

Limitations on Rights of Ownership

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A. Encumbrances That Affect the Physical Use

1. Public Limitations

- Escheat
- Air Rights
- Water Rights
- Land-Use Controls and Property Development

Limitations on Rights of Ownership

● Encumbrances – Physical Use

- A. Police Powers
- B. State Land-Use Planning Act (I.C. 67-6501 to 67-6529)
- C. The Comprehensive Plan
- D. Zoning
 - Zoning Objectives
 - Hearing Process
 - Zoning Districts
 - Zoning Permits:
 - Non-Conforming Use (originally conformed, now does not)
 - Variance
 - Conditional Use Permit (temporarily allows special use that is in the public interest)
 - Sign Ordinance

Limitations on Rights of Ownership

● Encumbrances – Physical Use

● Public Limitations

- E. Subdivisions, Gross Density (measurement of how heavily a land area is populated with development)
- F. Annexation
- G. Building Codes and Certificates of Occupancy
 - Inspections – Permits
 - Certificates of Occupancy
- H. Potential Takings of Private Property (I.C. 67-8001 et seq.)
- I. Interstate Land Sales Full Disclosure Act
 - Regulates the interstate sale of unimproved lots by HUD – prevents fraudulent marketing schemes

Environmental Issues

B. Environmental Issues and the Real Estate Transaction

1. Asbestos (encapsulation) 1978



Loose fill asbestos insulation in the ceiling of a home

Environmental Issues

2. Lead-Based Paint Hazard and Reduction Act (Homes built prior to 1978 are designated as targeted and require disclosures in writing)



Effective Dates

- September 6, 1996 for owners of five residential dwellings or more.
- December 6, 1996 for owners of less than five units.
- Applies to the sale or lease of all "Target Housing".
- "Target Housing" is defined as residential property constructed before 1978.

What the Law Requires

- Buyer is not required to purchase without disclosure of known lead based paint hazards.
- Disclosure has occurred when:
 - Buyer has been provided the information pamphlet.
 - Disclosure by seller of seller's actual knowledge of the existence of a hazard.
 - Provide buyer with reports.
 - Acknowledgement language in the PSA.....

LEAD PAINT DISCLOSURE: The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than _____ or the contingency will terminate, (d) that BUYER hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

The Disclosure Statement

- Disclose the risks
- Disclose the sellers knowledge
- A statement by buyer of having received the pamphlet.
- A statement by buyer acknowledging the 10 day inspection period.
- Agents stating that they have informed seller of the seller's obligation.
- Signatures by all attesting to the accuracy of the statements.



Lead-Based Paint

Ten Day Testing Period

- Treat it like an inspection contingency.
 - Buyer seeks correction by seller, void the contract or seeks other remedies in the contract.

Exceptions

- Sales at foreclosures
- Properties certified as lead based paint free
- Short term leases (100 days or less)
- Renewal of leases where there has been no change
- Zero bedroom dwellings
- Elderly or disabled housing without children

HUD inspectors are carefully looking at the dates of signatures on the lead-based paint disclosures and the purchase and sale agreements. It is important that the disclosure statement is signed first. HUD has not "officially" taken a position yet, which enables the field investigators an incredible amount of latitude. Follow the instructions of your local lead-based paint investigator.

Property Sold or Purchased at Auctions—There hasn't been a determination from HUD yet, but it is recommended that you get a disclosure if at all possible

Rehab or Remodel of Property—HUD indicates this can mean down to as little as a couple of square feet. It's safe to assume that any remodel will probably be subject to the regulations

Environmental Issues

3. Radon Gas

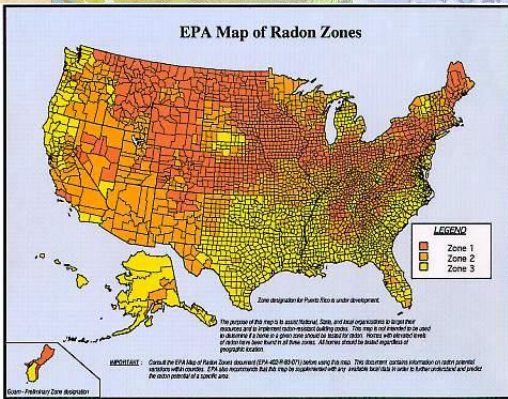
Radon

What is Radon?

