements.
- B. The description always starts at a point called “point of beginning” (P.O.B.) and always ends at the same POB, traveling certain distances at certain directions such as east west, southeast, etc.
- C. As evidence of boundary, the Surveyor establishes a “monument” as physical evidence of property lines and corners. Monuments may include wood stakes, metal rods, concrete blocks, existing trees and fences, water streams, etc.
- D. **Example:** Beginning at the intersection of the west line of Southfield Rd. and the south line of Ten Mile Rd. then south on the west line of Southfield Rd. 650 feet; then west 20 degrees south 350 feet more or less to the center thread of Swartz Creek then southeasterly along the center line of the said Creek 450 feet more or less to its intersection with the north line of Queens Rd. then east 280 feet to Southfield Rd. then north 720 feet to the point of beginning.
- E. Angular measurements are given in terms of so many degrees. Every degree consists of 60 minutes and every minute consists of 60 seconds.

### 2. LOT- BLOCK – SUBDIVISION METHOD - Regulated under the Michigan land division Act

This description identifies properties by reference to a subdivision plat filed by the developer with the county register of deeds office.

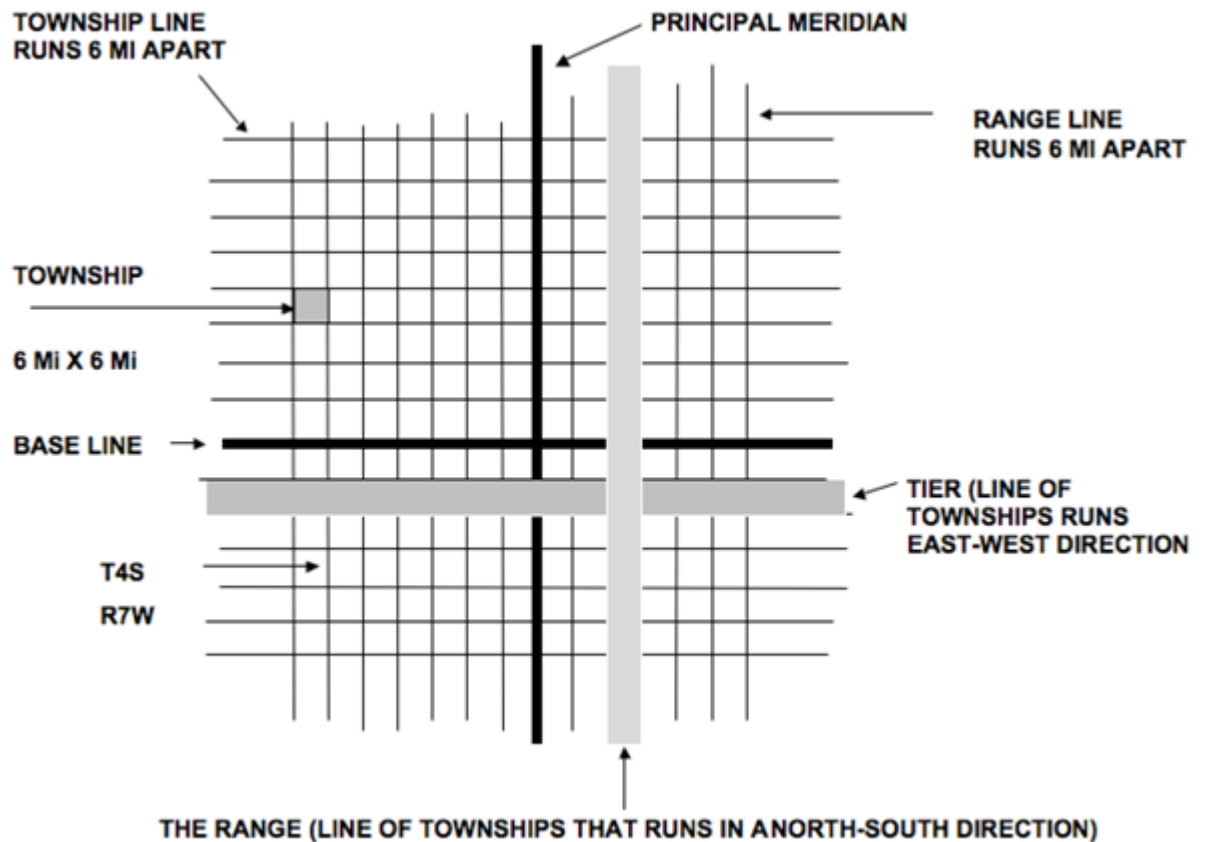
## CREATION OF A SUBDIVISION

- A. A developer locates some raw land that may be suitable for subdividing into smaller lots to be sold independently.
- B. An area of land is designated as a block, and the area making up the block is divided into lots.
- C. A detailed plan is submitted to the **local authority** such as the planning commission for approval. **Zoning ordinances** must also be checked and complied with. Such plan contains:
  - 1. Existing and proposed features affecting the lots as well as land use which should match the legal use allowed by the government.
  - 2. Drainage, sewer, utilities and easements.
  - 3. Building locations.
  - 4. Roads and drives.
  - 5. Lot sizes that are established with the help of surveyors.
  - 6. Plat map showing location and boundaries of individual properties.
  - 7. Upon government approval, the plat is filed at the county register of deeds office showing certain areas that are set aside for streets as dedicated, i.e. belonging to the government. Undedicated streets are private and will not be maintained by the County Road Commission.

