

# Seiler School of Real Estate

# Module #1 Outline

## Course Objectives

- Assist students in their preparation for the Hawaii real estate exam.
- Encourage students to study on a daily basis.
- Test students frequently to measure progress and improve test taking skills.

## Real Estate as a Career

An Overview of Career Opportunities

## Areas of Specialization

- General Brokerage;
  - Sales of homes, land and condominiums
- Commercial Brokerage;
  - Sales of business and commercial properties
- Time Share Sales;

## Property Management

- Long term rentals
- Vacation rentals
- Commercial leasing
- Association of Apartment Owners

## Realtor Definition

A real estate licensee that has joined the board of Realtors; a trade association.

- NAR = National Association of Realtors
- HAR = Hawaii Association of Realtors
- Local Board of Realtors
  - Hawaii Island, Honolulu, Kauai, Kona, Maui, Molokai

## Realtor & Realtor Associate

Realtor

Broker member of local board of Realtors

Non members are called Brokers

Realtor Associate (RA) or

Realtor (S) Salesperson

Salesperson member of local board of Realtors

Non Members are called: Salespersons

## History and Development of Hawaiian Real Estate - Chapter 1

### Prior to 1840's the Kings were owner of all the lands.

- Lands controlled by 'ali'i nui' (high chiefs)
- Farmed by the 'kanaka' (commoners)
- Original division of land was a 'moku-puni' (an entire island)
- Largest unit within the island was a 'moku'
  - From the mountain top to the seashore
- Moku were further divided into 'ahupua'a'
  - Narrower strips from the mountain top to the seashore
- Ahupua'a were governed by 'ali'i' (high chiefs)

### The next subdivision of land was called an 'ili'

- Generally a smaller estate
  - Perhaps that of 'koniki' (chief)
- Some 'ili' were made up of non contiguous pieces of land, they were called 'lele', (jumps)
- Smaller units of farm land were called 'mo'o'
- Lastly, came the basic land parcel occupied by 'kanaka' called 'kuleana'
  - Either subservient or independent to the 'ili'
  - Native rights of fishery, water, mountain
- These lands were often redistributed by a conqueror or successor king.

### King Kamehameha was victorious by the 1790's

- He redistributed the lands to the 'ali'i' and the 'konohiki' to control.
- 'Konohiki' distributed land to 'kanaka'
- People could use the land, but it was owned by the king.

## History of Hawaiian Real Estate

- 1845 Land Division appointed by King Kamehameha III
- 1848 Great Mahele
  - ‘Great division of lands’
  - Provided the basis for modern land titles
  - Changed ownership from royalty to allodial
  - Hawaii titles only need to be traced to 1840’s

## Of the approximately 4 million acres of land in Hawaii:

- The king kept  $\frac{1}{4}$  for himself, which were called Crown Lands;
- Of the remaining  $\frac{3}{4}$ 
  - Half were designated Government Lands;
  - Half were distributed to the ‘ali’i’ which were known as ‘konohiki’ lands

## Issues arose as to the rights of the ‘kanaka’

- The Land Commission could award title to ‘kanaka’ who occupied these lands.
  - These were called ‘kuleana lands’
- Even though ‘konohiki’ and ‘kuleana’ could be granted their land, they had to apply for titles from the Land Commission.

## Title was conveyed by

- Land Commission Awards
- Royal Land Patents
- Land Patents
- A commutation fee was charged to the acquirer
- Crown lands were sometimes sold by a Kamehameha deed

## The Hawaiian Monarchy was overthrown in 1893

Crown Lands were confiscated by the government and became part of the public domain.

Government Lands and Crown Lands were later sold, and title was conveyed to private individuals by grants called Royal Patent Grants (during the Monarchy) and Land Patent Grants (during the Provisional, Territorial and State Governments)

Chain of title in Hawaii can only be traced to around the 1860’s, to one of the original three divisions created by the Great Mahele

## Divisions of land boundaries

Were identified according to their ancient names, and were determined by mountain ridges, streams and ravine bottoms.

In 1846 the first longitudinal measurement was used in Hawaii.

All Hawaii lands were surveyed in 1927  
Official maps are available at the Bureau of Conveyances in Honolulu.

