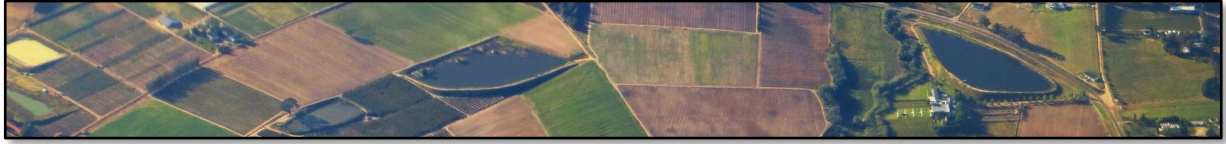


TOPIC 8

Land Use Controls & Regulations



EXAM TOPICS

A. Government rights in land

1. Property taxes and special assessments
2. Eminent domain, condemnation, escheat

B. Government controls

1. Zoning and master plans
2. Building codes
3. Regulation of special land types
 - a. Flood zones
 - b. Wet lands
4. Regulation of environmental hazards
 - a. Types of hazards
 - b. Abatement and mitigation
 - c. Restrictions on contaminated property

C. Private controls

1. Deed conditions or restrictions
 2. Covenants, conditions, and restrictions (CC&Rs)
 3. Homeowners association regulations
-

STUDY NOTES:

I. Local, State, and Federal Government Land Rights (PETE)

- A. **Police power** - power of the state to promulgate laws aimed at promoting the general welfare and protecting public health and safety; examples of the use of police power include zoning, building codes, environmental protection; enabling acts are created by states to grant zoning power to municipal governments.
- B. **Taxation** - power to tax real estate to meet the public needs of the government.
- C. **Eminent Domain** - power of the government to acquire private property for public use while providing just compensation (condemnation) for the property owner.
- D. **Escheat** - state laws that provide for ownership of real estate to revert to the state when the owner dies intestate and leaves no heirs or when the property is abandoned.
- E. **Water rights** - ownership of water and land adjacent to it as determined by state law, which is based on either the doctrines of riparian and littoral rights or on the doctrine of

prior appropriation; owners generally have the right to use water so long as they do not pollute or interrupt the flow.

1. **Riparian rights** - rights granted to owners along a nonnavigable river or stream.
2. **Littoral rights** - rights granted to owners along an ocean or large lake.
3. **Doctrine of Prior appropriation** - the right to use water is controlled by the state

rather than

by the adjacent landowner. A person must show a beneficial use for the water, such as crop irrigation, in order to secure water rights.

II. Control of Land Use

A. **Public land-use controls** - under police power, each state has the authority to adjust regulations required for protecting public health, safety, and the general welfare.

1. **Zoning** - zoning laws are local laws that regulate and control the use of land in the community, generally pertaining to the height, bulk, and use of the buildings.

Powers to zone are conferred on municipal governments by state enabling acts.

- a. **Nonconforming use** - use in existence prior to the passage of a zoning ordinance and allowed to continue even though it does not conform
 - (1) If property that exists as nonconforming is destroyed, it cannot be rebuilt without the approval of the zoning authority.
 - b. **Variance** - approval by a zoning authority that allows an individual to deviate from the zoning requirement.
 - c. **Conditional use permit** - allows for a use that does not conform with existing zoning but is necessary for the common good, such as locating a medical clinic in a primarily residential neighborhood.
 - d. **Downzoning** - land zoned for residential or commercial use is rezoned for conservation only; it also applies to changes from dense to less-dense usage. The state generally is not responsible for compensating property owners for any loss of value unless the court finds that a "taking" of value has occurred, such as land being rezoned from residential to conservancy.
 - e. **Buffer zone** - a land area that separates one land use from another; a park that separates a residential neighborhood from a shopping center.
 - f. **Spot zoning** - reclassification of a small area of land for use that does not conform to the zoning of the rest of the area.
 - g. **Planned unit development (PUD)** - planned mix of diverse land uses such as housing and recreation in one comprehensive plan.
 - h. **Density zoning** - ordinances that restrict the average maximum number of houses per acre that may be built within a particular area. As communities expand, urban sprawl becomes a concern because extensive community growth often leads to issues involving traffic congestion, overcrowding of schools, and loss of open space.
2. **Building codes** - ordinances that specify standards for construction, maintenance, and demolition.
 3. **City plan specifications** - a master plan to guide physical development of a community.
 4. **Subdivision regulations** - apply to the location of streets, minimum lot size, etc.
 5. **Environmental protection laws**
 - a. **Federal** - the National Pollutant Discharge Elimination System (NPDES), for example.
 - b. **State** - Connecticut has passed its' own environmental legislation.

