

Table of Contents

CHAPTER 1. REAL ESTATE AS AN INVESTMENT

- § 1:1 Profile of real estate ownership
- § 1:2 Market outlook: Different from 1990
- § 1:3 Profile of real estate ownership—Land ownership by market value and type of owner
- § 1:4 — — Residential property
- § 1:5 — — Commercial/industrial property
- § 1:6 Elements of a good real estate investment
- § 1:7 — Distinguishing features of real estate
- § 1:8 — — Immobility of land
- § 1:9 — — Unique location (heterogeneity)
- § 1:10 — — Indestructibility of land
- § 1:11 — Identifying real estate opportunities—Location as key to value
- § 1:12 — — Transport patterns and good location
- § 1:13 — — — New forms of transportation
- § 1:14 — — Factors creating demand for real estate
- § 1:15 — — — Demographics and real estate values
- § 1:16 — — — — Population growth in the United States
- § 1:17 — — — — Demographic outlook
- § 1:18 — — Migration: Major shifts
- § 1:19 — — Factors creating demand for real estate—Increase in leisure time, retirement years, and discretionary income
- § 1:20 — — — Movements of industry and trade
- § 1:21 — — — Immigration and migration
- § 1:22 — — — Demand demographics from 2000 census
- § 1:23 — Reasons for (and against) investing in real estate
- § 1:24 — — Flow of income
- § 1:25 — — Capital appreciation
- § 1:26 — — — True growth
- § 1:27 — — — Inflationary growth
- § 1:28 — — Risk of capital loss
- § 1:29 — — — High quality (e.g., secure and rising income)
- § 1:30 — — — Diversification
- § 1:31 — — Use of borrowed funds
- § 1:32 — — Tax treatment of income, gain, and loss
- § 1:33 — — — Tax-free exchange
- § 1:34 — — — Tax-delayed dispositions
- § 1:35 — — — Depreciation write-offs
- § 1:36 — — — Capital gain treatment
- § 1:37 — — — Benefits of financial leverage
- § 1:38 — — — Home mortgage interest deduction
- § 1:39 — — — Divisibility of real estate
- § 1:40 — — Illiquidity
- § 1:41 — — Management burden

- § 1:42 —Ten rules for institutional investment portfolios
- § 1:43 City and suburban trends affecting real estate—Population and household changes in cities and suburbs
- § 1:44 — —Growth cities in the 2000 census
- § 1:45 — —How city growth patterns differ
- § 1:46 — — —The rise of exurbia
- § 1:47 — — —Immigration and migration in the United States
- § 1:48 — —Cities: Shifting trends
- § 1:49 — —Construction outlook
- § 1:50 — —Job sprawl; where people work
- § 1:51 Types of real estate interests
- § 1:52 —Physical interests in real estate
- § 1:53 — —Surface space
- § 1:54 — —Subsurface space
- § 1:55 — — —Underground right-of-way
- § 1:56 — — —Mineral rights
- § 1:57 — — — —Use of surface to facilitate extraction from other lands
- § 1:58 — — —Subterranean space
- § 1:59 — —Air space
- § 1:60 — — —Ways to use air space
- § 1:61 — — —Transferring air rights
- § 1:62 — — —Transferable development rights
- § 1:63 — — —Air space and aviation
- § 1:64 —Legal interests in real estate
- § 1:65 — —Freehold (fee) estates
- § 1:66 — — —Fee simple absolute
- § 1:67 — — —Equitable title
- § 1:68 — — —Estoppel by deed
- § 1:69 — — —Defeasible fees
- § 1:70 — — —Life estates
- § 1:71 — — — —Renting property from a life tenant
- § 1:72 — — — —Remaindermen are not surface owners
- § 1:73 — —Leasehold estates
- § 1:74 — — —Estate for years
- § 1:75 — — —Estate from period to period
- § 1:76 — — —Estate at will
- § 1:77 — — —Estate at sufferance
- § 1:78 — —Nonpossessory interests
- § 1:79 — — —Easements
- § 1:80 — — — —Express and implied easements
- § 1:81 — — — —Appurtenant and in gross easements
- § 1:82 — — — —Affirmative and negative easements
- § 1:83 — — — —Prescriptive easement
- § 1:84 — — — —Easement by necessity
- § 1:85 — — — —Common easements
- § 1:86 — — — —Conservation easements
- § 1:87 — — — — —Types of conservation easements

TABLE OF CONTENTS

- § 1:88 — — — — —Granting a conservation easement
- § 1:89 — — — — —Benefits of conservation easements
- § 1:90 — — — — —Qualifying for deduction
- § 1:91 — — — — —Valuing conservation easements
- § 1:92 — — — — —Profits
- § 1:93 — — — — —License
- § 1:94 — — — — —Overriding royalty interests
- § 1:95 — — — — —License—Usufruct
- § 1:96 — — — — —Case study: Nine legal and physical interests in one property

CHAPTER 2. VALUING REAL ESTATE AND RETURN ON INVESTMENT

- § 2:1 Introduction
- § 2:2 The concept of value
- § 2:3 — — — — —Other valuation standards
- § 2:4 — — — — —Investment value
- § 2:5 — — — — —Current value
- § 2:6 — — — — —Liquidation value
- § 2:7 The appraisal process
- § 2:8 — — — — —Definition of the problem and the objective
- § 2:9 — — — — —Preliminary survey and appraisal plan
- § 2:10 — — — — —Data collection and analysis
- § 2:11 — — — — —Applying the three appraisal approaches
- § 2:12 — — — — —Reconciling estimates of value
- § 2:13 — — — — —Final estimate of value
- § 2:14 The cost approach of appraisal
- § 2:15 — — — — —Reproduction and replacement cost
- § 2:16 — — — — —Estimating accrued depreciation
- § 2:17 — — — — —Physical depreciation
- § 2:18 — — — — —Functional depreciation
- § 2:19 — — — — —Economic (locational) depreciation
- § 2:20 — — — — —Determining depreciated cost
- § 2:21 — — — — —Valuing the site
- § 2:22 — — — — —Opinion of value
- § 2:23 The market data approach of appraisal
- § 2:24 — — — — —Finding comparable properties
- § 2:25 — — — — —Identifying value characteristics
- § 2:26 — — — — —Adjusting prices of comparable properties
- § 2:27 — — — — —Reaching a correlation of value
- § 2:28 The income approach of appraisal
- § 2:29 — — — — —Determining net operating income
- § 2:30 — — — — —Deriving a capitalization rate
- § 2:31 Appraisal: Ten key concepts in valuing real estate
- § 2:32 The income approach of appraisal—Deriving a capitalization rate—Different cap rates for one property
- § 2:33 — — — — —How to use capitalization rates
- § 2:34 — — — — —Direct vs. Yield capitalization

- § 2:35 — —Capitalizing different types of income
- § 2:36 — —Deriving overall capitalization rates
- § 2:37 — —Deriving yield rates
- § 2:38 —Impact of below-market mortgage on value
- § 2:39 — —Low-interest self-liquidating loan
- § 2:40 — —Shorter-term balloon loan
- § 2:41 The concept of return on investment
- § 2:42 Types of real estate return
- § 2:43 —Cash flow
- § 2:44 — —Net operating income
- § 2:45 — — —Effective gross income
- § 2:46 — — —Operating expenses
- § 2:47 — — —Reserve for replacements
- § 2:48 — — —How lenders calculate NOI
- § 2:49 — — —Special considerations in calculating NOI
- § 2:50 — — —Using a rent spike in projecting NOI
- § 2:51 — —Mortgage debt service
- § 2:52 —Tax benefits
- § 2:53 — —Case study: Cash flow sheltered by tax losses
- § 2:54 —Equity buildup (loan amortization)
- § 2:55 —Appreciation in value
- § 2:56 Traditional methods of measuring return on investment
- § 2:57 —Free and clear return
- § 2:58 —Pretax cash flow (cash-on-cash) return
- § 2:59 —After-tax cash flow (cash-on-cash) return
- § 2:60 —After-tax cash flow plus equity buildup
- § 2:61 —After-tax cash flow plus equity buildup plus appreciation
- § 2:62 —Leverage in real estate investing
- § 2:63 — —Understanding financial leverage
- § 2:64 — —Understanding operating leverage
- § 2:65 — —Advantages and disadvantages of leverage
- § 2:66 — —How leverage affects purchase price
- § 2:67 — —How leveraged real estate can reduce risk
- § 2:68 Accounting return analysis—Understanding accounting return analysis
- § 2:69 —Limitation of accounting return analysis
- § 2:70 Payback analysis
- § 2:71 Discounted cash flow analysis
- § 2:72 —Present value theory
- § 2:73 —Compound interest and the discounting process—Compound interest
- § 2:74 — —Discounting
- § 2:75 —Choosing an appropriate discount rate
- § 2:76 —Other approaches to deriving a discount rate
- § 2:77 — —Cost-of-capital approach
- § 2:78 — —Alternate investment rate approach
- § 2:79 —Is discounted cash flow analysis necessary or desirable?
- § 2:80 —Alternatives to discounted cash flow analysis
- § 2:81 — —Front-door method

TABLE OF CONTENTS

- § 2:82 — —Back-door method
- § 2:83 — —Advantages and disadvantages
- § 2:84 Net present value
- § 2:85 Internal rate of return
- § 2:86 — —Internal rate of return as compound interest in reverse
- § 2:87 — —Example of IRR calculation
- § 2:88 — —Reinvestment of income
- § 2:89 Reinvestment rate (adjusted rate of return)
- § 2:90 — —Example of reinvestment rate approach
- § 2:91 — —Evaluation of reinvestment rate analysis
- § 2:92 Risk analysis—Types of risk
- § 2:93 — —The risk-return relationship
- § 2:94 — —Using sensitivity analysis in projecting cash flow
- § 2:95 Real estate derivatives
- § 2:96 Real estate and interest rates

CHAPTER 3. FORMS OF REAL ESTATE OWNERSHIP

- § 3:1 Overview of ownership entities
- § 3:2 — —Tax considerations
- § 3:3 — —Paying social security and employment taxes
- § 3:4 — —Business and legal considerations
- § 3:5 Individual ownership (sole proprietorship): In general
- § 3:6 — —Use by married individuals
- § 3:7 Concurrent ownership
- § 3:8 — —Tenancy in common
- § 3:9 — —Partner and co-tenant distinguished
- § 3:10 — —Cotenants not fiduciaries
- § 3:11 — —Are tenancies-in-common securities?
- § 3:12 — —Cautious outlook for tenancies-in-common
- § 3:13 — —Guidelines for tenancy-in-common investors
- § 3:14 — —Shared right of possession
- § 3:15 — —Shared obligations and contribution
- § 3:16 — —Easements
- § 3:17 — —Mineral rights
- § 3:18 — —Adverse possession
- § 3:19 — —Joint tenancy
- § 3:20 — —Tenancy by the entirety
- § 3:21 — —Use for cooperative ownership
- § 3:22 — —Default concurrent ownership is tenancy in common
- § 3:23 — —Estate taxation of joint tenancies and tenancies by the entirety
- § 3:24 — —Joint tenancy not exempt from judgment lien under rule restricted to tenancy by entireties
- § 3:25 — —Presumption of equal shares
- § 3:26 Partnerships: In general
- § 3:27 — —Comparison with other forms of ownership—Individual ownership
- § 3:28 — —C corporations
- § 3:29 — —S corporations

