Indiana Real Estate Brokers
CONTINUING EDUCATION

OWNERSHIP IN REAL ESTATE

PDH Academy Course Approval #CE21600004 | 4 CE HOURS

PDH Real Estate

COURSE DESCRIPTION:

This 4-hour continuing education course visits the tangled concepts of "ownership" as applied to real estate. It discusses categories of property, the bundle of rights and water rights, interests and estates, and finally the different types of ownership, to provide the broker with an up-to-date grounding in these important concepts. Key definitions are reviewed throughout.

The learning objectives of this course are as follows:

1. Distinguish categories of property
2. Identify elements of the bundle of rights
3. Define interests and estates in land
4. Define and distinguish sole ownership and the forms of co-ownership
5. Distinguish estates in trust
6. Identify features of corporations, partnerships, and limited liability companies
7. Describe condominium ownership, cooperative ownership, and time-share ownership

HOW DOES THIS COURSE WORK?

To enhance comprehension, review questions are provided at the end of the course.

A final exam will be administered after the course is completed to check for mastery of the material. If you do not pass the final exam, you can review the course material and retake the exam at no additional cost.

If assistance is needed with this course you can contact PDH Academy at 888-564-9098 or at support@pdhacademy.com.

After completing the course and final exam, we ask that you take our course survey to help us continue to provide high-quality continuing education.

OWNERSHIP IN REAL ESTATE – Final Exam

1. The legal premise underlying the definition of littoral rights is that a lake or sea _____.

a. Is not a navigable body of water

b. Should be available to the owner for unrestricted use

c. Is a navigable body of water

d. Is owned by the abutting owners

2. Land cannot be homogenous because _____.

a. It is indestructible.

b. A parcel of land cannot be moved.

c. No two parcels are alike.

d. No two owners are identical.

3. Which of the following concepts is associated with the term "real property"?

a. "Bundle of rights"

b. Personal property

c. Intangible property

d. Chattels

4. Which of the following is an example of a trade fixture?

a. A grocer's food freezers

b. A property's roof

c. An assigned parking space

d. Solar panels

5. Plants and crops that grow naturally without requiring anyone's labor or machinery are considered _____.

a. Emblements

b. Trade fixtures

c. Real property

d. Personal property

6. The conversion of real property to personal property effected by detaching it from the real estate is known as _____.

a. Severance

b. Chattel

c. Attachment

d. Affixing

7. Which of the following statements regarding the conversion of property is true?

a. The classification of an item of property as real or personal is not necessarily fixed.

b. The classification of property can never be changed by the process of conversion.

c. The conversion of real property to personal property is not possible.

d. The conversion of personal property to real property is not possible.

8. The ownership of real estate and the bundle of rights associated with owning the real estate is defined as _____

a. Personal property

b. Real property

c. Air rights

d. Subsurface rights

9. Which of the following is an example of tangible property?

a. Stock certificates

b. Contracts

c. Listing agreements

d. Real property

10. Since water is a resource necessary for survival, some states -- particularly those where water is scarce -- have taken the legal position that the state owns and controls all bodies of water. Which of the following applies to property owners that must obtain permits for the use of water?

a. Doctrine of Prior Appropriation

b. Doctrine of Littoral Rights

c. Doctrine of Riparian Rights

d. Zoning Permit

11. If a body of water is entirely contained within the boundaries of an owner's property, the owner would have which of the following rights?

a. Littoral rights

b. Riparian rights

c. Restricted rights of usage

d. Unrestricted rights of usage

12. Which of the following statements is true regarding a property owner's littoral rights?

a. The ownership extends to the low watermark of the body of water

b. The ownership extends to the high watermark of the body of water

c. The owner enjoys unrestricted use of the water and owns the land beneath

d. The owner owns the land beneath the body of water to the water's midstream

13. The primary criterion for distinguishing real property from personal property is _____.

a. Whether the item is permanently attached to the land or the structure

b. The original cost of the item

c. Whether the item was included in the previous sale of the property

d. Whether the item will be included in the listing agreement

14. The act of converting personal property to real property by attaching it to real estate is known as _____.

a. Severance

b. Affixing

c. Not possible

d. Accession

15. The judicial system exerts an influence on real estate ownership and use through decisions based on _____.

a. Land use regulations and ordinances

b. County and local government

c. Case law and common law

d. Zoning and permits

16. Which of the following scenarios represents an owner's undivided fractional interest in a property?

a. A local municipality is condemning an 8-story building

b. Condominium owners allocate three floors as a designated parking space

c. A general contractor encumbered the property when the condominium owner failed to pay

d. A mortgagor conveys legal title to the mortgagee

17. Which of the following distinguishes a determinable estate from a condition subsequent estate?

a. A determinable estate focuses on the use of the estate

b. The dispute of a determinable estate is settled in court

c. The recipient of a determinable estate determines the use of the estate

d. The remainderman of the determinable estate inherits the property

18. Which of the following reflects an estate restricted by specific dates or duration?

a. Estates in land

b. Legal life estate

c. Freehold tenancy

d. Leasehold estate

19. Which of the following is a right provided to a life tenant?

a. Possession

b. Inheritance

c. Disposing

d. Gifting

20. Which of the following statements describes a circumstance that involves an owner's use of homestead rights?

a. An owner sells the property to a neighbor

b. An owner is forced to sell his or her principal residence to satisfy unsecured creditors

c. An owner is selling the property by voluntary alienation

d. The grantor is creating a life estate for an elderly parent

21. Charles created a life estate for his mother. Upon his mother's death, Charles will have his daughter Mary move into the condominium where his mother lived. Mary, who will have a future interest, is known as the _____.

a. Reversion

b. Dower.

c. Curtesy

d. Remainderman

22. Karen signed an estate for years with Draper Apartments. As the lessee, what type of rights will she have under this leasehold estate?

a. The right of possession
b. The right of disposition
c. The right of reversion
d. The right of absolute control

23. The lessor and lessee signed a 1-year lease agreement. Upon the expiration of the lease, the lessee failed to leave the apartment and continued to occupy the property without paying rent or obtaining the landlord's consent. This rental situation is an example of which of the following?

a. An estate at will
b. An estate at years
c. An estate at sufferance
d. An estate for lifetime

24. A freehold estate of potentially unlimited duration is a _____.

a. Fee simple estate
b. Life estate
c. Defeasible estate
d. Leasehold estate

25. The principal interests accompanying the legal life estate are the _____.

a. Remainderman, reversion and pur autre vie
b. Freehold and leasehold estates
c. Same as ordinary life estates
d. Homestead, dower and curtesy, and elective share

26. Which of the following is a defining characteristic of tenancy in common?

a. The right of survivorship
b. No survivorship
c. One owner
d. Unity of time

27. Joint tenants may only convey their interests to outside parties as _____.

a. Joint tenant interest
b. Tenancy by the entirety interest
c. Community property interest
d. Tenants-in-common interest

28. To create a joint tenancy, all owners must _____.

a. Occupy the property at the same time
b. Be married
c. Own equal shares in the property
d. Hold separate titles to their individual interests

29. A _____ is a legal avenue for an owner who wants to dispose of his or her interest against the wishes of other co-owners.

a. Listing agreement
b. Sales contract
c. Partition suit
d. Suit to quiet title

30. In a community property state, upon the death of the separate property owner, the property _____.

a. Passes to the heirs by will or laws of descent
b. Automatically passes to the surviving spouse regardless of an existing will
c. Automatically becomes community property
d. Will be owned equally by the surviving spouse and heirs

