Introduction

Due to the rapid and continuing growth of cities and the movement of people into once quiet rural areas, the government has found itself in the real estate business. Such population changes have created problems, which have led to an increase in regulation.

The wide and varied range of problems includes ensuring adequate public facilities, such as schools and parks, preventing fraud and misrepresentation in the selling of subdivided real property, regulating lot design and physical improvements for the orderly and proper development of communities, and constructing streets, highways, and parking areas. Regulating airways over the land, providing a water supply, protecting life and property by means of police and firemen, maintaining clean air, mandating noise abatement, and providing sewage and waste disposal and utility services are also included in the range of problems.

When cities grow rapidly without design or control, problems are made worse, and the need for regulation and planning is greater. Communities try to ensure quality places to work and live by using the tools at hand: subdivision regulations, county and city master plans, zoning laws, and building codes.

In this unit, you will examine the principles of land-use planning, development, and building.
Learning Objectives

After reading this unit, you should be able to:

- explain the difference between eminent domain and police power.
- explain the goals of community planning.
- recognize the difference between the Subdivision Map Act and the Subdivided Lands Law.
- identify the types of government controls in real estate.

Government Regulation of Land Use

Continued urban growth and population increases overwhelm the existing infrastructure and place the burden of expanding public services in the hands of local, state, and federal agencies. As the demand for more schools, roads, hospitals, and public services increases, these agencies need to plan for and manage growth. Accommodating and managing this growth is accomplished through the legal powers of eminent domain and police power.

Eminent Domain

The Takings Clause of the Fifth Amendment to the Federal Constitution seems clear about the public use restrictions on the power of eminent domain. Recently, cities, counties, and states have been extending the power of eminent domain to take private property, not for public use, but to benefit private groups. Instead of building a highway or school, they take the private property and sell it to private developers to build shopping centers, luxury residences, and factories.

In 1981, Detroit used the power of eminent domain to take homes in the Poletown neighborhood, a well-kept, working-class neighborhood with more than 1,000 homes, 600 businesses, several churches, and a hospital. The only thing wrong with the neighborhood was that General Motors (GM) wanted the land to build a new assembly plant. GM threatened to take the plant out of Detroit if the city did not take the property by force.

The Michigan Supreme Court overturned the Poletown eminent domain ruling.
Using the excuse that the economic well-being of Detroit was dependent on the plant expansion, the city condemned and took the property under eminent domain and then sold it to General Motors. The Supreme Court of Michigan upheld this decision. However, in 2004, the Michigan Supreme Court was asked to “restore the constitutional protections, that ensure private property cannot be taken to benefit powerful interest groups at the expense of the less powerful.” The Supreme Court voted unanimously to overturn the Poletown eminent domain ruling, 20 years after the neighborhood was razed.

In June 2005, the United States Supreme Court decided on the case of *Kelo v. City of New London*. The courts heard from a group of New London, Connecticut homeowners who did not want their homes razed in order to allow the building of a hotel, health club, and offices. The city wanted to build these new structures to complement a multi-million dollar research facility, recently built by Pfizer, the corporation. The court decided 5–4 to allow the neighborhood to be razed for the new structures. The majority opinion stated that the city had carefully planned for the economic development, which was not limited to new jobs and increased tax revenue. The minority opinion stated that the decision effectively deleted the words for public use from the Takings Clause of the Fifth Amendment.

**Police Power**

**Police power** is the power of the state to enact laws within constitutional limits to promote the order, safety, health, morals, and general welfare of our society. The power to pass such laws is given to the states by the United States Constitution and to each county and city in California by the State Constitution. Thus, all citizens of California benefit from this empowerment of government to regulate the law.

The following excerpt from a United States Supreme Court case describes police power:

“The possession and enjoyment of all rights are subject to this power. Under it the state may prescribe regulations promoting the health, peace, morals, education and good order of the people, and legislate so as to increase the industries of the state, develop its resources and add to its welfare and prosperity.”
Any laws made as a result of the exercise of police power must be necessary and proper for the protection of the public interest. Currently, the business of real estate is regulated and controlled by licensing real estate professionals; monitoring subdivisions; enforcing the numerous building, health, and safety codes; and determining growth with master plans and zoning. Almost every aspect of the real estate industry, from land use and development to sales and leasing of property, is controlled in some way under police power.

Police power, through legislation, promotes the general well-being of communities. Zoning in cities keeps neighborhoods free of objectionable businesses and limits the districts in which cemeteries, slaughterhouses, factories, and the like may be located. Setting speed limits and regulating liquor sales, prostitution, and gambling are other examples of police power. Additionally, city and county government prohibit the sale of adulterated or impure goods, handle waste disposal, and vaccinate schoolchildren. Businesses are required to meet state and federal health and safety laws.

**Planning and Development**

In California, every city and county must adopt a comprehensive or master plan, known as a General Plan, for long-term physical development. Every General Plan must cover the development issues in the following seven major categories: land use, circulation, housing, conservation, open space, noise,
and safety. Cities or counties located on the coast must also address coastal development and protection of natural resources and wetlands.

A General Plan is the basis of and sets the direction for a community's future development. All community development decisions, such as rezoning, subdivision map approvals, and public works projects are required to be consistent with the General Plan. The land use proposals outlined in a General Plan are implemented in many ways—zoning being the best known and most frequently used tool. Additionally, General Plan land uses are carried out through specific plans, subdivision regulations, property tax incentives, land banking, and public finance measures, to name a few.

