

# Preface

Real estate law in the United States has a long history, going all the way back to British common law. *McGraw-Hill's Real Estate Law for Paralegals* tracks the evolution of real estate law principles leading up to the current state of real property rights, and also explains the various ownership statutes that exist today.

This text was designed to help prepare students for the practical world of real estate, setting forth the differences in real property (real estate) and personal property. Included in the text are numerous subject areas, ranging from modern-day condominiums, cooperatives, and timeshares to regulations, encumbrances, interests in land, and landlord—tenant relations. This text also introduces contracts, deeds, mortgages, financing, and real estate closings. The variety of subject areas introduces the student to a practical array of topics necessary for success in the real world practice of real estate, while not overwhelming the student with dry, dull, textual material.

*McGraw-Hill's Real Estate Law for Paralegals* contains twelve chapters along with two appendices. To provide a hands-on approach to learning, each chapter has a recent, applicable case opinion, along with many ancillaries, including charts, tables, figures, and exercises to aid in the student's development.

## TEXT DESIGN

### Pedagogy

This text has numerous features that take advantage of the varying learning styles that students apply to gain knowledge. Based on the notion that students who apply their newly acquired knowledge often retain it much better than those who do not, this text requires students to apply the knowledge they have acquired. Chapters are designed in a manner that assures the student will have the opportunity to learn the appropriate legal concepts, master the necessary vocabulary, develop legal reasoning skills, and demonstrate knowledge of the material. Each chapter contains the following features:

- **Spot the Issue:** A fact pattern in which the student is asked to “spot” the issue(s) present
- **Legal Research Maxim:** A general statement of a principle in law
- **Case Fact Pattern:** A simple fact pattern including a story and its outcome
- **Research This:** A hands-on assignment designed to develop the student's research skills
- **Eye on Ethics:** A presentation of ethical issue(s) related to one or more subjects in the chapter
- **You Be the Judge:** Presentation of a fact pattern and issue with a request that the student “be the judge” and decide on the issue
- **Surf's Up:** Hands-on research presenting the student with numerous Web sites through which surf and gather material
- **Practice Tip:** A tip alerting the student to nuance of law or caveat to a rule

- **Case in Point:** A significant real-life case, included illustrate and expand on the topics discussed in the chapter
- **Portfolio Assignment:** An assignment with which the student can begin, create, and add to a portfolio
- **Vocabulary Builder:** A crossword puzzle for the student to complete, using vocabulary words found in the chapter

The text is written in clear language that engages the student, keeps the reader's interest, and presents information in a variety of styles

## OTHER LEARNING AND TEACHING RESOURCES

### Supplements

The **Online Learning Center (OLC)** is a Web site that follows the text chapter by chapter. OLC content is ancillary and supplementary germane to the textbook—as students read the book, they can go online to review material or link to relevant Web sites. Students and instructors can access the Web sites for each of the McGraw-Hill paralegal texts from the main page of the Paralegal Super Site. Each OLC has a similar organization. An Information Center features an overview of the text, background on the author, and the Preface and Table of Contents from the book. Instructors can access the instructor's manual and PowerPoint presentations, and Test Bank. Students see the Key Terms list from the text as flashcards, as well as additional quizzes and exercises.

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# A Guided Tour

*McGraw-Hill's Real Estate Law for Paralegals* presents students with a clear, easy-to-understand, and exciting text in which they will learn about real property, personal property, and all of the facets inherent in real estate. The text includes a chapter dedicated solely to real estate closings. The students have access to numerous exercises, cases, and hands-on learning assignments (including sample forms) covering topics ranging from “Regulations and Encumbrances” to “Recording Statutes and Examinations.” The pedagogy of the book applies three main goals:

- Learning outcomes (critical thinking, vocabulary building, skill development, issues analysis, writing practice).
- Relevance of topics without sacrificing theory (ethical challenges, current law practices, technology application).
- Practical application (real-world exercises, practical advice, portfolio creation).

## CHAPTER OBJECTIVES

Upon completion of this chapter, you will be able to:

- Identify the concept of property ownership.
- Understand the difference between real property and personal property.
- Discuss the methods of property ownership.
- Identify the sources of real property law.