31. In an estate in trust the fee owner is known as the _____.

a. Trustee
b. Trustor
c. Beneficiary
d. Trust

32. Which of the following statements is true regarding the provisions of a land trust?

a. In a land trust, the beneficiary can never be trustor
b. In a land trust, the beneficiary must be the trustee
c. The land trust applies only to real property, not to personal property
d. The land trust applies only to personal property, not to real property

33. Which of the following statements is true regarding one's liability in a limited partnership?

a. The general partners bear full liability for debts and obligations
b. The general partners bear no liability
c. The limited partners bear full liability
d. All the partners are protected from bearing any personal liability

34. The unique aspect of the condominium is its _____ interest in the airspace contained within the outer walls, floors, and ceiling of the building unit.

a. Tenancy in common

b. Joint tenancy

c. Tenancy by the entirety

d. Fee simple

35. Condominium properties are created by executing and recording a _____.

a. Management agreement and an owner's association

b. Condominium declaration and a master deed

c. Deed and survey

d. Legal description and a proprietary lease

36. Which of the following statements regarding condominiums is true?

a. The shareholders of a condominium acquire a proprietary lease

b. Each condominium unit is individually assessed and taxed

c. A lender may foreclose on the entire condominium building if a unit owner defaults

d. A condominium unit owner's interest is personal property

37. The corporate entity of the cooperative association is the only party in the cooperative with _____.

a. A real property interest

b. A personal property interest

c. A trade fixture interest

d. An ownership interest with individual units

38. Which of the following terms is defined as "undivided interest jointly owned by husband and wife"?

a. Tenancy in severalty

b. Community property

c. Tenancy by the entirety

d. Tenancy in partnership

39. The proprietor tenant in a cooperative is responsible for the _____.

a. Unit's pro rata share of the corporation's expenses

b. Unit's monthly mortgage payment

c. Unit's yearly tax bill

d. Building's maintenance

40. Which of the following is a feature of a corporation?

a. The beneficiary controls the corporation

b. The trustee controls the corporation

c. The corporation may own real estate in severalty

d. The corporation may own real estate by the entirety

Ownership in Real Estate
Section 1: RIGHTS IN REAL ESTATE

Real Estate as Property
Real Versus Personal Property
Regulation of Real Property Interests

REAL ESTATE AS PROPERTY

Land
Real estate
Property
Real property rights
Water rights

A simple definition of real estate is that it is air, water, land, and everything affixed to the land. Real estate in the United States may be owned privately by individuals and private entities or publicly by government entities. Private ownership rights in this country are not absolute. The government can impose taxes and restrictions on private ownership rights, and it can take private property away altogether. In addition, other private parties can exert their rights and interests on one's real property. A bank, for example, can take a property if the owner fails to pay a mortgage. A neighbor can claim the right to walk across one's property whether the owner likes it or not, provided he or she has done so for a certain number of years.

In attempting to define real estate, it is essential to understand *what rights and interests parties have in a parcel of real estate*. And to understand real estate rights and interests, one must first recognize the distinctions between:

- land and real estate
- real estate and property
- real property and personal property

Land

The legal concept of land encompasses

- the surface area of the earth
- everything beneath the surface of the earth extending downward to its center
- all *natural* things permanently attached to the earth
- the air above the surface of the earth extending outward to infinity.

Land, therefore, includes minerals beneath the earth's surface, water on or below the earth's surface, and the air above the surface. In addition, land includes all plants attached to the ground or in the ground, such as trees and grass. A **parcel**, or **tract**, of land is a portion of land delineated by boundaries.

Physical characteristics. Land has three unique physical characteristics: *immobility, indestructibility, and heterogeneity.*

Land is immobile, since a parcel of land cannot be moved from one site to another. In other words, the geographical location of a tract of land is fixed and cannot be changed. One can transport portions of the land such as mined coal, dirt, or cut plants. However, as soon as such elements are detached from the land, they are no longer considered land.

Land is indestructible in the sense that one would have to remove a segment of the planet all the way to the core in order to destroy it. Even then, the portion extending upward to infinity would remain. For the same reason, land is considered to be permanent.

Land is non-homogeneous, since no two parcels of land are exactly the same. Admittedly, two adjacent parcels may be very similar and have the same economic value. However, they are inherently different because each parcel has a unique location.

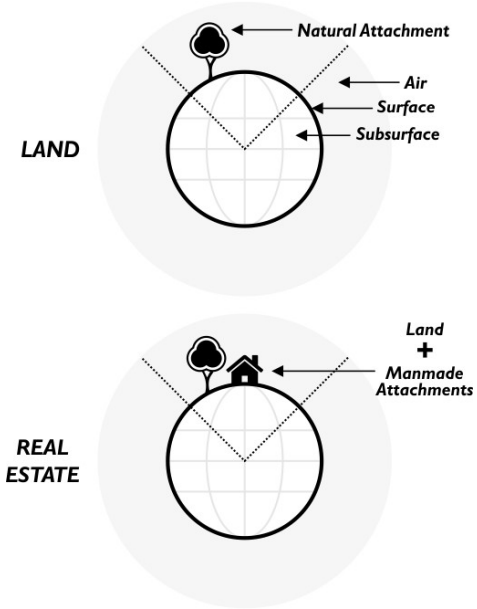
Real estate

The legal concept of real estate encompasses:

- land
- all *man-made structures* that are "permanently" attached to the land

Real estate therefore includes, in addition to land, such things as fences, streets, buildings, wells, sewers, sidewalks and piers. Such man-made structures attached to the land are called **improvements**. The phrase "permanently attached" refers primarily to one's intention in attaching the item. Obviously, very few if any manmade structures can be permanently attached to the land in the literal sense. But if a person constructs a house with the intention of creating a permanent dwelling, the house is considered real estate. By contrast, if a camper affixes a tent to the land with the intention of moving it to another camp in a week, the tent would not be considered real estate.

Exhibit 1.1
The Legal Concept of Land and Real Estate



Property

In common understanding, property is something that is owned by someone. A car is the property of Bill Brown if Bill Brown owns the car. If the item is not owned, it is not property. For example, if a car is abandoned and left to rust in the desert, the car is no longer property, since no one claims ownership. Similarly, the planet Jupiter is not property, since no one owns it.

From a more technical standpoint, property is not only the item that is owned but also a *set of rights to the item enjoyed by the owner*. These rights are commonly known as the "bundle of rights."

Exhibit 1.2
The Bundle of Rights

In owning property, one has the right to possess and use it as the law allows. The owner has the right to transfer ownership of the item (sell, rent, donate, assign, or bequeath). The owner may also encumber the item by mortgaging it as collateral for debt. Finally, the owner has the right to exclude others from use of the item. In the example of the car, when Bill Brown bought the car, the car became his property: he owned the car itself. At the same time, he also acquired the legal rights to transfer, use, encumber, exclude, and possess the car.

Classifications of property. Our legal system recognizes two classifications of property: *real property* and *personal property*. **Real property** is ownership of real estate and the bundle of rights associated with owning the real estate. **Personal property** is ownership of anything which is not real estate, and the rights associated with owning the personal property item. Items of personal property are also called **chattels** or **personalty**.

Note: since all real estate in the United States is owned by some person, private organization, or government entity, all real estate in the country *is* real property. Given that fact, this text will follow the customary practice of using the two terms interchangeably and synonymously.

Tangible versus intangible property. Real and personal property may be further categorized as **tangible** or **intangible** property. Tangible property is physical, visible, and material. Intangible property is abstract, having no physical existence in itself, other than as evidence of one's ownership interest.

Exhibit 1.3
Tangible vs. Intangible Property

	Tangible	Intangible
Real Property	all types	
Personal Property	boat, car, jewelry	stock certificate, contract, patent

All real estate, by its physical nature, is tangible property. Personal property may be tangible or intangible. Boats, jewelry, coins, appliances, computers, and art work are examples of tangible personal property. Stocks, copyrights, bonds, trademarks, patents, franchises, and listing agreements are examples of intangible personal property.