Zoning

The regulation of structures and uses of property within selected districts is known as zoning. Zoning ordinances are exercises of a city's or county's police power, and are upheld as long as they reasonably protect the public health, safety, and general welfare of an area. When the state uses police power, it is not required to compensate a property owner for any loss in property values as a result of the regulation, as it must do under the power of eminent domain.

Most cities and counties have ordinances that create land use districts or zones. A zoning ordinance does not duplicate the General Plan, even though both deal with land use. A zoning ordinance primarily implements the General Plan by regulating land use for individual projects, whereas the General Plan is more far-reaching and future-oriented. Each zone has a specific set of regulations that control the use of land, lot sizes, types of structures permitted, building heights, building setbacks, and density. There are zones for single-family residences, multi-family dwellings, commercial uses, industrial uses, and open space or agriculture land.
Symbols Used to Show Different Zoning Areas

- **A** - Agriculture
- **C** - Commercial
- **M** - Manufacturing
- **P** - Public Uses (like parking lots and parks)
- **R** - Residential

- **R1** - Single-family home
- **R2** - Duplex
- **R3** - Multiple residential units
- **R4** - Four units or higher density dwellings
- **PD** - Planned Development

Each zone has a specific set of regulations.
Usually every district is zoned for different types of uses, known as permitted uses and conditional uses. **Permitted uses** meet the current use requirements within the district. **Conditional uses** do not meet the current use requirements but may be allowed by obtaining a special permit known as a conditional use permit. When an area is rezoned to another use, existing properties may retain the previous zoning under a grandfather clause. Such uses or structures are termed to be non-conforming. An owner who wants to use his or her property in a way that does not meet the current use requirements may be able to obtain a conditional use permit or a variance.

**Conditional Use Permits**

A **conditional use permit** allows a land use that may be incompatible with other uses existing in the zone. The use is allowed as long as the project owner complies with the conditions specified in the permit. If the owner does not comply with the conditions, the permit may be revoked. A conditional use permit runs with the land, and its provisions still apply even if there is a change in ownership.


Zoning and Use Variances

A city or county may allow a variance, or an exception to existing zoning regulations for special reasons. For example, if a lot has an irregular shape and does not meet the standard zoning for a side-yard setback, the owner is at a disadvantage when trying to develop the property. The owner may ask the city or county for a waiver or zoning variance, which would allow the property to be developed. In summary, a variance is simply a deviation from a development standard.

Specific Plans

After a General Plan is adopted, some cities and counties carry out the proposed land uses through a specific plan. A specific plan pertains to a particular development site or area of the General Plan. Since they pertain to just one specific project, they are able to consolidate many of the factors needed to develop a project and monitor the development costs.

Environmentally Sensitive Lands

Land and water areas containing natural features or ecological functions of such significance as to warrant their protection are considered environmentally sensitive lands. The public’s desire to protect the natural environment is reinforced by federal and state laws, which require cities and counties to take into account environmental issues in arriving at planning decisions.

Local Coastal Programs

Under the California Coastal Act, 15 coastal counties and 58 cities, along with the state of California, have stewardship of the 1,100 miles of coast that stretches from Oregon to the border with Mexico. The coastal zone contains over 1.5 million acres of land and reaches from three miles at sea to an inland boundary that varies from a few blocks in urban areas to about five miles in less-developed areas.
Each city and county in the coastal zone must prepare Local Coastal Programs (LCPs), which adhere to the California Coastal Commission’s strict standards for coastal development and protection. The LCPs are the basic planning tools used to review and decide permits for new development in coastal areas. Additionally, they protect the shoreline and environmentally sensitive habitats, determine ways to improve and expand existing ports, improve public access to the shoreline, and establish urban-rural boundaries to direct new development into areas with existing services to avoid wasteful urban sprawl and leapfrog development.

If property is located in the coastal zone, the owner or developer must apply for a coastal development permit (CDP) before any new construction can begin. Permits are routinely approved provided the projects comply with the Coastal Act policies and standards. In many areas, the California Coastal Commission retains permit authority over the coastal zone, and many local actions can be appealed up to the Coastal Commission.

**Clean Water Act of 1977**

The Clean Water Act (CWA) of 1977 regulates the discharge of pollutants into waters of the United States, including wetlands. **Wetlands** are areas where water covers the soil, or is present either at or near the surface of the soil all year or for varying periods during the year, including during the growing season. Wetlands can vary widely because of regional differences and are found from the tundra to the tropics and on every continent except Antarctica. There are two types of wetlands: **coastal wetlands** and **inland wetlands**.

Coastal or tidal wetlands are found along California’s Pacific shoreline and estuaries. A **shoreline** is the intersection of the land with the water (mean high water line). An **estuary** is an area where seawater and freshwater mix. Inland wetlands are found in deltas, swamps, marshes, low-lying areas of lakes and ponds, and in floodplains along rivers and streams. A **floodplain** is the low land adjacent to a river, lake, or ocean.
Rangeland, Grazing Land, and Grassland Protection Act

In 2002 the Rangeland, Grazing Land, and Grassland Protection Act was passed to protect California’s rangeland, grazing land, and grasslands. Its threefold program includes: (1) prevent the conversion of rangeland, grazing land, and grassland to nonagricultural uses; (2) protect livestock grazing areas; and (3) ensure continued wildlife, water quality, watershed, and open-space benefits to the State of California from livestock grazing.