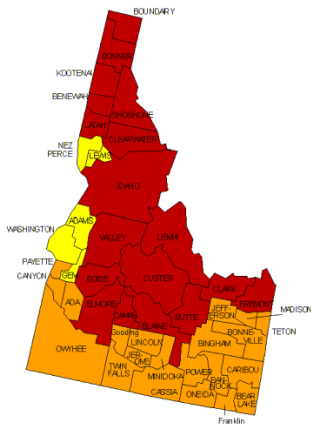
- It's Gas
- Naturally Occurring
- Can Not be Seen or Smelled
- Enters From the Soil Beneath a Building
- Can be Drawn In by Vacuum and Thermal Effects
- Radon Decays Into Radioactive Particles

Radon PSA

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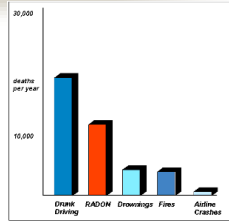


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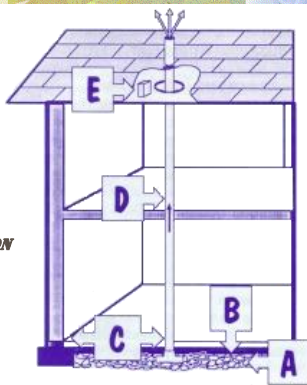
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Radon is estimated to cause about 14,000 deaths per year. However, this number could range from 7,000 to 30,000 deaths per year. The numbers of deaths from other causes are taken from 1990 National Safety Council reports.



Office of Air and Radiation (6101)
 EPA Document #402-K92-001
 Published: May 1992
 Co-sponsored by The U.S. Environmental Protection Agency,
 U.S. Department of Health and Human Services
 (Centers for Disease Control), and the
 U.S. Public Health Service

NEW CONSTRUCTION



Environmental Issues cont...



- 4. Urea Formaldehyde Foam Insulation (UFFI) – banned in 1982 and then reduced to a warning...
- 5. Carbon Monoxide
- 6. Electromagnetic Fields (EMFs) – high voltage power lines
- 7. Mold

Environmental Issues cont...

- 8. Methamphetamine (meth labs)
- 9. Underground Storage Tanks (USTs)
- 10. Waste Disposal Sites (landfills)
- 11. CERCLA and Superfund – created in 1980 \$9 billion



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Comprehensive Environmental Response Compensation & Liability Act

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Bunker Hill Mine



12. Brownfields Revitalization Act

- Obsolete industrial sites that may be contaminated but are possible development sites after clean-up. Old railroad yards, for example, are often considered to be Brownfields
- Brownfields legislation fosters cleanup and redevelopment while protecting innocent property owners
- Revitalization Act gives states & localities up to \$250/year for 5 years for clean-up

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Brownfields Revitalization Act

- Abandoned – Underutilized
 - Hindered by Possible Contamination
- Funding for Assessment and Cleanup
- Exempts Contiguous Owners
- Funding Administered Locally
- Faster, Effective Less Litigation Compared to Superfund
- EPA Limited on Reopening Sites That are Cleaned Up

Environmental Issues cont.

13. Liability of Real Estate Professionals

- *Discovery and Disclosure of Environmental Hazards*
- *Level Audits*
 - *Phases I, II & III*

C. Fair Housing – Equal Opportunity In Housing

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History

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Fair Housing

1. Historical overview

- 1866 – Civil Rights Act
 - All citizens of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.
- 1948 – Shelley vs. Kramer (Racial restrictive covenants)

Fair Housing—History (cont.)

- 1964 – Civil Rights Act - Prohibited discrimination in public accommodations, in federally-assisted programs and in employment on the basis of:
 - Race
 - Color
 - Religion
 - National Origin

Fair Housing

Civil Rights Act of 1968 – Expanded 1964 Act - prohibited discrimination against persons on the basis of race, color, religion or national origin in the sale/rentals of housing

- Jones vs. Mayer case in 1968
- Rehabilitation Act of 1973 – Prohibited discrimination against persons with disabilities in all federally-assisted programs, including housing
- 1974 – Housing & Community Dev. Act
 - Added Gender

Fair Housing

1988 – Fair Housing Amendment

- Familial Status
- Handicap – Physical & Mental

2. Prohibits Discrimination Based on:

- Race
- Color
- Religion
- National origin
- Gender
- Handicap
- Familial Status

Sexual orientation added in REALTOR® Code of Ethics in 2011

Fair Housing Prohibited Acts

3. Prohibited Acts

- In Sale or Rental of housing or residential lots
- In Advertising the sale or rental of housing
- In the Financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing

Fair Housing

4. Real Estate Transactions Exempted Under the Act:

Mrs. Murphy Rule – Individual owner/renter can choose whom they rent to

- Sale or rental of single-family home if all of the following apply:
 - Does not own more than three single-family dwellings at one time (2 for Idaho)
 - Only one sale is exempt within a 24-month period
 - Does not hold a real estate license
 - No discriminatory advertising

