

MODERN
REAL ESTATE PRACTICE
IN **TEXAS**: Principles I and II

19TH
EDITION



Loretta R. DeHay

Dearborn
Real Estate Education

Modern Real Estate Practice in Texas

Principles I and II

Nineteenth Edition

Loretta R. DeHay

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SAMPLE

PREFACE

Although the real estate industry is making rapid technological changes, a basic knowledge of real estate laws, practices, and terminology is still essential for anyone desiring to enter the field. *Modern Real Estate Practice in Texas*, now in its 19th edition, is the recognized authority for accurate, comprehensive information in a student-friendly format. Whether you are preparing for a state licensing examination, fulfilling a college or university requirement, looking for specific guidance about buying a home or an investment property, or simply expanding your understanding of this fascinating field, you can rely on *Modern Real Estate Practice in Texas*. If your goal is a license, this text covers all the topics required by the Texas Real Estate License Act to be included in a principles-qualifying course, with both national and state-specific content. In addition to helping you prepare to enter the real estate industry, this book can become an integral part of your professional reference library when you start to work.

This is a great time to get into the industry; you have an opportunity to train and get experience for the really busy times ahead. In addition, Texas may be just the market in which to begin. According to a 2016 *Forbes* magazine report, Texas was the United States' second-largest economy and ranked first for current economic climate based in part on its ranking on economic growth and job growth. Texas also ranks fourth in *Forbes* Best States for Business.

Today's real estate market is challenging and complex, and real estate students are increasingly sophisticated, demanding a high level of expertise and efficiency. The 19th edition of *Modern Real Estate Practice in Texas* meets those expectations. In response to the growing body of laws that govern the practice of real estate, this edition contains revisions and features designed to make it an even more effective tool, no matter what your goal.

FEATURES

This edition contains revisions brought about by the 88th Legislative Session in 2023, as well as changes in state and federal government regulations and industry practice and procedure. In addition, the book has been enhanced by

- “**hot issues**” such as fair housing, discrimination, ethics, the Dodd-Frank Act, and the new Loan Estimate and Closing Disclosure forms;
- **examples** to illustrate key concepts and provide real-life explanations for further clarification of real estate principles;
- **math concepts** at relevant points in the units—where they would normally occur in a transaction—to help illuminate the real-life application of the mathematics of real estate;
- a basic **real estate math primer**, Unit 13;
- **margin notes** to help direct attention to important vocabulary terms, concepts, study tips, and related news; and
- a “**Getting a Real Estate License**” **appendix**, which includes the license application process, tips for selecting a broker, and passing the state exam—plus a 100-question practice state exam.

A FINAL NOTE

The fundamental goal of *Modern Real Estate Practice in Texas* is to help students understand the dynamics of the real estate industry and to assist them in preparing for the licensing exam. This text provides the tools necessary to develop a foundation for advanced study in the general practice of real estate or in any of the real estate specialties. To derive the maximum benefit from this textbook, become familiar with the key terms listed at the beginning of each unit and the definitions included in the glossary. The questions at the end of each unit provide an opportunity to apply the principles presented in the text.

We like to hear from our readers. Like the dozens of Texas real estate instructors who have helped to develop this and previous editions, like the real estate professionals who have shared their expertise, you are a partner in the *Modern Real Estate Practice in Texas* series. The only way we can be sure we've succeeded—and know what we need to improve—is if you tell us.

Your comments are invaluable. Has your understanding of the real estate industry increased? How did you do in your course or on your real estate license exam? Which features of the text were most helpful to you? What additional or different information would improve the book?

Thank you for your help and for joining the ranks of successful *Modern Real Estate Practice in Texas* users!

Modern Real Estate Practice in Texas was originally adapted from the classic text, *Modern Real Estate Practice* by Galaty, Allaway, and Kyle (1959), which has provided more than 3 million readers with a critical edge as they enter the world of real estate.

The 22 units herein cover the broad subject of real estate, together with real estate law and operating procedures that apply to the State of Texas. Real estate practice in each state is controlled by federal laws and regulations, as well as the respective state laws, regulations, and court decisions. Additionally, the practice of real estate in any specific location in Texas may be influenced by local agencies, bureaus, and organizations such as county and city governments or local real estate associations.

Statements of law in this book are general summaries that are not intended to substitute for an experienced legal counsel. Unique situations require specific application of the law. Therefore, this text should be used only as a general guideline and not as a final statement of the law on any given matter. The author and the editors assume no responsibility for any errors, omissions, or inadvertent misinterpretations of the law.

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Sincere gratitude goes to the late G. E. Irby, Texas, series advisor to Real Estate Education Company® and author of the fifth and sixth editions of this book.