Oak Woodlands Conservation Act

In 2001, the California Oak Woodlands Conservation Program was enacted to protect the oak woodlands from residential, commercial, and industrial development or conversion of the oak woodlands to intensive agricultural development. Since over 80% of the remaining oak trees are found on private property, this program offers landowners an opportunity to obtain funding to maintain and restore the oak woodlands. Additionally, the program is designed to help local governments implement oak conservation elements in local General Plans to achieve oak woodland protection.

Subdivision

A subdivision is the division of land into five or more lots for the purpose of sale, lease, or financing. Practically every place where people live has been subdivided at some time. All developments started as a large parcel of land that was divided up and sold to separate individuals. Sometimes the parcels were large enough to be subdivided repeatedly, creating a need for some control to make sure a desirable quality of life was protected.

Commonly, we think of a subdivision as a partition of a large piece of property into units designed for sale or lease for specific purposes. Usually, this is the case. The majority of subdivisions might be designated as lot and residential subdivisions. The parcels are meant to be sold to private individuals who plan to build homes on them or to speculators who will build houses on spec because they expect to sell them later. In most cases, the parcels are sold to a developer who will build multiple houses and sell the dwelling and lot as one package in a project that the developer will supervise. Some subdivisions are also developed for commercial purposes. A commercial acre is the area remaining from an acre of newly subdivided land after deducting the area devoted to streets, sidewalks, alleys, curbs, etc. It is also referred to as a buildable acre.
Basic Subdivision Laws

There are two basic laws under which subdivisions are controlled in California—
the Subdivision Map Act and the Subdivided Lands Law. To understand
these two laws, it is important to know they were enacted for separate purposes.
Different meanings of a subdivision were adopted in each law to achieve each
of their objectives. However, both were created for the protection of the
consumer.

Review - Two Laws Control Subdivisions in California
1. Subdivision Map Act
2. Subdivided Lands Law

Complete compliance with all provisions of both subdivision laws is required
in any subdivided development. Developers and their professional consultants
must be thoroughly familiar not only with the provisions of state laws but also
with specific provisions in local subdivision control ordinance in the community
where the subdivision is being developed. In various local subdivision
ordinances, there are many differences because of the great diversity in types
of communities and conditions throughout California.
Land developers and subdividers should always consult the Department of Real Estate at an early planning stage in any subdivision development. A developer should be fully aware of the Real Estate Commissioner’s current requirements for the subdivision qualification under consideration.

**Laws Regulating Subdivisions Differ**

Under the Subdivision Map Act, the city or county is authorized to control the orderly and proper development of the community. Under the Subdivided Lands Law, the Real Estate Commissioner regulates conditions surrounding the sale or lease of subdivided real property while the city or county regulates the lot design and physical improvements. The Commissioner is concerned with preventing fraud and misrepresentation in selling.

**Subdivision Map Act**

The main objective of the Subdivision Map Act is to define the rules and procedures for filing maps to create subdivisions. It is directly controlled by local authorities (city and county) and is concerned with the physical aspects of a subdivision—such as building design, streets, and any adverse effects to the environment.

California has adopted the guidelines set forth by the California Environmental Quality Act (CEQA) to ensure that government agencies consider the environment prior to approving building projects. As a result, an environmental impact report may be required by authorities before issuing a building permit to private parties or prior to approving a subdivision tract map. An environmental impact report (EIR) is a study of how a development will affect the ecology of its surroundings. If it is determined that a proposed subdivision will have no adverse effect on the environment, the city or county prepares a negative declaration prior to making a decision on the project. A negative declaration is a written statement by the lead agency briefly describing the reasons that a proposed project, not exempt from the CEQA, will not have a significant effect on the environment and, therefore, does not require the preparation of an EIR.
Because of the Subdivision Map Act, the direct control of the kind and type of subdivisions to be allowed in each community and the physical improvements to be installed are left to local jurisdictions (city and county) within certain general limits specified in the act.

**Subdivision Map Act has Two Major Objectives**

The first is to coordinate the subdivision plans and planning, including lot design, water supply, street patterns, right-of-way for drainage and sewers, etc., with the community pattern and plan as laid out by the local planning authorities.

The second objective is to ensure initial proper improvement of areas dedicated for public purposes by having the subdivider file subdivision maps, including public streets and other public areas, so that these necessities will not become an undue burden in the future for taxpayers in the community.

The Subdivision Map Act requires every city and county to regulate subdivisions for which a tentative and final tract map (five or more lots) or parcel map (two to four lots), is required. A **tentative tract map** is a map of the proposed subdivision that is submitted to a planning commission for approval or disapproval. It is used to make sure that the improvements, such as lot layouts, sizes, and configurations; grading plans; traffic access and street alignments; storm drainage, sewers, and water facilities; and other project features have been designed to conform to city or county General Plans. A **final tract map** indicates any changes required by the planning commission and is recorded in the county where the property is located. A **parcel map** pertains to a parcel of land that will be subdivided into less than five parcels or units and shows land boundaries, streets, and parcel numbers.