- § 3:30 — —Land leases
- § 3:31 —General partnerships
- § 3:32 — —Fraudulent sale of interests to general partners
- § 3:33 — —Legal characteristics of a partnership
- § 3:34 — —Checklist for a partnership agreement
- § 3:35 — —Basic disadvantages of a general partnership
- § 3:36 —Limited partnerships
- § 3:37 — —Creating a limited partnership
- § 3:38 — —Status of general partners and limitations on authority
- § 3:39 — —How “fiduciary” are general partner duties?
- § 3:40 — —Status of limited partners and extent of limitation of liability for partnership debts
- § 3:41 — —Other significant aspects of limited partnerships
- § 3:42 —Qualifying as a partnership for tax purposes
- § 3:43 —Taxation of partnerships and partners
- § 3:44 — —Partner’s share of income, gain, or loss
- § 3:45 — —Organization and syndication fees
- § 3:46 — —Partner’s dealings with the partnership
- § 3:47 — —Dispositions of partnership interests
- § 3:48 — —Family partnerships
- § 3:49 — — —Family limited partnerships (FLPs)
- § 3:50 — — —Tax planning guidelines
- § 3:51 — — —Case study of an FLP
- § 3:52 — — —Maximizing discounts in family partnerships
- § 3:53 — — —Family limited partnership decision offers guidelines
- § 3:54 Limited liability companies
- § 3:55 —New roles for limited liability companies
- § 3:56 —The Operating Agreement
- § 3:57 —Duties of the Managing Member
- § 3:58 —Single-member LLCs
- § 3:59 — —Protection from creditors
- § 3:60 — —Veil Piercing
- § 3:61 — —Reverse Veil Piercing
- § 3:62 Corporations: In general
- § 3:63 —C corporations
- § 3:64 — —When compensation is disguised dividend
- § 3:65 —S corporations
- § 3:66 — —Eligibility requirements
- § 3:67 — —Election and termination of status
- § 3:68 S Corporations: In general—Built-in gains tax
- § 3:69 —Accumulated earnings and profits and excessive passive income—Section 1375 corporate level tax
- § 3:70 Corporations: In general—S corporations—Comparison with C corporation
- § 3:71 — —Comparison with partnership
- § 3:72 — —Comparison with LLCs
- § 3:73 —Dummy corporations
- § 3:74 Trusts
- § 3:75 —Resulting trusts

TABLE OF CONTENTS

§ 3:76	Nominees
§ 3:77	Joint ventures
§ 3:78	—Legal and tax aspects
§ 3:79	—Fiduciary duty of joint venturer
§ 3:80	—Organizing the joint venture
§ 3:81	—Financing arrangements in joint ventures
§ 3:82	—Developer-landowner joint ventures
§ 3:83	—Developer-tenant joint ventures
§ 3:84	— —Key issues
§ 3:85	— —Evaluation of benefits and risks
§ 3:86	—Using equity joint venture to close sales
§ 3:87	—Profit allocations in institutional joint ventures

CHAPTER 4. MORTGAGING REAL ESTATE

§ 4:1	Introduction
§ 4:2	—Borrower's objectives
§ 4:3	—Lender's objectives
§ 4:4	Mortgage loan application
§ 4:5	—Description of real estate security
§ 4:6	—Information about borrower
§ 4:7	Mortgage loan underwriting: In general
§ 4:8	—Analysis of property
§ 4:9	— —New role for accounts
§ 4:10	—Analysis of leases
§ 4:11	—Evaluation of borrower
§ 4:12	Structuring the loan
§ 4:13	—Setting the interest rate: In general
§ 4:14	— —Special interest methods
§ 4:15	—Loan term and amortization
§ 4:16	— —Standing (no amortization) mortgage
§ 4:17	— —Fully amortizing (self-liquidating) mortgage
§ 4:18	— —Partially amortized (balloon) mortgage
§ 4:19	— — —Understanding balloon risk
§ 4:20	— — —Reducing balloon risk
§ 4:21	—Amount of loan
§ 4:22	— —LTV ratio
§ 4:23	— —Debt coverage (DC) ratio
§ 4:24	— — —Calculating DC ratio
§ 4:25	— — —How to increase loan amount
§ 4:26	— — —The role of DCRs in rating conduit transactions
§ 4:27	— —Relationship between LTV ratio, DC ratio, and capitalization rate
§ 4:28	— —Break-even ratio
§ 4:29	Mortgage loan commitment: In general
§ 4:30	—Key terms of loan commitment
§ 4:31	— —Commitment fee
§ 4:32	— — —Commitment fee as interest under usury laws
§ 4:33	— —Enforceability of loan commitments

- § 4:34 — — —Recent decisions on enforcing commitments
- § 4:35 — — —When oral agreements are enforceable
- § 4:36 —Resolving disputes
- § 4:37 —Take-out commitments
- § 4:38 — —Special take-out techniques
- § 4:39 — —Protecting the permanent lender
- § 4:40 — —Purchase commitments
- § 4:41 — —Standby commitments
- § 4:42 — — —Reasons for using standby commitment
- § 4:43 — — —Cost of standby commitments and loans
- § 4:44 — — —Sophisticated standby financing techniques
- § 4:45 The promissory note
- § 4:46 Mortgage or deed of trust
- § 4:47 —Parties
- § 4:48 —Interest, amortization, loan term, and amount
- § 4:49 —Description of property
- § 4:50 —Priority of mortgage
- § 4:51 —Release provision
- § 4:52 —Prepayment
- § 4:53 — —Yield maintenance requirement
- § 4:54 —Acceleration (call) provisions
- § 4:55 —Real estate taxes and insurance premiums
- § 4:56 —Condition of property
- § 4:57 —Default
- § 4:58 —Foreclosure
- § 4:59 — —New York's Home Equity Theft Prevention Act
- § 4:60 Personal liability, guarantees, and additional security
- § 4:61 —Protecting the lender
- § 4:62 —Borrower's personal liability (recourse financing)
- § 4:63 — —Nonrecourse loans with a carve-out clause
- § 4:64 — —Effort to extend doctrine of waste
- § 4:65 — — —Typical carve-out provisions
- § 4:66 — —Detailed list of carve-outs
- § 4:67 — —Weaker Carveouts in CMBS
- § 4:68 —Third-party guarantees
- § 4:69 — —Additional types of third-party guarantees
- § 4:70 — —Security lease (master lease)
- § 4:71 — — —Using a security lease to protect lender
- § 4:72 — —Alternatives to third-party guarantees
- § 4:73 — — —Standby letter of credit
- § 4:74 — — —Two-part nonbank letters of credit
- § 4:75 — — —Bank guarantee
- § 4:76 — — —Comfort letter
- § 4:77 — — —Put agreement
- § 4:78 —Collateral security
- § 4:79 — —Negotiating cross-default clauses
- § 4:80 — — —Default under another note of lender

TABLE OF CONTENTS

§ 4:81	— — —Default under note of another lender
§ 4:82	—Assignment of rents
§ 4:83	—UCC documents
§ 4:84	Mortgage loan closing
§ 4:85	—Construction loan takeouts
§ 4:86	—Satisfying leasing requirements
§ 4:87	—Preclosing
§ 4:88	—Title issues
§ 4:89	—Miscellaneous issues
§ 4:90	Construction loan underwriting—Characteristics of construction financing
§ 4:91	—Risks in construction financing
§ 4:92	—Construction loan application
§ 4:93	—Property analysis by lender
§ 4:94	—Construction loan underwriting—Loan analysis by lender
§ 4:95	— — —Checking construction costs
§ 4:96	—Loan analysis by lender—Guarantees
§ 4:97	— — —Guarantees: Effect of Anti-deficiency Statutes
§ 4:98	—Construction loan underwriting—Loan analysis by lender—Bonds
§ 4:99	— — —Appraisals
§ 4:100	— — —Construction loan commitment
§ 4:101	—Loan closing: Building loan agreement
§ 4:102	—Loan disbursement process
§ 4:103	—Negotiating the equity investment
§ 4:104	Residential loan underwriting
§ 4:105	—Home loan application
§ 4:106	— — —Ratio of monthly housing expenses to gross monthly income
§ 4:107	— — —Other income cannot be excluded
§ 4:108	— — —Self-employed individuals subject to close scrutiny
§ 4:109	— — —FHA loan criteria
§ 4:110	— — —Ratio of payments for long-term expenses to gross monthly income
§ 4:111	— — —FHA loan criteria
§ 4:112	— — —Veterans Administration (VA) loan criteria
§ 4:113	— — —Miscellaneous rules
§ 4:114	— — —Other financial requirements
§ 4:115	— — —Stability of income
§ 4:116	— — —Borrower's equity
§ 4:117	— — —Source of down payment cash
§ 4:118	—Verification of borrower's employment and financial status
§ 4:119	—Property appraisal
§ 4:120	— — —Three approaches to valuation
§ 4:121	— — —Sales comparison analysis method
§ 4:122	— — —Reproduction cost method
§ 4:123	— — —Income approach method
§ 4:124	—Title insurance and property survey
§ 4:125	—Loan commitment
§ 4:126	Usury—In general
§ 4:127	—Factors indicating usury

- § 4:128 —Exemptions to usury ceilings
- § 4:129 —Penalties for usury violations
- § 4:130 —What is interest?
- § 4:131 — —Items that may be regarded as interest
- § 4:132 —Avoiding usury laws through use of dummy corporations
- § 4:133 —Usury Savings Clause
- § 4:134 Mortgage bankers and mortgage brokers: In general
- § 4:135 —Mortgage originations
- § 4:136 —Mortgage servicing
- § 4:137 —The correspondent relationship
- § 4:138 —The federal national mortgage association and the federal home loan mortgage corporation
- § 4:139 —Mortgage brokers and ERISA
- § 4:140 —Negotiating mortgage brokerage fees
- § 4:141 — —Complexity of financing
- § 4:142 — —Product type
- § 4:143 — —Project market area
- § 4:144 — —Ownership structure
- § 4:145 — —Time constraints
- § 4:146 — —Broker's experience
- § 4:147 — —Broker's risk
- § 4:148 Lender liability—Lender liability in general
- § 4:149 —Liability for violating standards of fair play
- § 4:150 —Duty to act in good faith
- § 4:151 —Preventive measures
- § 4:152 —Lender as fiduciary
- § 4:153 —Lender liability under CERCLA
- § 4:154 —Lender liability for improper disclosure
- § 4:155 Mortgages: Short sale is taxable income
- § 4:156 Securitization: Covered bonds