B. **Private land-use controls - restrictions** specified by the owner in the deed when conveying the property.

C. **If conflict exists between a zoning ordinance and a deed restriction, the more Restrictive of the two takes precedence.**

D. **Taxation on real estate**

1. **Real estate taxes generally take priority** over other liens; may be enforced by the

- court sale of real estate that is free of other liens.
2. **Ad valorem tax** (Latin for “according to the value”) - includes taxes levied on real estate by various governmental units and municipalities.
 3. **Assessment** - appraisal of value for tax purposes by an assessor representing the municipality in which the property is located.
 4. **Equalization factor** - used in some states to correct general inequalities in statewide tax assessment.
 5. **Computation of tax rate**
 - a. The taxing district adopts a budget that identifies the amount of income to be raised from real estate taxes.
 - b. To arrive at the tax rate, divide the amount of money required for the budget by the total assessed value of all properties within the taxing district. For example, if the taxing district must raise \$600,000 from real estate taxes and the total assessed value is \$10,000,000, the tax rate would be $\$600,000 \div \$10,000,000 = 0.06$, or 6 percent.
 - c. The tax rate may be expressed in mills. For example, 40 mills = 4% of the taxable value; 45 mills = 4.5% of the taxable value.
 - d. The tax bill for a property is calculated by applying the tax rate to the taxable value of the property; for example, a home assessed for tax purposes at \$200,000 and using a tax district rate of 45 mills, or 4.5% of the taxable value, would be required (annually) to pay \$9,000. Divided by 12, the monthly tax obligation would be \$750.
 6. **Special assessments** - special taxes levied on real estate; require property owners to pay for improvements that specifically benefit their real estate (installation of a curb and gutter, streets, water system, sewers, etc.).
 7. **Condominium associations** - these entities have the legal right to assess their property owners for common area maintenance (CAM) dues as well as special assessments.

III. Floodplain, Wetlands, and Shoreline Regulations

- A. **Floodplain** - portions of land located near running bodies of water, such as rivers or lakes, that are subject to flooding; government controls generally restrict building in a floodplain.
- B. **Wetlands** - areas of land where groundwater is close to or at the surface of the ground for a period of time each year that may produce swamps, floodplains, or marshes; because these areas of land are prone to flooding, they are covered by various federal, state, and local controls, such as zoning for conservation.
- C. **Shoreline regulation** - zoning laws that reflect environmental as well as health and safety concerns; usually require zoning of all lands within a given distance of all navigable waters in each state; generally include tree-cutting rules, setback requirements for structures, filling and grading controls, dredging regulations, minimum standards for water supply and waste disposal, minimum lot sizes and widths, and subdivision regulations.
- D. **The Federal Emergency Management Association (FEMA)** requires the purchase of Flood insurance for homes built within their designated flood zone.

IV. Health and Safety Codes

A. Building codes

1. Specify construction standards that must be met when erecting, maintaining, or demolishing buildings.
2. Generally identify requirements for electrical wiring, sanitary equipment, and fire-prevention standards.
3. Enforced by issuing building permits that verify compliance with building codes and zoning ordinances.
4. The building inspector issues a certificate of occupancy when the completed structure has been inspected and found satisfactory.

5. Issuing a building permit does not take precedence over the violation of a deed restriction.

V. Environmental Concerns

A. Pollution and environmental risks in real estate transactions

1. Increasing public awareness of and concern about pollution problems and their health and economic effects have had significant consequences on real estate sales and values.
2. The actual dollar value of real property can be affected significantly by both real and perceived pollution.
3. The cost of cleaning up and removing pollution may be much greater than the dollar value of the property before pollution occurred.
4. In some areas of the United States, mortgage and title insurance approval may depend on the inspection of the property for hazardous substances and proof of their absence.