In addition, the Act allows cities and counties to adopt laws for subdivisions for which no map is required. The diagram on the next page shows typical steps in subdivision procedure under the Act.
Basic Outline of Final Map Preparation and Approval

**Preparation**

- Economic analysis of feasibility
- Locational analysis
- Physical survey of site
- Preliminary discussion with agencies having jurisdiction over subdivision, including question of environmental impact report.
- Subdivider prepares tentative tract map
- Tentative map submitted for approval to:
  1. local government
  2. governmental loan insuring agency, e.g., FHA
- Subdivider prepares final map and secures all necessary signatures (record owners, public utilities, public entities).
- Final map submitted for approval to:
  1. local government
  2. governmental loan insuring agency
- Approved map is recorded. Copy sent to Department of Real Estate by applicant for public report.
- Development is started.

**Approval**

- On basis of preliminary conference subdivider obtains requirements from local authorities, state agencies, title company, and financial source (lenders).
- Planning commission accepts map from subdivider and obtains approval from other city or county offices. Copies forwarded to Department of Real Estate by applicant for Public Report.
- Officer designated in local ordinance accepts map from subdivider and obtains approval from other city or county offices.
**Health and Sanitation**

Every tentative tract map submitted must comply with health and sanitation regulations. The local health officer enforces state and local health laws to ensure the sanitary condition of all housing. Proper drainage, sewage disposal, and water supply are crucial health and sanitation considerations. The local health officers may determine if water is *potable* (safe to drink) or requires a percolation test. A *percolation test* is used to determine the ability of the land to absorb and drain water and is frequently used when installing septic systems. A *septic tank* is a sewage settling tank, which must be at least five feet away from the improvements. The sewage is converted into gas and liquids before the remaining waste is discharged by gravity into a leaching bed underground.

To insure proper drainage the water table must be determined. The *water table* is the natural level where water will be found, either above or below the surface of the ground. *Percolating water* is underground water not flowing in a defined channel. A *defined channel* is any natural watercourse, even though dry during a good portion of the year. Local health officers have the authority to stop any development with problems in these areas.

**Review - Subdivision Map Act**

- Enforced by city or county authorities
- Concerned with physical aspects of a subdivision

**Subdivided Lands Law**

The Subdivided Lands Law is directly administered by the Real Estate Commissioner. Its objective is to protect buyers of property in new subdivisions from fraud, misrepresentation, or deceit in the marketing of subdivided lots, parcels, units, and undivided interests.
The Real Estate Commissioner must issue a subdivision public report before any subdivision can be offered for sale in California. This even applies to lands outside the state, if they are being marketed in California.

The public report is a document disclosing all important facts about the marketing and financing of the subdivision. The public report must show that the subdivider (developer) can complete and maintain all improvements and that the lots or parcels can be used for the purpose for which they are being sold.

Before a developer can sell each lot in the project, he or she must give a copy of the Commissioner's final report to the buyer for approval. The buyer signs a receipt for the report stating it has been read. The seller (developer) must keep a copy of the statement for three years.

The public report is valid for five years, with any material changes in the development reported to the Commissioner, who then can issue an amendment to the original report.

![Receipt for Public Report](image)

It can take many months for a developer to get project approval once all the proper paperwork is submitted to the Commissioner. During that time, the developer may want to begin marketing the project while waiting for the final report. By submitting a minimum application filing package, the developer can get a preliminary public report, which allows taking reservations for the project but not accepting any non-refundable money or entering into any binding contracts until receiving the final report from the Commissioner.
As a student of real estate, sometimes it is difficult to sort out the differences between two very like-sounding laws. The following list comparing the Subdivision Map Act and the Subdivided Lands Law will help you compare the two laws.

### Review - Subdivided Lands Law
- Administered by Real Estate Commissioner
- Concerned with protecting the public from fraud

### Review - Comparison of Subdivision Laws

#### Subdivision Map Act
- Two or more lots or parcels
- Lots must be adjacent to each other
- No exemption for 160 acres and larger parcels
- Administered by local authorities
- No public report needed

#### Subdivided Lands Law
- Five or more lots or parcels
- Parcels need not be adjacent
- 160 acres and selected larger parcels are exempt
- Administered by Real Estate Commissioner
- Requires a final public report

### Types of Subdivisions

Due to the scarcity of land suitable for subdividing, the subdivision process has become more sophisticated, often resulting in higher land prices and new types of subdivisions. The legislature recognized this trend and has enacted laws to regulate such developments, including planned neighborhoods, community apartment houses, condominiums, limited-equity housing cooperatives, and undivided interest subdivisions. These projects do not follow the traditional subdivision model as being the simple division of a large piece of land into smaller parcels for the construction of individual homes. Typically, there are three types of subdivisions: standard subdivisions, common interest developments, and undivided interest development.
**Standard Subdivision**

A **standard subdivision** is a land division with no common or mutual rights of either ownership or use among the owners of the parcels created by the division. This type of subdivision is a typical tract of single-family homes on individual lots.

**Land Project**

Subdivisions located in sparsely populated areas (fewer than 1,500 registered voters within the subdivision or within two miles of its boundaries), made up of 50 parcels or more, are known as **land projects**. In the past, it appeared that these projects had been sold more on the intense promotion of alleged benefits than on the actual value of the project. There was a need for legislation to regulate these sales.

The Real Estate Commissioner was given the authority to oversee sales in land projects to make sure the consumer was protected. The law now allows a buyer 14 days after signing a contract to purchase property in a land project to rescind the offer, with a full refund of any money paid. This gives the buyer time to investigate the project and decide, unpressured, whether he or she still wants to go through with the purchase, and whether it was represented accurately or not.