CHAPTER 5. REAL ESTATE FINANCING TECHNIQUES

- § 5:1 Overview of real estate financing
- § 5:2 Finance markets: Stress test
- § 5:3 The real estate financing cycle—Land acquisition financing
- § 5:4 —Three-party financing of land acquisition
- § 5:5 —Land development financing
- § 5:6 —Construction financing
- § 5:7 —Permanent financing
- § 5:8 — —Overviewing permanent financing in 1999
- § 5:9 Income property financing techniques—In general
- § 5:10 —The move away from fixed interest rate financing
- § 5:11 Financing: Recourse loans
- § 5:12 Variable rate and participation mortgages
- § 5:13 —Variable rate mortgages
- § 5:14 — —Choosing fixed-rate or variable rate loans
- § 5:15 — — —Ownership controls

TABLE OF CONTENTS

§ 5:16	— — —Property controls
§ 5:17	— — —Lender controls
§ 5:18	—Participation mortgages
§ 5:19	— —Overviewing participating mortgages in 1999
§ 5:20	—Tax implications of participating mortgages
§ 5:21	Convertible mortgages: In general
§ 5:22	—Benefits and risks to the borrower
§ 5:23	—Benefits and risks to the lender
§ 5:24	—Legal problems in convertible loans
§ 5:25	—Case study: The largest convertible loan
§ 5:26	—Example of a convertible mortgage
§ 5:27	Accrual and zero coupon financing: In general
§ 5:28	—Benefits and risks to the borrower and the lender
§ 5:29	—Overviewing accrual loans in 1999
§ 5:30	—Zero coupon loans
§ 5:31	— —Case study: The zero coupon mortgage
§ 5:32	Loan refinancing: In general
§ 5:33	—Refinancing prior to sale
§ 5:34	—Retaining lien priority when refinancing
§ 5:35	— —Benefits of mortgage defeasance
§ 5:36	Short-term and medium-term financing: In general
§ 5:37	—Using interim financing for new construction
§ 5:38	—Using interim financing for existing projects
§ 5:39	—Negotiating the interim loan
§ 5:40	—Flexibility offered by bridge loans
§ 5:41	—Examples of short-term financing
§ 5:42	— —Bridge loan with partial releases
§ 5:43	— —Warehousing purchase-money loans
§ 5:44	— —Raw land loans
§ 5:45	—The mezzanine loan
§ 5:46	— —Value-added equity and mezzanine structures
§ 5:47	—Preferred equity
§ 5:48	—The mezzanine loan—The growth of mezzanine loans
§ 5:49	Purchase-money financing—In general
§ 5:50	—Loan-to-value ratio
§ 5:51	—Interest rate
§ 5:52	—Term of mortgage
§ 5:53	—Prepayment
§ 5:54	—Right to assign
§ 5:55	—Comparing cash sale and purchase-money financing
§ 5:56	— —Financial considerations
§ 5:57	— — —Setting the price
§ 5:58	— — —Net cash in the year of sale
§ 5:59	— — —Comparing installment sale and cash sale
§ 5:60	— —Minimizing the seller's risk
§ 5:61	—Utilizing purchase-money paper
§ 5:62	— —Case study: Trading paper money

- § 5:63 — —Case study: Buying with paper money
- § 5:64 — —Case study: Selling paper money
- § 5:65 — — —Cash purchase of a mortgage
- § 5:66 — — —Leveraged purchase of a mortgage
- § 5:67 — — —Exchange for property
- § 5:68 —Purchase-money cash flow mortgage
- § 5:69 —Negotiating purchase money mortgages
- § 5:70 Junior financing—In general
- § 5:71 —Purposes of junior financing
- § 5:72 —Sources of junior financing
- § 5:73 —Legal aspects of junior financing
- § 5:74 — —Reasons that lenders refuse to consent to junior financing
- § 5:75 — — —Reducing the equity “cushion”
- § 5:76 — — —Deed in lieu of foreclosure
- § 5:77 — — —Notice of foreclosure
- § 5:78 — — —Marshaling
- § 5:79 — — —Priority of lien
- § 5:80 — — —Nonmortgaged assets
- § 5:81 — — —Property management
- § 5:82 — — —Modifications in first mortgage
- § 5:83 — — —Insurance proceeds
- § 5:84 — — —Release provisions
- § 5:85 — —Subordination agreement guidelines for lenders
- § 5:86 —Junior mortgage underwriting
- § 5:87 — —Risks of junior financing
- § 5:88 — — —Extent of subordination
- § 5:89 — — —Increases in senior mortgage amounts
- § 5:90 — — —Reducing senior mortgage debt service
- § 5:91 — — —Escrow of first mortgage debt service
- § 5:92 — — —Notice of first mortgage default
- § 5:93 — — —Right to cure defaults
- § 5:94 — — —Escrow of tax and insurance payments
- § 5:95 Wraparound mortgage financing
- § 5:96 —Legal considerations for borrowers and lenders
- § 5:97 —Economics of wraparound loans
- § 5:98 — —Shorter-term wraparound loan
- § 5:99 — —Longer-term wraparound loan
- § 5:100 Leasehold financing: In general
- § 5:101 —Sources of leasehold financing
- § 5:102 —Economic risk in leasehold financing
- § 5:103 —Legal risks in leasehold financing
- § 5:104 —Example of leasehold financing
- § 5:105 Special financing techniques—Component (split) financing
- § 5:106 —Conventional first-mortgage loan
- § 5:107 —Fee mortgage and leasehold mortgage
- § 5:108 —Land sale-leaseback and leasehold mortgage
- § 5:109 —Subordinated land sale-leaseback and leasehold mortgage

TABLE OF CONTENTS

§ 5:110	—Sale-leaseback of entire property
§ 5:111	—Sale plus installment buyback
§ 5:112	—Junior financing
§ 5:113	— —First- plus second-mortgage financing
§ 5:114	— —First mortgage plus wraparound loan
§ 5:115	—Bondable net (high-credit) lease
§ 5:116	— —Case study: Underlying fee purchase
§ 5:117	— —Credit tenant lease loans in mortgage pools
§ 5:118	—Comparison of financing alternatives
§ 5:119	— —Matched funding (bullet loan)
§ 5:120	— —Fixed-rate accrual loan
§ 5:121	— —Floating-rate accrual loan
§ 5:122	— —Participating loan
§ 5:123	— —Convertible loan
§ 5:124	— —Joint venture
§ 5:125	Nonmortgage financing: In general
§ 5:126	—Financing with land contracts
§ 5:127	—Financing with options
§ 5:128	— —Financing with a sale-optionback
§ 5:129	—Financing with commercial paper
§ 5:130	— —Case study: Commercial paper program for real estate financing
§ 5:131	— — —Arranging a commercial paper program
§ 5:132	— — —Types of credit support
§ 5:133	— — —Interest rate protection
§ 5:134	—Corporate financing techniques
§ 5:135	— —How to pay lenders tax-free dividends
§ 5:136	—Financing with letters of credit
§ 5:137	— —Letter of credit for gap financing
§ 5:138	—Municipal bond financing—In general
§ 5:139	— —Tax increment financing
§ 5:140	— — —How tax increment financing helps job retention
§ 5:141	Crowdfunding
§ 5:142	Blockchain technology
§ 5:143	Crowdfunding—Tax considerations
§ 5:144	Qualified small business stock: IRC § 1202
§ 5:145	The cash flow mortgage—Avoiding legal traps in the cash flow mortgage
§ 5:146	—Defining cash flow in the cash flow mortgage
§ 5:147	—Dealing with deferred interest and calculating cash flow
§ 5:148	Interest rate hedge techniques—The need to hedge
§ 5:149	—Interest rate swaps
§ 5:150	— —Case study: Real estate-based interest rate swap
§ 5:151	— — —The real estate company
§ 5:152	— — —The counterparty
§ 5:153	— — —The direct borrowings
§ 5:154	— — —The swap
§ 5:155	— —Case study: Interest-rate swap through a dealer
§ 5:156	— —Legal obligation of a counterparty

- § 5:157 —Financial futures contracts
- § 5:158 —Interest rate caps and collars
- § 5:159 — —Borrower's interest rate cap
- § 5:160 — —Lender's interest rate cap
- § 5:161 — —How collars work
- § 5:162 Residential mortgage financing
- § 5:163 —Adjustable rate mortgage
- § 5:164 — —Basic features
- § 5:165 — — —Initial interest rate
- § 5:166 — — —Adjustment interval
- § 5:167 — — —Interest rate index
- § 5:168 — — —Margin amount
- § 5:169 — — —Interest only and hybrid ARMs
- § 5:170 — —Additional features
- § 5:171 — — —Interest rate cap
- § 5:172 — — —Negative amortization
- § 5:173 — — —Introductory rate
- § 5:174 — — —Assumability
- § 5:175 — — —Convertibility
- § 5:176 — — —Prepayment privilege
- § 5:177 —Graduated payment mortgage
- § 5:178 —Price-level adjusted mortgage
- § 5:179 —Split-rate mortgage
- § 5:180 —Flexible payment loan
- § 5:181 —Interest rate buy-downs
- § 5:182 —Renegotiable rate mortgage
- § 5:183 —Shared-appreciation mortgage
- § 5:184 —Shared equity financing agreement
- § 5:185 — —Calculating the equity split
- § 5:186 — —Case study of shared-equity financing
- § 5:187 —Growing-equity mortgage
- § 5:188 —Reverse annuity mortgage
- § 5:189 — —Home equity conservation mortgage program
- § 5:190 — —The Home Equity Conversion Mortgage (HECM)
- § 5:191 — —Reverse mortgages: Are they cost-effective?
- § 5:192 —Family wealth planning: Self-canceling installment notes
- § 5:193 —Residential bridge loans
- § 5:194 —Below-interest loans for employee relocation
- § 5:195 —Private mortgage insurance
- § 5:196 — —Homeowners Protection Act of 1998
- § 5:197 —Financing: Refinancing and distress
- § 5:198 —Foreclosures and debt cancellation
- § 5:199 —Annuity as collateral for home loan
- § 5:200 —Six alternatives to plain-vanilla home loans
- § 5:201 Federal housing administration programs
- § 5:202 Case studies in real estate financing—Financing a hotel investment using the pineapple technique

TABLE OF CONTENTS

- § 5:203 —Leveraged finance package permits office building acquisition
- § 5:204 —Reducing risk in purchase of net-leased property