## PROPERTY OWNERSHIP

### 3. THE GOVERNMENT RECTANGULAR SURVEY SYSTEM

- A. BASE LINES (Latitude lines):** Imaginary lines running East-West every 24 miles. In Michigan we use ONE PRINCIPAL BASE LINE ONLY (coincides with 8 Mile Road in Detroit).
- B. MERIDIAN LINES (Longitude lines):** Imaginary lines running North-South every 24 miles and intersects with the BASE lines forming a parcel of land that is 24 miles by 24 miles called a CHECK. In Michigan we use ONE PRINCIPAL MERIDIAN LINE ONLY starting from the Sault Ste. Marie and running perpendicular to the Base Line.
- C. RANGE LINES:** Imaginary lines running every 6 miles parallel to the Principal Meridian.
- D. TOWNSHIP LINES:** Imaginary lines running every 6 miles parallel to the Principal Base line.
- E. TOWNSHIP:** A parcel of land, 6 miles by 6 miles in size, resulting from intersection of Range lines and Township lines. Each township contains 36 square miles or **SECTIONS**.
- F. SECTION: 640 ACRES:** numbered in a township from 1 to 36.
- G. ACRE: 43,560 SQUARE FEET**
- H. RANGE:** A line of townships running North-South
- I. TIER:** A line of townships running East-West
- J. Townships are identified by their location against the Base and Meridian lines.**





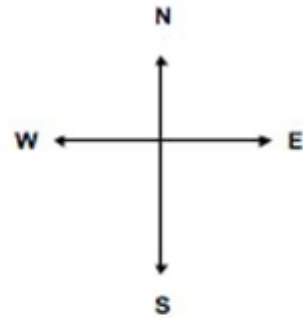
# PROPERTY OWNERSHIP

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

**1 TOWNSHIP = 36 SQUARE MILES**  
**1 SQUARE MILE = 1 SECTION**  
**1 SECTION = 640 ACRES**  
**1 ACRE = 43,560 SQUARE FEET**  
**1 MILE = 5280 FT**

*1 TOWNSHIP*

<b>NW ¼</b>		<b>W ½ OF NE ¼</b>	<b>E ½ OF NE ¼</b>	
160 ACRES		80AC	80AC	
40AC NW¼ OF SW¼	40AC NE¼ OF SW¼	40AC	40AC	
SW¼ OF SW¼	SE¼ OF SW¼	40AC		



← NE¼ SE¼ SE¼ (10AC)

*1 SECTION*

## PROPERTY OWNERSHIP

**Example 1:** A parcel of land 242ft by 450ft was sold for \$50,000. What was the price per acre?

Solution:

Step 1:  $242\text{ft} \times 450\text{ft} = 108,900 \text{ sq.ft.}$

Step 2:  $108,900 \text{ sq. ft} \div 43,560 \text{ (acre)} = 2.5 \text{ acres}$

Step 3:  $\$50,000 \div 2.5 \text{ acres} = \mathbf{\$20,000/acre}$

**Example 2:** A company has 20,000 square feet of land. They need 4 times as much space for a new project. What is the minimum amount of acreage they need to complete the project?