Fair Housing

Real Estate Transactions Exempted Under the Act cont.:

- Rental in buildings with four (4) or fewer family units if owner-occupied
- Private Clubs
-i.e. Elks, Lions

5. Prohibited Practices

- Blockbusting – restricting entry by race or origin
- Steering – channeling homeseekers to particular areas, limiting choices
- Redlining – lenders denying or restricting loans
- Exclusionary Land Use (prohibiting certain classes of individuals)
- Prohibitive Advertising

Fair Housing

6. Enforcement

- The complaint
- Penalties and fines
- Jail
- Private Enforcement – Civil action

Fair Housing

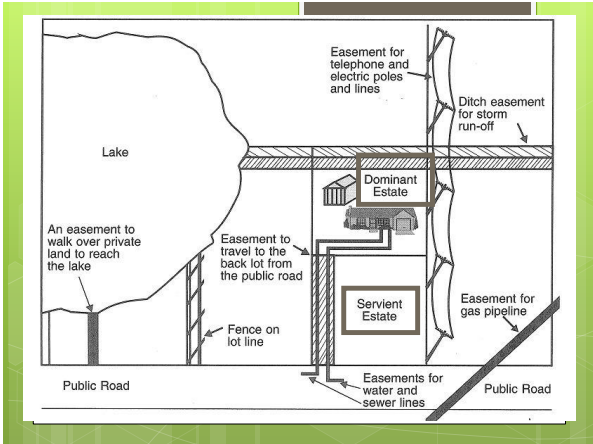
- 7. Americans with Disabilities Act (ADA)
- 8. Eminent Domain
 - Using condemnation under power of eminent domain to eliminate a protected class

D. Private Limitations of Ownership
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Easements

- Defined: Rights to use the land of others for particular purposes
 - A. Appurtenant Easements
 - Annexed to the ownership of one parcel and used for its benefit on the land of another
 - B. Easements In Gross
 - An individual interest in or a personal right to use the land of another



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Easements

C. Agreement
D. Grant or Reservation

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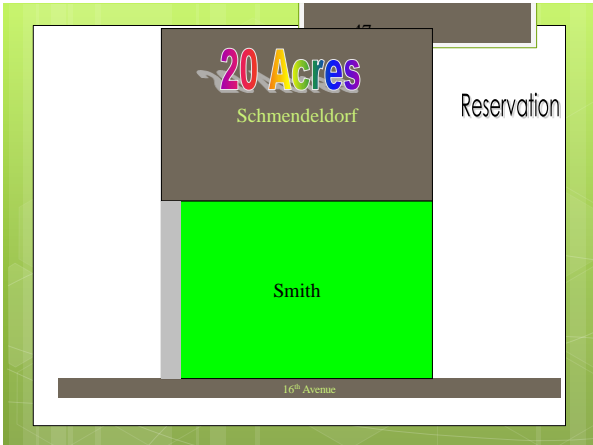
WARRANTY DEED

For value received, Buford T. Schmendeldorf, a single person, Grantor(s) of Ada County of the State of Idaho, hereby **CONVEYS, GRANTS and WARRANTS TO Bill and Mary Smith, husband and wife** Grantee(s) whose mailing address is 1326 18th Street , Boise , Idaho 83709 in the sum of one dollar (\$1) and other valuable consideration, the following described property located in Ada County, State of Idaho:

Lot 1 Block 2 of Glenaire Subdivision as recorded in Book 1 of Plats, Page 13, records of Ada County.

Together with an easement for ingress, egress and utilities over the west 20 feet of lot 2 Block 2 of Glenaire Subdivision as recorded in Book 1 of Plats, Page 13, records of Ada County





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Easements

- E. Condemnation (Eminent Domain)
- F. Reference in Subdivision Plat
- G. Necessity
- H. Solar Easements
- I. Conservation Easements (for purpose of protecting a species, wetlands, etc.)
- J. Party Wall Agreements

Easements

K. Termination of Easements

- Expiration
- End of Purpose
- Merger
 - The owner of either the dominant or the Servient tenement becoming the owner of both
- Agreement
- Abandonment
- Destruction of Servient Estate
 - For instance, party wall
- By excessive use - Overburdening

Other Private Limitations

2. Boundary by Agreement (Acquiescence)
3. Licenses
 - Privilege to use another's land for a specific purpose
4. Deed Restrictions - CC&R's
5. Encroachments
 - anything extending from one property across the property line onto another parcel or beyond legal building lines