## Hawaii consists of 124 islands

In order of size

- Hawaii
  - (Big Island)
- Maui
- Oahu
- Kauai
- Molokai
- Lanai
- Niihau
- Kahoolawe

Population

- Oahu
- Hawaii
  - (Big Island)
- Maui
- Kauai
- Molokai
- Lanai
- Niihau
- Kahoolawe

## Percentage of Ownership of Hawaii's land:

- 39% County, State, Federal government
- 20% by fewer than eight major land owners
- 41% for all other private landowners

## State Land Use Commission

- Hawaii's Land Use Law of 1961 was the first in the country.
- Classified all lands into four land use districts:
  - Urban = 4.7%
  - Agricultural = 47%
  - Rural = 0.2%
  - Conservation = 48%
- LUC established its boundaries,
- Individual counties control land uses within it.

## Urban Districts:

- Are zoned into residential, apartment, hotel and resort, industrial and commercial.
- Are generally defined as lands in urban areas with sufficient reserve areas to accommodate foreseeable future growth.

## Agricultural Districts:

- Include lands with a high capacity for intensive cultivation.

## Rural Districts:

- Lands composed of small farms mixed with
- Low-density residential lots, with a minimum size of ½ acre.

## Conservation Districts:

- Comprised primarily of lands in the existing forest and water reserve zones.
- They are administered solely by the State Department of Land and Natural Resources.
- The counties administer the other three districts.

## Island of Hawaii is Largest

- Twice the combined size of all the other islands in the State (2,573,400 acres)
- Estimated land area:
  - Urban = 44,255 acres
  - Conservation = 1,300,833 acres
  - Agricultural = 1,277,000 acres
  - Rural = 626 acres

## Maui County, 2<sup>nd</sup> Largest

750,900 acres and Includes the islands of

- Maui
- Molokai
- Lanai
- Kahoolawe

Estimated land area:

- Urban = 27,000 acres
- Conservation = 311,607 acres
- Agricultural = 404,060 acres
- Rural = 8,236 acres

## Kauai County 3<sup>rd</sup> Largest

399,600 acres

Includes the islands of

- Kauai
- Niihau

Estimated land area:

- Urban = 12,391 acres
- Conservation = 198,732 acres
- Agricultural = 141,544 acres

Niihau is privately owned by Niihau Ranch Company.

## Oahu = City & County of Honolulu

- Smallest of the four counties in size
- Has 75% of the State's population
- 386,188 acres
- Estimated land area:
  - Urban = 101,730 acres
  - Conservation = 156,619 acres
  - Agricultural = 128,839 acres

## Land, Land Elements and Water - Chapter 2

### Land may be defined as:

- The earth's surface
- The extension of earth's surface upward to infinity
- Downward to the center of the earth

### Real Estate Consists of:

- Lands
  - Surface of the earth, trees, rocks, soil, minerals
- Tenements
  - Includes the land, as well as the rights, tangible and intangible that arise from owning land.
- Hereditaments
  - All properties and rights that can be passed on to one's heirs upon death.

### Real Estate Bundle of Rights

- Right to possess
- Right to use; or keep others from using
- Right to encumber
- Right to enjoy
- Right to dispose

### Land Elements

- Gas, Oil and Minerals
  - In mainland states may be transferred or maintained by an owner.
  - In Hawaii, 90% reserved to state
  - 1974 legislature classified geothermal rights as a mineral
- Air Rights, Owner can lease or sell
- Trees and Crops
  - Natural growth = fructus naturales
  - Annually planted = fructus industriales = emblements

### Waters

Congress has control over all navigable waters in the U.S.

Navigable means used for trade or commerce.

What are the boundaries of navigable and non-navigable rivers or streams?

Riparian rights are the rights of owners adjacent to a waterway, river or stream.

Underground water

- An owner can use the water under his property for use on the land where it is found.

### Tidewater Lands & Boundaries

U.S. Supreme Court Ruling

- Mean high water mark

State of Hawaii Decision

- High wash of the waves, which is usually evidenced by the vegetation line.

Shoreline Protection Act

- Designed to curb development in shoreline areas.
- Consult Division of Land Use Permits at the Department of Planning and Permitting.

### Accretion, Avulsion, Reliction, Lava

- Accretion
  - a gradual building up of rock, sand or soil.
- Avulsion
  - sudden tearing away of land by the action of water.
- Reliction
  - water recedes gradually. Exposed land belongs to riparian owner
- Lava
  - Land newly created by lava flowing into the ocean belongs to the State of Hawaii
- Littoral property
  - (online glossary) Property located on a large body of water, seashore, large lake, etc.

