

## Property Management & Leasing

### Chapter 20

#### Property Managers Purpose:

- Provide for the owner the highest continuous net return from the property commensurate with its highest and best use, and at the same time provide the tenant of the property, the best service and value for the tenant's rental dollar.

#### Institute of Real Estate Management

- Division of NAR founded in 1933 whose primary purpose is to act as a medium for management ideas.
- CPM = Certified Property Manager
- ARM = Accredited Resident Manager

#### IREM Code of Ethics

- Loyalty to client.
- No conflicting interests.
- No rebates unless approved by owner.
- Confidentiality.
- Keep clients informed about their property.
- Provide regular accounting.
- Protect clients funds and place them in client trust account.
- Keep and maintain accurate accounting records.

#### Working Knowledge of:

- Accounting, taxes, insurance, credit procedures.
- Business administration procedures
- Government regulations & basic real estate law.
- Repairs & maintenance.
- Public relations.
- Research & surveys.
- Prepare income & expense budgets.
- Advertising & tenant selection.

#### Duties of Property Manager:

- Investigate tenant's credit.
- Collect rent & initiate legal proceedings.
- Create maintenance schedules and repairs, set up reserves.
- Supervise purchasing.
- Hire, train and supervise employees.
- Auditing and paying bills.
- Arrange and pay for insurance.
- Scrutinize taxes and assessments.
- Analyze depreciation deductions.
- Develop tenant relations.
- Maintain records of income & expense.
- Prepare leases.
- Advertise vacancies.
- Knowledge of health & safety codes, security.

#### Types of Properties Managed:

- Long term rental of home or condo.
- Apartment houses.
- Hotels.
- Short term vacation rentals.
- Office buildings
- Retail buildings.
- Manufacturing
- Shopping centers.
- Single purpose buildings, theaters, restaurants, hospitals, public buildings.
- Condominium AOA

#### Types of Managers

- Property Manager; often a real estate broker that manages a number of properties for various owners.
- Individual Building Manager; usually manages a single property and is salaried.
- Resident Manager; on premise person to perform or supervise maintenance and enforce house rules.

## **Management Contract Should:**

- Brief description of the property.
- Obligations of both parties.
- Terms of the contract.
- Length of the contract.
- Management fees.
- Authority of the agent

## **Management Fee May Be:**

- Percentage of gross rents collected.
- Based on value of new leases signed.
- Fee for supervising repairs may be based on cost of the repairs.
- Sales commissions usually based on sales price of property.

## **Short Term Leases**

- Tenancy for Years
- Periodic Tenancy
- Tenancy at Will
- Tenancy at Sufferance
- Leases of more than 1 year must be written.

## **Commercial Leases**

- Net Lease; lessee pays expenses such as real estate taxes, insurance, and utilities. CAM and CAS.
- Gross Lease; lessee pays a flat rental amount and lessor pays expenses.
- Percentage Lease; usually a fixed minimum rent + percentage of the gross income. A straight percentage lease often includes a recapture clause.

## **Long Term Leasehold Estates**

- In Hawaii, until recently, 85% of non-government owned lands were occupied under a long term lease.
- Under common law, leasehold estate is personal property.
- Hawaii treats leasehold as real property as they do all condo units whether fee or lease.

## **Ground Leases**

- Typical term is 55 years.
- Fixed period and Step Up or Graduated
- Lessee is allowed to remove his improvements at the end of the lease.
- Hawaii Land Reform Act and HFDC.
- Fee conversion.

## **Leasehold Disclosure Act:**

- Effective July 30, 1990
- Seller must give buyer a copy of the lease to review within 10 days after acceptance of Purchase Contract. Seller must summarize key terms of the lease and include a lease glossary.
- Buyer has 10 days to review and cancel Purchase Contract.
- Get a statement signed by buyer stating that they have received, read, and understood the lease.

## **Elements of a Lease Required**

- Contractual ability of the parties.
- Mutual agreement with consideration.
- Description of the property.
- Legal purpose.

## **Not Required**

- Date
- Use of premises
- Acknowledgement
- Recording
- Tenant's signature.

## **Termination of Leases**

- Expiration of the Term.
- Surrender
- Breach of Conditions.
- Actual Eviction by;
  - Summary Possession
  - Dispossess Proceeding
  - Unlawful Detainer
- Constructive Eviction
- Prior Right
- Destruction of Premises.
- Abandonment

## Assignment, Sub-Leasing, Options

- Unless restricted by the lease, lessee may assign or sub-lease.
- Assignor remains liable.
- Sub-lessee only liable to sub-lessor.
- Option to renew lease.
- Right of first refusal to purchase.
- Lease-option agreement.