B. Role of real estate licensees regarding environmental risks in real estate transactions

1. Be alert to the possibility of pollution and hazardous substances on the property being sold.
2. Ask clients about the possibility of hazardous substances associated with the property.
3. Expect increasing numbers of questions from customers concerned about pollution.
4. Consider the consequences of the potential liability in real estate transactions where hazardous substances may be involved.
5. Contact government agencies and private consulting firms for information, guidance, and detailed study; real estate licensees often, however, do not have the technical expertise required to determine whether hazardous material is present on or near the property.
6. Be scrupulous in considering environmental issues and exercise a high degree of care in all real estate transactions.

C. Hazardous substances of concern to real estate professionals

1. **Radon gas** - an odorless radioactive gas produced by the decay of radioactive materials in rocks under the earth's surface.
 - a. Radon is released from the rocks and finds its way to the surface; usually it is released into the atmosphere. Radon comes into a house through holes in the foundation or basement or crawl space.
 - b. Long-term exposure is believed to cause lung cancer.
 - c. The U.S. Environmental Protection Agency (EPA) has established radon levels that are thought to be unsafe.
 - d. Testing techniques have been developed that allow homeowners to determine the exact quantity of radon in their homes.
 - e. If a home is determined to have radon gas, the seller may, if the contract requires, be obligated to remediate the hazard, whether the danger is actual or only perceived.
 - f. Most homes with elevated levels of radon can be fixed for between \$500 and \$2,500, with an average cost of about \$1,200.
2. **Asbestos** - material used for many years as insulation on plumbing pipes and heat ducts and as general insulation because it is a poor heat conductor; also was used in floor tile and roofing material.
 - a. Relatively harmless if not disturbed; can become life-threatening during its removal because of accompanying dust.
 - b. Exposure to asbestos dust may exist if
 - (1) the asbestos ages and starts to disintegrate. This disintegration is referred to as being friable.
 - (2) remodeling projects include the removal of asbestos shingles, roof tile, or insulation that can cause the dust to form in the air and expose people in the area to the

health hazard.

3. **Urea-formaldehyde foam insulation (UFFI)** - a synthetic material generally used to insulate buildings prior to 1978. It was banned because of its toxic out-gassing.

The toxicity known as volatile organic compounds (VOC) escaped into a dwelling for several years after its application. Today insulators use a nontoxic spray to insulate buildings.

- a. UFFI was typically pumped between walls as a foam that later hardens and acts as an insulating material.
 - b. UFFI became dangerous because of gases released from the material after installation.
4. **Lead poisoning** - lead is a mineral that has been used extensively because of its pliability, its ability to impede water flow, and its rust resistance.
 - a. Becomes a health hazard when ingested.
 - b. Sources of lead poisoning
 - (1) Peeling or flaking paint
 - (2) Water supply systems
 - c. Federal regulations on lead-based paint disclosure
 - (1) Owners of residential properties built before 1978, when the use of lead-based paint was banned, will have to disclose to buyers or renters the presence of known lead-based paint hazards, if known to owner (seller) or landlord.
 - (2) A lead-based paint disclosure statement must be attached as a separate item to all real estate sales and lease contracts on pre-1978 residential properties.
 - (3) Real estate practitioners must distribute to buyers and renters a federal lead hazard pamphlet but are not responsible for ensuring that people read and understand the brochure.
 - (4) Buyers will have up to 10 days to have a lead-risk assessment performed on the property if they want one.
 - (5) Exemptions from the regulations are provided for housing for the elderly and disabled, provided children are not regularly present; for vacation homes and short-term rentals; for foreclosure sales; and for single-room rentals within dwellings.
 - (6) Children under six years of age are most vulnerable to exposure to lead-based paint.
 5. **PCBs (polychlorinated biphenyls)** - used in the manufacture of electrical products
such as voltage regulators as well as in paints and caulking materials
 - a. PCBs haven't been used since 1977; however, they still are dangerous because many of the products containing them are still in operation.
 - b. An environmental consultant can assess the property and recommend procedures for cleanup.
 6. **Waste-disposal sites - landfill operations**
 - a. Landfill - a specific site that has been excavated and should be lined with either a clay or a synthetic liner to prevent leakage of waste material into the local water system.
 - b. Construction and maintenance of a landfill operation is heavily regulated by state and federal authorities.
 - c. Landfills at improper locations and improperly managed sites have been sources of major problems; for example, landfills

