Final Exam

80 MC Questions
44 do not require a calculation
3 require calculation

3 extended problems
1. Fixed Rate Mortgages
2. ARM
3. Residential Fin. Analysis

Chapter 2 - Legal Considerations for Mortgages

Real Property Law is STATE Law, so it varies from State to State. However, there are a lot of similarities.

Since the growth of real estate, there has been increased emphasis on the regulation of Real Property - in hand and through attachments to the land.
The rights to real property can be divided in many ways:

Ownership is the highest form of rights (or collection of rights).

Typical rights include occupation (i.e., the right to occupy the property), the right to sell, and the right to quiet enjoyment.

There are possibly more:
- Possession of real property
- Right to use but not possess
- (2) Rights to use
  - Right to consume milk

(3) Security interest
   - This is the interest of the person who holds your mortgage, i.e., a mortgage provides what is called a "secured interest." This provides the lender with rights if you fail to comply with the terms of the mortgage.

"Mortgage" is rooted French for "dead pledge."
Forms of Ownership

Single Ownership: A person or a corporation.

Various forms of joint ownership: such as husband & wife, as partnerships, community property, tenancy in common, and condominiums.

Real Property is owned by:

- Personal Partnerships
- Limited Partnerships
- Corporations
- Trusts
- Estates (Real Estate, Testamentary Trust)
- Governments
- Other Entities
Concept of Title

Title = Ownership
- The highest level of rights

Title is an abstract term.
It refers to the bundle of rights you have. These are documented by a chain of Title over time.

Private limitations on Title include:
security interest (e.g. mortgage)
leasehold interest
covenants e.g. "rules in a subdivision or PUD (planned unit development)"

Public Limit on Title
- State has Police Power
  - power to condemn,
  - power to regulate through building codes
  - environmental concerns (e.g. wetlands)
A Valid Deed

1. Must be in writing
2. Identifies who title is being conveyed to
3. Identifies the property (typically use the "legal description")
4. Signed by the person making the conveyance.

Also need "consideration" (i.e., something of value, such as money). There has to be intent to deliver the deed.
Type of Deed

I. General Warranty Deed
   1. The grantor indeed owns the property.
   2. Has the full right to convey.
   3. No claims on the property except those noted.
   4. Quiet enjoyment - no person with a superior claim can interfere with the grantee use and possession of the property.

II. Special Warranty Deed
   - Suggest that the grantor is conveying all the rights he had when he purchased the property.

III. Deed without Warranty
     - Seller asserts ownership but does not warrant the quality of the title.

IV. Quit Claim Deed - Grantor quits any claim on the property. Typically used to clear up "clouds" on the title.
probably the most common type of deed recorded. The common use is in Divorces.

Methods of Title Insurance

Lawyer's Abstract of Title:

Title Insurance

An insurance company guarantees the quality of title in exchange for a wraparound fee (about 1% in Texas). Kinds of Policies taken out at real estate closing.

1. Owner's Policy - protects the owner against claims.

2. Mortgage Policy - protects the quality of the lien.
Recording Acts
- Various legal transactions can be recorded with the county.
  Typical for Plat Maps, Zoning, Subdivision Restrictions, deed restrictions.
  Can record a lease.

Items that are recorded may not be by law to have given "constructive notice." This means anybody can find out this information if they want.

In many states, first to record has higher right.

Mechanics Lien - A person who does work on your house has a mechanics lien on your property. Mechanics liens can be filed or "perfected" after the work has been done.
The Mortgage

to a security interest

typically executed with a
promissory note that obligates
the borrower to repay the loan.

If the borrower fails to honor
the note, then the security interest
is pursued.

Trust Deed - is like a mortgage but
it is a 3 party instrument - Borrower,
Lender & Trustee. In theory the Trustee
holds the Trust Deed so it may be
easier for the lender to pursue
his security interest.

In the foreclosure process, it can either
be judicial (through the courts) or
nonjudicial (follow accepted
state procedures). It's faster and
usually cheaper to foreclose via
nonjudicial means.
Recourse

Mortgages can either be recourse or non-recourse.

Most commercial mortgages are non-recourse. Most residential mortgages are recourse. Therefore, if the lender cannot pursue the borrower for repayment of any loan to the lender in addition to the property itself.

Assumption - Lender may need to qualify the party assuming the loan. Recourse may still go back to the original borrower.

Seller Financing - When the seller provides part or all of the financing. Can take the form of a 2nd Mortgage. Sometimes structured as a "contract for deed" or "Land Contract."
Mortgage Default

What is default?

Any breach of the mortgage contract.

In practice, it's when you quit making your payments.

- Other defaults
  - 1. Workouts - when you make a deal not stated in the original agreement
  - a. allow the loan to be assumed
  - b. extension
  - c. partial forgiveness of debt
  - d. Short sale - allows you to sell the house & lender accepts less than the balance
  - e. Deed in lieu of foreclosure
  - f. Foreclosure
Redemption - All states allow "equitable redemption" which is the right to redeem prior to foreclosure.

Some states, mainly agricultural, also allow statutory redemption. This gives the borrower the right to redeem after foreclosure.

Nature of Title after Foreclosure: "Clouched" typically no warranty.

Deferring Judgments - Most states allow lenders to seek a judgment if the foreclosure sale does not cover the balance due, plus expenses (which is most of the time) not much is typically collected on judgments.

Tax Foreclosures occur when the owner does not pay the property taxes.
In the "old days," Savings & Loans (and other "Thrifts") and Commercial Banks made mortgage loans and held those loans in portfolio. The interest paid on the loan was used to pay interest to the depositors.

Mortgage Brokers originated some loans for out of state financial institutions.

Now days there is typically a separation between origination and owner ship of mortgage. Even if a bank "makes" a mortgage loan, it typically sells it. More of the origination today is by Mortgage Brokers and Mortgage Brokers
Commercial Banks and Thrifts take customer deposits and originate and service loans, and some loans may be held in portfolio.

Mortgage Banks originate and securitize loans. They also package loans to sell on secondary markets.

Mortgage Brokers originate loans using mortgage bankers or banks or thrifts, etc.

Primary Market Issuance means that the money flows to the person whose name is on the security.

Secondary markets are when money flows among investors.

To create secondary markets for mortgages, investors had to feel comfortable that these were good investments.

This was helped by:

1) Uniform underwriting standards
The first large scale secondary market was for FHA and VA loans. These loans have federal guarantees as to timely payment of principle and interest that were seen as low risk. [Parallel FHA and VA do not make loans. They insure mortgages underwritten to their standards]

After the success of these secondary market instruments for FHA & VA loans, similar programs were adopted for conventional loans.