Real property rights

Real property rights consist of the bundle of rights associated with owning a parcel of real estate. Foremost of these rights is the right of possession.

The *right to use* a property refers to the right to use it in certain ways, such as mining, cultivating, landscaping, razing, and building on the property. The right is subject to

the limitations of local zoning and the legality of the use. One's right to use may not infringe on the rights of others to use and enjoy their property. For example, an owner may be restricted from constructing a large pond on her property if in fact the pond would pose flooding and drainage hazards to the next door neighbor.

The *right to transfer* interests in the property includes the right to sell, bequeath, lease, donate, or assign ownership interests. An owner may transfer certain individual rights to the property without transferring total ownership. Also, one may transfer ownership while retaining individual interests. For example, a person may sell mineral rights without selling the right of possession. On the other hand, the owner may convey all rights to the property except the mineral rights.

While all rights are transferrable, the owner can only transfer what the owner in fact possesses. A property seller, for example, cannot sell water rights if there are no water rights attached to the property.

The *right to encumber* the property essentially means the right to mortgage the property as collateral for debt. There may be restrictions to this right, such as a spouse's right to limit the degree to which a homestead may be mortgaged.

The *right to exclude* gives the property owner the legal right to keep others off the property and to prosecute trespassers.

The bundle of real property rights also applies separately to the individual components of real estate: the air, the surface, and the subsurface. An owner can, for example, transfer subsurface rights without transferring air rights. Similarly, an owner can rent air space without encumbering surface or subsurface rights. This might occur in a city where adjoining building owners want to construct a walkway over a third owner's lot. Such owners would have to acquire the air rights for the walkway. If the city wants to construct a subway through the owner's subsurface, the city has to obtain the subsurface rights to do so.

An ordinary lease is a common example of the transfer of a portion of one's bundle of rights. The owner relinquishes the right to possess portions of the surface, perhaps a building, in return for rent. The tenant enjoys the rights to possess and use the building over the term of the lease, after which these rights revert to the landlord. During the lease term, the tenant has no rights to the property's subsurface or airspace other than what the building occupies. Further, the tenant does not enjoy any of the other rights in the bundle of rights: he cannot encumber the property or transfer it. To a limited degree, the tenant may exclude persons from the property, but he may not exclude the legal owner.

Surface rights. Surface rights apply to the real estate contained within the surface boundaries of the parcel. This includes the ground, all natural things affixed to the ground, and all improvements. Surface rights also include water rights.

Air rights. Air rights apply to the space above the surface boundaries of the parcel, as delineated by imaginary vertical lines extended to infinity. Since the advent of aviation, air rights have been curtailed to allow aircraft to fly over one's property, provided the overflights do not interfere with the owner's use and enjoyment of the property. The issue of violation of air rights for the benefit of air transportation is an ongoing battle between airlines, airports, and nearby property owners.

Subsurface rights. Subsurface rights apply to land beneath the surface of the real estate parcel extending from its surface boundaries downward to the center of the earth. Notable subsurface rights are the rights to extract mineral and gas deposits and subsurface water from the water table.

Water rights

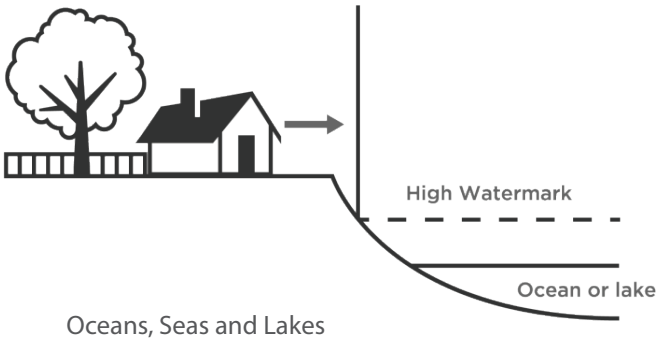
Water rights basically concern the rights to own and use water found in lakes, streams, rivers, and the ocean. In addition, they determine where parcel boundaries can be fixed with respect to adjoining bodies of water. What water rights does an owner of a property that contains or adjoins a body of water enjoy? The answer depends on three variables:

- whether the state controls the water
- whether the water is moving
- whether the water is navigable

Doctrine of Prior Appropriation. Since water is a resource necessary for survival, some states -- particularly those where water is scarce -- have taken the legal position that the state owns and controls all bodies of water. Called the Doctrine of Prior Appropriation, this position requires that property owners obtain permits for use of water. If a proposed usage is reasonable and beneficial, the state will grant a permit which, over time, can attach to the property of the permit holder. If a state does not operate under prior appropriation, it operates under the common law doctrines of *littoral rights* and *riparian rights*.

Littoral rights. Littoral rights concern properties abutting bodies of water that are not moving, such as lakes and seas. Owners of properties abutting a navigable, non-moving body of water enjoy the littoral right of use, but do not own the water nor the land beneath the water. Ownership extends to the high-water mark of the body of water.

Exhibit 1.4
Littoral Rights

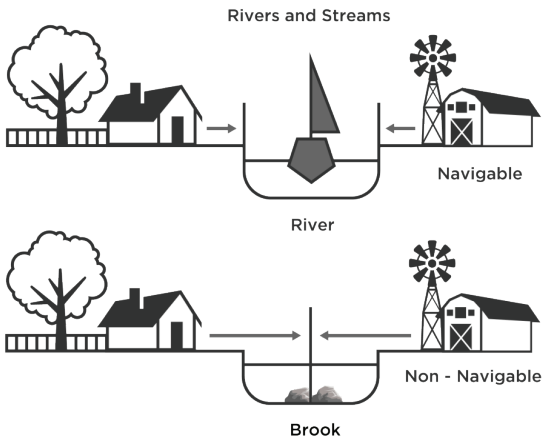


The legal premise underlying the definition of littoral rights is that a lake or sea is a *navigable body of water, therefore, public property* owned by the state. By contrast, a body of water entirely contained within the boundaries of an owner's property is not navigable. In such a case, the owner would own the water as well as unrestricted rights of usage.

Littoral rights attach to the property. When the property is sold, the littoral rights transfer with the property to the new owner.

Riparian rights. Riparian rights concern properties abutting moving water such as streams and rivers. If a property abuts a stream or river, the owner's riparian rights are determined by whether the water *is navigable or not navigable*. If the property abuts a non-navigable stream, the owner enjoys unrestricted use of the water and *owns the land beneath the stream to the stream's midpoint*. If the waterway in question is navigable, the waterway is considered to be a public easement. In such a case, the owner's property extends *to the water's edge* as opposed to the midpoint of the waterway. The state owns the land beneath the water.

Exhibit 1.5
Riparian Rights



One's riparian rights to use flowing water are subject to the conditions that:

- the usage is reasonable and does not infringe on the riparian rights of other owners downstream
- the usage does not pollute the water
- the usage does not impede or alter the course of the water flow.

Like littoral rights, riparian rights attach to the property.

REAL VERSUS PERSONAL PROPERTY

Fixtures
Differentiation criteria Trade fixtures
Emblements
Factory-built housing Conversion

In conveying real property, it is vitally important to recognize the distinctions between personal property and the real property that is to be conveyed. Confusion can arise because items of property *may be either personal property or real property, depending on circumstances.*

The primary criterion for distinguishing real from personal property is whether the item is permanently attached to the land or to structures attached to the land. For example, a tree growing in one's yard is an item of real property. However, when the owner cuts the tree down, it becomes personal property. Similarly, a swimming pool pump on a shelf in the owner's garage is personal property. When it is installed with the rest of the pool, it becomes real property.

