

BUSI 112 Canadian Real Property Law and Real Estate Ethics

PURPOSE AND SCOPE

The *Real Property Law* course BUSI 112 is intended to give the real estate practitioner student a working knowledge of the law of real property. The course will provide you with detailed information on the law as it applies to real estate, including the fundamentals of contracts, the nature of interests in land, land title registration, mortgage law, and condominium law. The material is intended to be introductory in nature; it is important to keep in mind that study of this course by itself does not qualify the reader to give legal advice related to real estate matters. The purpose of this course is not to make you an expert in property law – lawyers and other specialists offer legal advice in complex circumstances, and can provide much more in-depth knowledge of this area than would ever be required of a real estate professional. This course will instead offer a practical overview of the legal implications that a real estate professional must consider each time a real estate transaction occurs, and it offers insight into how the law of property affects real estate practitioners on a daily basis.

After reading the text and proceeding through the *Course Workbook*, the student should have a basic understanding of the legal elements related to the purchasing, selling, dividing, and financing of real estate. In satisfying the general objectives of this course, a student should become able to identify and understand the following:

- the historical basis and the current structure of the Canadian legal system;
- the seven essentials required to form a valid contract;
- the interpretation, termination and breach of contracts, and how contract disputes are dealt with in the courts;
- how contract law applies to real estate transactions;
- the meaning of "ownership" of land, and some other types of interests in real property;
- principles of both the recording system and the Torrens System of land title registration, and how real property's title is registered;
- the responsibilities that land owners and occupiers have under various heads of tort law;
- the role of the real estate agent/broker/licensee in real property transactions;
- the law of mortgages, including the different forms of mortgages, types of mortgages, and the legislation which governs them;
- the nature of tenancies, both commercial and residential;
- the law which governs condominiums, including the types of strata, the creation of strata, the strata corporation and council, and the legislation, bylaws, and regulations which govern the operation of strata developments;
- the organization and regulation of the real estate industry;
- the provincial legislation which dictates the professional standards of the real estate industry; and
- ethics, and in particular, how they apply to professionals in the real estate industry.

LESSON 1 – Introduction to Canada's Legal System and Real Estate Industry

1. Describe briefly the history of the legal system(s) used in Canada today.
2. Explain the division of powers in the Canadian legal system.
3. Discuss the role of statute law and the relationship between the courts, parliament, and the legislatures.
4. Explain the structure of the courts in Canada.
5. Discuss the various stages of a civil law suit.
6. Explain the role of stare decisis and how case law is used within the legal system.
7. Explain the organization and regulation of the real estate industry.

LESSON 2 – Estates and Interests in Land

1. Explain the scope of and extent of "ownership" of land.
2. Describe the origins of our real property law and what is included in "land".
3. Explain the concept of an "estate" in land and be able to describe common types of estates.
4. Describe interests in land which do not amount to estates – easements, restrictive covenants, building schemes, profits à prendre, and licences.
5. Explain what it means to say an interest "runs with the land".
6. Identify and apply the tests used to determine whether an item is a fixture or a chattel.
7. Discuss the current rights to airspace and subsurface rights, as well as the right to support for land.

LESSON 3 – Contract Law

1. Explain the seven elements required for a binding contract.
2. Explain the difference between "void", "voidable", and "unenforceable" contracts.
3. Explain the requirement of writing and the parole evidence rule.
4. Explain the doctrine of privity of contract and how it interrelates with the right of a party to assign his or her rights under a contract.
5. Describe the ways in which a contract can be terminated.
6. Explain revocation of a contract and option agreements.
7. Discuss the interpretation of terms and the use of implied terms.
8. Discuss breach of contract, the effects of a breach, and the remedies available.

LESSON 4 – Land Registration and Land Title Office Procedure

1. Describe the common law method of dealing with title and transfer of title.
2. Describe the recording system of deed registration.
3. Describe the Torrens system of title registration, its purpose, and how it is achieved.
4. Explain what is meant by the "dual land registration system".
5. Describe the title search and registration processes in a typical Torrens jurisdiction, with reference to registration of the fee simple and charges.
6. Discuss the Assurance Fund and when it can be used.
7. Discuss registration and the transfer of interests in regards to manufactured homes.

LESSON 5 – Land Ownership and Tort Liability

1. Provide examples of the three types of trespass and explain the three major characteristics of that tort.
2. Explain who can sue for trespass, what remedies are available, and the defences to trespass.
3. Describe private nuisance, public nuisance, the types of damages recognized, and the remedies available.
4. Distinguish between nuisance and trespass.
5. Discuss liability for nuisance and distinguish between valid and invalid defences.
6. List the three elements of negligence and apply them to an instance of negligent misrepresentation.
7. Define what is meant by the term "occupier", both at common law and by statute.
8. Discuss the standard of care an occupier owes to each type of "visitor" to the occupier's property.

