Types of Loans

- Conventional Loans
- Insured or Guaranteed Loans
Conventional vs. Guaranteed or Insured Loan

- Conventional – Lender’s risk is solely on borrower’s ability to pay and value of land securing the loan
- Guaranteed or Insured – Lender’s risk is also guaranteed or insured
Private Mortgage Insurance

- Borrower pays a premium for private mortgage insurance
- PMI = Private Mortgage Insurance
- If borrower defaults, insurance company protects lender against loss
FHA Loans

- Loans made by banks and other lenders
- Government insures the loan
VA Loans

- Certain military veterans are eligible
- Loans made by banks and other lenders
- Government guarantees 60% of loan
SBA Loans

- SBA = Small Business Administration

- SBA sometimes makes loans directly; more typically a bank or other lender makes the loan which is guaranteed by the government
Subprime Lending

The business practice of making mortgage loans to people who do not have a good credit history or stable income.
Permanent vs. Construction Loans

- **Permanent Loans**: Made to help borrowers purchase an existing home or commercial property.
- **Construction Loans**: Made to help borrowers build a home or other building on real estate.
Primary vs. Secondary Market

- **Primary Market**: Banks and other lenders who make mortgage loans directly to people buying real estate.
- **Secondary Market**: Banks and other investors who purchase mortgage loans assigned by primary lenders.
Government Corporations Assisting the Secondary Market

- Fannie Mae – Federal National Mortgage Association
- Freddie Mac – Federal Home Loan Mortgage Corporation
- Ginnie Mae – Government National Mortgage Association

You may hear these names in your practice.
“Servicing the loan”

Means collection of payments from the borrower of a mortgage loan

When the mortgage loan is sold onto the secondary market, this function may stay with primary lender or may be transferred with the loan
Amortization

Reduction of a debt by periodic payments covering interest and a part of the principal

The gradual extinguishing of a debt by regular payments
Debt Service

Means payment of principal and interest on a loan

When a borrower is making regular payments on a loan, we say the “debt is being serviced”
Promissory Note

Legal document that contains a promise by one party to pay money to another party

A written promise to pay a certain sum of money by a certain time
Maker vs. Payee

- **Maker**: The party to a promissory note that promises to pay
- **Payee**: The party to a promissory note to who will get paid – to whom the promise to pay has been made
A Negotiable Note...

...or other instrument, is capable of being transferred from one payee to another.

Holder: Person who is the owner of a negotiable instrument.
When is an note negotiable?

When the instrument is:

- Written,
- Signed by the maker,
- And when it contains an unconditional promise to pay a certain sum on demand or at a definite time

U.C.C. § 3 - 104

Md. Code, Commercial Law, § 3 - 104
Endorsement or Indorsement

Method of transferring ownership of a negotiable instrument

Signing a negotiable instrument in a way that allows the instrument and the rights it stands for to transfer to another person
When there is more than one maker....

- Each co-maker is liable for the full amount of the loan due and owing (joint and several liability)
- If the debt is not being serviced, the holder can attempt to collect the full amount from any maker
Not for this course, but....

Upon full payment or satisfaction of any note (car, house, vacation, etc.) ask lending institution to send you the original note marked “paid” or “satisfied.”
Prepayment

- Paying off all of the money owed on a note before the note’s maturity date.
- Without a “prepayment clause” in the note, maker has to offer the principal owed and all the interest that would be owed if paid at maturity date.
- “Prepayment clause” in a note allows satisfaction with principal and interest due on the date of payment.
Execution

- The maker’s signature on a promissory note does not have to be witnessed or acknowledged before a notary.
- The promissory note for a real estate loan is usually not recorded among the land records.
Guaranty

Legal document that obligates the maker to pay the debt of another
Security Interest

Any right in property that is held to make sure money is paid or that something else is done
Types of Security Instruments for Real Estate Loans

- Mortgage
- Deed of Trust
- Deed to Secure Debt (Not used in Md., Pa., or W.Va.)
Main Instruments for Real Estate Loans

- Promissory Note – Not recorded
- Mortgage or Deed of Trust - Recorded
Mortgage vs. Deed of Trust

- A mortgage creates an encumbrance on the title to real estate — the real estate is *pledged* to secure the debt.

- A deed of trust conveys title to a trustee who holds the title as security for the debt.
Mortgagee vs. Mortgagor

- Mortgagee: Person who receives a mortgage – a lender
- Mortgagor: Person who signs a mortgage pledging real property to secure a debt

These terms are used for both mortgages and deeds of trust
Requirements for a Mortgage or Deed of Trust

- Parties
- Words of Conveyance or Grant
- Description of Debt being Secured
- Legal Description of Property
- Proper Execution and Attestation or Acknowledgement
- Delivery to Lender
“Due on Sale” Clause

Clause found in a mortgage or deed of trust that prohibits the sale of the real property described in the instrument without the lender’s consent.

A sale in violation of this provision is a default of the mortgage or deed of trust and usually accelerates maturity (due) date.
Satisfaction of Mortgage

- Mortgage or deed of trust is automatically cancelled when all principal and interest is paid.
- Full repayment of debt = Satisfaction
- Lender/Mortgagee is obligated to note satisfaction on the land records where the mortgage or deed of trust is recorded.
Risk & Second Mortgages

- The first mortgage is superior to the second mortgage
- If the first mortgage goes into default, a second mortgage will be terminated at foreclosure
Foreclosure

Sale brought by holder or a mortgage or deed of trust for the purpose of paying the debt secured by the real property

“Power of Sale” clause gives lender or trustee the power to sell the mortgaged property upon default
Main Defense to Foreclosure

- Debtor/Borrower files bankruptcy action
- “Automatic Stay” begins immediately upon filing of petition in bankruptcy court.
The Importance of Confidentiality

Almost everyone who works in a law office is going to hear intimate information about the problems of clients – financial or otherwise.
Chapter 11 Objectives

- Understanding Security Agreements
- Understanding perfection of security agreements
- Introductory understanding of mortgage or deed of trust covenants
Security Agreements

Legal documents that pledge personal property (and perhaps rents and profits) as security for a debt

Security Agreements are controlled by the Uniform Commercial Code (U.C.C.)
Perfecting a Security Agreement

Security Agreements are perfected by filing a Financing Statement (UCC-1)
Title Examination

Examination of the real property records* to determine the ownership to a particular tract of real property.

*Real property records have traditionally been located in the county courthouse where the land is located – now many records are on-line.
Purposes of Title Exams

- Where client is purchasing property:
  to make sure the seller has satisfactory evidence of good title

- Where client is lending money to be secured by real estate:
  to make sure borrower has satisfactory evidence of good title