While the "attachment" criterion is pivotal in distinguishing between real and personal property, there are other tests to be applied. In addition, the attachment rule is subject to exceptions.

Fixtures

A personal property item that has been converted to real property by attachment to real estate is called a fixture. Typical examples are chandeliers, toilets, water pumps, septic tanks, and window shutters.

The owner of real property inherently owns all fixtures belonging to the real property. When the owner sells the real property, the buyer acquires rights to all fixtures. Fixtures not included in the sale must be itemized and excluded in the sale contract.

Differentiation criteria

In the event that the attachment criterion is insufficient to determine whether an article of property is real or personal,

a court may apply one or more of the following additional criteria.

Intention. One's original intention can override the test of movability in determining whether an item is a fixture or not. If someone attached an item to real property, yet intended to remove it after a period of time, the article may be deemed personal property. If a person intended an article to be a fixture, even though the item is easily removable, the article may be deemed a fixture.

For example, an apartment renter installs an alarm system, fully intending to remove the system upon lease expiration. Here, the alarm system would be considered personal property.

Adaptation. If an item is uniquely adapted to the property, or the property is custom-designed to accommodate the item, it may be deemed real property whether the item is easily removable or not. House keys, a garbage compactor, and a removable door screen are examples.

Functionality. If an item is vital to the operation of the building, it may be deemed a fixture, even though perhaps easily removable. Window-unit air conditioners and detachable solar panels are possible examples.

Relationship of parties. If a tenant installs a fixture in order to conduct business, the fixture may be considered a trade fixture, which is the tenant's personal property.

Sale or lease contract provisions. In a sale or lease transaction, the listing of an item in the contract as a personal property item or a fixture overrides all other considerations. Unless otherwise stated as exceptions, all fixtures are included in the sale. For example, if a sale contract stipulates that the carpeting is not included in the sale, it becomes a personal property item. If the carpeting is not mentioned, it goes with the property, since it is attached to the floor of the building.

Trade fixtures

Trade fixtures, or **chattel fixtures,** are items of a tenant's *personal property* that the tenant has temporarily affixed to a landlord's real property in order to conduct business. Trade fixtures may be detached and removed before or upon surrender of the leased premises. Should the tenant fail to remove a trade fixture, it may become the property of the landlord through *accession*. Thereafter, the fixture is considered real property.

Examples of trade fixtures include a grocer's food freezers, a merchant's clothes racks, a tavern owner's bar, a dairy's milking machines, and a printer's printing press.

Emblements

Growing plants, including agricultural crops, may be either real property or personal property. Plants and crops that grow naturally without requiring anyone's labor or machinery are considered real property.

Plants and crops requiring human intervention and labor are called **emblements**. Emblements, despite their attachment to land, are considered personal property. If an emblement is owned by a tenant farmer, the tenant has the right to the harvested crop whether the tenant's lease is active or expired. If the tenant grew the crop, it is his or her personal property, and the landlord cannot take it.

Factory-built housing

Factory-built housing consists of dwelling units constructed off-site and transported to and assembled on a building site. The category also includes readily moveable housing of the type that can be relocated from place to place, once known by the term **mobile home.** The National Manufactured Housing Construction and Safety Standards Act of 1976 defined the types of factory-built housing and retired the mobile home designation. **Manufactured housing** is factory-built housing that conforms to HUD standards. Factory-built housing may be considered real property or personal property, depending on whether it is permanently affixed to the ground, and according to state law. Real estate practitioners should understand the local laws before selling any kind of factory-built housing.

Conversion

The classification of an item of property as real or personal is not necessarily fixed. The classification may be changed by the process of conversion. **Severance** is the conversion of real property to personal property by detaching it from the real estate, such as by cutting down a tree, detaching a door from a shed, or removing an antenna from a roof. **Affixing**, or attachment, is the act of converting personal property to real property by attaching it to the real estate, such as by assembling a pile of bricks into a barbecue pit, or constructing a boat dock from wood planks.

Exhibit 1.6
Real Property vs. Personal Property

Real Property	Personal Property
land	trade fixtures
fixtures	emblements
attachments	conversions by severance
conversions by affixing	

PROPERTY INTERESTS

Areas of regulation
Federal regulation
State regulation
Local regulation
Judicial regulation

Although the Constitution guarantees private ownership of real estate, laws and regulations at every level of government qualify and limit individual real property ownership and the bundle of rights associated with it.

Areas of regulation

Government entities regulate the following aspects of real property interests:

- the bundle of rights: possession, usage, transfer, encumbering and exclusion
- legal descriptions
- financing
- insurance
- inheritance
- taxation

Regulation takes the form of federal and state laws and regulations; county and local ordinances and codes; and court decisions in the judicial system.

Federal regulation

In regulating real property rights, the federal government is primarily concerned with broad standards of real property usage, natural disaster, land description, and discrimination.

Federal agencies such as the Federal Housing Administration promote and regulate home ownership. The Environmental Protection Agency establishes protective usage restrictions and guidelines for dealing with hazardous materials and other environmental concerns. Federal flood insurance legislation requires certain homeowners to obtain flood insurance policies. Federal laws such as the Federal Fair Housing Act of 1968 prohibit discrimination in housing based on race, religion, color, or national origin. Such laws as the Americans with Disabilities Act prescribe design and accessibility standards.

The federal government does not levy real estate taxes.

State regulation

State governments are the primary regulatory entities of the real estate business. State governments establish real estate license laws and qualifications. In addition, state governments have established real estate commissions to administer license laws and oversee activities of licensees.

State governments also exert regional influence in the usage and environmental control of real estate within the state. Relevant state laws might include laws relating to flood zones, waste disposal, drainage control, shore preservation, and pollution standards.

States also play a role in defining how real property may be owned, transferred, encumbered, and inherited. For example, in some states a mortgaged property becomes the legal property of the lender until the mortgage loan is paid.

States have the power to levy real estate taxes but generally pass this power to local government.

Local regulation

County and local government regulation focuses on land use control, control of improvements, and taxation. Land use regulations and ordinances control how all property within the jurisdiction may be developed, improved, demolished, and managed. County and local governments have the power to zone land, take over land for the public good, issue building permits, and establish the rules for all development projects.

County and local governments, along with school districts and other local jurisdictions, have the power to levy real estate taxes.

Judicial regulation

The judicial system exerts an influence on real estate ownership and use through decisions based on case law and common law, as distinguished from statutory law. Case law consists of decisions based on judicial precedent. Common law is the collective body of law deriving from custom and generally accepted practice in society.