CHAPTER 6. SOURCES OF CAPITAL FOR REAL ESTATE

- § 6:1 Introduction
- § 6:2 Comparing public and private real estate ownership
- § 6:3 Commercial banks
- § 6:4 Savings institutions—Collapse of the savings institutions
- § 6:5 —Financial Institutions Reform, Recovery, and Enforcement Act of 1989
- § 6:6 — —Office of thrift supervision and Federal Housing Finance Board
- § 6:7 — —Deposit insurance
- § 6:8 —Thrifts as mortgage lenders
- § 6:9 — —Qualified thrift lenders
- § 6:10 — —Capital standards
- § 6:11 — —Loan limitations
- § 6:12 — —Sources of funds
- § 6:13 —Resolution trust corporation
- § 6:14 Life insurance companies
- § 6:15 —Life company mortgage loan update
- § 6:16 Private credit companies
- § 6:17 Pension funds—In general
- § 6:18 —Employee Retirement Income Security Act of 1974
- § 6:19 —Tax aspects of pension fund investments—In general
- § 6:20 — —Pension fund investment in REITs
- § 6:21 Real estate limited partnerships (syndication)—Introduction
- § 6:22 —Historical development of real estate syndication
- § 6:23 —Dividing up the proceeds
- § 6:24 —Syndication structures
- § 6:25 — —Multiclass syndications
- § 6:26 — — —Different classes of interests
- § 6:27 — — —Land-building split
- § 6:28 — — —Equity-loan split
- § 6:29 — —Open-end and closed-end syndications
- § 6:30 —Investment policies of syndicates—All cash vs. leveraged investments
- § 6:31 — —Type of property
- § 6:32 — —Single or multiple properties
- § 6:33 — —Specified-property or blind-pool
- § 6:34 — —Opportunity funds—Setting up an opportunity fund
- § 6:35 — — —Distinctive features of opportunity funds
- § 6:36 —Master limited partnerships: In general
- § 6:37 — —Comparing an MLP and a REIT
- § 6:38 — —Reasons for forming an MLP
- § 6:39 — —Taxation of MLPs
- § 6:40 —Real estate securities
- § 6:41 — —When real estate offerings are securities—The Howey test
- § 6:42 — — —The risk-capital test
- § 6:43 — — —Specific real estate transactions

- § 6:44 — — Exemption of real estate offerings from registration
- § 6:45 — — — Private offering exemption
- § 6:46 — — — Intrastate offering exemption
- § 6:47 — — — Small offering exemption
- § 6:48 — — — Accredited investors exemption
- § 6:49 — — State securities law issues—General
- § 6:50 — — — North American Securities Administrators Association
- § 6:51 Real estate investment trusts—Introduction
- § 6:52 — Types of REITs by asset holdings
- § 6:53 — — Equity REITs
- § 6:54 — — Mortgage REITs
- § 6:55 — — Hybrid REITs
- § 6:56 — — Net lease trusts
- § 6:57 — Indefinite life and finite life REITS
- § 6:58 — Public unlisted REITs
- § 6:59 — Umbrella partnership REITs
- § 6:60 — — DownREITs
- § 6:61 — How REITs use financial leverage
- § 6:62 — — Debt leverage
- § 6:63 — — Equity leverage
- § 6:64 — — Other equity leveraging techniques
- § 6:65 — Legal requirements for a REIT—Organizational requirements
- § 6:66 — — Income requirements
- § 6:67 — — Asset requirements
- § 6:68 — — Dividend distributions and taxation
- § 6:69 — — Securities requirements
- § 6:70 — — REIT Subsidiaries
- § 6:71 — — REITs going global
- § 6:72 New reporting standards
- § 6:73 The secondary mortgage market and mortgage-backed securities—The
secondary mortgage market
- § 6:74 — Mortgage-backed securities
- § 6:75 — — Pass-through securities
- § 6:76 — — Mortgage-backed bonds
- § 6:77 — — — Traditional bonds
- § 6:78 — — — Pay-through bonds
- § 6:79 — — — Builder bonds
- § 6:80 — Collateralized mortgage obligations—Introduction
- § 6:81 — — Planned amortization class and targeted amortization class
- § 6:82 — — Stripped and synthetic CMOs
- § 6:83 — — Residuals
- § 6:84 — Real estate mortgage investment conduits
- § 6:85 — Speculative tranches in a REMIC
- § 6:86 — RMBS Risk Retention Rules
- § 6:87 — — Definition of sponsor
- § 6:88 — — Qualified Mortgages
- § 6:89 — Commercial mortgage-backed securities—Two types of commercial
securitization

TABLE OF CONTENTS

§ 6:90	— — —Capital stack and B-holder rights
§ 6:91	— — —Risk Retention Rules
§ 6:92	— — —B-Piece Buyer Option
§ 6:93	— — —Qualifying CRE Loans
§ 6:94	— — —Future of CMBS
§ 6:95	— — —Rating the commercial MBS
§ 6:96	— — —Rating net lease transactions
§ 6:97	— — —Rating small commercial loans
§ 6:98	— — —Methods of credit enhancement
§ 6:99	— — —Examples of mortgage pools
§ 6:100	— — —Conduits
§ 6:101	— — —Examples of property-specific securitized financings
§ 6:102	— — —CDOs compared to CMBS
§ 6:103	— — —Credit rating agencies
§ 6:104	— — —Commercial mortgage-backed securities—Multifamily housing securities
§ 6:105	— — —Valuation problems
§ 6:106	— — —Choosing loans for securitization
§ 6:107	Understanding terminology
§ 6:108	Covered bonds
§ 6:109	Single asset real estate provisions
§ 6:110	Transferable state income tax credits
§ 6:111	Structuring public/private partnerships—State economic development grants: Nonshareholder capital contributions

CHAPTER 7. TAXATION OF REAL ESTATE

§ 7:1	The 2017 Tax Cuts and Jobs Act
§ 7:2	Deduction for pass-through income (I.R.C. § 199A)
§ 7:3	Overview
§ 7:4	Deductions: amortizing land
§ 7:5	Gross income and operating expenses
§ 7:6	Real estate business and investment expenses
§ 7:7	—Business expenses
§ 7:8	—Production of income expenses
§ 7:9	—Start-up expenses
§ 7:10	—Deducting organizational expenses
§ 7:11	Depreciation of real and personal property—Depreciation deductions and capital recovery
§ 7:12	—Tax benefits of depreciation
§ 7:13	— — —Deferral of tax
§ 7:14	— — —Conversion of ordinary income to capital gain
§ 7:15	— — —Recapture of depreciation
§ 7:16	— — —Cost recovery and borrowed capital
§ 7:17	—Property eligible for depreciation
§ 7:18	—Person entitled to depreciation deduction
§ 7:19	—Depreciation of real property
§ 7:20	— — —Lease improvements qualifying for depreciation
§ 7:21	— — —Partial year deduction: Midmonth convention

- § 7:22 — —Alternative depreciation system
- § 7:23 — —Component depreciation
- § 7:24 —Maximizing depreciation through cost allocation
- § 7:25 — —Land/building allocation
- § 7:26 — —Deducting Land Costs
- § 7:27 — —Land/land improvement allocation
- § 7:28 — —Real/personal property allocation
- § 7:29 — — —Architectural and design planning
- § 7:30 —Depreciation of personal property: In general
- § 7:31 — —Expensing in place of depreciation
- § 7:32 —Depreciation of intangibles
- § 7:33 — —Lessee's interest in below-market lease
- § 7:34 — —Trade names
- § 7:35 — —Covenants not to compete
- § 7:36 Deduction for interest
- § 7:37 Deduction of business interest limited—I.R.C. § 163(j)
- § 7:38 Deduction for interest—Personal loans
- § 7:39 —Home mortgages prior to December 15, 2017
- § 7:40 Limited home mortgage deduction 2018 through 2025: I.R.C. 163(h)(3)(F)
- § 7:41 Deduction for interest—Home mortgages—Secured debt
- § 7:42 — —Qualified home
- § 7:43 — —Loans taken out before October 14, 1987
- § 7:44 — —Loans taken out after October 13, 1987, and before December 15, 2017,
to buy, build, or improve a home
- § 7:45 — —Loans taken out after October 13, 1987, and before December 15, 2017
- § 7:46 — —Deducting points on residential financing
- § 7:47 — —Refinancing home loans
- § 7:48 —Trade or business loans
- § 7:49 Deduction of business interest limited: I.R.C. § 163(j)
- § 7:50 Deduction for interest—Investment loans: I.R.C. § 163(d)
- § 7:51 —Investment loans—Definition of investment interest paid
- § 7:52 — —Net investment income
- § 7:53 — — —Investment expense
- § 7:54 —Construction period interest and taxes
- § 7:55 —Effect of tax-exempt investments
- § 7:56 —Original issue discount and imputed interest
- § 7:57 — —OID rules applied to real estate
- § 7:58 — — —Adequacy-of-interest rule
- § 7:59 — — —Time-value-of-money rule
- § 7:60 — —Exceptions to OID rules
- § 7:61 — — —Small transactions
- § 7:62 — — —Other seller financing
- § 7:63 — — —Cash method available
- § 7:64 —Interest distinguished from other payments
- § 7:65 Deduction for property and sales taxes—In general
- § 7:66 —Special rule for business or investment property sales
- § 7:67 Deduction for repairs: In general

TABLE OF CONTENTS

§ 7:68	—How to fractionalize large expenditures—Reconditioning or improvement
§ 7:69	— —Fractionalizing a remodeling job
§ 7:70	—Repair vs. Casualty Deductions
§ 7:71	—Deducting demolition costs
§ 7:72	Deduction for theft or casualty: In general
§ 7:73	—Measuring personal casualty loss
§ 7:74	—Measuring business casualty loss
§ 7:75	—Theft and fraud losses
§ 7:76	—Home losses due to natural disasters
§ 7:77	Home office expenses—Self-employed persons
§ 7:78	—Deduction rules eased
§ 7:79	—Employees
§ 7:80	—Amount of deduction
§ 7:81	Real estate business and investment losses: Introduction
§ 7:82	—Active trade or business
§ 7:83	— —Proving material participation
§ 7:84	— —Part-time occupations
§ 7:85	— —Material participation by limited partners
§ 7:86	— —Avoiding material participation
§ 7:87	—Passive activity
§ 7:88	— —Defining a rental activity
§ 7:89	— —The \$25,000 exception
§ 7:90	— —Real property business exception
§ 7:91	— —Treatment of passive losses
§ 7:92	— — —Definition of an activity
§ 7:93	— — —Tax benefits from sale of passive activities
§ 7:94	— — —Abandonment a disposition
§ 7:95	— — —Transfers to a related party not a disposition
§ 7:96	— — —Special rule for close corporations
§ 7:97	— — —Passive loss rule and investment interest limitation
§ 7:98	— — —Desirability of liquidating debt
§ 7:99	— — —Passive loss rule and capital loss limitation
§ 7:100	— — —Passive loss rule and at-risk limitation
§ 7:101	— — —Passive loss rule and other tax rules
§ 7:102	— —Interplay of passive losses and home interest deduction
§ 7:103	— — —Rental of principal residence
§ 7:104	— — —Rental of vacation home
§ 7:105	—Portfolio activity
§ 7:106	At-risk limitation on losses
§ 7:107	—Extent of real estate investor's risk
§ 7:108	—Legal Risk vs. Economic Risk
§ 7:109	Hobby loss limitation: Relevant factors
§ 7:110	Abandoned property losses
§ 7:111	Rehabilitation tax credit: In general
§ 7:112	—External and internal wall requirements
§ 7:113	—Substantial rehabilitation required
§ 7:114	—Historic structure rehabilitations

