

OWNERSHIP

(REAL PROPERTY CHARACTERISTICS, DEFINITIONS, OWNERSHIP, RESTRICTIONS, AND TRANSFER)

Property is everything subject to ownership (also known as title). Tangible (corporeal) means physical items such as furniture and buildings. Intangible (incorporeal) means rights such as copyright and appurtenances.

PERSONAL PROPERTY (personalty or chattel)

Movable; **not** attached directly or indirectly to land; conveyed from one party to another by an instrument called a **bill of sale**.

Two Exceptions: Trade Fixtures: attached and used in the ordinary course of business; by lease terms, tenant will remove them at expiration of lease – despite attachment, they remain personal property of tenant. **Emblements:** annual and semi-annual plantings (crops) which, although rooted in the land, are removable by seller by agreement with buyer or tenant farmer by agreement with landlord.

REAL PROPERTY (real estate or realty)

Land and anything either directly or indirectly permanently attached (affixed) to the land. Immovable, affixed, attached and annexed. Ownership of real estate includes the "**bundle of rights**" meaning owner may transfer, build, mortgage, control, possess, rent and devise any component of the realty. Realty is conveyed from one party to another by an instrument called a **deed**. Real estate includes:

Land: the surface material of the earth (a horizontal/surface interest).

Improvements: items permanently attached directly or indirectly, such as buildings.

Appurtenances: rights existing outside the four corners of the property such as a right of way across adjoining land of another (easements).

Air/Subterranean (subsurface) Rights: rights to space above/below the land (a vertical interest).

Mineral Rights: gravel, dirt, oil, gas, coal, minerals and water.

Riparian Rights: rights of owners of land adjoining waterways. Abutting a navigable river gives rights to edge or accretion line of the water and to the low water mark. Abutting non-navigable river gives rights to mid-point (thread).

Littoral Rights: rights of owners of land bordering lakes and oceans.

Four common tests as to whether property is personal or real: **Method of Attachment** - permanently affixed; **Adaptability** - custom-built to fit a particular space; **Agreement of Parties** - seller and buyer agree seller will remove an item of realty before transfer of title; **Intention** - owner intended to make it permanent.

All real estate is part of sale unless excluded in writing in the purchase and sale agreement. The real estate agent must discover from the seller what realty is **not** included and inform prospective buyers.

Changes in property: Annexation: personal to real. **Severance:** real to personal.

Full legal description of property location in the deed includes:

Address, Land description, Title reference: Book, Page, Date.

Methods of land description in America:

Metes and Bounds - monuments, natural or artificial may be point of beginning (p.o.b.). **Metes** is the number of feet from one point to another; **Bounds** pertains to the compass direction. The description returns to the p.o.b.

Government Rectangular Survey - **Base** lines run east and west and are crossed by **meridians** which cross them running north and south. **Townships** are 36 square miles (or ranges) which are divided into **sections** one square mile of 640 acres - the smallest land unit. Also known as Public Land Survey. Arrows point **north** on maps.

Lot and Block System - the recorded plat (plan) of subdivision divides the tract into **blocks** separated by streets. The blocks are divided into house **lots**.

Links and Rods – a link is equal to .66 feet and a rod equals 16.5 feet.

Area Calculations

1. A building measured 300' by 20'. Its footprint covered 25% of the lot. If 15% of the lot was sold, how much land would remain?

Building is: $300' \times 20' = 6,000 \text{ s/f}$ [Answer]

Total Lot is: $\frac{6,000 \text{ s/f}}{[Answer] \ 24,000 \text{ s/f} \times .25}$

Remaining Lot is: $\frac{20,400 \text{ s/f}}{24,000 \text{ s/f} \times .85}$ [Answer]

2. A 18' by 20' room was covered with wall to wall carpeting. The carpet cost \$6.75 per square yard. What was total cost of carpeting?

$18 \times 20 = 360 \text{ s/f}$ total carpet

$360 \div 9$ (3 ft per yard in each direction [3 x 3]) = 40 square yards

$\$6.75 \times 40 = \270.00 [Answer]

TYPES OF ESTATES

The words "estates" and "interests" and "tenancies" are interchangeable. They refer to amount and duration of an individual's rights in a parcel of real estate. These estates are divided into two groups: freehold (ownership) and non-freehold (possession).