E. Encumbrances That Affect the Title to Real Estate

- General Information about Liens
 - Priority of liens
 - Subordination Agreements

Example of Subordination

May				Oct				Jan				
1	8	15	22	29	5	12	19	26	5	12	19	26
	◆	W/D Seller to Buyer										
	◆	D/T John and Mary Seller										
	◆	D/T Chase Bank										

May				Oct				Jan				
1	8	15	22	29	5	12	19	26	5	12	19	26
	◆	W/D Seller to Buyer										
	◆	D/T John and Mary Seller										
	◆	D/T Chase Bank										
	◆	Subordination Seller/Chase Bank										

Encumbrances – Title (Liens)

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2. Specific Equitable – Voluntary

- Mortgages
- Contracts for Deed
 - Vendor (Seller) /Vendee (Buyer)
- Bail Bond Liens

Encumbrances – Title (Liens)

3. Specific Statutory

A. Mechanic's Liens

1. Who can file
2. Notification
 - *Lien holder's notification*
 - *Builder's required disclosure*
3. Timing for filing (90 days)
4. Time to perfect lien
 - Must file suit to foreclose the lien within 6 months
 - A Judgment lien is good for 5 years, can be extended every 5 years
5. How to protect against mechanic's lien
 - Lien Waivers

B. Property Taxes

1. Ad Valorem taxes, tax on value of property
2. Exemptions from general property taxes
 - Cities, State, Federal Governments
 - Various municipal organizations
 - Religious and Charitable organizations
 - Hospitals and Educational institutions
 - Home Owner's Exemption
 - Circuit Breaker

Property Taxes

- **Home Owner's Exemption**
 - Beginning in 2007 exemption amount is tied to the Housing Price Index published by the US Office of Housing Enterprise Oversight.
 - 2013 Exemption applies to 50% of the assessed value of a primary residence (including up to one acre of real property) or \$81,000 -whichever is LESS.
 - Any property valued under \$162,000 receives the 50% deduction, any property over that value receives the \$81,000 reduction.

HOME OWNERS EXEMPTION PROPERTY TAX

EXAMPLE (50%)

• ASSESSED VALUE	\$130,000
• IMPROVEMENTS	\$100,000
• LAND	\$ 30,000
• NEW EXEMPTION	\$ 65,000
• NEW TAXABLE – VALUE	\$ 65,000

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HOME OWNERS EXEMPTION PROPERTY TAX

EXAMPLE (2013)

• ASSESSED VALUE	\$500,000
• IMPROVEMENTS	\$400,000
• LAND	\$100,000
• NEW EXEMPTION	\$81,000
• NEW TAXABLE – VALUE	\$419,000

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CIRCUIT BREAKER PROPERTY TAX RELIEF

- Who qualifies?
 - Age 65 or older
 - Widow(er) of any age
 - Blind
 - Fatherless or motherless child under 18 years of age
 - Former prisoner of war / hostage
 - Veteran with at least 10% service-connected disability, or receiving VA pension for a nonservice-connected disability
 - Disabled as recognized by the Social Security Administration, Railroad Retirement Board or Federal Civil Service

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3. Property Taxation Process

- Assessment
- Budget
- Appropriation (process of levying tax)
- Tax Statements
- Delinquency
- Tax Sale

4. Important Tax Dates

- January 1 of each year – current taxes for the year become an lien on the property
- Due December 20 (can pay 1/2 then and 1/2 on June 20)
- Delinquent on December 21 and June 21
- Penalty fee of 2% and interest at 12% is added
- After 3 years the county gives notice in the papers and issues a deed to itself
- (All taxes when paid apply to current year unless specified)

- H. Special Assessment, LID (Local Improvement District)
- Always specific and statutory liens
 - Voluntary - the property owners in the area to be affected can petition for the improvement
 - Involuntary - the appropriate governmental authority can initiate the procedure

Special Assessment, LID

- Costs are spread over the assessment roll properties
 - on a fractional basis (equal costs) or
 - on a front-footage basis (prorated costs)
- The annual bills are typically spread out for a number of years, with the property owner having the right to prepay at any time without penalty.

4. General Statutory Liens

- Judgments
- Lis Pendens (notice of pending action)
- Federal estate tax lien
- State inheritance tax lien
- IRS and state income tax liens
- Other
 - Alimony, child support

ADVERTISING

- What can you and can't you say in your ads???
- Puffing (Exaggeration of a property's benefits)
 - EX: "charming," "beautiful" to describe an average looking house
 - EX: "water front property" – borders an irrigation canal
- Fraud (Intentional misrepresentation of a material fact in such a way as to harm or take advantage of another)