## Personal Property & Fixtures - Chapter 3

### Personal and Real Property

- If it's not real property it must be personal property.
  - (Chattel, Personalty)
- The differences between Real and Chattel Property regarding:
  - Financing
  - Sale
- Example of a Chattel Real
  - Check online glossary

### Fixtures

- Fixtures are articles of personal property that have become attached to and become part of real property.
- Fixtures pass with the land.
- Personal property must be mentioned in the deed or sold by way of a bill of sale in order to pass with the sale of the property

### Four Tests of a Fixture

- Method of Attachment
- Adaptation to the Property
  - Designed especially for a particular property
- Relationship of the Parties
  - Owner or tenant
- Intention of the Parties
  - Most important test. Best to put it in writing

### Trade Fixtures

- Exception to the fixture rule.
- Fixtures that are items of personal property that a business operator installs in rented space.
- Examples would be those items used as tools of the tenant's trade, such as bar and restaurant equipment, barber chairs, hair washing sinks, etc.

## Uniform Commercial Code

- When a property owner purchases personal property on credit, or uses it as security on a loan, the UCC provides that the seller/lender can retain a security interest in the property until he is paid in full
- Lender records a financing statement.

## Estates & Interests in Real Property - Chapter 4

### Estates

- Estate = all that a person owns in real and personal property;
- Estate also describes the degree, nature, quantity, or extent of a person's interest in property;
- Estates may be:
  - Freehold Estates or
  - Leasehold estates;

### Freehold Estates

- A freehold estate is one whose duration is uncertain and indefinite. It may be further classified as follows:
  - Fee Simple
  - Fee Defeasible
  - Fee Tail
  - Life Estate

### Fee Simple Absolute

#### Greatest estate possible

- Largest bundle of ownership rights
- An estate of inheritance
- Freely transferable
- Exists for an indefinite duration

When a person owns in fee, he is said to have 'seisin'.

Seisin gives him the right to dispose of it in life by gift or sale,

Upon death by will, or pass to his heirs by intestate succession.

## Governmental Limitations:

- Right of Eminent Domain
  - The right to seize land for public use with compensation to the land owner;
- Escheat
  - The right of the state to claim property abandoned or left by a person who dies intestate (after 15 years)
- Taxation
  - The right of the government to tax real estate;
- Police power,
  - the right to regulate land use through things like zoning or planning.

## Private Limitations:

- Deed restrictions
  - Limits placed on land by an owner, restricting it's future use;
- Mortgage liens;
- Leases;
  - The right to use, given to another for a limited time;
- Easements;
  - A right given to another to use the land of the owner for a specific purpose;

## Fee Defeasible

- Estates that have conditions that can restrict a fee simple estate.
- If they are broken, or a particular event occurs, they may enable the grantor to revoke or terminate (defeat) the transfer.

## Fee Simple Condition Subsequent

- A condition which might happen in the future. The time of the event is uncertain, but if it does occur, title will revert back to the original grantor;
- For example, transfer by grantor to grantee with the stipulation that no alcoholic beverages be sold on property; if there is, the property will revert back to the grantor.

## Fee Simple Determinable

- A condition that if it does occur, it will cause the transfer of the property.
- For example, a father transfers a property to his son, on the condition that he does not marry.
- If the son does marry, title will revert back to the grantor or the heirs or devisees.
- Defeasible estates have less value than fee simple because of the conditions.

## Fee Tail

- Not recognized in Hawaii
- Cannot convey outside the family
- Reverts back to the grantor when there are no more male heirs.
- Designed to keep large estates intact.

## Life Estate

- Smallest of the freehold estates
- Exists for the life of the life tenant
- Not an estate of inheritance
- Remainder
  - Able to Baker to Charlie
- Reversionary
  - Able to Baker to Able
- Obligations & Benefits to life tenant?
- Pour Autre Vie

## Dower and Curtesy

- Replaced by the Uniform Probate Code in 1977;
- Still applies in those properties where both the marriage and the acquisition of the property occurred prior to July 1<sup>st</sup> 1977
- An automatic life estate, given to the surviving spouse of a marriage

## Dower

- During marriage, the wife's rights (inchoate dower) of a possibility she might receive something upon his death.
- Upon his death, her interest would change unto actual possession.
- Husband could not convey to another without wife's signature.

## Curtesy

The same interest afforded to the husband in the wife's property during her lifetime, however there was no inchoate curtesy. This allowed the wife to sell her separately owned property without her husband's signature.

Surviving spouse's right of election have replaced dower and curtesy for properties and marriages that occurred after 7/1/77. More information in Chapter 14

## Homestead

A life estate in a piece of real property used by the occupant as his primary residence. During his lifetime, a portion of his interest in the home is protected from claims of most creditors.