Throughout history, property ownership rights and control have been very important. Tribes conquered other tribes for the right to control property. Kings fought with other kings for the right to control property. Countries have gone to war for land. For many people, even the American dream centers on the thought of one day owning their own property. Real property has been and still is a valued commodity in almost all societies. The law of real property involves and regulates almost every aspect of the use and ownership of this commodity. This chapter provides an introduction to the law of real property.

## Chapter Objectives

Introduce the concepts students should understand after reading each chapter and provide brief summaries describing the material to be covered.

## Spot the Issue

Is a hands-on exercise that presents students with a fact pattern and asks them to apply concepts learned in the chapter to “spot” the issues present.



### SPOT THE ISSUE

Rodney owns a condominium at Main Place Condominiums. Recently, the board has sent notice that certain regulations have been adopted and added to the rules and regulations of the condominium. These regulations include that an owner cannot have a large dog; trash cans cannot be kept outside of the individual garage units; guests cannot park on the curbs next to the roadways; and owners cannot paint the inside of their condominiums the color red. Which regulation would probably not be within the scope of the board’s authority?

## Legal Research Maxim

Highlights some of the major principles in law covered in each chapter.



### LEGAL RESEARCH MAXIM

If the grantee is deceased, the deed is void. Other examples in which a deed is void may include: a deceased grantor, deceased heirs of a living person, or a corporation not in existence. However, there are times when a court will reform a deed that would otherwise be void in order to carry out the grantor’s intent. See *Haney’s Chapel United Methodist Church v. United Methodist Church*, 716 So. 2d 1156 (Ala.1998).

## Case Fact Pattern

Describes simple fact patterns and asks students to apply concepts learned from the chapter to understand the legal issues at hand.

### CASE FACT PATTERN



John and Bob are best friends who both love horses. They decide to purchase a local ranch and raise horses for sale. Bob and John want to have an equal interest in the ranch. They take title to the property as tenants in common, with each having an equal interest. A few years later, John is killed in a car accident. John’s will indicates that his property interest in the ranch is to be left to his grown son. Because John and Bob took title as tenants in common, there exists no right of survivorship between them.



### RESEARCH THIS

Research RESPA to ascertain in more detail what types of transactions are subject to RESPA, as well as who is obligated to perform certain types of duties. How does RESPA protect a consumer financially?

## Research This

Gives students the opportunity to investigate issues more thoroughly through hands-on assignments designed to develop critical research skills.



### EYE ON ETHICS

It is always important when dealing with real property transactions to check the chain of title carefully in order to ensure that no liens, covenants, or encumbrances are attached to the property of which either party may be unaware. A law office that fails to thoroughly investigate the chain of title could be held liable for malpractice if problems arise from that failure. There are third-party title companies that will, for a fee, examine the chain of title on a property. In addition, the purchase of title insurance helps to provide a source of redress to a party should issues with title be uncovered after the transaction.

## Eye on Ethics

Recognizes the importance of bringing ethics to the forefront of paralegal education. It raises ethical issues facing paralegals and attorneys in today's legal environment.



### PRACTICE TIP

Whether buying or selling, parties involved in real estate transactions typically employ brokers. Brokers help prospective buyers find a suitable property, help prospective sellers sell their property, and help parties with all the paperwork involved in a real estate transaction. Most states require that an individual take classes and then pass the state's licensing exam in order to become a licensed real estate broker.

## Practice Tip

Presents different nuances of the law and caveats to rules to alert student to the intricacies of the law.

## Surf's Up

Presents students with numerous and varied Web sites to “surf” and gather additional information on the important legal concepts and issues discussed in each chapter.


**SURF'S UP**

To learn more about real estate financing, the following Web sites are helpful:

<a href="http://www.lendny.com/nymortgagebanker.htm">http://www.lendny.com/nymortgagebanker.htm</a>	<a href="http://www.fanniema.com">http://www.fanniema.com</a>
<a href="http://mortgage-x.com">http://mortgage-x.com</a>	<a href="http://www.ginniema.gov">http://www.ginniema.gov</a>
	<a href="http://www.freddiemac.com">http://www.freddiemac.com</a>

## You Be the Judge

Places students in the judge's seat. Students are presented with facts from a fictitious case and they use concepts learned from the chapter to make a legal determination.