- constructed in the wrong type of soil will leak waste into nearby wells, causing major damage.
- d. Real estate licensees must be aware of such facilities within their areas and take appropriate steps when dealing with potential clients.
7. **Underground storage tanks** - used in residential and commercial settings for many years.
 - a. In the United States there are an estimated 3 million to 5 million underground storage tanks that hold hazardous substances such as gasoline.
 - b. Risk occurs when containers become old, rust, and start to leak.
 - c. Toxic material may enter the groundwater, contaminate wells, and pollute the soil.
 - d. Sources of pollution
 - (1) Older gas stations with steel tanks that develop leaks through oxidation (rusting).
 - (2) Underground containers used to hold fuel oil for older homes
 - e. Recent federal legislation calls for removal of such tanks and all the polluted soil around them.
 8. **Groundwater contamination**
 - a. Groundwater includes runoff at ground level as well as underground water systems that are sources of wells for both private and public facilities.
 - b. Sources of contamination
 - (1) Waste-disposal sites
 - (2) Underground storage tanks
 - (3) Pesticides and herbicides typically used in farming communities
 - c. The only protection for the general public against water contamination is heavy government regulation.
 - d. Once contamination is identified, its source can be eliminated; the process often is time-consuming and may be very expensive.
 9. **Electromagnetic fields (EMFs)** - generated by movement of electrical currents.
 - a. High-tension power lines reflect a major concern with regard to EMFs.
 - b. The potential for EMFs being a health hazard is a source of controversy; however, they are suspected of causing cancer and related health problems.
 - c. Real estate licensees should be aware of continuing research on EMFs.
 10. **Mold** - an organism that may cause allergic reactions and, therefore, is an environmental issue. Annual maintenance checks (around toilets, showers, and sinks) help to detect mold in its early stages. Dehumidifiers, proper ventilation, perimeter drainage, and sump pumps help avoid mold by removing water from the property. Most homeowners' insurance companies set dollar limits for mold claims or make mold problems an exclusion to the homeowner's policy.
 - a. Common varieties of mold can cause allergic reactions as well as asthma episodes, infections, and other respiratory problems, but they do not emit toxins.
 - b. Very little is known about toxic molds like *Stachybotrys chartarum*, often referred to as "black mold." In sufficient amounts this mold can be dangerous and has been associated with severe health problems and substantial contamination of buildings.
 - c. Disclosure of mold contamination is not currently required by the federal government.

- d. The EPA has established guidelines to deal with mold problems for schools and commercial buildings.

D. Agencies administering federal environmental laws

1. **Environmental Protection Agency (EPA)**
 - a. **Toxic Substance Control Act**
 - b. **Resources Conservation and Recovery Act**
 - c. **Federal Clean Water Act**
2. **U.S. Department of Transportation** - administers the Hazardous Materials Transportation Act
3. **The Occupational Safety and Health Administration (OSHA)** and the U.S. Department of Labor - administer standards for all employees working in the manufacturing sector
4. Federal government encourages state and local governments to prepare legislation in their areas

E. Statutory law

1. **Resource Conservation and Recovery Act (RCRA)** of 1976 - created to regulate the generation, transportation, storage, use, treatment, disposal, and cleanup of hazardous waste.
2. **The Comprehensive Environmental Response Compensation & Liability Act (CERCLA)** was created in 1980.
 - a. **Established fund of \$9 billion called Superfund** to clean up uncontrolled hazardous waste dumps and respond to spills.
 - b. Created a process for identifying liable parties and ordering them to take responsibility for cleanup.
 - c. Liability under Superfund consideration to be strict, joint and several, and retroactive.
 - (1) **Strict liability** - owner is responsible to the injured party without excuse.
 - (2) **Joint and several liability** - each individual owner personally responsible for the damages in whole; if only one owner is financially able to handle the total damage, that owner will have to pay all of it and attempt to collect the proportionate share of the rest from the owners.
3. **Leaking Underground Storage Tanks (LUST) regulations** - established in 1984
 - a. Governs the installation, maintenance, monitoring, and failure of underground storage tanks
 - b. Aimed at protecting groundwater in the United States through release prevention, detection, and correction
4. **Superfund Amendments and Reauthorization Act (SARA)** - created in 1986
 - a. Established stronger cleanup standards for contaminated sites
 - b. Substantially increased the funding of the Superfund
 - c. Attempted to clarify the obligation of the lenders
 - d. Created the concept called innocent landowner immunity