**Common Interest Developments**

A **common interest development** (CID) combines the individual ownership of private dwellings with the shared ownership of common facilities of the entire project. The common facilities can range from roads and water systems to clubhouses, swimming pools, golf courses and even stables and private airport facilities. The CID provides a system of self-governance through a community association, sometimes called a **homeowners’ association**. The association has the authority to enforce special rules called CC&Rs (Covenants, Conditions, and Restrictions) and to raise money through regular and special assessments. Restrictions on lots in a new subdivision would be found in a recorded declaration of restrictions. Common interest developments vary both in physical design and legal form. The following CIDs are all considered subdivisions and under the control of the subdivision laws: condominiums, planned developments, stock cooperatives, community apartment projects, and timeshare projects.
Upon sale of an existing common-interest development, a buyer must be provided:

1. a copy of the Conditions, Covenants and Restrictions (CC&Rs), articles of incorporation, association by-laws, governing documents, and a current financial statement on the homeowners’ association.

2. written notification of any known pending special assessments, claims, or lawsuits against the seller or the homeowners’ association.

3. a statement showing whether the seller’s account with the homeowners’ association is paid up-to-date.

**Condominiums**

A condominium consists of a separate fee interest in a particular specific space (the unit), plus an undivided interest in all common or public areas of the development. All owners are allowed to use any of the facilities in the common area. Each unit owner has a deed, separate financing, and pays the property taxes for his or her unit.

**Review – Condominiums**

- Fee simple ownership to living unit
- Undivided interest in land and common areas
- Separate property tax bill, deed, deed of trust
- Operations controlled by elected governing board

**Planned Developments**

A planned development (previously called planned unit development) is a planning and zoning term describing land not subject to conventional zoning requirements. It allows clustering of residences or other characteristics of the project, which differ from normal zoning. In a planned development subdivision, the owner has title to the unit and land under it, together with membership in an association that owns common area. Sometimes the owners of separate interests also have an undivided interest in the common area. The planned development is popular in suburban and rural areas. Owners have private ownership of their individual homes and lots but share the ownership of the common features. Shared facilities can include private roadways, water systems, septic systems, parks and open space, ponds and lakes, airport landing strips, trails, and ocean access. Some planned developments even share the ownership of forests and agricultural lands, which produce income for the community.
Stock Cooperatives
A corporation formed for the purpose of owning property is known as a stock cooperative. Each stockholder is given the use of a living unit and any amenities and community recreational facilities, with the building being owned by the corporation.

In a community apartment project, a buyer receives an undivided interest in the land coupled with the right of exclusive occupancy of one of the apartments in the project.

Timeshare Ownership
Timesharing is a favorite way to have an interest in a building, with the right to occupy limited to a specific time period. This type of ownership is popular in resorts and other desirable areas where people like to vacation once or twice a year but do not need the right of possession the rest of the time.

Undivided Interest
In an undivided interest, the land itself is not divided—just the ownership. The buyer receives an undivided interest in a parcel of land as a tenant in common with all the other owners. All owners have the nonexclusive right to the use and occupancy of the property. A recreational vehicle park with campground and other leisure-time amenities is an example.

Regulation of Housing and Construction
The housing and construction industries in California are regulated by three laws: the State Housing Law, local building codes, and the Contractors’ State License Law.

In addition, through the role of federal home building financing programs, both FHA and VA financing impose housing and construction regulations. It is critical in a subdivision with FHA or VA participation that the developer consults with those and any other appropriate agencies. These programs require, as a prerequisite to participation, that the house involved meet Minimum Property Requirements (MPRs). In some instances, MPRs are more demanding than either the State Housing Law or local building codes. An example of MPRs is the FHA 7-feet-6 inch minimum requirement for residential ceiling height.

State Housing Law
The State Housing Law (Health and Safety Code Section 17910, et seq.) outlines the minimum construction and occupancy requirements for dwellings.
Local building inspectors enforce the construction regulations while local health officers enforce the occupancy and sanitation regulations. One way of enforcing the construction regulations is by the issuance of a **building permit**. In order to issue a building permit, the building inspector reviews and approves plans, specifications, plot plan, and accompanying exhibits for a proposed project. All new construction rehabilitation or remodeling projects must have a building permit issued by the local building inspector prior to beginning any work. **Rehabilitation** is the restoration of a property to its former or improved condition without changing the basic design or plan. **Remodeling** changes the basic design or plan of the building to correct deficiencies.

### Local Building Codes

Prior to 1970, local governments could use their own building codes. However, in 1970, the California Legislature made the Uniform Housing Code, **Uniform Building Code** (UBC), Uniform Plumbing Code, Uniform Mechanical Code, and National Electric Code the applicable building codes for the entire state. Local government still has the power to set requirements for local zoning, local fire zones, building setbacks, side and rear yards, and property lines.

Currently, factory-built housing must be built to the standards of the most recent editions of the uniform building codes. Local government has the power to supervise and regulate on-site installation of factory-built housing.