FREEHOLDS

Fee, Fee Simple or Fee Simple Absolute (interchangeable terms)

- Highest form of ownership; *indefeasible*
- Indefinite duration; unlimited
- Most common form of ownership
- Inheritable

Ownership is assumed to be fee unless deed states otherwise. Transferring title (ownership) is known as "granting" title. Grantor A - signs and delivers *deed* to Grantee B - Upon B's death, ownership passes to B's heirs.

Life Estate

Title passes from grantor to grantee by deed, but grantor states in deed who gets title after this grantee's death – not inheritable, a life-time stewardship of the property. Three variations:

Life estate in reversion – upon grantee's death, title passes back to grantor, who retains a future interest. If grantor is already dead, title passes to grantor's estate/heirs.

Life estate in remainder – the ordinary life estate (most common form). Upon grantee's death, title passes in fee to third party C – *remainderman* (or to his/her heirs).

Pur autre vie – Title passes from A to B. B owns the property for Z's lifetime. When Z dies, B loses title to C, who is originally named by A in the deed. Life tenant holds a **present** interest; remainderman holds a **future** interest; life tenant may not commit waste or fail to pay property taxes; life tenant may sell property but new owner holds title only as long as the original life tenant lives; life tenant may lease property but lease terminates on the death of life tenant; no lender will accept it as collateral.

TYPES OF CO-OWNERSHIP

One owner/one deed is ownership in **severalty** (a corporation or other legal entity counts as a "person")

Concurrent or Co-ownership: ownership by two or more persons (human or entity)

Tenancy In Common

- ◆ Equal or unequal interests (percentage interests)
- ◆ Equal right of possession
- ◆ Undivided interest in whole (interest in every part of property)
- ◆ Upon death of tenant in common, interest passes in probate to heirs
- ◆ Transferable when tenant in common is alive

Joint Tenancy

- ◆ Equal interests
- ◆ Equal right of possession
- ◆ Undivided interest in whole
- ◆ One deed with all parties named
- ◆ At death of a joint tenant, interest does NOT go to probate for distribution to heirs; it goes to **surviving** joint tenants equally
- ◆ Four Unities: Possession - equal right to possess
Interest - equal, undivided interest
Time - acquire title at same time
Title - acquire title in same deed
- ◆ Transferrable when joint tenant is alive, but converts transferred interest into tenancy in common

Tenancy By The Entirety

- ◆ A form of joint tenancy restricted to a married couple (they choose it, it is not required)
- ◆ Upon death of one spouse, the survivor becomes fee simple owner, without probate
- ◆ Neither party may alienate (sell or convey) without written permission of other
- ◆ Creditor shield against forced sale by unsecured creditors when only one spouse owes money
- ◆ Both parties must sign deed when selling
- ◆ Upon divorce, they own as tenants in common unless they choose to own as joint tenants

PUBLIC RESTRICTIONS - Government (federal, state, local) may take actions to promote public safety, health or welfare, but not against the public good.

THE FOUR (4) PUBLIC LIMITATIONS ON PRIVATE PROPERTY

Police Power - zoning ordinances and building (sanitation) codes.

Eminent Domain – right of government to force sale of private property through process of **condemnation** for the public good at a fair price.

Taxes - municipal ad valorem property taxes. The priority lien before lender.

Escheat - death of owner with no will and no heirs or abandoned property. Cash or cash proceeds put in state treasury.

Attachments

- ◆ A legal seizure by court action of a defendant's property as security for possible judgment; to prevent transfer and hiding of assets.
- ◆ Defendant remains owner and possessor of subject property.
- ◆ Final determination of rights of parties by a court.
- ◆ Writ of execution used to enforce a judgment or decree of court.
- ◆ A sheriff's sale takes place after a judgment is not paid.
- ◆ Recording a **homestead exemption** prevents this for primary residence

PRIVATE RESTRICTIONS - Run with the land; contractual limitations.

Private restrictions known as C, C & Rs (conditions, covenants and restrictions) are a form of private zoning. They must be deemed legal (for example, not a violation of fair housing laws or an abridgement of basic rights) and not intrude in public governance.

In a conflict between a private restriction and a public zoning ordinance, the stronger restriction will be enforced. For example, if public zoning permits two-family houses, but the deed only allows a single family house, the deed controls.

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