Exhibit 1.7
Regulation of Real Property Interests

FEDERAL	**Constitution**	► Establishes absolute right of private ownership of real estate ► Prohibits federal government from levying real property taxes
	Laws	► Create, regulate real estate-related agencies ► Prohibit discrimination ► Create standards for legal descriptions of real estate ► Establish environmental standards for all property ► Establish standards for protecting interests of handicapped people
	Agencies	► Establish mortgage lending standards ► Establish housing construction standards ► Establish environmental standards
STATE	**Constitution**	► May establish right to levy tax; or may delegate right to counties and municipalities
	Laws	► Regulate real estate licensing ► Establish broad usage standards ► Define, qualify ownership rights
	Agencies	► Regulate practitioners, administer real estate license laws
LOCAL	**Laws**	► Create and enforce real estate taxation ► Control land usage over specific parcels of land
COURTS	**Common law**	► Regulates real estate ownership and usage according to customary and accepted practices
	Case law	► Regulates real estate ownership and usage according to prior court decisions

Rights and Interests in Real Estate Snapshot Review

REAL ESTATE AS PROPERTY

- Constitution guarantees private ownership of real estate; ownership rights
- not absolute; others may exert claims against one's property

Land

- surface, all natural things attached to it, subsurface, and air above the surface; unique aspects: immobile, indestructible, heterogeneous

Real estate

- land plus all permanently attached man-made structures, called improvements

Property

- something that is owned by someone and the associated rights of ownership
- the bundle of rights: possession, use, transfer, exclusion, and encumbrance
- property is real or personal, tangible or intangible

Real property rights

- any of the bundle of rights, applied to airspace (air rights), surface (surface rights), and subsurface (subsurface rights)

Water rights

- Doctrine of Prior Appropriation: state controls water usage; grants usage permits
- littoral rights: abutting property owners own land to high water mark; may use, but state owns underlying land
- riparian rights: if navigable, abutting property owners own land to water's edge; may use, but state owns underlying land; if not navigable, owner owns land to midpoint of waterway

REAL VS PERSONAL PROPERTY

- an item may be real or personal property depending on the "attachment" criterion and other circumstances

Fixtures

- real property converted from personal property by attachment to real estate

Differentiation criteria

- intention; adaptation; functionality; relationship of parties; contract provisions

Trade fixtures

- personal property items temporarily attached to real estate in order to conduct business; to be removed at some point

Emblements

- plants or crops considered personal property since human intervention is necessary for planting, harvesting

Factory-built housing

- housing pre-built off-site; includes mobile homes; real or personal depending on attachment to land

Conversion

- transforming real to personal property through severance, or personal to real property through affixing

REGULATION OF REAL PROPERTY INTERESTS

Federal regulation

- grants overall rights of ownership; controls broad usage standards, discrimination

State regulation

- governs the real estate business; sets regional usage standards

Local regulation

- levies real estate taxes; controls specific usage

Judicial regulation

- applies case law and common law to disputes

Ownership in Real Estate
Section 2: INTERESTS AND ESTATES

Interests and Estates in Land
Freehold Estates
Leasehold Estates

INTERESTS AND ESTATES IN LAND

Interests
Estates in land

Interests

An interest in real estate is *ownership of any combination of the bundle of rights* to real property, including the rights to

- possess
- use
- transfer
- encumber
- exclude

Undivided interest. An undivided interest is an owner's interest in a property in which two or more parties share ownership. The terms "undivided" and "indivisible" signify that the owner's interest is in a fractional part of the entire estate, not in a physical portion of the real property itself. If two co-owners have an undivided equal interest, one owner may not lay claim to the northern half of the property for his or her exclusive use.

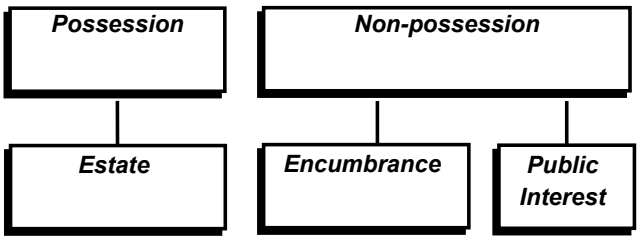
Examples of interests include:

- an owner who enjoys the complete bundle of rights
- a tenant who temporarily enjoys the right to use and exclude
- a lender who enjoys the right to encumber the property over the life of a mortgage loan
- a repairman who encumbers the property when the owner fails to pay for services
- a buyer who prevents an owner from selling the property to another party under the terms of the sale contract
- a mining company which temporarily owns the right to extract minerals from the property's subsurface
- a local municipality which has the right to control how an owner uses the property
- a utility company which claims access to the property in accordance with an easement

Interests differ according to

- how long a person may enjoy the interest
- what portion of the land, air, or subsurface the interest applies to
- whether the interest is public or private
- whether the interest includes legal ownership of the property

Exhibit 2.1
Interests in Real Estate



Interests are principally distinguished by whether they include possession. If the interest-holder enjoys the right of possession, the party is considered to have an **estate in land**, or, familiarly an estate. If a private interest-holder does not have the right to possess, the interest is an **encumbrance.** If the interest-holder is not private, such as a government entity, and does not have the right to possess, the interest is some form of *public interest*.

An encumbrance enables a non-owning party to restrict the owner's bundle of rights. Tax liens, mortgages, easements, and encroachments are examples.

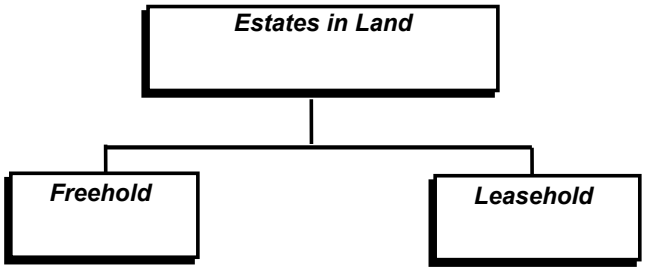
Public entities may own or lease real estate, in which case they enjoy an estate in land. However, government entities also have non-possessory interests in real estate which act to control land use for the public good within the entity's jurisdiction. The prime example of public interest is **police power**, or the right of the local or county government to **zone**.

Another example of public interest is the right to acquire ownership through the power of eminent domain.

Estates in land

An estate in land is an interest that includes the right of possession. Depending on the length of time one may enjoy the right to possess the estate, the relationships of the parties owning the estate, and specific interests held in the estate, an estate is a freehold or a leasehold estate.

Exhibit 2.2
Estates in Land



In a **freehold estate**, the duration of the owner's rights cannot be determined: the rights may endure for a lifetime, for less than a lifetime, or for generations beyond the owner's lifetime.

A **leasehold estate** is distinguished by its specific duration, as represented by the lease term.

Ownership of a freehold estate is commonly equated with ownership of the property, whereas ownership of a leasehold estate is not so considered because the leaseholder's rights are temporary.

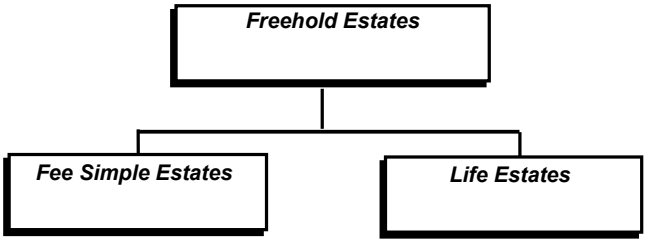
Both leasehold and freehold estates are referred to as **tenancies**. The owner of the freehold estate is the **freehold tenant**, and the renter, or lessee, is the **leasehold tenant**.

FREEHOLD ESTATES

Fee simple estate
Life estate
Conventional life estate
Legal life estate

Freehold estates differ primarily according to the duration of the estate and what happens to the estate when the owner dies. A freehold estate of potentially unlimited duration is a fee simple estate: an estate limited to the life of the owner is a life estate.

Exhibit 2.3
Freehold Estates



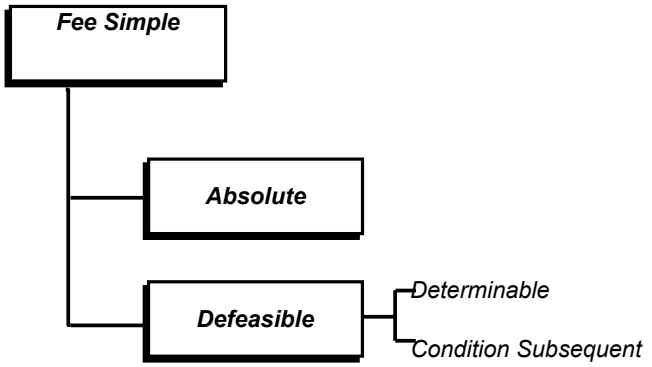
Fee simple estate

The **fee simple** freehold estate is the *highest form of ownership interest* one can acquire in real estate. It includes the complete bundle of rights, and the tenancy is unlimited, with certain exceptions indicated below. The fee simple interest is also called the "fee interest," or simply, the "fee." The owner of the fee simple interest is called the **fee tenan**t.