- A. 1 acres
- B. 2 acres
- C. 3 acres
- D. 4 acres

Solution:

$20,000 \text{ sq. ft.} \times 4 = 80,000 \text{ sq. ft.}$

$80,000 \text{ sq. ft.} \div 43,560 \text{ sq. ft.} = 1.8 \text{ acres}$

They need at least 2 acres (B)

### REVIEW QUESTIONS

- Q – 1** How many acres are there in a parcel 400ft by 871.20ft? Half Acres?
- Q – 2** A parcel sold for \$65,500 and it measures 450' by 644'. What is the price per acre?
- Q –3** How many acres in the NW $\frac{1}{4}$  OF SE $\frac{1}{4}$  OF SW $\frac{1}{4}$  OF SECTION 23?
- Q –4** How many acres in the N $\frac{1}{2}$  OF SE $\frac{1}{4}$  OF SE $\frac{1}{4}$  OF SE $\frac{1}{4}$  OF SECTION 7?
- Q –5** Bob bought  $\frac{1}{4}$  of a section and divided it into parcels 20 acres each. How many parcels did he get?

### ANSWERS

1.  $400 \times 871.20 = 348,480 \text{ Square Feet}$   
 $348,480 \div 43,560 = 8 \text{ Acres}$   
To find half acres, multiply 8 acres  $\times 2 = 16 \text{ half acres}$
2.  $450 \times 644 = 289,800 \text{ Square Feet}$   
 $289,800 \text{ sq ft} \div 43,560 = 6.65 \text{ Acres}$   
 $\$65,500 \div 6.65 = 9,849.62 = \$9,850 \text{ Per Acre}$
3.  $640 \div 4 \div 4 \div 4 = 10 \text{ Acres}$
4.  $640 \div 4 \div 4 \div 4 \div 2 = 5 \text{ Acres}$
5.  $640 \div 4 = 160 \text{ Acres}$   
 $160 \div 20 = 8 \text{ Parcels}$

## PROPERTY OWNERSHIP

### MEASURING STRUCTURES

1. Gross Living Area (GLA): The area of a structure measured using exterior dimensions. Also referred to as "Livable Area".

- Finished space that has access to electricity, plumbing, air conditioning and heating.
- Area below grade is not counted in the total square feet of the structure, only above grade is measured.
- No garages or decks are included.

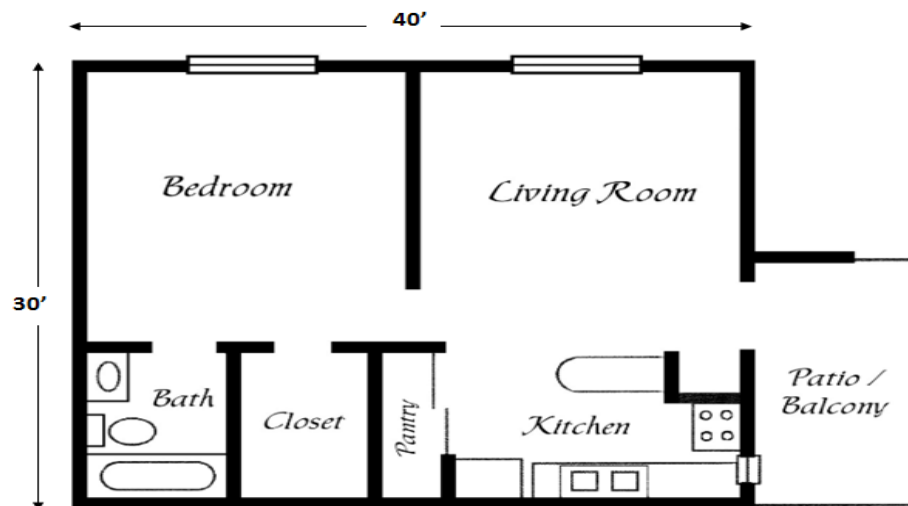
2. Usable Area – Used in commercial leasing

a. The specific area the tenant will occupy in order to do business. Includes all office space plus any storage or private restrooms. No exclusions for columns or recessed entries.

b. If a tenant occupies a full-floor, the usable square feet extend to everything inside the boundaries of the building floor, minus stairwells and elevator shafts. This can include non-usable areas like janitorial closets, or mechanical and electrical rooms. It also include private bathrooms and floor common areas, like kitchenettes, hallways, and reception areas that are specific to that floor's use.