- § 7:115 —Rehabilitation risks
- § 7:116 —IRS audit guide
- § 7:117 — —Substantial rehabilitation
- § 7:118 — —Basis and depreciation
- § 7:119 — —Eligible expenditures
- § 7:120 — —Historic structure rehabilitations
- § 7:121 — —Rehab credit and passive loss rules
- § 7:122 Low-income housing credit
- § 7:123 New Market Tax Credit Program
- § 7:124 Vacation homes
- § 7:125 —Limited rental use
- § 7:126 —Limited personal use
- § 7:127 — —Deducting rental expenses
- § 7:128 — —Deducting personal use expenses
- § 7:129 —Substantial rental and personal use
- § 7:130 —Planning ideas
- § 7:131 Information returns to IRS
- § 7:132 —Proceeds from real estate transactions (Form 1099-S)
- § 7:133 —Rent payments (Form 1099-MISC)
- § 7:134 —Defaulted or abandoned real estate (Form 1099-A)
- § 7:135 —Interest payments (Form 1099-INT)
- § 7:136 —Interest received (Form 1098)

CHAPTER 8. BUYING, SELLING, AND EXCHANGING REAL ESTATE

- § 8:1 The buy-sell contract of sale—The doctrine of equitable conversion
- § 8:2 Methods of transferring title to real estate
- § 8:3 —Transfer by gift
- § 8:4 — —Deeding fractional shares
- § 8:5 — —Installment sale
- § 8:6 — —Comparing the two methods
- § 8:7 —Transfer by inheritance
- § 8:8 —Foreclosure sale or tax sale
- § 8:9 —Adverse possession
- § 8:10 —Presumed grant
- § 8:11 —Escheat
- § 8:12 —Eminent domain (condemnation)
- § 8:13 — —Prior public use, paramount public importance
- § 8:14 — —Supreme Court expands “public use”
- § 8:15 — —Inverse condemnation
- § 8:16 — —Physical and regulatory takings
- § 8:17 — —Regulatory takings—Public nuisance
- § 8:18 — —Obstructed view
- § 8:19 — —Road access
- § 8:20 — —Condemnation blight
- § 8:21 —Boundary dispute and resolution
- § 8:22 — —Boundary by acquiescence

TABLE OF CONTENTS

§ 8:23	— —Boundary by parol agreement or practical location
§ 8:24	Supreme Court overrules state court inverse condemnation prerequisite to takings claim
§ 8:25	Transfer of title by purchase and sale—Overview
§ 8:26	—When to sell real estate
§ 8:27	— —Declining return on investment
§ 8:28	— —Declining tax shelter
§ 8:29	— —Personal reasons for selling real estate
§ 8:30	— —Applicability of new tax law
§ 8:31	— — —Contracts of sales
§ 8:32	— — —Options
§ 8:33	— — —Alternatives to sale: Cashing-out techniques
§ 8:34	— — —Refinancing
§ 8:35	— — —Junior financing
§ 8:36	— — —Tax-deferred exchange
§ 8:37	— — —Syndication
§ 8:38	— — —Umbrella partnership REIT
§ 8:39	—Choosing a property for purchase—In general
§ 8:40	— —Investigation of property
§ 8:41	— —Analysis of existing leases
§ 8:42	— —Letter of intent
§ 8:43	Options to purchase real estate—In general
§ 8:44	—Alternatives to options
§ 8:45	—Innovative uses of options
§ 8:46	—The sale option-back
§ 8:47	—Innovative uses of options—Ensure future sale at fixed price
§ 8:48	— —Providing nonrecourse financing
§ 8:49	—Tax aspects of options
§ 8:50	—Checklist for option agreement
§ 8:51	—How the option can improve seller's tax position
§ 8:52	—Option cannot give buyer immediate tax losses
§ 8:53	Key elements in the sales contract—Introduction
§ 8:54	—When to use a letter of intent
§ 8:55	—Parties to contract and date of contract
§ 8:56	—Description of premises—In general
§ 8:57	— —Land description and measurement
§ 8:58	—Purchase price, manner of payment, and allocation of purchase price—Purchase price
§ 8:59	— —Manner of payment
§ 8:60	— —Allocation of purchase price
§ 8:61	—Existing mortgages
§ 8:62	—Third-party financing
§ 8:63	—Purchase-money financing
§ 8:64	—Surveys
§ 8:65	—Title and title insurance—Title
§ 8:66	— —Title insurance
§ 8:67	— — —Standard title policy forms
§ 8:68	— — —Eliminating standard policy exceptions

- § 8:69 —Building and zoning regulations
- § 8:70 —Licenses, permits, and certificates of occupancy
- § 8:71 —Condition of premises; Violations
- § 8:72 — —Understanding the “as is” clause
- § 8:73 —Hazardous substances
- § 8:74 — —The innocent owner defense
- § 8:75 — —Liability protection under CERCLA
- § 8:76 —Fixtures and personal property
- § 8:77 —Sale of a going business
- § 8:78 — —Noncompete covenants
- § 8:79 — — —Prior rulings
- § 8:80 — —Amortizing goodwill
- § 8:81 —Existing leases and tenancies
- § 8:82 — —Estoppel Certificates
- § 8:83 — —Master lease as seller guarantee
- § 8:84 — —Improving purchase price with sandwich lease
- § 8:85 — —Improving purchase price with a renegotiated lease
- § 8:86 —Purchase and sale: Joint venture in place of straight sale
- § 8:87 —Possession of premises
- § 8:88 —Damage, destruction, or condemnation of property
- § 8:89 —Casualty and liability insurance
- § 8:90 —Representations and warranties
- § 8:91 — —Environmental representation and warranties
- § 8:92 — —Survival After Closing
- § 8:93 —Indemnification of parties
- § 8:94 —Assignment of contract
- § 8:95 —Breach of contract
- § 8:96 —Brokerage commissions
- § 8:97 — —Guidelines for real estate brokerage agreements
- § 8:98 — —Four types of brokerage relationships
- § 8:99 —Recording the contract
- § 8:100 —Notice, approval, and consent
- § 8:101 —Arbitration
- § 8:102 —Construction of contract
- § 8:103 —Execution and acknowledgment
- § 8:104 Rescission for impossibility or frustration of purpose
- § 8:105 —Impossibility
- § 8:106 —Frustration of purpose
- § 8:107 Alternatives to a straight purchase and sale
- § 8:108 —Using an option in place of sales contract
- § 8:109 —Using a convertible mortgage in place of sales contract
- § 8:110 —Using a joint venture in place of sales contract
- § 8:111 Speculating with flip contracts
- § 8:112 —Underlying contract issues
- § 8:113 —Flip contract issues
- § 8:114 Real estate closings; Deeds—Real estate closings
- § 8:115 —Deeds

TABLE OF CONTENTS

§ 8:116	— — Rules of construction for deeds
§ 8:117	— — Rules of construction—Intent of parties governs ambiguity
§ 8:118	— — When to use general warranties
§ 8:119	Land contracts
§ 8:120	Tax aspects of real estate sales—Calculating gain or loss
§ 8:121	—Capital gains and losses—In general
§ 8:122	— — Real estate dealers
§ 8:123	—Real estate dealers—Dealer and investor distinguished
§ 8:124	Fraud: Protective measures
§ 8:125	Tax aspects of real estate sales—Capital gains and losses—How Section 1231 works
§ 8:126	— — Converting ordinary income to capital gain
§ 8:127	—Installment and contingent sales
§ 8:128	— — Computation and reporting of gain
§ 8:129	— — —Gross profit
§ 8:130	— — —Total contract price
§ 8:131	— — —Principal payments received in tax year
§ 8:132	— — —Tax savings and other benefits
§ 8:133	— — Original issue discount and imputed interest
§ 8:134	— — —Adequacy-of-interest rule
§ 8:135	— — —Applicable federal rate
§ 8:136	— — —Time-value-of-money rule
§ 8:137	— — Family installment sales
§ 8:138	— — —Bypassing related-party rules
§ 8:139	— — Contingent sales
§ 8:140	— — Pros and cons of installment sales
§ 8:141	—Reporting real estate sales to IRS
§ 8:142	Tax-free sales and exchanges of real estate
§ 8:143	—Tax-free exchanges of investment and business property—In general
§ 8:144	— — Exchanging co-ownership properties
§ 8:145	— — IRS rules on undivided fractional interests
§ 8:146	— — Requirements to be met for tax-free exchange
§ 8:147	— — “Primarily for sale” defined
§ 8:148	— — “Like kind” defined
§ 8:149	— — Land trust certificates
§ 8:150	— — Only one party to exchange need seek tax-free benefit
§ 8:151	— — Fractional interests qualify for exchange
§ 8:152	— — Exchanging with an UPREIT
§ 8:153	— — Exchanges where other property or a mortgage is involved
§ 8:154	— — Realized versus recognized gain
§ 8:155	— — Three ways to eliminate boot
§ 8:156	— — Deferred tax-free exchanges
§ 8:157	— — —Identification of the replacement property
§ 8:158	— — —Multiple properties
§ 8:159	— — —Receipt of replacement property
§ 8:160	— — —Safe harbors
§ 8:161	— — —The qualified intermediary

- § 8:162 — — —Disqualified persons
- § 8:163 — — —Boosting depreciation in a tax-free exchange
- § 8:164 — — —Deferred tax-free exchanges—Doing reverse exchanges
- § 8:165 — — —Exchange plus home sale exclusion
- § 8:166 — — —How exchanges facilitate property transfers
- § 8:167 — — —Cash-poor buyer
- § 8:168 — — —More than one mortgage
- § 8:169 — — —Investor seeks long-term appreciation
- § 8:170 — — —Exchange for more financeable property
- § 8:171 — — —Exchange for more salable property
- § 8:172 — — —Move to new location
- § 8:173 — — —Reduce management burden
- § 8:174 — — —Increasing appreciation potential
- § 8:175 — — —Consolidate/diversify assets
- § 8:176 — — —Increasing cash flow with exchanges
- § 8:177 — — —Increasing gross income
- § 8:178 — — —Reducing operating expenses
- § 8:179 —Home trade-in agreements
- § 8:180 —Tax-free gain on sales of residences
- § 8:181 — — —Definition of principal residence
- § 8:182 — — —Cooperative apartments are real estate
- § 8:183 — — —Mixed use property
- § 8:184 — — —Sale of principal residence
- § 8:185 — — —Two-year ownership/occupancy period
- § 8:186 — — —Reduced exclusion
- § 8:187 — — —Partial exclusion rules
- § 8:188 — — —Reduced exclusion for married persons filing jointly
- § 8:189 — — —Entering marriage, divorce, or widowhood
- § 8:190 — — —Marriage
- § 8:191 — — —Clarifying the home gain exclusion for married couples
- § 8:192 — — —Divorce
- § 8:193 — — —Widowhood
- § 8:194 — — —Exclusion of gain from prior rollovers
- § 8:195 — — —Sheltering gain from prior sales
- § 8:196 — — —Rescuing unused prior-law exclusion
- § 8:197 — — —Combining tax-free gain with installment sale
- § 8:198 — — —Election not to exclude gain
- § 8:199 — — —Maintaining records of improvements
- § 8:200 —Involuntary conversions
- § 8:201 — — —Replacement period
- § 8:202 — — —Similar use or like-kind requirement
- § 8:203 — — —Effect of partial taking: Treatment of severance damages
- § 8:204 — — —Tax treatment of insurance proceeds
- § 8:205 Private real estate annuities
- § 8:206 Tax lien securities
- § 8:207 Tax liens: Federal relief
- § 8:208 Exchange pitfalls to avoid

