Elements of a Platted Description

- County and any and all sub-units of county
- State
- Name of plat plan
- Identification of particular lot(s)
- Reference to exact location of plat in the land records
Mettes and Bounds Description

- Complete description of the boundary lines of the and its location in reference to a known landmark
- Course: Direction of a property line
- Distance: Length of a property line
- Call: Course and distance describing one boundary line
Closure

A valid survey must “close”

This means that the reviewer should be able to start at the beginning point and – using the course and distance of the various calls – end up exactly at the beginning point.
Avoiding Mistakes

- Proofread a metes and bounds description with another person
- The survey description should match the legal description
- Unless the parcel is a new one, the legal description in all documents for a conveyance or loan closing should match the legal description in the seller’s deed
Assignment

- Complete practical assignment 2 or 3, text, page 61.
- From the survey on text page 66 or 67, prepare a metes and bounds legal description
- 20 point assignment – more points possible for doing assignment # 3
Encumbrance

A claim or lien on real property or any matter that reduces its value or restricts its use

Examples: lien, mortgage, easement
Zoning

Power of government to regulate the use of real property.

Limits the use of real property to make all uses in a district or zone similar.
Zoning Procedure

- Divide the jurisdiction into districts
- Prescribe the uses, types of structures, density, and architectural designs in each district
“Generic” Use Districts

- Single Family Homes
- Multi-Family Homes
- Retail-Commercial
- Manufacturing

Sample Sub-Types:
- Light and Heavy Manufacturing
Building Codes & Subdivision Regulations

- Building Codes regulate methods and materials to be used in construction of buildings.
- Subdivision Laws regulate the development of tracts of land for single or multi-family homes.
Environmental Protection Laws

Protect our earth and, ultimately, protect human health
CERCLA (Superfund Act)

- Comprehensive Environmental Response, Compensation and Liability Act
- Lands where former uses resulted in hazardous waste in the soil and/or water
- CERCLA makes the polluter liable for clean-up, but present owner is potentially liable
Environmental Assessments

- Phase I: Inspection of real property to determine if contamination from pollutants is present.
- Phase II: Taking soil samples and conducting lab analysis to detect contamination from pollutants.
Underground Storage Tanks

Underground storage tanks – particularly those for petroleum products – are strictly regulated by state law.
Lead Paint and Radon

- Lead paint ingestion can cause brain damage
- Radon, an odorless gas, can cause health problems; is a carcinogen
- Federal law requires lead paint notice for homes built prior to 1978
- Maryland Vendor’s Disclosure Statement
  
  Md. Code Ann., Real Prop. § 10-702
Power of Eminent Domain

Power of government to take private property for public use

Example Uses:
Public utilities; government buildings, parks; new streets
Property Tax

- Ad Valorem tax is based on the value of land and improvements
- Assessment is the process to determine the value of property
- Calculation: tax rate or millage rate X value of property
- Property tax is apportioned at closing
LIEN

- Money debt attached to real property
- Liens are perfected by filing notice of lien among the land records of the county where the land is located
- Types of liens: Tax, Judgment, Mechanics’ and Materialmens’

(Debts created by mortgages are also properly called liens.)
Judgment Liens

- Court judgments for money damages are potential liens on the defendants’ real property.
- When perfected, such a judgment becomes a lien on real property owned by the defendant in the county where recorded.
Mechanic’s and Materialmen’s Liens

- Lien to secure payment for labor performed or materials furnished
- In the context of real property, for construction or repair to improvements
- Mechanic’s & Materialmen’s liens are created when filed among the land records of the county where the work was completed
Mortgages and Deeds of Trust

- Documents providing evidence of the security interest of a lender in real property
- Separate from a note (contract to repay borrowed money)
- Recorded among the land records of the county where the land is located to provide notice of a lien
Restrictive Covenants

- Limit the use of land
- May appear in deeds or in separately recorded lists of restrictions applicable to an entire subdivision, industrial park or condo development
Sample restrictive covenants for a townhouse development

- “None of the lots shall be used for any purpose other than for residential use. No business activities shall be conducted…”

- “No boats, boat trailers, trucks of a capacity of one ton or more...may be parked in streets, driveways, front yards…”

- “No animals, livestock, or poultry or any kind shall be raised, bred or kept on any lot, except that an ordinary number of dogs, cats or other household pets may be kept…”
Easement

Right granted to a nonowner of land to use the land for a specific purpose
Dominant vs. Servient

- Owner of a servient estate or tenement gives up the right to an easement on his/her land
- If one property benefits from an easement, it is a dominant estate or tenement
Most easements transfer to the new owner when the land(s) subject to the easement convey.
Affirmative vs. Negative

- **Affirmative Easement**: Landowner gives up a use of his/her land
- **Negative Easement**: Landowner is prohibited from doing something on his/her land
“Express”

In the legal world, “express” means clear and definite, and it usually means in writing.
Express Easement

- Created by written document - deed of easement or reservation of easement in a deed conveying title to land
- Grantor must be the person owning the land over which the easement is granted
Implied Easement

- Must start with common ownership of dominant and servient estates
- Sale to another (even without express easement) will include all that is necessary for beneficial use by grantee
Prescriptive Easement

- Adverse, open and hostile use of property without owner’s permission for a certain period of time
- Similar to adverse possession
- Time period in MD is 20 years

White v Pines Community
Easement by Necessity

- Created by court order when use of servient estate is *strictly necessary* for enjoyment of dominant estate

- Used when owner of proposed servient estate is unwilling to make express grant of easement

- Owner of dominant estate must fairly compensate owner of servient estate
License

Revocable permission to use land

May be oral, written or implied
Contract

- Agreement between 2 or more persons consisting of a promise or mutual promises the performance of which the law recognizes as a duty.
- A promise or set of promises that the law will enforce.
Legal Capacity to Contract #1

- Capacity = legal ability to do something
- For natural persons, the main concerns are age and mental competence
- Problem potential for persons acting for entities such as corporations, partnerships, estates, etc.
Legal Capacity to Contract #2

- Corporations: Board resolution required to authorize officers to enter real estate contracts

- General Partnerships: All partners must sign unless agreement specifies authority of one or more partners
Legal Capacity to Contract #3

- **Limited Partnerships:** All general partners must sign unless agreement has special provisions.
- **Limited Liability Corporations:** Examine articles of organization to determine who is authorized to sign real estate contracts.
Legal Capacity to Contract #4

Estate = property & assets of decedent

- Will – Estate managed by executor or executrix
- Intestate – Estate managed by administrator

Trusts = property & assets managed by trustee who *may* have capacity to buy and sell land
Legal Capacity to Contract #5

- Agent = person having power and authority to act on behalf of another.
- Attorney in fact created by Power of Attorney (POA)
- Closing attorney or paralegal should determine that attorney in fact is acting within scope of authority and that principal is still alive
Mutual Agreement

- Contract exists when an offer is made and accepted and terms of acceptance are “mirror image” of offer
- Offer = announcement of willingness to contract on certain terms
- Counteroffer = response to offer stating different terms