F. Agents' Responsibilities

1. Most state laws DO NOT hold listing agents or buyers' agents to a standard of discovery. This is why most states have passed a seller's property disclosure act. With this new legislation the burden to disclose both known and latent property defects (to the buyer) is shifted to the seller. However, if listing agents know or have been made aware of the material defect, they must obviously disclose what they know. A buyer's agent is held to the same standard. Discovery, no. Disclosure, yes.

VI. Deed Restrictions or Covenants

- A. **Private restrictions written into deeds or leases that limit the use of property** - for example, restrictions on the type or size of the building.
- B. May be terminated by the affected necessary parties by a quitclaim deed or mutual release properly recorded.
- C. **Generally enforced by means of a court injunction.**
- D. **Adjoining lot owners** in a subdivision can lose the right to the court's injunction by inaction, under the doctrine of laches (the loss of a right through undue delay or failure to assert the right).
- E. **Deed restrictions** or covenants differ from deed conditions in that violation of a condition can give the grantor the right to take back ownership; this right does not apply where a violation of a private restriction occurs.

VII. Water Rights

- A. **Riparian rights** - rights of owners of land adjacent to a river or stream
- B. **Littoral rights** - rights of owners adjacent to commercially navigable lakes, seas, and oceans.
- C. **Amount of land owned adjacent to water may be affected by the following:**
 - 1. **Accretion** - land increase caused by water's action leaving soil deposits; if water recedes, new land would be acquired by reliction.
 - 2. **Erosion** - the slow loss of soil caused by wearing away of land by wind or rain.
 - 3. **Avulsion** - sudden loss of land caused by act of nature such as an earthquake.
 - 4. **Doctrine of prior appropriation** - with exception of limited domestic use, right to use water is controlled by the state instead of the owner of land adjacent to the water.
 - 5. **Alluvion** - an increase in land ownership created by the gradual addition of deposited matter from running water. Alluvion is the clay, silt, sand, or gravel deposited by accretion.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

NATIONAL TEST TOPIC #8
LAND USE & GOVERNMENT CONTROLS #8
2020 Practice Classroom Quiz



1. A landowner constructed a building seven stories high. Several years later, the municipality changed the zoning ordinance, prohibiting buildings that exceed six stories in height. Which of the following is *TRUE* regarding the existing seven-story building?

- A) It is a nonconforming use.
- B) The building must be demolished.
- C) It is a conditional use.
- D) The owner must obtain a variance.

2. Control by zoning ordinances does *NOT* regulate the

- A) height of buildings in an area.
- B) density of population.
- C) use of the property.
- D) price of the property.

3. The federal Interstate Land Sales Full Disclosure Act provides that

- A) sales of lots in subdivisions consisting of more than 25 lots are exempt from regulation.
- B) developers file with HUD before selling certain properties interstate.
- C) sales of lots in subdivisions of ten acres or more are exempt from regulation.
- D) potential purchasers be issued a written report with detailed information about the subdivision before closing.

4. Which statement is *TRUE* about land taken for public use?

- A) The owner must be fairly compensated.
- B) The health, safety, and welfare of the government must be the reason.
- C) The local use will benefit the residents in the immediate area.
- D) The property is then established as a fee simple determinable estate for a particular use.

5. If a buyer builds an outbuilding that violates the subdivision covenants mentioned in his deed, he

- A) may forfeit the title to the property.
- B) may be sued and required to alter the structure or remove it.
- C) may be sued and required to pay damages to the other residents in the neighborhood.
- D) is safe from legal actions taken by other residents in the area about this matter.

6. A town prohibits a developer from building more than five houses per acre in a subdivision. This restriction is called

- A) a variance.
- B) density zoning.
- C) cluster building.
- D) curvilinear development.

7. For the past 30 years, a business owner has operated a neighborhood grocery store. Last week the city council passed a zoning ordinance that prohibits packaged food sales in the area where her grocery store is located. The store is now an example of a(n)

- A) illegal enterprise.
- B) nonconforming use.
- C) violation of the zoning laws.
- D) variance of the zoning laws.