### Contractors’ State License Law

In order to protect California consumers, contractors are licensed in California under the **Contractors’ State License Law**. Contractors must meet certain experience and knowledge qualifications and must post a bond or cash deposit to the state of California for the benefit of anyone damaged by the contractor. Except for minor work not exceeding $500, a valid California Contractor’s License is required for the license category in which the contractor is to work. Currently there are 42-different types of contractor licenses, including general and specialty contractors. General building contractors usually oversee projects and coordinate the specific subcontractors for a job. Specialty contractors or subcontractors usually are hired to perform a single job.
A contractor may have his or her license suspended or revoked if the contractor abandons a project, diverts funds, departs from plans and specifications, violates work safety provisions, violates building codes and regulations, or breaches the contract.

Construction and Building Styles

Unless a real estate licensee works for a builder/developer or specializes in new home sales, it is not usually necessary to know the details of home construction, installation methods, or the price and quality of building materials. However, a licensee should be familiar with architectural styles, types of roofs, styles of windows, parts of a building, typical exterior materials, and different types of heating/cooling systems (HVAC). Additionally, a licensee should be able to answer questions about current insulation standards for roofs, walls, and window systems that prevent excess sun infiltration for homes in the area.

Terms Relevant to Energy Efficiency

Insulation
Material inserted into walls and ceilings to help keep the heat inside the home in the winter and outside the home in the summer. Insulation's resistance to heat is measured by the R-value.

R-Value
The R-value is a rating that measures how well insulation resists heat loss. When the R-value is higher, the insulation is better. New homes have minimum insulation requirements and the R-value rating of the insulation used in the homes must be disclosed.

Energy Efficient Ratio (EER)
A measurement of the efficiency of energy; used to determine the effectiveness of appliances.

British Thermal Unit (BTU)
A measurement that calculates heat; the amount of heat needed to raise one pound of water one degree Fahrenheit.

Many home buyers express common concerns about the condition of the soil on which the house is built because it can affect the stability of the foundation. Filled or compacted ground and expansive soil frequently cause foundation damage. Compaction refers to extra soil that is added and compressed to fill in the low areas or raise the level of the parcel. Clay soils are generally classified as expansive soil. This means that a given amount of clay will tend
to expand (increase in volume) as it absorbs water and it will shrink (lessen in volume) as water is drawn away. Adobe is one of the most expansive of the clay soils. Backfill is soil that is used to fill in holes or support a foundation. It is also used to fill in trenches and around excavations.

**Parts of a Building**

Common terms used in building:

1. **Anchor Bolt**
   Attaches mud sill to foundation; embedded in concrete foundation

2. **Bracing**
   Diagonal board nailed across wall framing to prevent sway

3. **Building Paper**
   Waterproof paper used between sheathing and roof covering

4. **Closed Sheathing**
   Foundation for exterior siding; boards nailed to studding

5. **Crawlspace**
   A crawlspace is the area or space between the ground and floor joists used to access plumbing and electrical connections beneath the house. For FHA loans, the minimum crawlspace is 18 inches.

6. **Cripple**
   Stud above window or door headers, or below windowsills

7. **Eaves**
   Part of roof that hangs over the exterior walls

8. **Fire Stop**
   Boards nailed between studs to block the spread of fire in the walls

9. **Flashing**
   Sheet metal or other material that keeps water from seeping into a building.

10. **Footing**
    A footing is an extended part of foundation at the base or bottom of a foundation wall, pier, or column.

11. **Foundation**
    Base of house; usually concrete

12. **Header**
    The horizontal, load-bearing board over a doorway or window opening

13. **Joists**
    Parallel boards supporting floors or ceilings (The boards supporting them are girders, beams, or bearing walls.)
14. **Mud Sill**
   The lowest part of the frame of a house. It is fastened with bolts to the foundation and supports the upright studs of the frame. **Redwood** is frequently used because of its high resistance to termites. **Subterranean termites**, ant-like insects that eat wood, are the most destructive.

15. **Open Sheathing**
   Boards nailed to rafters to form foundation for roof

16. **Rafter**
   Slanted boards of a roof that are designed to support the roof boards and shingles. To strengthen the load-bearing factor of a roof, the rafters should be placed closer together.

17. **Ridge Board**
   Highest structural part of a frame building

18. **Sill**
   Horizontal board along the bottom of a window or door

19. **Sole Plate**
   A board (usually 2” x 4”) on which wall and partition studs rest. Support for studs

20. **Studs**
   Vertical, supporting 2”x 4” boards in the walls spaced 16” on center
Other Building - Development Terms

**Bearing wall**: A wall that supports a vertical load as well as its own weight.

**Board foot (144 cubic inches)**: A measurement of lumber equal to the volume of a board 12" x 12" x 1".

**Conduit**: A flexible pipe in which electrical wiring is installed.

**Deciduous**: Plants and trees that lose their leaves seasonally in the fall.

**Drywall**: Gypsum panels used in place of wet plaster to finish the inside of buildings.

**Elevation sheet**: A drawing that shows front and side exterior views of a building as it will be when finished.

**Foundation plan**: A drawing that shows foundation, sub-floors, footing, and pier placement.

**Kiosk**: A freestanding small booth, such as a jewelry store in a mall.

**Linear foot**: A measurement of length, rather than area (square foot) or volume (cubic foot).

**Party wall**: A wall erected on the line between two adjoining properties, which are under different ownership, for the use of both parties.