## Landlord Tenant Code (HRS 521)

- Effective since January 1, 1973
- Can't agree to waive a right or remedy.
- Tenant to notify landlord of needed repairs
  - Tenant can deduct up to \$500 from rent if the landlord does not make repairs
- House rules must be reasonable.
- Damage by fire or tsunami.
- Disclose owner or manager on same island.

## Tenant Code Highlights

- Tenant notifies if absent for more than 20 days.
- Lock outs.
- Security Deposits
  - Maximum amount = 1 months rent
  - Pet deposit additional = 1 month rent
  - No pet deposit for service animals.
  - Return of deposit within 14 days.
  - Deposit belongs to tenant.
  - Used as last month's rent.
- Doesn't apply in Agreement of Sales.
- Requires proper notice for rent increase.
- Landlord notice to enter minimum 2 days.
- Tenant pays rent to court.
- Condo conversion or demolition of property = 120 day notice to tenant.
- No rent control in Hawaii.
- N/A under early occupancy in DROA.
- Month to month notice requirements:

- Tenant must give 28 day notice.
- Landlord must give 45 day notice.
- Inventory and condition report at move in and again at move out.
- Can't hold tenant's property until rent is paid.
- New owner & tenant are bound by lease upon sale of property.
- Unless restricted, lease can be assigned or sub-leased.
- Unit not ready for occupancy.
- Tenant's enjoyment of dwelling
- Termination of electric or water.
- Five day notice to quit.
- Dwelling unit used only as residence.
- Tenant wrongfully breaks lease.
- Landlord must pay:
  - General Excise Tax
  - Transient Accommodations Tax

## Review

- Learn the Landlord Tenant Code Deadlines towards the end of the chapter
- HAR Rental Agreement

## Land Description

### Chapter 21

## Legal Descriptions

- Land Court Map Number;
- Lot Number & Certificate of Title Number
- Lot, Block and Subdivision
- Plat & Parcel
- File Plan
- Metes and Bounds
- Government Survey

## Not Adequate for a Legal Description

- Descriptions that are sufficient for a listing or DROA.
- Tax Map Key Number
- Street Address

## Government Survey System

- Quadrangle
- Meridian
- Base Line
- Range
- Tier
- Township
- Section

## Plat and Parcel System

- Also called Subdivision & Lot Number
- In describing a lot from a recorded plat, now called a file plan, the lot and block number, the name or number of the subdivision plat, name of county and state would be used.
- Land court property is described by lot number with reference to the map number and the TCT. It is rarely described by metes and bounds.
- Review samples.

## Metes & Bounds Description

- Metes are measures of length.
- Bounds are boundaries.
- Old descriptions used trees, stones & creeks.
- Monuments are physically identifiable objects.
- Benchmarks are monuments used to measure elevation.

## Azimuth System

- POB = Point of Beginning
- 360 Degrees in a Circle
- 60 Minutes in a Degree
- 60 Seconds in a Minute
- In Hawaii azimuths are measure from true South.

## Quadrant System

## Tax Map Key Numbers

- Not adequate for a legal description.
- Commonly used by title & escrow companies, lenders and real estate agents.
- Hawaii is divided into four tax divisions.
  - Oahu = Division 1
  - Maui County = Division 2
  - Big Island of Hawaii = Division 3
  - Kauai County = Division 4

## Tax Map Key

- Division-Zone-Section-Plat-Parcel-CPR
- Double underlined number is parcel number.
- Number with circle around it is the developer lot number.

## Information on a Tax Map

- Sketch of the boundaries, dimensions and square footage.
- Name of owners and the tenancy.
- Easements on or adjacent to the property.
- Abutting parcels & parcels in the vicinity.
- Abutting private & public streets.

## Field Books

- Each property has at least one page:
  - Synopsis of recent chain of ownership.
  - Square footage of the property
  - Sketch of any improvements.
  - Information on type of materials used.
  - Building permit dates.
  - Assessed value.
- Field Books are now obsolete
  - Information now contained on microfilm

## Appraising

### Chapter 22

#### An Appraisal is:

- An estimate or opinion of value of a property as of a specific date, by a competent appraiser, supported by factual and relevant data.
- In Hawaii appraisers do not need a real estate license.
- FIRREA now requires appraisers to be state licensed.

#### Value, Price and Cost

- Value is the worth of a thing in money or goods at a given time.
- Cost is what one has invested in the way of land, materials and labor.
- Price is what someone asks or pays for a property in terms of dollars.