3. Rentable Area – Used in commercial leasing

The usable square feet of the office space plus a pro-rata share of building common areas. Calculated based on the tenant's percentage of space occupied in comparison to the entire building.



**GLA / Livable Area**

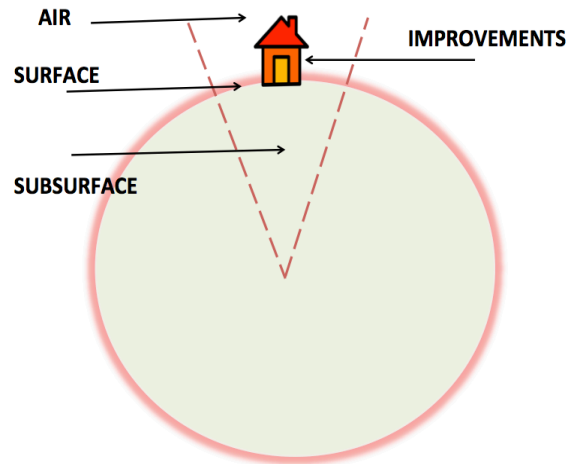
**40' x 30' = 1,200 sq.ft.**

**Patio not included**

**PROPERTY OWNERSHIP**  
**MINERAL, AIR AND WATER RIGHTS**

**Real Estate is Land, what's attached to it permanently, the air space above it and the subsurface underneath such as water, oil and gas, other minerals, etc.**

- 1- When real estate is sold, the sale usually includes the surface, improvements, the subsurface including oil, gas, and other mineral rights all the way down to the center of the earth. The sale includes the air space all the way up to infinity.
- 2- The owner may sell/lease all or a portion of the real estate. For example, the owner may sell or lease the subsurface rights while retaining the surface and air rights and vice versa.



**3- RIPARIAN RIGHTS:**

- A. Rights enjoyed by land owners whose land is located next to rivers, streams or inland lakes.
- B. Owners have the right of reasonable use of water and **own the property all the way to the middle of the stream or center of the lake** that they are situated on.

**4- LITTORAL RIGHTS:**

- A. Rights of an owner whose land borders large navigable rivers, lakes or oceans.
- B. Owners own the land adjacent to water up to the **high water mark (shoreline)**.

**EROSION:** The gradual wearing away of land due to the natural movement of water.

**ACCRETION:** The increase in land resulting from the deposit of soil by natural action of water.

**RELICTION:** Land is exposed when water permanently recedes.

**C- ENCUMBRANCES AND EFFECTS ON PROPERTY OWNERSHIP**

**ENCUMBRANCES:** Liens, mortgages, taxes, leases, easements, judgments, deed restrictions, possibly encroachments, etc. attached to property that may become a burden and which may diminish its value. Encumbrances “run with the land”, i.e. unless cleared before the sale, it continues to affect the property and must be honored by the new owner

## PROPERTY OWNERSHIP

### LIENS (TYPES AND PRIORITY)

**LIEN:** A charge against property that provides security for a debt or obligation.

#### TYPES OF LIENS

- 1. STATUTORY LIEN:** Provided by law such as property tax lien, income tax lien, etc.
- 2. EQUITABLE LIEN:** Usually placed as a result of a civil dispute such as compensation for slander, harassment, non-payment of bills, etc.

#### APPLICABILITY OF LIENS

- 1. SPECIFIC LIEN:** Applies against certain property only, usually the parcel that is the subject of the lien such as:
  - A. Mechanic's Lien [Construction Lien]:** A person who furnishes materials and/or effort to improve land and is not paid by the landowner may place a lien on the property.
  - B. Real Estate Tax Liens:** When taxes on real estate are not paid, it becomes a lien and is attached to the property. The government can take the property and sell it to satisfy the lien.
  - C. Special Assessments:** Cost due for improvements performed by the local government such as installing city sewers or water, paving the street, etc. Assessments have nothing to do with the true cash value of property. Spreading the cost of the improvements among the benefiting properties assesses it.
  - D. Mortgage lien:** Applied when a borrower receives a loan and signs a mortgage contract against property.
- 2. GENERAL LIEN (BLANKET LIEN):** Applies to a group of properties that an individual owns, usually results from the owner's personal liability.