Fee simple estates, like all estates, remain subject to government restrictions and private interests.

There are two forms of fee simple estate: **absolute** and **defeasible**.

Exhibit 2.4
Fee Simple Estates



Fee Simple Absolute. The fee simple absolute estate is a perpetual estate that is *not conditioned by stipulated or restricted uses.* It may also be freely passed on to heirs. For these reasons, the fee simple absolute estate is the most desirable estate that can be obtained in residential real estate. It is also the most common.

Fee Simple Defeasible. The defeasible fee estate is perpetual, provided the usage *conforms to stated conditions.* Essential characteristics are:

- the property must be used for a certain purpose or under certain conditions
- if the use changes or if prohibited conditions are present, the estate reverts to the previous grantor of the estate.

The two types of fee simple defeasible are **determinable** and **condition subsequent**.

Determinable. The deed to the determinable estate states usage limitations. If the restrictions are violated, the estate automatically reverts to the grantor or heirs.

Condition subsequent. If any condition is violated, the previous owner may repossess the property. However, reversion of the estate is not automatic: the grantor must re-take physical possession within a certain time frame.

Life estate

A life estate is a freehold estate that is limited in duration to the life of the owner or other named person. Upon the death of the owner or other named individual, *the estate passes to the original owner or another named party.* The holder of a life estate is called the **life tenant**.

The distinguishing characteristics of the life estate are:

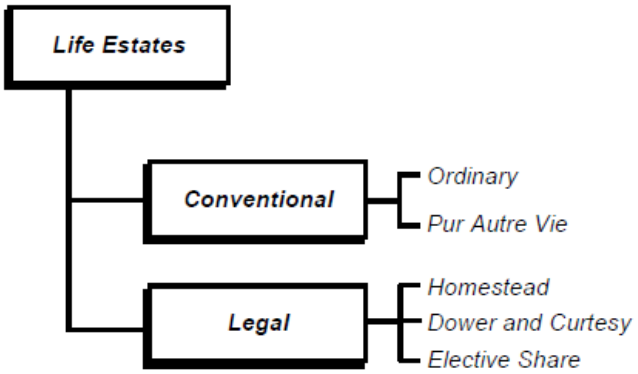
- the owner enjoys full ownership rights during the estate period
- holders of the future interest own either a reversionary or a remainder interest
- the estate may be created by agreement between private parties, or it may be created by law under prescribed circumstances.

Remainder. If a life estate names a third party to receive title to the property upon termination of the life estate, the party enjoys a future interest called a remainder interest or a remainder estate. The holder of a remainder interest is called a **remainderman**.

Reversion. If no remainder estate is established, the estate reverts to the original owner or the owner's heirs. In this situation, the original owner retains a reversionary interest or estate.

The two types of life estates are the **conventional** and the **legal** life estate.

Exhibit 2.5
Life Estates



Conventional life estate

A conventional life estate is created by grant from a fee simple property owner to the grantee, the life tenant. Following the termination of the estate, rights pass to a remainderman or revert to the previous owner.

During the life estate period, the owner enjoys all ownership rights, provided he or she does not infringe on the rights of the remainder or reversion interest holders, such as by damaging the property or jeopardizing its value. Should such actions occur, holders of the future interest may take legal action against the property owners.

The two types of conventional life estate are the **ordinary** and the **pur autre vie** life estate.

Exhibit 2.6
Conventional Life Estates

	Ordinary Life Estate	Pur Autre Vie
With reversion	duration: owner's life reverts to grantor	duration: another's life reverts to grantor
With remainder	duration: owner's life reverts to another	duration: another's life reverts to another

Ordinary life estate. An ordinary life estate *ends with the death of the life estate owner* and may pass back to the original owners or their heirs (reversion) or to a named third party (remainder).

For example, John King grants a life estate in a property to Mary Brown, to endure over Mary's lifetime. John establishes that when Mary dies, the property will revert to himself.

Pur autre vie. A pur autre vie life estate endures over the lifetime of a third person, after which the property passes from the tenant holder to the original grantor (reversion) or a third party (remainderman).

For example, Yvonne grants a life estate to Ryan, to endure over the lifetime of Yvonne's husband Steve. Upon Steve's death, Yvonne establishes that her mother, Rose, will receive the property.

Legal life estate

A legal life estate is *created by state law* as opposed to being created by a property owner's agreement. Provisions vary from state to state. The focus of a legal life estate is defining and protecting the property rights of surviving family members upon the death of the husband or wife.

The major forms of legal life estate are the **homestead**, **dower and curtesy**, and **elective share**.

Homestead. A homestead is one's principal residence. Homestead laws protect family members against losing their homes to general creditors attempting to collect on debts.

Homestead laws generally provide that:

- all or portions of one's homestead are exempt from a forced sale executed for the collection of general debts (judgment liens). The various states place different limits on this exemption.
- tax debts, seller financing debt, debts for home improvement, and mortgage debt are not exempt
- the family must occupy the homestead
- the homestead interest cannot be conveyed by one spouse; both spouses must sign the deed conveying homestead property
- the homestead exemption and restrictions endure over the life of the head of the household, and pass on to children under legal age. State laws define specifically how the interest transfers upon the death of the household head
- homestead interests in a property are extinguished if the property is sold or abandoned
- in some states the exemption is automatic; in others, homeowners must file for the exemption.

The homestead exemption from certain debts should not be confused with the *homestead tax* exemption, which exempts a portion of the property's value from taxation.

Dower and curtesy. Dower is a wife's life estate interest in the husband's property. When the husband dies, the wife can make a claim to portions of the decedent's property. Curtesy is the identical right enjoyed by the husband in a deceased wife's property. Property acquired under dower laws is owned by the surviving spouse for the duration of his or her lifetime.

To transfer property within dower and curtesy states, the husband (or wife) must obtain a release of the dower interest from the other spouse in order to convey clear title to another party. If both parties sign the conveyance, the dower right is automatically extinguished.

Dower and curtesy laws have been largely supplanted by community property laws and elective share laws.

Elective share. Elective share is a state-level statute enabling a surviving spouse to make a minimum claim to the deceased spouse's real and personal property in place of the provisions for such property in the decedent's will.

For example, if a husband's will excludes the wife from any property inheritance, the wife may, upon the husband's death make the elective share claim.

Elective share laws generally provide that:

- the surviving spouse is entitled to a percent of the deceased spouse's property, excepting homestead property and property the decedent owned exclusively
- the surviving spouse must file for the elective share within a limited time period
- if the spouse fails to file, the estate passes on according to the will or the state's laws of descent
- the elective share right pertains only to the surviving spouse and is not transferrable.

LEASEHOLD ESTATES

Estate for years
Estate from period-to-period
Estate at will
Estate at sufferance

A leasehold estate, or **leasehold**, arises from the execution of a lease by a fee owner -- the **lessor,** or **landlord** -- to a **lessee**, or **tenant**. Since tenants do not own the fee interest, a leasehold estate is technically an item of personal property for the tenant.

Leasehold tenants are entitled to possess and use the leased premises during the lease term in the manner prescribed in the lease. They also have restricted rights to exclusion.

Estate for years

The estate for years is a leasehold estate for a definite period of time, with a beginning date and an ending date. The estate for years may endure for any length of term. At the end of the term, the estate automatically terminates, without any requirement of notice.