8. Restrictive covenants

- A) are no longer effective when the title is transferred.
- B) apply only until the developer has conveyed the title.
- C) can be removed by a court of competent jurisdiction.
- D) apply to and bind successive owners of the property.

9. The construction of a family room, additional bedroom, and extra bath has been completed on the owner's home. Before the addition can be used, which of the following is *TRUE*?

- A) The municipality must issue a building permit.
- B) The bath must be inspected by the plumbing inspector.
- C) The municipality must issue an occupancy permit.
- D) The municipality must issue a conditional-use permit.

10. A wooded area with biking and hiking trails is situated between old cotton mills and a housing development. This area is considered a

- A) designated park required under federal guidelines.
- B) variance to the existing zoning.
- C) utility easement.
- D) buffer zone.

11. A man applies to the municipality for permission to open an adult day-care facility in his neighborhood. He may be granted a(n)

- A) variance.
- B) nonconforming use permit.
- C) amendment to the zoning ordinance.
- D) conditional-use permit.

12. Under an existing ordinance no signs that extend more than three feet above the highest point of a roof may be placed on any building. An owner wants to erect a nine-foot-high revolving sign on the roof of his store. In order to do this legally, the owner must get a

- A) deed to the air rights.
- B) variance.
- C) nonconforming use permit.
- D) court order.

13. All of the following are examples of public land-use control *EXCEPT*

- A) zoning ordinances.
- B) building codes.
- C) restrictive covenants.
- D) city planning requirements.

14. A man owns property next to property that the city has condemned to extend the runways at the municipal airport. The man feels his property has diminished in value due to this public use. He may seek compensation by an action of

- A) taking.
- B) condemnation.
- C) confiscation.
- D) inverse condemnation.

15. Deed restrictions may *NOT* legally control or limit

- A) sizes and types of structures to be built.
- B) potential future uses of the properties.
- C) the race of future owners and occupants of a property.
- D) exterior finish and decoration of the structures.

16. The condemnation of private property for public use is allowed under the state's right of

- A) police power.
- B) escheat.
- C) eminent domain.
- D) confiscation.

17. A subdivision was developed, and one of the deed restrictions covering all of the properties in the subdivision set aside the back six feet of each parcel as a combination green belt area and bicycle path. A homeowner plans to convert the back one-half of her yard, including this set-aside space, into an organic garden. Her neighbor can

- A) do nothing because individual homeowners have no authority in this matter.
- B) go to court in an attempt to obtain an injunctive relief.
- C) force the homeowner to sell her property.
- D) share in the bounty from the organic garden.

18. The purpose of bulk zoning is to

- A) ensure that certain kinds of uses are incorporated into developments.
- B) specify certain types of architecture for new buildings.
- C) control density and avoid overcrowding.
- D) set overall development goals for the community.

19. The plat for a proposed subdivision is submitted to the

- A) municipality.
- B) property owners.
- C) developer.
- D) state.

20. Deed restrictions are created by all of the following *EXCEPT*

- A) deed.
- B) statute.
- C) written agreement.
- D) general plan of a subdivision.

21. Zoning ordinances normally define specific uses for land that are permitted within a municipality. All of the following are designated uses in such ordinances EXCEPT

- A) industrial.
- B) commercial.
- C) residential.
- D) rental.

22. A municipality establishes development goals in its

- A) subdivision regulations.
- B) restrictive covenants.
- C) environmental regulations.
- D) comprehensive plan.

23. Which of the following is a variance?

- A) Exception to a zoning ordinance
- B) Court order prohibiting certain activities
- C) Reversion of ownership
- D) Nullification of an easement

24. The purpose of building permits is to

- A) generate revenue for the municipality.
- B) control the activities of building inspectors.
- C) ensure compliance with building codes.
- D) prevent encroachments.

Answer Key - TOPIC:8: LAND USE & GOVERNMENT CONTROLS

1. A
2. D
3. B
4. A
5. B
6. B
7. B
8. D
9. C
10. D
11. D
12. B
13. C
14. D
15. C
16. C
17. B
18. C
19. A
20. B
21. D
22. D
23. A
24. C

THIS PAGE INTENTIONALLY LEFT BLANK