Not protected from real estate tax liens or mortgage liens on the property.

If the home were sold at a court sale, it would reserve for the family a certain amount of money from the sale proceeds.

## Leasehold Estates

- Tenancy for years
  - Periodic tenancy
  - Tenancy at will
  - Tenancy at sufferance
- These will be fully discussed in Chapter 20.

## Easements, Restrictions, & Adverse Possession - Chapter 5

### Encumbrances

- Any right or interest in land possessed by a stranger to the title, which diminishes the value or use of the owner's estate therein.
- Those affecting the physical condition:
  - Easements, restrictions, encroachments
- Those affecting the title:
  - Mortgage liens, tax liens, judgments

### Easements

- An easement is an encumbrance that affects the physical condition or use of the property.
- A right or privilege that a person has in the land of another permitting him to use or enjoy the land for a specific purpose.

### Easement in Gross

- An easement in gross is not appurtenant to any particular land, and is a personal right which is irrevocable.
- The easement is given to a person or company rather than the dominant tenement.
- An example would be a public utility easement over private lands.

### Easement Appurtenant

Attached to a piece of land that benefits from the easement.

Servient Estate = land over which easement runs.

Dominant Estate = land receiving the benefit of the easement.

The right to the easement will be automatically transferred to any subsequent purchaser, whether or not it is mentioned in the conveyance.

## Creation of Easements

- Express Grant or Reservation
- Implied Grant or Reservation
  - Review the requirements
- Prescription
  - Open, notorious, adverse for a 20-year prescriptive period
- Eminent Domain (Condemnation)
  - Review Severance Damages
- Necessity
- Dedication

## Termination of an Easement

- Express Release
  - By the Dominant Estate
- Merger
  - One owner buying both properties.
- Abandonment
  - Permanently abandons; non use is insufficient to show intent to abandon
- Termination of Purpose

## Easement & License Distinguished

- An Easement is usually created in writing, for a specific purpose. It is of permanent nature and is conveyed with the sale of the property.
- A License is created in writing or verbally, and is for a temporary period. It is personal, revocable, and non-assignable.

## Private Restrictions

- Covenants are written promises.
  - The remedy for breach can be:
    - Action for dollar damages
    - Court injunction compelling compliance
- Conditions
  - If violated, grantor can bring a suit for repossession.
    - Hawaii courts generally enjoin the grantee from violating the conditions and treat like covenants.

## Termination of Restrictions

- Expiration of time limit
- Merger of ownership
- Voluntary cancellation
- Courts deny enforcement
- Act of public authorities

## Adverse Possession Requirements

- In Hawaii 20 years
- Hostile or Adverse
- Actual, Open and Notorious
- Exclusive
- Continuous
  - Note 'tack on' example in textbook
- Claim of Right
- Must go through quiet title proceeding.

## Protected from Adverse Possession Claims

- Property devoted to public use
- Government owned property
- Properties registered in Land Court
- Maximum lot size award in Hawaii is five acres.

## Rights of Adjoining Owners

- Encroachments
- Lateral Support
- Party Walls
- De Minimus Structure Position Discrepancies (Know for Testing)
- PASH
- Zero Lot Line

## Encroachments

- The condition that exists when a part of one property, such as a fence, wall or building, illegally intrudes on the property of another.
- It is usually disclosed by a survey.
- An encroachment may lessen the value of the property.



## Lateral Support

- Where neighbors own adjoining lands, each owes the other certain duties of lateral support.
- If an owner excavates, he is liable if his neighbors land falls into the excavation.
- An owner is not responsible to support his neighbor's building.

## Party Walls

- When adjoining property owners each have buildings that abut the common boundary line they may agree to use the same wall.
- Party wall agreement should be created between the parties and recorded.

## De Minimus Structure Position Discrepancies

- 1997 Amendments to Hawaii statutes attempted to limit problems from encroachments.
  - 3" for commercial, industrial and multi-unit residential
  - 6" for all other residential properties
  - 9" for agricultural and rural properties
  - 18" for conservation properties

## Public Access to Shorelines in Hawaii (PASH)

Upheld by the State Supreme Court are the rights of native Hawaiians to have access to less than fully developed, privately owned shoreline lands for "customary and traditional rights of gathering, subsistence, cultural and religious needs". Such rights may influence future shoreline developments or claims against title to shoreline lands.