For example, a landlord grants a tenant a three-year lease. After the three years, the leasehold terminates, and the landlord may re-possess the premises, renew the lease, or lease to someone else.

Estate from period-to-period

In an estate from period-to-period, also called a **periodic tenancy**, the tenancy period automatically renews for an indefinite period of time, subject to timely payment of rent. At the end of a tenancy period, if the landlord accepts another regular payment of rent, the leasehold is considered to be renewed for another period.

For example, a two-year lease expires, and the landlord grants a six-month lease that is automatically renewable, provided the monthly rent is received on time. At the end of the six months, the tenant pays, and the landlord accepts another monthly rent payment. The acceptance of the rent automatically extends the leasehold for another six months.

The most common form of periodic tenancy is the month-to-month lease, which may exist without any written agreement.

Either party may terminate a periodic tenancy by giving proper notice to the other party. Proper notice is defined by state law.

Estate at will

The estate at will, also called a **tenancy at will**, has no definite expiration date and hence no "renewal" cycle. The landlord and tenant agree that the tenancy will have no specified termination date, provided rent is paid on time and other lease conditions are met.

For example, a son leases a house to his father and mother "forever," or until they want to move.

The estate at will is terminated by proper notice, or by the death of either party.

Estate at sufferance

In an estate at sufferance, a tenant occupies the premises without consent of the landlord or other legal agreement with the landlord. Usually such an estate involves a tenant who fails to vacate at the expiration of the lease, continuing occupancy without any right to do so.

For example, a tenant violates the provisions of a lease and is evicted. The tenant protests and refuses to leave despite the eviction order.

Interests and Estates
Snapshot Review

INTERESTS AND ESTATES IN LAND

Interests

- any combination of bundle of rights
- estates, encumbrances, police powers

Estates in land

- include right of possession; also called tenancies
- leaseholds: of limited duration
- freeholds: duration is not necessarily limited

FREEHOLD ESTATES

- implies "ownership" in contrast to leasehold

Fee simple estate

- also "fee"; most common form of estate; not limited by one's lifetime
- fee simple absolute: highest form of ownership interest
- defeasible: can revert to previous owner for violation of conditions

Life estate

- fee estate passes to another upon death of a named party
- remainder: interest of a named party to receive estate after holder's death
- reversion: interest of previous owner to receive estate after holder's death

Conventional life estate

- full ownership interest, limited to lifetime of life tenant or another named party
- created by agreements between parties
- ordinary: on death of life tenant, passes to remainderman or previous owner
- pur autre vie: on death of another; passes to remainderman or previous owner

Legal life estate

- automatic creation of estate through operation of law
- designed to protect family survivors
- homestead: rights to one's principal residence
- laws protect homestead from certain creditors
- dower and curtesy: a life estate interest of a widow(er) in the real property
- elective share: right to claim deceased spouse's property in lieu of will

LEASEHOLD ESTATES

- non-ownership possessory estates of limited duration

Estate for years

- specific, stated duration, per lease

Estate from period-to-period

- lease term renews automatically upon acceptance of monthly or periodic rent

Estate at will

- tenancy for indefinite period subject to rent payment; cancelable with notice

Estate at sufferance

- tenancy against landlord's will and without an agreement

Ownership in Real Estate
Section 3: OWNERSHIP

Sole Ownership
Co-Ownership
Estates in Trust
Ownership by Business Entities
Condominiums
Cooperatives
Time-Shares

There are numerous ways of holding ownership of a freehold estate according to how many parties share the ownership and how they share it. The primary distinction is between ownership by a single party, and ownership by multiple parties. Various trust structures enable an owner to employ a trustee to hold and manage an estate. Condominiums, cooperatives and time-shares are hybrids that combine several forms of ownership.

SOLE OWNERSHIP

Tenancy in severalty

Tenancy in severalty

If *a single party owns* the fee or life estate, the ownership is a **tenancy in severalty**. Synonyms are **sole ownership**, **ownership in severalty**, and **estate in severalty**. When the would-be sole owner is a husband or wife, state laws may require homestead, dower or elective share rights to be released to allow ownership free and clear of any marriage-related claims.

The estate of a deceased tenant in severalty passes to heirs by probate.

CO-OWNERSHIP

Tenancy in common
Joint tenancy
Tenancy by the entireties
Community property
Tenancy in partnership

If more than one person, or a legal entity such as a corporation, owns an estate in land, the estate is held in some form of co-ownership. Co-owners are also called **cotenants**.

Tenancy in common

The tenancy in common, also known as the **estate in common,** is the most common form of co-ownership when the owners are not married. The defining characteristics are:

- two or more owners
- identical rights
- interests individually owned
- electable ownership shares
- no survivorship
- no unity of time

Two or more owners. Any number of people may be co-tenants in a single property.

Identical rights. Co-tenants share an indivisible interest in the estate, i.e., all have equal rights to possess and use the property subject to the rights of the other cotenants. No co-tenant may claim to own any physical portion of the property exclusively. They share what is called undivided possession or unity of possession.

Interests individually owned. All tenants in common have distinct and separable ownership of their respective interests. Co-tenants may sell, encumber, or transfer their interests without obstruction or consent from the other owners. (A co-tenant may not, however, encumber the entire property.)

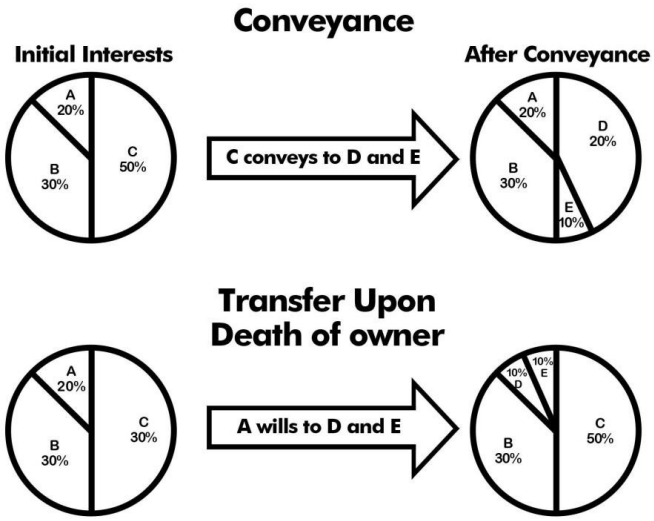
Electable ownership shares. Tenants in common determine among themselves what share of the estate each party will own. For example, three co-tenants may own 40%, 35%, and 25% interests in a property, respectively. In the absence of stated ownership shares, it is assumed that each has a share equal to that of the others.

No survivorship. A deceased co-tenant's estate passes by probate to the decedent's heirs and devisees rather than to the other tenants in common. Any number of heirs can share in the ownership of the willed tenancy.

No unity of time. It is not necessary for tenants in common to acquire their interests at the same time. A new co-tenant may enter into a pre-existing tenancy in common.

The following exhibit illustrates how tenants in common may transfer ownership interests to other parties by sale or will.

Exhibit 3.1
Tenancy in Common



The exhibit shows three owners of a property as tenants in common: A owns 20%, B owns 30%, and C owns 50%. C decides to sell 4/5 of his interest to D and 1/5 to E. D's interest in the estate will be 40% (4/5 times 50%), and E's will be 10% (1/5 times 50%). Both new tenants are tenants in common with A and B. Note that any owner may sell any portion of his or her interest to other owners or outside parties.

The second part of the exhibit shows how, when co-owner A dies, she might bequeath her 20% share of the ownership to heirs D and E equally. In such a case, the heirs would each acquire a 10% share of ownership as tenants in common with B and C.