CHAPTER 9. LEASING REAL ESTATE

§ 9:1	Leasehold interests and the lease relationship—In general
§ 9:2	—Economic analysis of a lease
§ 9:3	—The add-on leasing system
§ 9:4	— —Benefits to tenants
§ 9:5	— —Benefits to landlords
§ 9:6	—Tax treatment of acquisition costs
§ 9:7	—In general—Lease vs. license
§ 9:8	Rent payments
§ 9:9	—Flat rental
§ 9:10	—Step-up or step-down rental
§ 9:11	—Operating cost escalation
§ 9:12	— —Property taxes
§ 9:13	— — —Checking property tax invoices
§ 9:14	— —Operating expense escalation
§ 9:15	— — —Definition of operating expense
§ 9:16	— — —Porter's wage or penny wage formula
§ 9:17	— — —Types of escalation clauses
§ 9:18	— — —Allocation of operating expenses among tenants
§ 9:19	— — —Other considerations
§ 9:20	— — —Using a gross-up clause
§ 9:21	— — —Electricity deregulation
§ 9:22	—Index escalation
§ 9:23	— —Consumer price index
§ 9:24	— — —Drafting a fair CPI escalation clause
§ 9:25	— — —CPI-rent ratio
§ 9:26	— — —Double-dipping
§ 9:27	— — —One-way ratchet
§ 9:28	— — —Calculating the CPI change
§ 9:29	— —Other indices
§ 9:30	—Reappraisal rentals
§ 9:31	—Percentage rents
§ 9:32	— —Types of percentage rent
§ 9:33	— —Measure to which percentage applies
§ 9:34	— —Protective provisions
§ 9:35	—Tax considerations
§ 9:36	— —Rent receipts to landlord
§ 9:37	— —Rent payments by tenant
§ 9:38	— —Rental must not be excessive
§ 9:39	— —Deferred and stepped rental payments
§ 9:40	—Electric charges—Four methods of receiving electric service
§ 9:41	— —Common area and overtime charges
§ 9:42	Security deposits and advance rentals
§ 9:43	—Landlord recoveries from bankrupt tenant
§ 9:44	Term of lease; Possession of premises—Term of lease
§ 9:45	—Right to possession vs. actual possession
§ 9:46	Maintenance and repair of premises—In general

- § 9:47 —Retail leases
- § 9:48 —Office leases
- § 9:49 —Apartment leases
- § 9:50 —Structural and nonstructural repairs
- § 9:51 —Tax considerations
- § 9:52 Compliance with laws
- § 9:53 —Compliance with new legislation
- § 9:54 —Rent escalation clause
- § 9:55 —Trademark violations by tenant
- § 9:56 Alterations and improvements
- § 9:57 —Initial improvements; Workletters—In general
- § 9:58 — —Drafting a mechanic's lien clause
- § 9:59 — —Payment for improvements
- § 9:60 —Build-to-suit lease: Rent abatement forfeiture
- § 9:61 —Alterations during term of lease
- § 9:62 —Tax considerations
- § 9:63 — —Substitute for rent
- § 9:64 — —Capital expenditure
- § 9:65 — —Five tax-planning approaches
- § 9:66 — — —Tenant makes and pays for improvements
- § 9:67 — — —Cash reimbursement to tenant
- § 9:68 — — —Reduction in rent
- § 9:69 — — —Landlord makes and pays for improvements
- § 9:70 — — —Landlord reimbursed by tenant
- § 9:71 — — —New treatment of leasehold improvements
- § 9:72 — — —Retail tenant construction allowances nontaxable
- § 9:73 —Fixtures
- § 9:74 — —Trade fixtures
- § 9:75 Signs
- § 9:76 Use and occupancy; Limits on competition—Use and occupancy clause
- § 9:77 —Limits on competition
- § 9:78 — —Exclusive clauses
- § 9:79 — —Trade-area limitations
- § 9:80 — —Use clauses
- § 9:81 Assignment or sublease by tenant
- § 9:82 —Sublease and assignment distinguished
- § 9:83 —Variations in the no-sublease, no-assignment clause
- § 9:84 —Conditions to an assignment or sublease
- § 9:85 —Hidden barriers to subleases and assignments
- § 9:86 —Landlord's right to cancel as alternative to sublease
- § 9:87 —Sharing profits from assignment or sublease
- § 9:88 —Sale or exchange of lease; Acquisition costs
- § 9:89 Sale or mortgage by landlord—Landlord's sale of fee
- § 9:90 —Tenant's right to remain in leased premises
- § 9:91 —Landlord's right to cancel lease
- § 9:92 —Landlord's obligations under lease
- § 9:93 —Landlord's mortgage of fee

TABLE OF CONTENTS

§ 9:94	—Nondisturbance agreement
§ 9:95	Insurance
§ 9:96	—Casualty insurance
§ 9:97	— —Innocent co-insureds of intentional malfeasors
§ 9:98	—Waiver of subrogation
§ 9:99	—Liability insurance
§ 9:100	—Protective provisions for landlord
§ 9:101	Indemnity of landlord; exculpation
§ 9:102	—Landlord’s exculpatory clause
§ 9:103	Damage or destruction
§ 9:104	—Negotiating the damage and destruction clause
§ 9:105	Condemnation—In general
§ 9:106	—Total condemnation
§ 9:107	—Partial taking
§ 9:108	Default by tenant or landlord
§ 9:109	—Default defined
§ 9:110	—Leases: Remedies for defaults
§ 9:111	— —Landlord’s right to accelerate future rent
§ 9:112	— —Retaking property—Forcible entry and detainer
§ 9:113	— — — —Res judicata
§ 9:114	— — — —Notice
§ 9:115	— — — —Mootness
§ 9:116	— — — —Liability of law enforcement officers
§ 9:117	—Landlord’s duty to mitigate damages
§ 9:118	Removal of rental unit from the market
§ 9:119	Termination of lease; surrender of premises
§ 9:120	—Surrender of premises by tenant
§ 9:121	—Holdover tenants
§ 9:122	— —Types of tenancies created by tenant holding over after expiration of lease term
§ 9:123	—Covenant of quiet enjoyment
§ 9:124	Option to renew
§ 9:125	—Renewal term
§ 9:126	—Renewal rental
§ 9:127	—Terms of renewal lease
§ 9:128	—Conditions prior to exercise of renewal option
§ 9:129	—Time and manner of giving notice
§ 9:130	When to consider early lease renewal
§ 9:131	Option to expand space
§ 9:132	Cancellation or space reduction option—Lessee’s option to cancel
§ 9:133	—Lessor’s option to cancel
§ 9:134	—Tax aspects of lease cancellation payments—Cancellation payments by lessee
§ 9:135	— —Lease cancellation payments received by lessor
§ 9:136	— —Converting cancellation payments to capital gain
§ 9:137	— —Lease cancellation payments by lessor
§ 9:138	— —Lease cancellation payments received by lessee
§ 9:139	—Option to reduce space

- § 9:140 —Alternatives to space reduction option
- § 9:141 Option to purchase; right of first refusal
- § 9:142 Right of first refusal versus right of first offer
- § 9:143 —Option to purchase
- § 9:144 — —Purchase option should not resemble immediate sale
- § 9:145 —Right of first refusal
- § 9:146 Brokerage commissions
- § 9:147 Parking facilities
- § 9:148 Lease guarantees
- § 9:149 —The “good guy” guarantee
- § 9:150 Liability for environmental hazards
- § 9:151 —Landlord’s concerns
- § 9:152 —Protecting the landlord
- § 9:153 —Tenant’s concerns
- § 9:154 —Protecting the tenant
- § 9:155 —Responsibility for underground storage tanks
- § 9:156 Net leases—In general
- § 9:157 —Key terms of the net lease
- § 9:158 —Lessee’s default under lease mortgage
- § 9:159 —Net lease opportunities in a weak economy
- § 9:160 Net Leases—Medical Properties
- § 9:161 —Quick service restaurants
- § 9:162 Ground leases
- § 9:163 —Advantages and disadvantages to landowner
- § 9:164 —Advantages and disadvantages to developer
- § 9:165 —Appraisals to adjust ground rent
- § 9:166 —Subordination of fee interest
- § 9:167 —Example of ground lease/subordinated fee financing
- § 9:168 Sandwich (operating) leases—In general
- § 9:169 —Improving sales price with sandwich lease
- § 9:170 —Case study of sandwich lease transaction
- § 9:171 Sale-leasebacks—In general
- § 9:172 —Sale-leasebacks by business firms
- § 9:173 — —Reason for increasing popularity
- § 9:174 —Distinguished from mortgage for tax purposes
- § 9:175 —Accounting standard for sale-leasebacks
- § 9:176 — —True sale-leaseback
- § 9:177 — —Continuing involvement defined
- § 9:178 — —Profit sharing
- § 9:179 Equity leases
- § 9:180 —Accounting and tax concerns of tenants
- § 9:181 — —Rent deductions
- § 9:182 — —Limitation of losses
- § 9:183 Title insurance for tenants
- § 9:184 Synthetic leases
- § 9:185 Credit tenant leases (CTLs)
- § 9:186 Negotiating the landlord’s cancellation clause

TABLE OF CONTENTS

- § 9:187 Lease accounting rules
- § 9:188 —Reporting present value leases on balance sheet
- § 9:189 —Disclosure of other information
- § 9:190 —Planning between purchase and lease