## Zero Lot Line

- Permitted in some subdivisions;
- A type of layout of property and structure that allows neighbors' property to have no side setback, and provide for common walls.
- This design allows more open space to each lot while the houses share walls in common.

## Methods of Ownership - Chapter 6

### Principal Types of Tenancy

- Tenancy in Severalty
- Tenancy in Common
- Joint Tenancy
- Tenancy by the Entirety
- Reciprocal Beneficiaries
- Hawaii is not a community property state.

### Tenancy in Severalty

- One person, or one entity, owns the property.
- Severalty does not mean several owners.
- The interest of the owner is "severed" and is apart from any other person.
- Give some examples of tenancy in severalty.

### Tenancy in Common

- An estate of land held by two or more.
- Upon death, interest passes to heirs or devisees. No rights of survivorship.
- Unequal interests in the property allowed.
- Equal rights of possession.
- Partition suit is allowed.

## Joint Tenancy

- Two or more owners with equal and undivided interest in property.
- Upon death of a joint tenant, property survives to the other owners.
- Partition suit is allowed.
- Review common practices that may sever a joint tenancy listed in the textbook.

## Tenancy by the Entirety

- Only two persons,
- USUALLY husband and wife;
- The marriage owns the property.
- Upon death, surviving spouse receives property.
- A creditor of one spouse cannot force the sale.
- Partition suit is not allowed.

## Reciprocal Beneficiaries

- Relatively new law in Hawaii
- Extends certain rights that were previously available only to married couples, to couples who are legally prohibited from getting married.
  - Brother and sister; uncle and niece;
  - Widowed parent and unmarried son;

## Reciprocal Beneficiaries

- Each partner must be at least eighteen.
- Neither married nor in another reciprocal relationship.
- The parties be legally prohibited from marrying.
- Consent not obtained by force, duress, fraud.
- Each party signs declaration to relationship.

## Termination of Beneficial Relationship

- Either party filing a signed notarized declaration of termination with the Department of Health
- Any marriage license subsequently issued to a party to a beneficial relationship.
- Either party entering into a legal marriage.

## Rights of Co-Tenants

- Equal rights of possession
- Rules for retention of profits, rental income.
- Co-tenant who pays taxes & makes repairs.
- Selling their interest vs. selling the property.
- Confidentiality among co-tenants.
- Rights of partition.

## Other Forms of Multiple Ownership

- General Partnership; “Hui”
- Limited Partnership
- Corporation, Benefits & Liabilities
- Limited Liability Corporation (LLC)
- Joint Venture
- Real Estate Investment Trust (REIT)
- Land Trusts

## General Partnership

An association of two or more individuals to carry on a business.

Title vesting in the owners as “tenants in partnership”.

Each partner is liable for all the firm’s debts. The death of one partner either dissolves the partnership or his partnership interest goes to the surviving partners.

## Limited Partnership

One formed by two or more persons having as owners at least one general partner and one or more limited partners.

Limited partners are not liable for the firm's debts.

Permits investors with modest capital to participate in real estate projects normally requiring a substantial amount of money

## Corporation

- A separate entity created and regulated by state law that has perpetual existence, and the right to distribute share of ownership to the public.
- Shareholders are not liable for the firm's debts.
- Major disadvantage is that its income is subject to double taxation.

## Limited Liability Company (LLC)

- In Hawaii Statutes since 1997
- Combines the best of the partnership and S corporate forms of ownership.
- Does not have perpetual existence.
- Single layer of taxation.
- Owners are called members and hold membership interest.

## Joint Venture

- Similar to a partnership, treated as such for tax purposes.
- A special joining of the parties for a specific project with no intention of continuing the partnership relationship.
- One party to a joint venture can not bind the other parties to a contract.

## Syndication

- A combination of two or more people for the purpose of making and operating an investment.
- One or more parties take an active role in the creation and management.
- Others take a passive role, supplying the capital.
- Most are organized as limited partnerships.

## Real Estate Investment Trust (REIT)

An alternative to the partnership or corporate form of investing in real estate. Investors purchase certificates of ownership in the trust, which in turn invests the money in real property and then distributes any profits to the investors free of corporate tax.

REITS generally invest in larger industrial or commercial properties and must be registered as a security.

## Land Trust Act of 1978

Title to property is transferred to, and held by, a trustee.

Offers improvements to the Agreement of Sale

Avoids ancillary probate.

Owner of beneficial interest can divide into smaller units and give away over time.

Maintains confidential ownership to subsequent beneficiaries.

## Review the Tenancy Chart at the end of Chapter 6.