**YOU BE THE JUDGE**

Andrew moves into a house next to a college campus, and rents it from the John the landlord for a period of one year, using a written lease. Loud parties with loud music begin to emanate from the Rock 'em Sock 'em fraternity house, located adjacent to the house leased by Andrew. The loud music is heard only on Saturdays and Sundays from 1:00 p.m. until 5:00 p.m. Does Andrew have any grounds to bring a claim against the John for breach of quiet enjoyment? Consider all possibilities in coming to your decision, based on the few facts given.

## Chapter Summary

Provides a comprehensive review of the key concepts presented in the chapter.

**Summary**

The Real Estate Procedures Act (RESPA) is a federal statute that governs all federally guaranteed mortgage loans. RESPA was passed in order to redesign the real estate closing process and protect consumers from the high closing and settlement costs associated with the purchase of property. According to RESPA, all settlement or closing costs must be disclosed to the consumer in advance of the closing. In addition, RESPA eliminates the kickbacks and referral fees that previously plagued the unsuspecting purchasers of real property. RESPA also dictates the maximum amount of funds that may be required to be placed into escrow accounts in order to pay for recurring charges or assessments.

The Truth-in-Lending Act is another act passed by the United States Congress with the intent of protecting the consumer. It protects consumers from inaccurate and unfair billing practices. It also provides for the disclosure of credit terms in a form that is easily read by consumers, so that they can compare the rates from different lenders for a variety of terms.

The Truth-in-Lending Act provides for creditors to make certain disclosures to the consumer or borrower. It affects real estate transactions that are not subject to RESPA. Under the Truth-in-Lending Act, all disclosures must be made prior to the time that the borrower becomes contractually obligated to make payments on the loan.

The Truth-in-Lending Act also provides consumers with the right of rescission. Usually, the right of rescission gives a consumer anywhere from three to five days to change her mind about having contracted for the loan, and allows the borrower to void the transaction without incurring any penalties.

Creditors are required to disclose their interest rates on any loan transaction so that consumers can make informed transactions. The annual percentage rate being assessed on the loan must be disclosed. On some loans the interest rate is set and fixed and does not vary for the life of the loan. For other loans, the interest rate will fluctuate up or down, depending on a predetermined variable to which the interest rate is tied.

Variable interest rates are known as adjustable interest rates and are tied to a particular interest rate index. These rates are usually known as adjustable rate mortgages (ARM). The interest rate index to which these types of loans are tied can be a treasury bill or a prime lending rate. As the index increases or decreases

		Key Terms
Caption	Habendum clause	
Covenant against encumbrances	Indenture	
Covenant for quiet enjoyment	Law of equity	
Covenant of further assurance	Limited warranty deed	
Covenant of warranty	Preamble	
Covenants of title	Quitclaim deed	
Deed	Seal	
Deed poll	Seisin	
Doctrine of merger	Testimonium	
General warranty deed	Void	
Grantee	Voidable	
Grantor		

## Key Terms

Used throughout the chapters are defined in the margin and provided as a list at the end of each chapter. A common set of definitions is used consistently across the McGraw-Hill paralegal titles.

Review Questions	
	1. What is the difference between a conventional loan and an insured loan?
	2. What is a loan-to-value ratio, and why is it important?
	3. What is a VA loan?
	4. List six indexes upon which an adjustable-rate mortgage might be based.
	5. What is a fixed-rate mortgage?
	6. How do a fixed-rate mortgage and an adjustable-rate mortgage differ?
	7. What is a construction loan?
	8. What is a permanent loan?
	9. What is the secondary mortgage market?
	10. What is a primary lender?