CHAPTER 10. PROPERTY MANAGEMENT, MARKETING, AND LEASING

- § 10:1 Introduction
- § 10:2 Goals of property management
- § 10:3 —Matching strategy to the investment criteria
- § 10:4 —Maximizing the return on an investment
- § 10:5 Management functions and organization
- § 10:6 —Real estate management functions
- § 10:7 —Organization of the management company
- § 10:8 Property management alternatives
- § 10:9 —Professional management organizations
- § 10:10 —Owner management
- § 10:11 —Choosing a property management firm
- § 10:12 The management planning process
- § 10:13 —The management plan
- § 10:14 —Systems for control
- § 10:15 —Operating budget
- § 10:16 Management agreement
- § 10:17 Establishing the management fee
- § 10:18 —Estimating the cost of management
- § 10:19 —Percentage of gross income
- § 10:20 —Incentive fees
- § 10:21 —Start-up fees
- § 10:22 —Renovation fees
- § 10:23 Manager's role in the acquisition process
- § 10:24 Managing the physical asset
- § 10:25 —Custodial maintenance
- § 10:26 —Corrective maintenance
- § 10:27 —Preventive maintenance
- § 10:28 —Emergency maintenance
- § 10:29 —Contract services
- § 10:30 Marketing and leasing
- § 10:31 —Market surveys and tenant profiles
- § 10:32 —Identifying prospects
- § 10:33 —Advertising and public relations
- § 10:34 — —Promotions
- § 10:35 — —Initial meeting; Qualifying the prospect
- § 10:36 — —Presentation
- § 10:37 — —Lease application
- § 10:38 —Negotiating and closing the lease
- § 10:39 —Rent schedules
- § 10:40 —Security deposits

- § 10:41 Tenant and management relations
- § 10:42 —Occupancy procedures
- § 10:43 —Rent rolls and tenant ledgers
- § 10:44 —Rent management
- § 10:45 —Rent collection and recording
- § 10:46 Complying with the Patriot Act
- § 10:47 Financial reporting and controls
- § 10:48 —Components of reporting and control systems
- § 10:49 — —Operating budget
- § 10:50 — —Statement of operations
- § 10:51 — —Comparative statements
- § 10:52 — —Narrative reports
- § 10:53 — —Management summary
- § 10:54 — —Other reports
- § 10:55 —Purchasing
- § 10:56 —Maximizing return on cash
- § 10:57 —Services commercial real estate firms should expect from accounting professionals
- § 10:58 Administrative responsibilities
- § 10:59 Communications
- § 10:60 Insuring real estate
- § 10:61 —General provision of property insurance policies
- § 10:62 —Casualty insurance
- § 10:63 — —Building and personal property coverage
- § 10:64 — —Special types of property coverage
- § 10:65 — —The coinsurance clause
- § 10:66 —Consequential loss insurance
- § 10:67 —Liability insurance
- § 10:68 — —Occurrence policy form vs. claims-made policy form
- § 10:69 — —Lead-based paint liability
- § 10:70 —Earthquake insurance
- § 10:71 —Flood insurance
- § 10:72 —Environmental insurance
- § 10:73 — —Types of environmental insurance
- § 10:74 — —Insurance for asbestos abatement programs
- § 10:75 —Surety bonds
- § 10:76 —Apartment building coverages
- § 10:77 Insurance proceeds applied to restoration without regard to borrower's default
- § 10:78 Real property taxation—In general
- § 10:79 —Assessment of real property
- § 10:80 —Reducing property tax liability
- § 10:81 Electric utility costs
- § 10:82 Profits from telecommunications
- § 10:83 Dealing with mold
- § 10:84 Auditing revisited

CHAPTER 11. WORKOUTS, FORECLOSURE, AND BANKRUPTCY

- § 11:1 Introduction

TABLE OF CONTENTS

§ 11:2	Distressed properties—Signs of distress
§ 11:3	—Managing a distressed property
§ 11:4	Options for distressed real estate
§ 11:5	Restructuring a mortgage
§ 11:6	Workouts: in general
§ 11:7	—Real estate workout game plan
§ 11:8	—Evaluating the situation
§ 11:9	— —Loan documents and legal status
§ 11:10	— —The property
§ 11:11	— —The parties
§ 11:12	— —Dealing with a special servicer
§ 11:13	—Prenegotiated agreements
§ 11:14	—Conducting the negotiations
§ 11:15	—Goals of the workout—Borrower’s objectives
§ 11:16	— —Lender’s objectives
§ 11:17	—Elements of successful workouts: in general
§ 11:18	— —Sources of funding for the workout
§ 11:19	— —Increased control and monitoring
§ 11:20	— —Creative approaches
§ 11:21	—Construction workouts
§ 11:22	— —Financial aspects of construction contracts
§ 11:23	— —Key non-financial provisions of construction contracts
§ 11:24	— —Resolving disputes under construction contracts
§ 11:25	—Tax considerations
§ 11:26	Tax consequences of workouts—Debt for equity exchanges by corporations and partnerships: IRC § 108(e)(8)
§ 11:27	—Recourse and nonrecourse debt
§ 11:28	Workouts: in general—Bankruptcy proofing
§ 11:29	—Risks of the workout—In general
§ 11:30	— —Risks to the lender
§ 11:31	— — —Effect of mortgage modification on lien priority
§ 11:32	— — —Other legal risks
§ 11:33	Workouts: In general—Risks of the Workout—Risks to the lender—Fraudulent Transfer
§ 11:34	Deed in lieu of foreclosure
§ 11:35	—Advantages for the borrower
§ 11:36	—Advantages for the lender
§ 11:37	—Risks of a deed in lieu
§ 11:38	Deed lieu of foreclosure—Challenge as fraudulent transfer
§ 11:39	Foreclosure: in general
§ 11:40	—Receivership
§ 11:41	—Mortgagee in possession
§ 11:42	—Bidding at the foreclosure sale
§ 11:43	—Defenses to foreclosure
§ 11:44	—Risks to the lender
§ 11:45	Bankruptcy—Introduction
§ 11:46	—Debtor’s perspective
§ 11:47	—Lender’s perspective

- § 11:48 —Investor's perspective
- § 11:49 —Types of bankruptcy
- § 11:50 —Prebankruptcy planning
- § 11:51 —Parties involved
- § 11:52 — —Debtor in possession
- § 11:53 — —Trustee
- § 11:54 — —Creditors' committees
- § 11:55 —Commencement of a case—Voluntary bankruptcy filings
- § 11:56 — —Bad-faith filings
- § 11:57 — —Involuntary bankruptcy filings
- § 11:58 —Automatic stay—In general
- § 11:59 — —Modification or termination of the stay
- § 11:60 — — —Lifting the stay for "cause"
- § 11:61 — — —Debtor lacks equity and the property is not necessary to an effective reorganization
- § 11:62 — — —Single Asset Real Estate
- § 11:63 Single asset real estate entities—Bankruptcy blocking provisions
- § 11:64 Bankruptcy—Creditors' claims
- § 11:65 —Nonrecourse Mortgage May Become Recourse
- § 11:66 —Equitable subordination
- § 11:67 —Contracts and leases—Rejection, assumption, and assignment
- § 11:68 — —Contracts for sale of real property
- § 11:69 — —Financing agreements
- § 11:70 — —Personal service contracts
- § 11:71 — —Leases
- § 11:72 — — —Performance between filing and assumption or rejection
- § 11:73 — — —Termination of lease
- § 11:74 — — —Debtor as lessee
- § 11:75 — — —Debtor as lessor
- § 11:76 — — —Shopping center leases
- § 11:77 —Contracts and leases-Leases-Sale free of tenant's rights
- § 11:78 —Assignments of rents and cash collateral—In general
- § 11:79 — —Assignments of rents
- § 11:80 — —Negotiated cash collateral orders
- § 11:81 —Debtor-in-possession financing
- § 11:82 —Avoiding powers
- § 11:83 — —Preferences—In general
- § 11:84 — — —Foreclosure Sale as Preference
- § 11:85 — — —Insider preferences
- § 11:86 — —Fraudulent transfers
- § 11:87 — —Lien avoidance
- § 11:88 —Guaranties and letters of credit—Guaranties
- § 11:89 — —Letters of credit
- § 11:90 —Reorganization plans
- § 11:91 — —Procedure
- § 11:92 — — —Classification and impairment
- § 11:93 — — —Voting

TABLE OF CONTENTS

§ 11:94	— — Requirements for confirmation: in general
§ 11:95	— — Requirements for confirmation—Cram down
§ 11:96	— — — — Lender's right to credit bid
§ 11:97	— — — — Substitution of Collateral
§ 11:98	— — — — "Cram Up"
§ 11:99	— — Plan issues in single-asset cases—Classification of deficiency claim
§ 11:100	— — — Valuation
§ 11:101	— — — The 1111(b) election
§ 11:102	— — Appealing after cramdown
§ 11:103	Guidelines for investing in distressed real estate
§ 11:104	Case study: Nipping distress in the bud

CHAPTER 12. SPECIFIC TYPES OF REAL ESTATE

§ 12:1	Undeveloped land—Introduction
§ 12:2	— Current market strategies and valuation techniques
§ 12:3	— Advantages of land investment—Low cost
§ 12:4	— — High potential gain
§ 12:5	— Negotiating the land purchase money mortgage
§ 12:6	— Advantages of land investment—Diversification of investment
§ 12:7	— Disadvantages of land investment—No current income
§ 12:8	— — Difficulty in financing
§ 12:9	— — Risk of overpayment
§ 12:10	— — Physical and legal defects
§ 12:11	— — Government regulation
§ 12:12	— — — Identifying wetlands
§ 12:13	— Patterns of land growth
§ 12:14	— Negotiating the raw land contract
§ 12:15	— Evaluating sites for residential subdivisions
§ 12:16	— The land assemblage process
§ 12:17	— — Keeping assemblage secret
§ 12:18	— — Conditional purchases
§ 12:19	— — Title problems
§ 12:20	— — Leased properties
§ 12:21	— — Future development
§ 12:22	— Capital gain despite subdividing
§ 12:23	Farmland—Introduction
§ 12:24	— Agriculture in the U.S
§ 12:25	— Types of farms
§ 12:26	— — Row crop farms
§ 12:27	— — Vegetable crop farms
§ 12:28	— — Livestock or dairy farms
§ 12:29	— — Orchards
§ 12:30	— Farm management
§ 12:31	— — Farm lease
§ 12:32	— — Direct operation
§ 12:33	— Sources of financing
§ 12:34	— Choosing a farm for investment