Dearborn Real Estate Education would like to thank Cheryl Nance for her high-quality and diligent work on *Modern Real Estate Practice in Texas* past editions.

ABOUT THE AUTHOR

Loretta DeHay is an attorney in private practice in central Texas with an extensive background in real estate regulation and government administration. She holds a bachelor's degree from New Mexico State University and a Juris Doctor from the University of New Mexico. She retired in August 2013 from the Texas Real Estate Commission (TREC), where she started as the director of enforcement and later served as general counsel and assistant administrator. As general counsel at TREC, she served as the agency liaison with several advisory committees including the Broker Lawyer Committee, the Education Standards Advisory Committee, the Broker Responsibility Committee, and the Home Inspector Advisory Committee. She was one of the authors of the first TREC Mandatory Continuing Education Legal Update and Ethics courses. DeHay is a contributing editor on other Dearborn Texas real estate courses including Real Estate Agency, Law of Contracts, and Promulgated Contract Forms.

UNIT

Introduction to Modern Real Estate Practice

LEARNING OBJECTIVES

When you have completed this unit, you will be able to

- › **identify** the various careers available in real estate and the professional organizations that support them,
- › **describe** the five uses of real property,
- › **list** the seven sources of real estate law and give an example of each,
- › **describe** the physical and economic characteristics of real estate,
- › **explain** the operation of supply and demand in the real estate market, and
- › **identify** the economic, political, and social factors that influence supply and demand and the real estate cycle.

KEY TERMS

abatement
agricultural real estate
broker
business cycle
commercial real estate
common law
cost
demand
demographics
industrial real estate

market
mixed-use real estate
National Association of
REALTORS® (NAR)
objective value
precedent
price
Realtist
REALTOR®
residential real estate

sales agent
seven sources of law
special-purpose real
estate
subjective value
supply
Texas Real Estate
Commission (TREC)
Texas Real Estate License
Act (TRELA)

OVERVIEW

Real estate transactions take place all around us, all the time. A commercial leasing company rents space in a mall to an electronics store. The owner of a building rents an apartment to a retired couple. An appraiser gives an expert opinion of the value of 100 acres of farmland, which is now surrounded by residential subdivisions. A bank lends money to a professional

corporation so that it can purchase a medical office building. And, of course, the typical American family sells its old house and buys a bigger one.

Real estate is big business, involving billions of dollars every year in the United States alone. Because real estate is a heavily regulated market, the real estate practitioner must be familiar with the many sources of law on the federal, state, and local levels.

The real estate business is more than the neighborhood storefront with the realty sign hanging in the window. Real estate is a national industry that has worldwide economic influence.

This unit introduces students to the real estate industry in general, as well as to many legal considerations that affect today's real estate professional.

This unit also discusses the physical and economic characteristics of real estate and explains the concept of value, particularly how value is tested by the influences of supply and demand in the real estate market.

REAL ESTATE—A BUSINESS OF MANY SPECIALIZATIONS

Brokerage

The business of bringing together people who are interested in making a real estate transaction is *brokerage*. Typically, the **broker** acts as an *agent* of the buyer or the seller (or both) in negotiating the sale, purchase, or rental of property. A **sales agent** is a license holder employed by or associated with a broker who conducts brokerage activities on behalf of the broker for a fee or commission. Residential brokerage involves the sale and purchase of a residential property. Other types of real estate brokerage, such as property management, apartment locating, commercial brokerage, and the sale of farm and ranch property, require specialization and sometimes additional education and experience to maintain competency in that area.

Despite the size and complexity of the real estate business, many people think it only consists of brokers and salespersons. In reality, the real estate industry is much bigger than that and encompasses a wide variety of related disciplines interacting together. Basic knowledge of the real estate–related disciplines helps to maintain a better understanding of the real estate business in general.

Real Estate–Related Disciplines

Some real estate–related disciplines include appraising, lending and financing, property inspection, property development, real estate counseling, real estate education, title insurance and abstracting, urban planning, time-share sales, petroleum landmen and women, and easement and right-of-way registrants.