## Review Questions and Exercises

Emphasize critical thinking and problem-solving skills as they relate to real estate law. The Review Questions focus on more specific legal concepts learned in each chapter. The Exercises introduce hypothetical situations and ask students to determine the correct answers using knowledge gained from studying topics in each chapter.

PORTFOLIO ASSIGNMENT

The first title insurance company was chartered in 1876. Read and brief *Watson v. Muirhead*, 57 Pa. 161 (1868), the case largely responsible for the development of title insurance.

## Portfolio Assignments

Ask students to use the skills mastered in each chapter to reflect on major legal issues and create documents that become part of the paralegal's portfolio of legal research. The Portfolio Assignments are useful as both reference tools and as samples of work product.



## Vocabulary Builders

Provides a crossword puzzle in each chapter that uses the key terms and definitions from that chapter to help students become more proficient with legal terminology.

Vocabulary Builders

**Instructions**  
Use the key terms from this chapter to fill in the answers to the crossword puzzle.  
NOTE: When the answer is more than one word, leave a blank space between words.

**ACROSS**

<p>4. a payment of money or something of value to a person for the purpose of obtaining business from that person.</p> <p>11. the actual cost of borrowing money, expressed in the form of annual interest rate to make it easy for one to compare the cost of borrowing money among several lenders.</p> <p>12. a statute governing real estate transactions in all fed-</p>	<p>5. a mortgage format under which the lender is permitted to adjust the mortgage interest rate from time to time in accordance with fluctuations in some external index.</p> <p>6. a written agreement by which one person assigns or transfers his right to or interest in goods and personal chattels to another.</p> <p>7. a federal regulation passed to protect consumers from</p>
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## Case in Point

At the end of each chapter exposes students to real-world examples and issues through a case chosen to expand on key topics discussed in the chapter.

CASE IN POINT

United States District Court,  
D. Hawaii.

Samuel Laureano VIERNES and Imelda Legaspi Viernes, Plaintiffs,  
v.  
EXECUTIVE MORTGAGE, INC.; Argent Mortgage Company, LLC; Ameriquest Mortgage Company; and Lydia Pascual, as an individual, Defendants.  
372 F.Supp.2d 576  
No. CIV. 04-00212ACKLEK.  
Oct. 13, 2004.

**BACKGROUND**

Mortgagors brought action against mortgage broker, broker's officer, and other defendants, alleging violation of the federal Consumer Credit Protection Act, fraud, intentional infliction of emotional distress, deceptive and unfair trade practices, and breach of fiduciary duty. Mortgage broker defendants moved for summary judgment on federal claim and for **dismissal of state law claims**.

Holdings: The District Court, Kay, J., held that:

(1) mortgage broker and officer were not "creditors" under Truth-in-Lending Act (TILA) and Regulation Z, and

(2) values of economy, convenience, and fairness all favored court's retention of jurisdiction over state law claims against mortgage broker defendants.

Summary judgment motion granted; **dismissal motion denied**.

KAY, District Judge

Plaintiffs filed an Opposition. On October 1, 2004, Defendants filed a Reply to the Opposition. Plaintiffs and Defendants also filed concise statements of fact. On September 24, 2004, Defendants Argent Mortgage and Ameriquest Mortgage filed a statement of no position as to the Motion. A hearing was held on October 12, 2004.

Defendants Argent Mortgage and Ameriquest Mortgage take "no position" on the motion for summary judgment and dismissal. Argent Mortgage and Ameriquest Mortgage stated at the hearing on October 12, 2004 that they have reached a settlement with Plaintiffs but that Plaintiffs have attempted to repudiate the agreement. These Defendants also stated that they intend to file a motion to enforce the settlement agreement. Should it be determined that there is no settlement, these Defendants have indicated that they will move to assert cross-claims for indemnity and contribution against Executive Mortgage.

[Text omitted]

**DISCUSSION**

I. Motion for Summary Judgment on TILA Issues

The Truth-in-Lending Act ("TILA"), which is contained in Title 1 of the Consumer Credit Protection Act, as amended (15 U.S.C. § 1601, et seq.), is intended to assure a meaningful disclosure of credit terms so that consumers can compare more readily various credit terms and avoid the use of

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