#### Types of Value

- Market Value
  - Willing Buyer & Seller
- Assessed Value
  - Real property taxes 100% of market value
- Insurance Value
  - Replacement Cost
  - Reproduction Cost
- Book Value
  - Cost – depreciation + improvements
- Mortgage Loan Value

#### Four Elements of Value

- Utility
- Scarcity
- Demand
- Transferability

#### Principles of Value

- Supply & Demand
- Change
  - Regression
  - Progression
- Substitution

- Adjust comparable to the subject property
- Highest & Best Use
  - Greatest **Net** Return
- Contribution
- Conformity
- Anticipation
- Increasing and Decreasing Returns

#### Four Considerations to Value:

- Social:
  - Prestige, family sizes, social & economic homogeneity
- Physical:
  - Street patterns, proximity to schools, shopping.
- Economic:
  - Rent & income levels, new construction.
- Government:
  - Special assessments, taxes, zoning, building codes.

#### The Appraisal Process

- Define the problem.
- Inspect the neighborhood & the property.
- Collect pertinent data.
- Apply each approach to value.
- Reconcile the value estimate.
- Prepare the appraisal report.
- How is an appraiser paid?

#### Depreciation

- Deterioration
  - Physical wear and tear.
- Functional Obsolescence
  - 3 bedroom 1 bath.
- External / Economic Obsolescence
  - Near highway or airport.
- Each type of depreciation may be:
  - Curable or Incurable

#### Approaches to Value

- Cost
- Market Comparison
- Income

- Gross Income / Rent Multiplier

## Cost Approach

- Estimate the value of the land.
- Estimate current cost of replacing or reproducing the buildings.
- Estimate and deduct the depreciation.
- Add the estimated land value to the depreciated building value.
- Review the cost approach example.

## Market Comparison

- Commonly used by real estate brokers.
- Based on the principle of substitution.
- Comparable sales in the last 3 months.
- Adjust comparables to the subject property.
- Most easily understood by the public.
- Difficult for unique properties; school, library, hospital, art gallery etc.

## Income Approach

- Estimate Potential Gross Income:
  - Economic / Market Rent
  - Contract Rent
- Subtract vacancy and credit loss to get EGI.
- Deduct annual expenses to get NOI.
- Capitalize the Net Income

## An Investor is Entitled to:

- Interest;
  - a return on the investment; profit.
- Recapture;
  - a return of his investment through depreciation.

## Cash Flow:

- Cash Flow equals Net Operating Income minus:
  - Debt Service; principal & interest payments.
  - Income taxes attributable to the investment.

## Gross Income Multiplier

- Only a rule of thumb.
- Ratio between the rental the property receives and its sales price.
- Divide the Sales Price by the annual Gross Income.
- Does not consider, expenses, vacancy factor, age of building etc.

## Basic Steps in the Appraisal Process

### Cost Approach

- Estimate the land value.
- Estimate current cost to replace building.
- From the current reproduction costs deduct the accrued depreciation.
- Add the estimated land value to the depreciated cost of the building.

### Market Comparison Approach

- Locate comparable sales.
- Compare each comparable sale with the subject property making price adjustments to compensate for significant differences.
- On the basis of the adjusted sales prices of the comparables, draw a conclusion as to the value of the subject property.

### Income Approach

- Estimate the annual potential gross income.
- Deduct an allowance for vacancy & collection loss to arrive at effective gross income.
- From the effective gross income deduct the annual expenses to arrive at net income.
- Divide the **net** income by the capitalization rate for an indication of value.



## Planning, Zoning and Building Ordinances

### Chapter 23

#### Four Governmental Limitations

- Right of Eminent Domain
- Escheat
- Taxation
- Police Power
  - The purpose is to protect the health, safety, morals, and general welfare of the public.

#### Science & Art of Planning Should:

- Create awareness of current problems, anticipate future problems.
- Create an orderly, intelligent growth of the community.
- Enable the populace to take a creatively active role in the process.

#### Physical Inventory

- Analysis of existing natural beauty.
- Analysis of the area's potential in relation to soil density, construction, water supply, topography, legal boundaries, possible expansion of street patterns.

#### Important Economic Elements:

- How and why did the community originate.
- What is the present population with regard to such things as ethnic composition, age distribution, and employment opportunity.
- What is the present and the potential growth of business activities.
- What is the availability of land and how can it best be utilized.

#### Ambition of State Administration

- Create, through good planning, further development of the neighbor islands, industrially and commercially, that will result in more evenly balanced and desirable allocation of population among the islands.

#### Honolulu Department of Planning & Permitting

- Regulate construction
- Process land use permits
- Application for zoning changes and ordinances
- SMA permits
- Subdivision applications
- Ohana dwellings
- Special use permits
- Development permits
- Site plan reviews

#### Department of Land and Natural Resources

- Manages the State's public lands.
- Manages Water and mineral resources.
- Administration of conservation districts.
- Manages the Bureau of Conveyances.

#### Zoning

- Zoning is the operational arm of general planning in that it is a police power that gives both the state and the counties the power to control land for the most beneficial use of the population, both socially and economically.