**Residential ceiling height measurements**: Minimum = 7.5 feet; Normal = 8 feet

**Schematics**: Preliminary drawings and sketches by an architect, such as site plans and elevations.

**Setback**: The distance a building must be set back from the street, property line, or curb; usually determined by local building code. A side-yard setback is the distance a building must be set back for the lot line at the side of the property.

**Shopping centers’ population requirements**:
- Neighborhood shopping center (5,000-10,000 population required)
- Major shopping center or mall (50,000-100,000 population required)

**Wainscotting**: The bottom portion of a wall that is covered with wood siding; the top part is treated with another material.

**Walk-up**: An apartment of more than one story with no elevator.

**Water-pressure test**: Water pressure can be tested by turning on all faucets and flushing all toilets at the same time.
Roof Types

A licensee should know the most desirable roof pitches and be able to distinguish a hip roof from a gable roof. The pitch of a roof is its incline or rise. The steeper the pitch of a roof, the longer its life expectancy. A **gable roof** has a pitched roof with two sloping sides. A **gambrel roof**, typically seen in Dutch colonial architecture, is a curved roof, with a steep lower slope with a flatter one above. A **hip roof** is a pitched roof with sloping sides and ends (all four sides).

Additionally a licensee should know the types of roofing materials that are permitted or required (in fire hazard areas, for example) in the community. Roof types are determined by the direction, steepness, and number of roof planes.
House Styles

Traditional house styles used in building are interesting for their variety and important for a real estate agent to know.

- Mediterranean
- California Bungalow
- Contemporary
- Ranch
- Contemporary with traditional Tudor influence
- Cape Cod
- Georgian Colonial
- Tudor Revival
Summary

Land use is regulated and controlled through government agencies, private regulations, and direct public ownership of land. The government can acquire property by the power of eminent domain through condemnation proceedings from a private owner for public use. This power can extend beyond the federal government down to public agencies. When the government acquires property by eminent domain, the property owner is reimbursed for fair market value. Property owners displaced by federal condemnation are assisted in relocation.

Police power is the right of the state to create laws that regulate property use for the protection of the public interest. The state is not required to compensate the owner for any resulting loss in property due to police power.

A master plan is used to develop cities. The primary form of land-use regulation is zoning. Property owners who want to use property for nonconforming use must seek a conditional use permit or zoning variance. Each city and county in the coastal zone must prepare Local Coastal Programs to comply with the California Coastal Commission’s strict standards for coastal development and protection.

A subdivision is the division of land into lots for the purpose of sale, lease, or financing. There are two basic laws that control subdivisions in California—the Subdivision Map Act and the Subdivided Lands Law. Local authorities administer the Subdivision Map Act. The objectives of the Subdivision Map
Act are: (1) to coordinate the subdivision plans and planning and (2) to ensure initial proper improvement of areas dedicated for public purposes by filing detailed subdivision maps to avoid problems for future taxpayers. Included in the Subdivision Map Act are lot design, water supply, street patterns, and right-of-way for drainage and sewers. The Real Estate Commissioner directly administers the Subdivided Lands Law. The objective of this law is to protect property buyers in new subdivisions from fraud, misrepresentation, or deceit in the marketing of subdivided lots, parcels, units, and undivided interests. The Real Estate Commissioner must issue a subdivision public report before the subdivision can be offered for sale in California. A copy of this report is given to the buyer upon request.

Regulation of housing and construction in California consists of three laws: (1) the State Housing Law, (2) local building codes, and (3) the Contractor’s State License Law. Federal laws also regulate housing and construction through the FHA and VA building financing programs. These programs require that housing meet minimum property requirements.
UNIT 12 REVIEW

Matching Exercise

Instructions: Write the letter of the matching term on the blank line before its definition. Answers are in Appendix B.

Terms

A. backfill  M. final tract map  Y. setback
B. bearing wall  N. General Plan  Z. Subdivided Lands Law
C. board foot  O. linear foot  AA. subdivision
D. BTU  P. parcel map  BB. Subdivision Map Act
E. CID  Q. party wall  CC. tentative tract map
F. condemnation  R. percolating water  DD. variance
G. conduit  S. percolation test  EE. wainscoting
H. deciduous  T. planned development  FF. water-pressure test
I. drywall  U. police power  GG. water table
J. EER  V. potable  HH. wetlands
K. EIR  W. R-value  II. zoning
L. eminent domain  X. schematics

Definitions

1. _______ The division of land into five or more lots for the purpose of sale, lease, or financing.

2. _______ A measurement of length, rather than area (square foot) or volume (cubic foot).

3. _______ A wall that supports a vertical load as well as its own weight.