LESSON 6 – Real Property Transactions and Agency Law

1. Describe how an agency relationship can be created and be able to explain the various types of authority that an agent has.
2. Identify the various types of listing agreements and be able to distinguish among them.
3. Discuss the information required for a valid listing contract.
4. Discuss the formal requirements of a Listing/Agency Agreement, including the requirement of writing.
5. Explain the duties and obligations an agent owes to his or her principal and be able to apply them to a real estate agency relationship.
6. Discuss how and when an agent becomes personally liable to a third party.
7. Explain when a principal is liable to pay commission to a real estate agent.
8. List the circumstances which would render an agency agreement terminated.
9. Outline the major considerations involved in drafting a contract of purchase and sale.
10. Discuss conditions precedent, the difference between an objective and subjective condition precedent, the requirement of fulfilling the condition, and when a condition precedent can be unilaterally waived.

LESSON 7 – Mortgage Law

1. Explain the concept of a "mortgage".
2. Name the parties to a mortgage.
3. Explain the difference between a legal mortgage and an equitable mortgage.
4. Describe the implied and express terms of a mortgage, with particular reference to clogging, collateral advantages, and short forms legislation.
5. Discuss the attributes of different types of mortgages: vendor take-back, collateral, interim blanket, wrap around, mortgage consortiums, and specific and floating charges.
6. Explain the scope and effect of the federal legislation such as the Interest Act, the Criminal Code, and the Bankruptcy and Insolvency Act.
7. Explain the scope and effect of relevant provincial legislation and how it affects mortgages.
8. Explain how a lender assigns a mortgage, and the rights and obligations of the lender, the borrower, and the assignee.
9. Explain how a mortgage can be assumed and what risks are involved.

10. Describe the priority of interests and how this might be affected by statute.
12. Discuss the acceleration of repayment upon default, and the different procedures which a lender can use if a mortgage falls into default.
13. Describe an agreement for sale, and how it works when there is an existing mortgage.

LESSON 8 – Commercial and Residential Tenancies

1. Distinguish between a lease and a licence and explain the importance of the distinction.
2. Distinguish between a commercial and a residential tenancy
3. Explain the major features of the four main types of tenancies and how these features apply to residential and commercial situations.
4. Discuss the rights and obligations of the parties to a lease, with particular reference to rent, security deposits, assignments and sub-leases, implied covenants and short form legislation, express covenants, as well as the obligations specific to a landlord and to a tenant.
5. Discuss the remedies for breach of a tenancy agreement.
6. Discuss the important attributes of residential tenancy agreements.
7. Describe the types of reasons a residential landlord must give for terminating a tenancy and list several specific examples, including termination for cause, non-payment for rent, landlord's own use, and reasonable cause.
8. Describe the manner in which a landlord must give notice of end of tenancy and the tenant's right to dispute it.
9. Describe when and how a rent increase notice is given in residential tenancies.
10. Discuss the resolution of disputes and the role of an arbitrator and/or a court in settling disputes.
11. Discuss tenancies for manufactured home pads.

LESSON 9 – Strata Titles (Condominiums)

1. Discuss the uses and types of strata lots, including both residential and non-residential properties.
2. Describe how a strata development is created, the types of developments, and other pertinent details such as the requirements of a strata plan.
3. Distinguish between a strata corporation and strata council and be able to describe the duties of each.
4. Explain how bylaws and rules are created and amended.
5. List the responsibilities of a strata lot owner and, if he or she does not fulfil these duties, the remedies available to the strata corporation or another owner.
6. List the rights of a strata lot owner and the remedies he or she has against the strata corporation or other owners.
7. Identify the most important characteristics of leasehold strata plans.
8. Explain what a cooperative is, how a cooperative development is created, the financing of a cooperative purchase, and the distinction between this type of development and a condominium development.

LESSON 10 – Legal and Ethical Guidelines for the Real Estate Professional

1. Discuss government regulation of real estate licensees through legislation on nine common aspects of real estate transactions: the appraisal; the listing contract; advertising; fair dealing with the public; disclosure requirements; the sale of a business; the contract of purchase and sale; books, accounts, and trust funds; and commission (using BC legislation as an example).
2. Discuss the preservation of real estate contracts, vicarious liability, and a licensee's liability as a stakeholder.
3. Discuss how provincial legislation affects real estate appraisers.
4. Explain how breaches of provincial legislation are dealt with, and the penalties which can be levied by a disciplinary body.
5. Discuss the application of the federal Competition Act, offences under the Act, and the penalties which may be levied.
6. Discuss the meaning of the term "professional ethics", and outline how CREA's and AIC's standards and codes of conduct exemplify this.
7. Explain at least three breaches of professional ethics under CREA's and AIC's Standards, and how these are managed by the governing body.