**Federal / State Income Tax Liens:** This includes inheritance taxes and income taxes that have not been paid therefore it may become a lien on the real estate.

### EASEMENTS AND LICENSES

**APPURTENANCES:** Rights, privileges and improvements conveyed when ownership of the property is transferred, unless otherwise specified.

**EASEMENT:**(Also referred to as the “**right of way**”) A right given to a person or entity to use the property of another. May consist of the right to install and maintain sewers, electric and telephone lines, or the right of passage [ingress (entrance) and egress (exit)]. Easements are of a permanent nature and is said to “run with the land”.

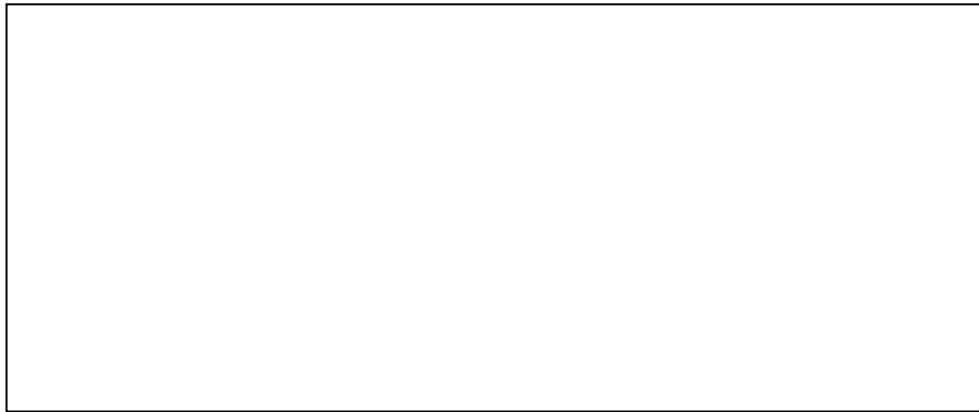
**LICENSE:** Permission, of a personal and temporary nature, granted to enter someone's land for a particular purpose such as a license to fish or hunt. This right does not run with the land.

## PROPERTY OWNERSHIP

### TWO MAJOR TYPES OF EASEMENTS

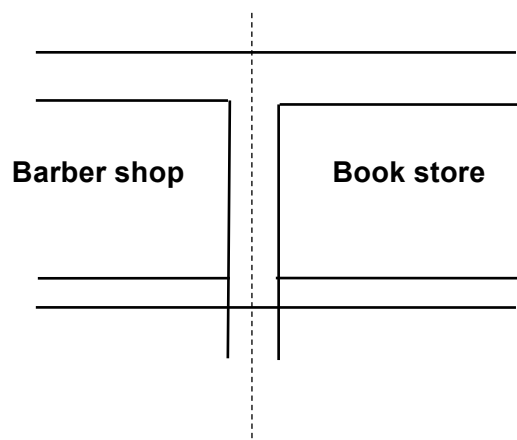
#### A. EASEMENT APPURTENANT:

1. Benefits a neighboring property, for example, an easement for Ingress and Egress
2. Passes with and is appurtenant to the land
3. Two estates or tenements involved:
  - A. **DOMINANT ESTATE (TENEMENT):** The property that *benefits* from the easement.  
**DOMINANT TENANT:** The owner of the dominant estate.
  - B. **SERVIENT ESTATE (TENEMENT):** The property that is subject to the easement and *encumbered* by it.  
**SERVIENT TENANT:** The owner of the servient estate.



**PARTY DRIVEWAY:** Two owners of adjoining lots share all or part of the same driveway to get to their houses.

**PARTY WALL:** A single wall is located on the lot line that separates two parcels.



**“RUNS WITH THE LAND”** - Easement appurtenant remains as an encumbrance on land after sale, gift, or inheritance, even without mention of such an easement.

## PROPERTY OWNERSHIP

### B. EASEMENT IN GROSS:

1. Benefits a person or entity.
2. Conveys a right to use the land of another.
3. Involves a servient estate but no dominant estate, i.e. not a neighboring parcel.
4. **PERSONAL EASEMENT (i.e., given to a person):** Does not “run with the land”. It may not be assigned to another person. Terminates upon the sale of the servient estate or death of the holder.
5. **COMMERCIAL EASEMENT (i.e., given to a company):** “Runs with the land”, it can be assigned. Doesn’t terminate upon the sale of the servient estate.

