

1  Real Estate Concepts Review

2  Real Estate v. Real Property

- How do we define *Real Estate*?
  - Land and Structures permanently attached to the land
  
- How is *Real Property* defined?
  - The legal interest held in land and buildings and the financial obligations they support

3  Real Property

- Corporeal Property?
  - Property which has a physical form
  - ie: A parcel of land w/ or w/o a building
- Incorporeal Property?
  - Property not possessing a physical dimension
  - ie: The right to receive rental payments
- Which of these will we focus on in this class? Hint: We concentrate on mortgages.

4  The Bundle of Rights

- Estates in Land
  - The interest which one possesses in Land
  - Freehold Estates
    - » The right of ownership
  - Leasehold Estates
    - » The right to use and possess (occupy) but not own

5  Estates in Land

- Freehold Estates
  - Ownership estate for an indefinite period
    - » Can be sold
    - » Can be granted by will or law to heirs
  - Fee Simple Estate
    - » An ownership interest unencumbered by any other interest or estate
  - Life Estate
    - » Temporary interest until death of a named person

6  Estates in Land

- Leasehold Estates
  - Possessory estate granting the right to use and occupy but not own
  - Leasehold Interest
    - » The Lessee's – tenant's estate
    - » Usually restricted in duration
      - Stated Period – Defined termination
      - Period to Period – Unidentified termination

7  Estates in Land

- Leasehold Estates
  - Leased Fee interest
    - » The ownership estate created by leasehold

- » Leased fee owner known as the Lessor - Landlord
- » Common focus in valuation of leased property

## 8 Transfers of Ownership

- Title
  - Proof of ownership in property
- Deed
  - A legal document transferring title in real estate
    - » Grantor = transferring party
    - » Grantee = recipient
  - Legal Descriptions

## 9 Assurance of Title

- Deed Covenants
  - Warranty Deeds
    - » Good and marketable title
    - » Right to convey
    - » Covenant against encumbrances
    - » Pledge to Defend
  - Quitclaim Deeds
    - » Only releases implied title
    - » No Guarantees

## 10 Assurance of Title

- Title Abstracts and Title Opinions
  - Abstracts provide a chain of ownership
  - Opinions provide only a statement of findings
- Title Insurance
  - Insurance policy issued at transfer
  - Pays the mortgage lender in case of defects
  - Required by most lenders

## 11 Mortgages

- A pledge of property as security for a loan
  - Historically mortgages involved initial title transfer to the lender
  - Full title would be returned when the debt was paid off
  - Hypothecation
  - Lien theory dominates today
    - » Requires Foreclosure for lender to acquire title

## 12 Mortgage Contracts

- Promissory Note
  - A written promise to repay money borrowed
  - Usually provided within the mortgage document
- Deed of Trust
  - Alternative form of mortgage document
  - Dormant title held by third party trustee
  - Only becomes active in case of default

## 13 Mortgage Contracts

- Security Deed (Deed to Secure Debt)
  - Used in Georgia (& a few other states)
  - Passes legal title to the land while reserving to the debtor *equitable title* to use and enjoy the conveyed land
  - Title is passed back at payoff of the debt
  - Provides for Non-Judicial Foreclosure
    - » with Power of Sale

#### 14 Mortgage Clauses

- Designation of Borrower and Lender
  - Mortgagor = Borrower
  - Mortgagee = Lender
- Legal Description
- Covenants of marketable title by borrower
- Hazard Insurance
- Escrow for taxes and insurance
- Due on Sale Clause
- Acceleration Clause
- Prepayment Clause
- Subordination

#### 15 Mortgage Recording

- Recording sequence dictates position
  - First vs. Second
- Taxation of Mortgages
  - Recorded documents require payment of tax
  - Georgia Intangibles Tax
    - » Equal to \$1.50 per \$500 of mortgage amount

#### 16 Prepayment

- Defn: Early payback of outstanding balance
  - Considered a Call Option
- Optimal Prepayment
  - Choice to prepay due to financial incentive
  - What is the most common incentive?
- Non-optimal Prepayment
  - Prepayment due to non financial concerns
  - Change of Job location or family size

#### 17 Mortgage Markets

- Primary Markets
  - Initial Issue (Origination)
  - Occurs only once
- Secondary Markets
  - Resale of previously originated loans
  - May occur many times over a loans life
  - Led to standardization in mortgage contracts

#### 18 Mortgage Default

- Defn: Breach of duties defined in the mortgage contract
  - Usually due to missed periodic payments
- Default generally leads to foreclosure
- Default might be intentional
  - When would you default?
- Default should be viewed as an option
  - Exercise when mortgage value is min. to lender
  - Value Default Option =  $PVA_{mort} - H_{val} - DCost$

19  **Mortgage Foreclosure**

- Defn: Forced sale of property to provide repayment of outstanding debt
  - Judicial or Non-Judicial Process
  - Lender keeps only the outstanding debt and any cost of foreclosure
  - Usually sold at auction to the highest bidder
  - Often the lender is the only bidder
    - » No money changes hands in this case
    - » Borrower often gets nothing

20  **Mortgage Foreclosure**

- Rights of Redemption
  - “Equitable Right of Redemption”
    - » The borrower’s right to redeem the property after default but before foreclosure
  - “Statutory Right of Redemption”
    - » In some States borrowers also have redemption rights after foreclosure
    - » Can be 30, 180 days or more depending on State law
    - » This right does not exist in Georgia

21  **Mortgage Foreclosure**

- Deficiency Judgments
  - A case where the property sells for less than the outstanding mortgage balance
  - The lender then seeks court assistance in being paid by the borrower for the deficiency
  - Many states do not allow deficiency judgments
    - » We often refer to these as “**Non-recourse Loans**”
    - » Allows borrowers to walk away
    - » This creates a Put Option for the Borrower

22  **Alternatives to Foreclosure**

- Foreclosure can be costly to the lender
  - Legal fees and court costs
  - Redemption rights extend foreclosure time creating holding costs

23  **Alternatives to Foreclosure**

- Deed in lieu of Foreclosure
  - Transfer title to lender without foreclosing
  - Lender releases the borrower from liability
- Recasting the Mortgage
  - Extend time for repayment
  - Lower payments
    - » Increase Maturity

» Lower the Contract Rate

24  **Alternative Financing**

■ **Junior (Second) Mortgages**

- Borrow against outstanding equity
  - » Often used for home improvements, consumer purchases, and education expenses. Why?
- Subordinate to all higher level mortgages
  - » Have a residual claim upon default
- Generally shorter than first mortgage
- Higher contract rates than first. Why?

25  **Alternative Financing**

■ **Loan Assumption**

- Acquiring rights and responsibilities of an existing mortgage
- Could be beneficial in rising interest rate periods
- Is the seller fully released from obligation?
- Buyer pays difference b/w sale price and mortgage balance to seller
- Can be used as an alternative to foreclosure

26  **Alternative Financing**

■ **Seller Financing**

- "Purchase Money Mortgage"
- Seller transfers title to buyer and takes back a mortgage on the property
- Usually nominal down payment is required
- When are they used?
  - » Vacant Land
  - » Higher credit risk borrowers

27  **Alternative Financing**

■ **Land Contracts (Contract for Deed)**

- Typically last resort financing
- Seller financing arrangement where title is not transferred until loan is paid off
- Example of where this might be used
  - » Rural home sites for mobile homes