#### Land Use Ordinance (LUO)

Also Called Zoning Ordinance

Provisions of the LUO provide standards for the:

- Location of structures
- Height of structures
- Bulk and size of structures Yard areas
- Off-street parking
- Open spaces
- Use of structures

## **Shoreline Protection Act**

- Affects use of properties bordering on the beach and the ocean.
- How far away from the water a structure can be built.
- On Oahu, at least 40 feet from the vegetation line, depending on the size and shape of the lot.

## **Special Zoning Conditions**

- A variance is a request to do something that is contrary to current zoning.
- Conditional use permits and special licenses have to do with much shorter periods.
- Non-conforming or grandfathered is a situation whereby a certain use of a property exists even though current zoning does not permit it.

## **Special Zoning Conditions (continued)**

- Spot Zoning
  - A specific property within a zoned area is rezoned to allow a use different than the other properties in the area.
- Down Zoning
  - A change in zoning from a higher to lower;
  - Residential to conservation;
- Special Management Area
  - A smaller area within a larger area;

## **Ohana Dwelling Limitations**

- All other provisions of zoning law apply.
- Ohana provisions do not apply to cluster development, planned development housing, or duplex lots.
- Approved sewers, water availability, fire protection, minimum of 16' wide paved road.
- May be occupied by family or rented. Also the Ohana unit may be sold as a condo.
- Land lease or private limitations prevail.
- Can't add another unit if 2 exist now.
- Owner builder OK but must use licensed plumber and electrician.

- There are size limits.
- Cesspool for the ohana not permitted.

## **Planned Development Housing**

- A specific type of zoning used as a means of utilizing the State's small amount of land as efficiently as possible.
- A developer places the units close together providing a smaller amount of yard space for each unit, while reserving larger areas for open space or recreation.

## **Building Ordinances Cover:**

- Size and location of rooms,
- Elevators
- Floor loads
- Electrical installation
- Plumbing
- Other measures for protection of the occupants and the public.

## **Specialized Areas**

- Electrical codes
- Plumbing codes
- Fire codes
- Codes are administered by specific departments of the county.

## **Permits Required to Demolish, Repair or Construct**

- Owner must get permit first.
- Application to be submitted with plans and specifications.
- County officials will review the plan to make sure improvements comply with zoning and building codes.
- Building department can order removal of improvements or impose stiff fines.



## Environmental Disclosures

- Because of the National Environmental Policy Act of 1969, before changing or initiating any land use or development, one is required to file an Environmental Impact Statement (EIS).
- To insure that the use will not adversely affect the environment in the area such as air, noise, and water pollution.

## Resource Conservation and Recovery Act (RCRA)

- Created the ability to regulate the generation, transportation, storage, treatment, and disposal of hazardous wastes at active facilities such as landfills, as well as businesses that stored petroleum-based products in underground storage tanks.

## CERCLA

- Sites that contain hazardous substances are identified and the responsible parties, or the government has to clean them up.
- Amendments to CERCLA established the Superfund dealing with cleanup standards of contaminated real estate sites.

## Legislation Includes Protection:

- Wildlife habitats
- Shorelines
- Wetlands
- Endangered species
- Asbestos
- Formaldehyde
- Radon
- Indoor pollutants
- Lead-based paint
- Mold
- Polychlorinated biphenyls (PCB's)

## Three of These Acts

- Federal Water Pollution Control Act
  - Wetlands
- Brownfields Revitalization
  - Federal government provides funds to rejuvenate abandoned industrial properties
- Lead Based Paint Disclosure
  - Properties built prior to 1978

## Potential Problem in Hawaii

- Underground Storage Tanks
  - Used to store petroleum products, chemicals, and liquid wastes;
- Indications of UST
  - Air vents or piping sticking out of ground;
  - Oil sheens in wet areas;
  - Traces of concrete, metal or asphalt that may indicate former commercial use;

## Need to Determine If UST

- Is actually leaking;
- The extent on any contamination caused by the leak;
- The cost to remedy the problem

## Phase 1 Assessment

- A physical examination of the property, including record examination, historical review, etc.
- Environmental Site Assessment will determine if contamination potentially exists.

## Phase 2 Assessment

- A sampling to verify the problem at which time the regulatory agencies will be informed.

## **Phase 3 Assessment**

- The sampling will determine how far the problem has migrated.
- At this time there will be recommendations for a remedy that may include removal and cleanup of the surrounding soil area.
- It might also mean the cleanup of affected nearby properties.

## **Real Estate Agents**

- Are not required to have a vast understanding of environmental hazards.
- Should recommend the buyer and seller retain appropriate experts to evaluate those hazards.
- Should consult an attorney to assist in the disclosures to be made.