4. _______ Underground water not flowing in a defined channel.
5. _______ The regulation of structures and uses of property within selected districts.
6. _______ Plants and trees that lose their leaves seasonally in the fall.
7. _______ Map showing a parcel of land that will be subdivided into less than five parcels or units and shows land boundaries, streets, and parcel numbers.
8. _______ The right of the government to take private property from an owner, for public use, paying fair market value.
9. _______ The natural level at which water will be found, either above or below the surface of the ground.
10. _______ Fresh water that is safe and agreeable for drinking.
11. _______ Water pressure can be tested by turning on all faucets and flushing all toilets at the same time.
12. _______ Measurement of lumber equal to the volume of a board 12"x12"x1" (144 cubic inches).
13. _______ Gypsum panels used in place of wet plaster to finish the inside of buildings.
14. _______ Measurement of the efficiency of energy; used to determine the effectiveness of appliances.
15. _______ Test used to determine the ability of the land to absorb and drain water and is frequently used when installing septic systems.
16. _______ Areas where water covers the soil, or is present either at or near the surface of the soil all year or for varying periods of time during the year, including during the growing season.
17. _______ Measurement that calculates heat; the amount of heat needed to raise one pound of water one degree Fahrenheit.
18. _______ Common-interest development combining the individual ownership of private dwellings with the shared ownership of common facilities of the entire project.
19. _______ State law protecting purchasers of property in new subdivisions from fraud, misrepresentation, or deceit in the marketing of subdivided property.
20. _______ Flexible pipe in which electrical wiring is installed.
21. _______ Exception granted to existing zoning regulations for special reasons.
22. _______ Soil that is used to fill in holes or support a foundation-bearing wall.
23. ______ Preliminary drawings and sketches by an architect, such as site plans and elevations.

24. ______ Map of the proposed subdivision that is submitted to a planning commission for approval or disapproval.

25. ______ Study of how a development will affect the ecology of its surroundings.

26. ______ Rating that measures how well insulation resists heat.

27. ______ The law that authorizes a city or county to control the orderly and proper development of the community.

28. ______ Wall erected on the line between two adjoining properties, which are under different ownership, for the use of both parties.

29. ______ The distance a building must be set back from the street; usually determined by local building code.

30. ______ The proceeding to exercise the power of eminent domain.

### Multiple Choice Questions

Instructions: Circle your response and go to Appendix B to read the complete explanation for each question.

1. Which of the following rights cannot be vested in an individual?
   a. Littoral
   b. Severance
   c. Riparian
   d. Eminent domain

2. A grandfather clause:
   a. is a change in zoning.
   b. is an example of downzoning.
   c. permits continuation of a nonconforming use.
   d. is an inheritance right to property.
3. A builder is allowed to make a change in construction that does not conform to the local building code. This is an example of:
   a. rezoning.
   b. a variance.
   c. a conditional-use permit.
   d. a restriction.

4. The intersection of the land with the water at the mean high-water line describes:
   a. wetlands.
   b. a shoreline.
   c. a floodplain.
   d. an estuary.

5. The division of land into five or more lots for the purpose of sale, lease, or financing is called a:
   a. land project.
   b. timeshare.
   c. tentative map.
   d. subdivision.

6. The law giving the city or county authority to control the orderly and proper development of the community is called the:
   b. State Housing Law.
   c. Subdivision Map Act.
   d. Contractors’ State License Law.

7. Under the Subdivided Lands Law, property can be subdivided into a minimum of _________ interest(s).
   a. one
   b. two
   c. four
   d. five

8. Waters that seep from the ground, arising from an indeterminable source, are known as _________ water.
   a. riparian
   b. percolating
   c. littoral
   d. appropriated
9. The purpose of a percolation test is to determine the:
   a. quality and potability of the water.
   b. acidity of the water.
   c. capacity of the soil to absorb water.
   d. location of any abandoned wells.

10. Which of the following statements is incorrect?
    a. State Housing Law outlines the minimum construction requirements for dwellings.
    b. State building inspectors enforce the construction regulations.
    c. Local building inspectors enforce the construction regulations.
    d. Local health officers enforce the occupancy and sanitation regulations.

11. The main purpose of the Uniform Building Code is to:
    a. provide for the health, safety, public welfare, and property rights of the general public.
    b. provide construction data useful for scheduling.
    c. indicate styles of architecture and prevailing sizes for use in calculating construction estimates.
    d. none of the above

12. The restrictions for a subdivision state that the minimum lot size is 10,000 square feet. Local zoning ordinances state that the minimum is 13,000 square feet. In this case, if the developer is subdividing one acre, which would prevail?
    a. Restrictions
    b. Zoning
    c. Whichever recorded first
    d. The county planning commission will decide the matter.

13. If a local building code is more stringent than a state code or the UBC:
    a. the stricter code prevails.
    b. contractors may choose between them.
    c. state or federal codes always take precedence over local codes.
    d. the local codes take precedence because they are more responsive to local situations.
14. The R-value is a rating that measures:
   a. how well insulation resists heat.
   b. the efficiency of energy; used to determine the effectiveness of appliances.
   c. the amount of heat needed to raise one pound of water one degree Fahrenheit.
   d. insulation.

15. The soil that is used to fill in holes or support a foundation is called:
   a. expansive soil.
   b. compaction.
   c. backfill.
   d. adobe.

16. Crawlspace is the area or space between the ground and floor joists used to access plumbing and electrical connections beneath the house. For FHA loans, the minimum crawlspace is ________ inches.
   a. 12
   b. 18
   c. 24
   d. 36

17. Which of the following is not part of the foundation?
   a. Anchor bolts
   b. Footing
   c. Mud sill
   d. Ridge board

18. A freestanding small booth, such as a jewelry stand or a newsstand is known as a:
   a. joist.
   b. joint.
   c. kiosk.
   d. walk-up.

19. Drawing that shows front and side exterior views of a building as it will be when finished is called:
   a. a foundation plan.
   b. an elevation sheet.
   c. plot plan.
   d. none of the above
20. The words, gambrel, hip, gable, and flat refer to:
   a. styles of houses.
   b. types of conduit.
   c. types of insulation.
   d. types of roofs.