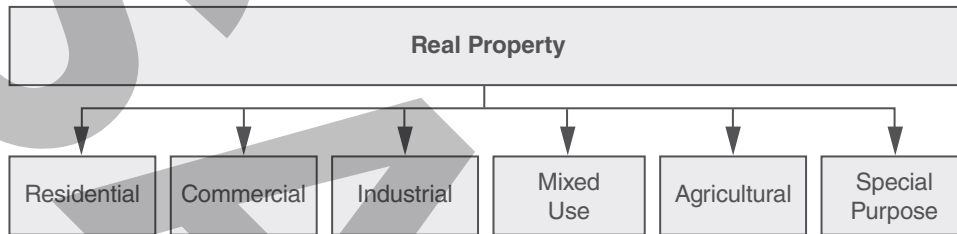
Uses of Real Property

Just as there are many areas of specialization within the real estate industry, there are many different types of property in which to specialize (see Figure 1.1). Real estate generally can be classified as

- **residential**—all property used for housing, from small city lots to acreage, both single-family and multifamily, in urban, suburban, and rural areas;
- **commercial**—business property, including offices, shopping centers, stores, theaters, hotels, and parking facilities;

- **industrial**—warehouses, factories, and land in industrial districts;
- **agricultural**—farms, timberland, pastureland, ranches, and orchards;
- **special purpose**—places of worship, schools, cemeteries, and government-held lands; or
- **mixed use**—any lawful combination of the other five basic categories of real property permitted by local zoning.

Figure 1.1: Uses of Real Property



The market for each of these types of properties can be further subdivided into (1) the sales market, which involves the transfer of title, and (2) the rental market, which involves the use of space on a lease basis.

IN PRACTICE



Although in theory a real estate person or firm can perform all these services and handle all six classes of property, this is rarely done, except in small towns. Most real estate firms tend to specialize in one class to some degree, especially in urban areas.

EDUCATION STANDARDS ADVISORY COMMITTEE

The Texas Legislature created the Education Standards Advisory Committee (ESAC) by amending the Texas Real Estate License Act (TRELA) in 2011. The mission of the ESAC is to regularly review and revise curriculum standards, course content requirements, and instructor certification requirements for qualifying and continuing education courses. The committee consists of seven members who have been actively engaged in the practice of real estate for at least five years before appointment; four members who are either owners of real estate schools that are accredited by the Texas Real Estate Commission (TREC) and provide qualifying or continuing education, or approved instructors; and one public member. The chair of the Commission may also appoint a nonvoting Commission-member liaison.

At its first meeting, the ESAC developed a process for reviewing existing qualifying courses and textbooks, comparing course materials to the topics required by TRELA for each course, and creating a detailed list of subtopics with time periods ascribed to each subtopic. The committee began its review of each qualifying course by first focusing on Principles of Real Estate I and II. The committee extensively surveyed a selection of textbooks on the principles of real estate, including this book, comparing the texts to the topic areas required by TRELA for principles, and finally recommended a revised curriculum for the Principles of Real Estate I and II, consisting of two 30-hour courses with very specific subject matter requirements. The Commission adopted the new curriculum requirements for Principles I and II in the Rules.

This edition of *Modern Real Estate Practice in Texas* incorporates the required curriculum for Principles of Real Estate. The ESAC has also recommended, and the Commission has adopted by rule, curriculum requirements for 30-hour courses in Law of Agency, Promulgated

Contract Forms, Law of Contracts, Real Estate Brokerage, Real Estate Finance, Property Management, Real Estate Marketing, Real Estate Appraisal, Real Estate Investment, Real Estate Law, Real Estate Math, and Real Estate Residential Inspection.

The ESAC continues to recommend rule changes to the Commission as necessary to improve the quality of real estate education in Texas.

REAL ESTATE LAW

The purchase of real estate is an entirely different type of transaction from the purchase of personal property such as groceries, clothing, fuel, automobiles, or television sets. Although every type of sales transaction creates a change of ownership involving certain relatively simple legal problems, even the simplest of real estate transactions brings into play a body of complex laws.

Real estate brokers and sales agents must have a broad understanding of law and how various laws affect real estate activities. However, if legal questions or problems arise, the real estate practitioner must advise the parties to consult an attorney, preferably one who specializes in real estate law.