**Example:** Granting of rights to erect billboards, utility easements for electric and gas.

### MAINTENANCE OF EASEMENT:

- A. Negotiated at the time easement is obtained.
- B. The general rule is that the party benefiting from the easement will maintain it.

**Example:** Utility Company will fix a gas leak inside your property, while neighbors sharing a party driveway or wall will both maintain it.

### EASEMENTS ARE GIVEN BY MEANS OF:

- A. **A GRANT:** A written document that specifically grants an easement to another person
- B. **EASEMENT BY RESERVATION:** A person may transfer ownership in property but withhold the right to use a certain portion of that property.
- C. **EASEMENT BY NECESSITY:** Court-ordered easement for the benefit of a “landlocked” parcel over an adjacent property providing access.
- D. **GOVERNMENT CONDEMNATION:** Easement is obtained by the government under the power of eminent domain, for public use.
- E. **EASEMENT BY PRESCRIPTION** (adverse easement):
  1. Obtained as a result of trespass situation by one party on another’s land
  2. Continues for the statutory period (15 years in Michigan)
  3. Trespass must be open, continuous and notorious
  4. Claimant to file “quieting title suit” to claim easement and has burden of proof

### TERMINATION OF AN EASEMENT

- A. **MERGER** of Dominant and Servient Estates.
- B. **RELEASE** by Dominant tenant.

## PROPERTY OWNERSHIP

**C. NECESSITY NO LONGER EXISTS** (only when easement was obtained by necessity).

**D. LACK OF USE** (abandonment or prolonged non-use). The mere non-use may not terminate an easement.

## ENCROACHMENTS

### ENCROACHMENT:

A. A trespass of a building, garage, fence, etc., over the property line of another. It may be detected by a survey.

B. An owner of property trespassed over may force the removal of encroachment with a court order.

C. If encroachment stays for the statutory period, it may affect the marketability of the property.

**ADVERSE POSSESSION:** A person occupies another person's land for the statutory period of time, (in Michigan, 15 years or more) and then seeks a court order (file "Quieting Title Suit") to receive title to property. The following conditions must be met:

A. Possession must have been exclusive and continuous, throughout the whole period of time.

B. Must not be authorized by the owner, i.e. hostile and notorious.

C. Open and Apparent Possession.

## D- TYPES OF OWNERSHIP

### TYPES OF ESTATES

**1. FREEHOLD ESTATE:** Interest in real property for a lifetime or more. It is of an indeterminable length. It can be obtained through inheritance or deed.

**2. NON-FREEHOLD ESTATE (Leasehold estate):** Interest in property for less than a lifetime and considered to be personal interest. It is obtained by receiving a lease on property.

#### 1. FREEHOLD ESTATES:

##### 1. FEE-SIMPLE ESTATES:

A. Also known as FEE-SIMPLE ABSOLUTE.

B. The highest type of interest in real estate recognized by law.

C. An estate of inheritance can run indefinitely.

D. Upon the death of the owner, it passes to the heirs as provided in the owner's will or according to state law if there is no will.



## PROPERTY OWNERSHIP

### 2. DEFEASIBLE FEE ESTATES (Qualified Fee Estate):

A. Title may be divested upon occurrence or non-occurrence of a specified event that is stated as a condition placed in the deed. Such condition will “run with the land”. If the grantee is not abiding by the restrictions set forth by the grantor, the property may revert back to the grantor.

B. It consists of FEE SIMPLE DETERMINABLE or FEE SIMPLE CONDITIONAL.

**1. FEE SIMPLE DETERMINABLE:** Given for a special purpose and has a special limitation or condition that the owner must do.

**Example:** Property granted to a college “as long as” it is used for educational purposes. If the use is violated, title automatically reverts to the grantor.

**2. FEE SIMPLE CONDITIONAL:** Terminates upon the violation of a certain activity that the owner must not perform. Such activity is specified when property is granted, grantor reserves a “right of re-entry”. The estate does not terminate until the grantor goes to court to assert his right.