- § 12:35 Office buildings—In general
- § 12:36 —Evaluating an office building
- § 12:37 —Keys to office building credit quality
- § 12:38 —Strategy for office building investments
- § 12:39 — —Decentralization of demand
- § 12:40 — —Higher development and leasing costs
- § 12:41 — —Office building debt financing
- § 12:42 — —Office building equity financing
- § 12:43 —New technologies in office space
- § 12:44 —Executive suites in office buildings
- § 12:45 —Medical office buildings
- § 12:46 Shopping centers—Introduction
- § 12:47 —A profile
- § 12:48 —In Crisis?
- § 12:49 —Effect of e-commerce
- § 12:50 —Risk factors in shopping centers
- § 12:51 —High-Tech Stores a Customer Draw
- § 12:52 —Three-tier rating scale
- § 12:53 —Shopping center design
- § 12:54 —Neighborhood centers
- § 12:55 — —Recent trends in neighborhood centers
- § 12:56 —Community centers
- § 12:57 —Regional centers
- § 12:58 — —Entertainment facilities
- § 12:59 — — —The E-Box
- § 12:60 — — —Mall-based entertainment
- § 12:61 — — —Retailer-based entertainment
- § 12:62 —Other shopping center formats
- § 12:63 — —Theme centers
- § 12:64 — —Power centers
- § 12:65 — —Mixed-use centers
- § 12:66 — —Warehouse centers
- § 12:67 — —Urban entertainment centers
- § 12:68 — —Lifestyle centers
- § 12:69 —Factory outlet and discount centers—In general
- § 12:70 — —Key elements of success
- § 12:71 — —Evaluating factory outlet centers
- § 12:72 —Investing in an existing shopping center
- § 12:73 —The shopping center lease—Types of tenants in a center
- § 12:74 — —Key provisions of leases
- § 12:75 — —Restrictive covenants in shopping center leases
- § 12:76 — — —Tenant mix
- § 12:77 — — —Center operations
- § 12:78 — — —Price fixing
- § 12:79 — — —Radius restrictions
- § 12:80 —Retail properties—In general
- § 12:81 — —Retail/office rotation in cycle

TABLE OF CONTENTS

§ 12:82	— —An overview of convenience stores
§ 12:83	Industrial properties—In general
§ 12:84	—Industrial market outlook
§ 12:85	—Types of industrial properties
§ 12:86	— —Manufacturing plants
§ 12:87	— —Warehouse/distribution properties—In general
§ 12:88	— — —Miniwarehouses
§ 12:89	— —Research and development facilities
§ 12:90	— —Incubator buildings
§ 12:91	—Industrial site selection
§ 12:92	—Industrial parks—In general
§ 12:93	— —Special types of parks
§ 12:94	Apartment buildings—Introduction
§ 12:95	—The multifamily market since the financial crisis
§ 12:96	—Types of apartment buildings
§ 12:97	—Risks of apartment building investment
§ 12:98	—Judging demand for apartment units
§ 12:99	—Financing apartment buildings
§ 12:100	— —Thrift institutions
§ 12:101	— —Federal agencies
§ 12:102	— —Life insurance companies
§ 12:103	— —Pension funds and REITs
§ 12:104	— —Other sources of credit
§ 12:105	— —Underwriting apartment projects
§ 12:106	—The resurgence of apartment REITs
§ 12:107	— —Successful strategies in apartment investments
§ 12:108	—Insurance guidelines for apartments
§ 12:109	One-family houses—Introduction
§ 12:110	—Investment considerations
§ 12:111	Single-family Rentals
§ 12:112	—Investing in a single-family rental property
§ 12:113	Single Family Rentals—Institutional Investors
§ 12:114	—Securitizations
§ 12:115	One-family houses—How to use a single-family lease option
§ 12:116	— —The elements of a lease with option
§ 12:117	— —Example of single-family lease option
§ 12:118	—Home price outlook: Rent-price comparison
§ 12:119	—Manufactured home communities
§ 12:120	— —Manufactured home communities overview
§ 12:121	Senior housing—In general
§ 12:122	—Financing senior housing
§ 12:123	Condominiums, cooperatives, and homeowner associations
§ 12:124	—Condominiums
§ 12:125	—Cooperative housing corporations
§ 12:126	—Comparing condominiums and cooperatives
§ 12:127	—Condominium conversions—In general
§ 12:128	— —Selecting a building

- § 12:129 — —Assessing market potential
- § 12:130 — —Economic feasibility of the project
- § 12:131 — —Financing a condominium conversion
- § 12:132 — —Regulatory concerns
- § 12:133 — —Tax considerations
- § 12:134 —Condominium office buildings—In general
- § 12:135 — —Market for units
- § 12:136 — —Factors affecting marketability
- § 12:137 —Cooperative office buildings
- § 12:138 —Homeowner associations
- § 12:139 — —Key features of an HOA
- § 12:140 — —Setting up an HOA
- § 12:141 — —Creating a special tax district
- § 12:142 Time-sharing
- § 12:143 —Types of time-sharing
- § 12:144 — —Use and ownership of units
- § 12:145 — — —Fee ownership
- § 12:146 — — —Non-fee ownership
- § 12:147 —Appraising a timeshare project—New approaches to time-sharing
- § 12:148 —State and federal regulation of time-sharing
- § 12:149 —Appraising a timeshare project
- § 12:150 —Recent developments in timeshare properties
- § 12:151 —Rise of the fractionals
- § 12:152 Equity and non-equity membership clubs
- § 12:153 The hospitality industry—Introduction
- § 12:154 —Hotel boom and bust
- § 12:155 — —How slowing economy affects occupancy and average rate
- § 12:156 —Segmentation of hotel industry
- § 12:157 —Hotels and motels as investments
- § 12:158 — —Understanding the franchise fee obligation
- § 12:159 —Structuring a hotel REIT
- § 12:160 —Condominium hotels
- § 12:161 — —Developer and lender concerns
- § 12:162 —Conference centers
- § 12:163 Parking facilities—Types of parking facilities
- § 12:164 —Surface parking lot
- § 12:165 —Parking garages
- § 12:166 —Investment analysis of a surface parking lot
- § 12:167 Restaurants
- § 12:168 —Types of restaurant operations
- § 12:169 — —Types of dining experience
- § 12:170 — — —Sit-down dinner
- § 12:171 — — —Take-home dinner
- § 12:172 — — —Sit-down breakfast/lunch
- § 12:173 — — —Fast-fuel breakfast/lunch
- § 12:174 —Restaurant location
- § 12:175 —Return on investment

TABLE OF CONTENTS

§ 12:176	—Valuing restaurant real estate
§ 12:177	—Restaurant industry overview
§ 12:178	Asia-Pacific real estate
§ 12:179	Canadian real estate outlook
§ 12:180	Foreign real estate—Mexico
§ 12:181	Global real estate markets
§ 12:182	Foreign real estate—Business plan and site selection
§ 12:183	—Leasing vs. purchasing
§ 12:184	—Purchasing vs. construction
§ 12:185	—Structuring real estate investments
§ 12:186	The self-storage industry
§ 12:187	—Recent developments in self-storage facilities
§ 12:188	—Self-storage market
§ 12:189	Adaptive reuse
§ 12:190	—Adaptive use of bank properties
§ 12:191	—Adaptive use of office buildings
§ 12:192	—Adaptive use of industrial property
§ 12:193	Marketing call centers
§ 12:194	Timberland
§ 12:195	Infrastructure
§ 12:196	Infrastructure: Recent developments
§ 12:197	Student housing
§ 12:198	Wind parks: Increasing growth

CHAPTER 13. FEDERAL REGULATION OF REAL ESTATE AND MORTGAGE LENDING

§ 13:1	Introduction
§ 13:2	Anti-Terror tools and real estate
§ 13:3	Real Estate Settlement Procedures Act—In general
§ 13:4	—Exemptions
§ 13:5	—Lender obligations
§ 13:6	—Kickbacks and unearned fees
§ 13:7	—Escrow accounts
§ 13:8	—Transfer of loan servicing
§ 13:9	Interstate Land Sales Full Disclosure Act—Introduction
§ 13:10	—Covered parties
§ 13:11	—Exemptions
§ 13:12	— —Statutory exemptions
§ 13:13	— —Statutory exemptions from registration requirements
§ 13:14	— — —100-lot exemption
§ 13:15	— — —Twelve-lot exemption
§ 13:16	— — —Scattered site subdivision
§ 13:17	— — —Twenty-acre lot exemption
§ 13:18	— — —Single-family residence exemption
§ 13:19	— — —Mobile home exemption
§ 13:20	— — —Intrastate exemption
§ 13:21	— — —SMSA exemption

- § 13:22 — —Regulatory exemptions
- § 13:23 —Registration and statement of record
- § 13:24 — —Property report
- § 13:25 — —Additional information and documentation
- § 13:26 —Revocation rights
- § 13:27 — —Cooling-off periods
- § 13:28 — —Delivery of property reports
- § 13:29 — —Other contract terms required
- § 13:30 — —Measure of reimbursement
- § 13:31 —Sales practices and standards
- § 13:32 — —Unlawful sales practices
- § 13:33 — —Misleading sales practices
- § 13:34 —Sanctions—Suspensions
- § 13:35 — —Rescission
- § 13:36 — —Civil liabilities
- § 13:37 — —Criminal penalties
- § 13:38 Condominium and Cooperative Abuse Relief Act
- § 13:39 Federal Trade Commission Act—Introduction
- § 13:40 —Federal trade commission structure
- § 13:41 —Rule-making process
- § 13:42 Agricultural Foreign Investment Disclosure Act
- § 13:43 Fair Housing Act—Civil Rights Act of 1968
- § 13:44 —Fair Housing Amendments Act of 1988
- § 13:45 —Liability based on disparate impact
- § 13:46 Fair Housing Act—Civil Rights Act of 1968—Discrimination prohibited by the
Fair Housing Amendments Act of 1988—Familial status
- § 13:47 — —HUD-designated exemption
- § 13:48 — —Sixty-two-years-or-older exemption
- § 13:49 — —Fifty-five-years-or-older exemption
- § 13:50 — —Handicap-based discrimination
- § 13:51 — — —Definition of handicap
- § 13:52 — — —Handicap accessibility
- § 13:53 — — —Design and construction standards for new multifamily dwellings
- § 13:54 — — —Modification of existing housing
- § 13:55 — —Coercion and intimidation
- § 13:56 — —Real estate—Related transaction
- § 13:57 — —Religious and private club exemption
- § 13:58 — —Fair housing advertising guidelines
- § 13:59 —Enforcement mechanisms
- § 13:60 — —Complaint processing
- § 13:61 — — —Procedure
- § 13:62 — — —Filing a charge
- § 13:63 — — —Conciliation
- § 13:64 — —Administrative proceedings
- § 13:65 — —Civil action
- § 13:66 — —Certification of substantially equivalent agencies
- § 13:67 Equal Credit Opportunity Act

TABLE OF CONTENTS

§ 13:68	—Transactions covered
§ 13:69	—Application stage
§ 13:70	—Evaluation of credit
§ 13:71	—Extension of credit
§ 13:72	— —General notification rules
§ 13:73	— —Notification of time limits
§ 13:74	— —Formats and contents of notification
§ 13:75	— —The right to individual accounts
§ 13:76	— —Additional required signatures
§ 13:77	—Enforcement and remedies
§ 13:78	Americans With Disabilities Act
§ 13:79	—Disability discrimination
§ 13:80	—New building accessibility
§ 13:81	—Tax credit and deductions
§ 13:82	—Effect on employment practices and construction sites
§ 13:83	—Landlord-tenant compliance with the ADA
§ 13:84	Soldiers' and Sailors' Civil Relief Act
§ 13:85	—Interest limit on military persons' debt obligations
§ 13:86	—Enforcement of secured obligations of military persons

Table of Laws and Rules

Table of Cases

Index