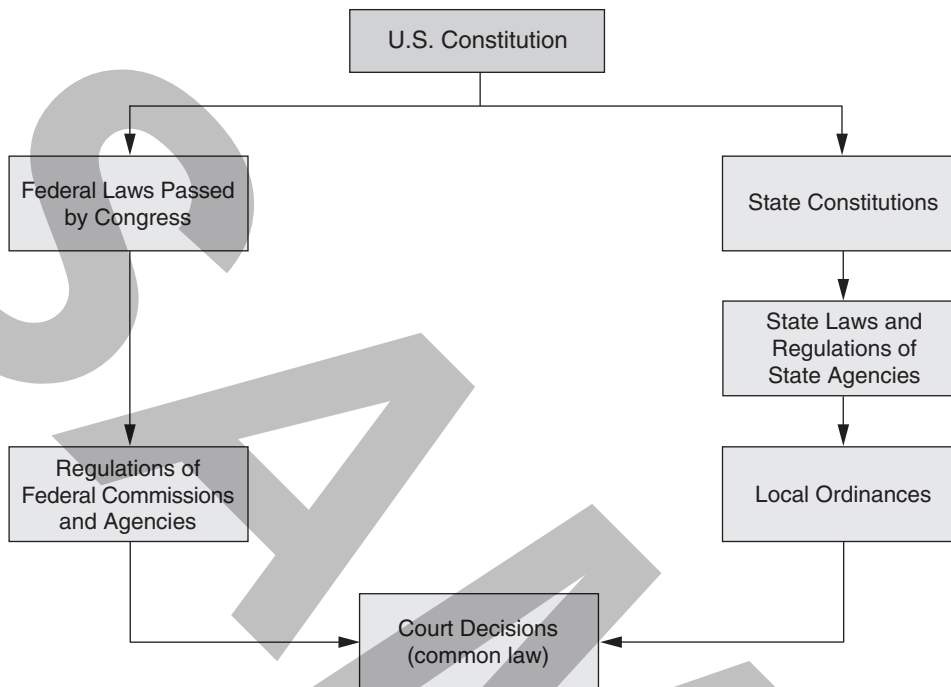
Sources of Real Estate Law

Generally, in the United States, **seven sources of law** affect the ownership and transfer of real estate (see Figure 1.2). These sources are the Constitution of the United States; laws passed by Congress; federal regulations adopted by the various agencies and commissions created by Congress; state constitutions; laws passed by state legislatures; ordinances passed by cities, towns, and other local governments; and court decisions. Because the Spanish, Mexican, and French flags are among the “six flags over Texas,” the laws of those countries have influenced the development of Texas legal principles. Texas has adopted the English common law for certain rules, such as riparian water rights, and has drawn heavily on Spanish law for doctrines such as community and separate property.

The primary purpose of the U.S. Constitution and the individual *state constitutions* is to establish the rights of citizens and delineate the limits of governmental authority. For example, the 14th Amendment to the U.S. Constitution provides civil rights protections that serve as the basis for federal fair housing legislation; homestead and community property laws derive from the Texas Constitution.

Laws passed by Congress and by *state and local legislative bodies* may establish specific provisions, or they simply may set broad standards of conduct and establish administrative enforcement agencies. Federal fair housing laws prohibiting discrimination are examples of laws passed by the U.S. Congress; the Texas Real Estate License Act, which regulates real estate professionals, is a state statute passed by the Texas Legislature. Some laws may apply only to a specific type of property. For example, some landlord-tenant laws differ between residential and commercial properties.

Governmental agencies that enact rules and regulations range from the federal Consumer Finance Protection Bureau (CFPB) to the Texas Real Estate Commission to local zoning boards. The regulations passed by these agencies are a means of implementing and enforcing legislative acts; they provide detailed information regarding legal and illegal actions and practices; they designate penalties and violations; and they expand on the law and have the effect of law.

Figure 1.2: Sources of Real Estate Law

Decisions handed down by federal, state, and municipal courts serve to clarify and interpret laws, regulations, and constitutional provisions. By applying and interpreting the laws in relation to a specific event, a court decision expands the meaning of the law, establishing a **precedent** that may be used as a standard in subsequent similar cases. However, the courts are not always bound by established precedent. Courts in one jurisdiction (area of authority) may not be bound by the decisions of courts in other jurisdictions. Furthermore, a court with superior authority in its jurisdiction may, at its discretion, reverse the ruling of a lower court.

Real estate ownership and transfer are affected by **common law**, which is the body of rules and principles founded on tradition and court decisions. It is derived mainly from practices developed in England and, as it applies to the United States, dates back to practices in effect during the American Revolution.

Some remedies provided under common law were considered too harsh, and as a result, *courts of equity* evolved to provide relief on the basis of equitable principles. Although Texas does not have separate courts of law and equity, Texas judges are permitted to grant both legal and equitable remedies to ensure justice.

Laws Affecting Real Estate Practice

The general sources of law encompass a number of specific areas that are important to the real estate practitioner. These include the *law of contracts*, *general property law*, *landlord-tenant law*, the *law of agency* (which covers the obligations of a broker to the person who engages his services), the *real estate license law*, and *consumer protection laws*. All these areas will be discussed in this text.

ABOUT DEARBORN REAL ESTATE EDUCATION

For over 60 years, Dearborn has set the standard for real estate education. As a full-service educational publisher, Dearborn offers the best content and support services in the industry. With unsurpassed experience and understanding of the real estate training industry, you can ensure your success with Dearborn.

The strength of our experience lies in our dedication and ability to continually produce the highest quality, up-to-date real estate educational and training content. Our seasoned authors have years of real-world experience and our content spans every stage of a real estate professional's career from prelicensing, exam prep, and continuing education to broker, appraisal, home inspection, and professional development.

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