**Example:** Property is conveyed on condition there is no consumption of alcohol. If condition is violated, the former owner has the right to get property back.

### 3. LIFE ESTATES:

A. Granted to a person (life tenant) for a lifetime.

B. Not an estate of inheritance.

C. Consists of two basic types: Ordinary and PurAutre Vie.

**1. ORDINARY LIFE ESTATE:** Duration of ownership ends upon the death of the life tenant and the property reverts back to the original person who granted it or his/her heirs, or other specified entity.

**Example:** Tom grants property to his sister Sharon for her lifetime. When Sharon dies, the property reverts back to Tom, his heirs, or other specified entity.

**2. PUR AUTRE VIE ESTATE:** Granted for the life of a third party other than the person that granted the estate and the present life tenant.

**Example:** Tom grants property to his sister Sharon for the life of their mother because Sharon cares for the mother at the property. When their mother dies, the house must go back to Tom.

## PROPERTY OWNERSHIP

D. The person giving the life estate can specify either of the following estates, which controls the recipient of the estate after the death of the life tenant.

**1. ESTATE IN REMAINDER:** The deed or will that creates the life estate names a third party or entity to which title will pass upon the death of the life tenant. The third party is said to own a “remainder interest” or estate. This person or entity is called the REMAINDERMAN.

**2. ESTATE IN REVERSION:** Property reverts back to the original person who granted it to the life tenant and who holds a REVERSIONARY INTEREST.

**INTER VIVOS:** During one’s life.

## E. LEGAL LIFE ESTATES

### 1. DOWER RIGHTS:

A. Wife’s life estate in her husband’s real property conveyed to her upon his death.

B. In order for wife to bar her dower, she must join husband in conveying property upon sale despite the fact that husband owns property alone.

C. Many states including Michigan have eliminated Dower.

**2. CURTESY:** Husband’s life estate in his wife’s property conveyed to him upon her death.

**3. HOMESTEAD:** Protects the holder’s principal residence from being sold by creditors to satisfy outstanding debts.

## FORMS OF OWNERSHIP

**1. SEVERALTY (ESTATE IN SEVERALTY):** Ownership by one individual or an entity such as a corporation.

**2. CONCURRENT ESTATE:** Held by more than one person

### I. TENANTS BY THE ENTIRETIES:

A. Property is deeded to a married couple.

B. Each owns the entire property.

C. **Right of Survivorship:** If either spouse dies, the survivor automatically becomes the owner of the property in severalty. No need for a will or probate court. Tenants by the entireties could also be joint tenancy with survivorship.

## PROPERTY OWNERSHIP

D. In order for property to be sold, refinanced, leased, willed, both husband and wife must sign all the instruments.

E. Requires the following:

- a- **Unity of Possession:** Undivided and equal possession of the entire property.
- b- **Unity of Time:** Both spouses must receive title at the same time.
- c- **Unity of Title:** Both spouses must receive title using the same instrument (deed).

### II. JOINT TENANCY:

A. Property is deeded to two or more owners with the **right of survivorship**.

**Example:** John and Bob are Joint Tenants. John dies. What happens to property? It goes to Bob.

**B. Unity of Possession**

**C. Unity of Interest:** Tenants share equal interest, i.e. if there are three tenants, they must each have one-third.

**D. Unity of Time**

**E. Unity of Title**

### III. TENANTS IN COMMON:

A. Owners may have an equal or an unequal interest; each owns a proportionate share of the property as an undivided interest. Ownership interest is stated on the deed. If the deed does not state a percentage of ownership, each of the grantees is presumed to receive an equal interest.

**B. UNITY OF POSSESSION:** Parties share an undivided possession of property and are entitled to its full use and enjoyment.

**Example:** Tenant (A) owns 20% of property while (B) owns the remaining 80%. (A) has the same right to occupy and use property that (B) has.

C. No right of survivorship; when one tenant dies, his/her interest passes to the heirs.

D. Tenants may take ownership, all at one time, or at different times.

E. Each tenant may dispose of any part of his/her interest without affecting the interest of others.

**F. PARTITION SUIT:** Originated by one or more co-tenants asking the court to order the splitting of interest to end the tenancy when a voluntary agreement cannot be reached.

## PROPERTY OWNERSHIP

### LEASEHOLDS – See Leasing and Property Management

#### COMMON INTEREST OWNERSHIP PROPERTIES

##### CONDOMINIUM OWNERSHIP:

A system of ownership reflected in owning one unit in a multi-unit structure, combined with the ownership of common elements.

##### A. TYPES AND FORMS OF CONDOMINIUMS:

1. Offices in an office building.
2. Apartment buildings including high-rises.
3. Townhouses.
4. Shopping Centers.
5. Mini-storage warehouses
6. Home sites, etc.

##### B. COMMON ELEMENTS:

1. Portions of the multi-unit structure that are owned by unit owners together as tenants in common.
2. Examples are swimming pool, clubhouse, yards, structural portions of the complex, etc.

##### C. OWNERSHIP OF CONDOMINIUMS:

Each condominium unit is owned as a separate parcel and is owned in fee simple. Each co-owner has a deed to his/her unit.

##### D. CONDOMINIUM ASSOCIATION (OWNERS' ASSOCIATION):

1. Consists of the co-owners of the condominium units.
2. Operates the condominium development according to the **BYLAWS**.
3. Governed by a **BOARD OF DIRECTORS**.
4. Responsible for maintenance, cleaning, and sanitation of the common elements and structural portions of the property.
5. Maintains fire and extended-coverage insurance as well as liability insurance for the common areas and the structural portions of property.

##### E. CONDOMINIUM FEE (ASSOCIATION FEE):

1. An expense assessed in proportion to the cost necessary to operate the Condominium Association such as maintenance and insurance of common elements. It is billed to every individual unit owner.
2. Although may be tax deductible for a condominium unit used as an investment or in line of business, it is not tax deductible if unit is used as principal residence.

## PROPERTY OWNERSHIP

### F. FINANCING OF CONDOMINIUMS:

1. Not different from any single family home or other property.
2. Upon default, the owner is subject to losing his/her unit in a foreclosure action by the lender. The other owners in the same project are not affected.
3. Owners are entitled to tax deductions.

### G. TAXES ON CONDOMINIUMS:

1. Paid ad valorem.
2. Taxes on common elements are prorated and billed to each individual co-owner.

### H. INSURANCE:

Although fire and extended-coverage and liability insurance is provided for the common elements and the structural portions of the property by the association, insurance on the contents and interior of the units must be provided for by each individual unit owner.

### I. AIR SPACE:

Condominium owner is technically considered to own the air space between floors, walls, and ceilings. The floors, walls, and ceilings are typically common elements.

### J. TIME-SHARED OWNERSHIP:

1. Multiple purchasers buy interests in the same parcel
2. Each owner is entitled to use the unit for a certain period of time throughout the year
3. Maintenance and other common expenses are prorated among the unit owners.

## COOPERATIVES:

Land and improvements owned by a corporation which leases units back to the shareholders.

### A. PROPRIETARY LEASE:

Given by the corporation to shareholders in the cooperative to be able to use the property in part or full. The shareholders are called the COOPERATORS.

### B. OWNERSHIP OF COOPERATIVES:

1. The real estate is owned by a corporation, which has title to the complex
2. The leaseholders own stock in the corporation, which is personal property and not real estate
3. Leaseholders control the cooperative development through their stock ownership in the corporation.

## BUNDLE OF RIGHTS

The right to own real estate as a Freehold estate including legal rights such as possession, enjoyment, lease, sell, will, mortgage, etc.

## PROPERTY OWNERSHIP

### Property ownership held in a trust (Brokers Only)

#### Trust Ownership

A trust is a legal fiduciary arrangement involving three parties, the **trustor/grantor** who transfers property upon the second party, the **trustee** who controls and manages the property for the benefit of the third party, the **beneficiary**.

A popular type is the “living trust” which is used for estate planning where an individual grants title to be held during the grantor’s lifetime (inter vivos ) and it is common for the grantor to **be both a trustee and a lifetime beneficiary** while naming other contingent beneficiaries upon the grantor’s death.

In other words, the written legal document places someone’s assets into a trust for his own benefit during his lifetime and then transfers the assets to designated beneficiaries upon his death by an appointed trustee which could be a relative or a child who can jump right in and start acting to manage the trust without waiting for a decision from probate court, saving the beneficiaries time, money and public scrutiny as opposed to filing a will with probate court.