Joint tenancy

In a joint tenancy, two or more persons collectively own a property as if they were a single person. Rights and interests are indivisible and equal: each has a shared interest in the whole property which cannot be divided up. Joint tenants may only convey their interests to outside parties as tenant-in-common interests. One cannot convey a joint tenant interest.

The defining characteristics and requirements of joint tenancy are:

- unity of ownership
- equal ownership
- transfer of interest
- survivorship

Unity of ownership. Whereas tenants in common hold separate title to their individual interests, joint tenants together hold a single title to the property.

Equal ownership. Joint tenants own equal shares in the property, without exception. If there are four co-tenants, each owns 25% of the property. If there are ten co-tenants, each owns 10%.

Transfer of interest. A joint tenant may transfer his or her interest in the property to an outside party, but only as a tenancy in common interest. Whoever acquires the interest co-owns the property as a tenant in common with the other joint tenants. The remaining joint tenants continue to own an undivided interest in the property, less the new cotenant's share.

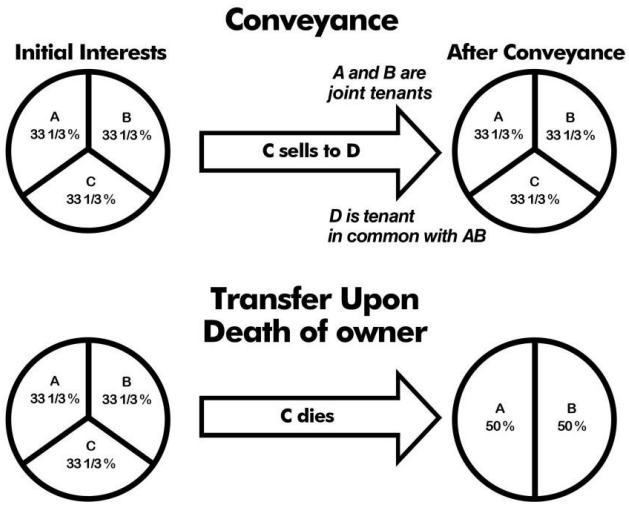
Survivorship. In most states, joint tenants enjoy rights of survivorship: if a joint tenant dies, all interests and rights pass to the surviving joint tenants free from any claims of creditors or heirs.

In other states, joint tenancy does not inherently include survivorship; survivorship must be expressly stated to be effected on transfer.

When only one joint tenant survives, the survivor's interest becomes an estate in severalty, and the joint tenancy is terminated. The estate will be then probated upon the severalty owner's death.

The survivorship feature of joint tenancy presents an advantage to tenancy in common, in that interests pass without probate proceedings. On the other hand, joint tenants relinquish any ability to will their interest to parties outside of the tenancy.

Exhibit 3.2
Joint Tenancy



The exhibit shows three parties, A, B, and C, who acquired a property as joint tenants. By definition, each owns a one-third share. If C sells to D, A and B automatically become joint tenants of two-thirds of the property. D becomes a tenant in common with A and B. D's interest will pass to her heirs upon her death.

If C dies, A and B receive equal shares of C's estate, making the remaining shares an equal 50%. If B then dies, A acquires the whole estate and becomes the sole owner. This event terminates the joint tenancy estate, and it becomes an estate in severalty.

Creation of joint tenancy. To create a joint tenancy, all owners must acquire the property at the same time, use the same deed, acquire equal interests, and share in equal rights of possession. These are referred to as the **four unities**.

- **Unity of time**
  all parties must acquire the joint interest at the same time
- **Unity of title**
  all parties must acquire the property in the same deed of conveyance
- **Unity of interest**
  all parties must receive equal undivided interests
- **Unity of possession**
  all parties must receive the same rights of possession

In most states, the conveyance must name the parties as joint tenants with rights of survivorship. Otherwise, and in the absence of clear intent of the parties, the estate will be considered a tenancy in common. In addition, a joint tenancy can only be created by agreement between parties, and not by operation of law.

In some states, a severalty owner may create a joint tenancy with other parties without the presence of the four unities by deeding the property to himself or herself and other parties as joint tenants.

Termination by partition suit. A partition suit can terminate a joint tenancy or a tenancy in common. Foreclosure and bankruptcy can also terminate these estates.

A partition suit is a legal avenue for an owner who wants to dispose of his or her interest against the wishes of other co-owners. The suit petitions the court to divide, or **partition**, the property physically, according to the owner's respective rights and interests. If this is not reasonably feasible, the court may order the property sold, whereupon the interests are liquidated and distributed proportionately.

Tenancy by the entireties

Tenancy by the entireties is a form of ownership traditionally reserved for **husband and wife,** though now available for same-sex spouses in some states. It features survivorship, equal interests, and limited exposure to foreclosure.

Survivorship. On the death of husband or wife, the decedent's interest passes automatically to the other spouse.

Equal, undivided interest. Each spouse owns the estate as if there were only one owner. Fractional interests cannot be transferred to outside parties. The entire interest may be conveyed, but only with the consent and signatures of both parties.

No foreclosure for individual debts. The estate is subject to foreclosure only for jointly incurred debts.

Termination. The estate may be terminated by divorce, death, mutual agreement, and judgments for joint debt.

Community property

Some states have established a community property form of ownership. This type of ownership defines property rights of legal spouses before, during, and after their marriage, as well as after the death of either spouse.

Community property law distinguishes real and personal property into categories of **separate** and **community** property. Separate property belongs to one spouse; community property belongs to both spouses equally.

Separate property consists of:

- property owned by either spouse at the time of the marriage
- property acquired by either spouse through inheritance or gift during the marriage
- property acquired with separate-property funds
- income from separate property

Community property consists of:

- all other property earned or acquired by either party during the marriage

For instance, John owns a car and a motorcycle, and Mary owns a car. They marry and buy a house. A year later, Mary's father dies and leaves her $10,000, which she uses to buy furniture. John, meanwhile, sells the motorcycle and buys a computer. John rents the computer to a programmer for $50 a month. The ownership of these properties is as follows:

John	Mary	Community
car 1	car 2	house
motorcycle	$10,000	
computer	furniture	
$50 income		

A spouse owns separate property free and clear of claims by the other spouse. He or she can transfer it without the other spouse's signature. Upon the death of the separate property owner, the property passes to heirs by will or laws of descent. Community property cannot be transferred or encumbered without the signatures of both spouses. Upon the death of either spouse, half of the deceased's community property passes to the surviving spouse, and the other half passes to the decedent's heirs.

Tenancy in partnership

Tenancy in partnership is a form of ownership held by business partners, as provided by the **Uniform Partnership Act**. The partnership tenancy grants equal rights to all partners, but the property must be used in connection with the partnership's business. Individual rights are not assignable.

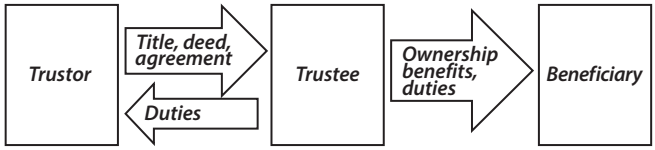
ESTATES IN TRUST

Living trust
Land trust

In an estate in trust, a fee owner -- the **grantor** or **trustor** -- transfers legal title to a fiduciary -- the **trustee** -- who holds and manages the estate for the benefit of another party, the **beneficiary**. The trust may be created by a deed, will, or trust agreement.

The trustee has fiduciary duties to the trustor and the beneficiary to maintain the condition and value of the property. The specific responsibilities and authorities are set forth in the trust agreement.

Exhibit 3.3
Estate in Trust



Living trust

A living trust allows the trustor, during his or her lifetime, to convey title to a trustee for the benefit of a third party. The trustor charges the trustee with all necessary responsibilities for managing the property, protecting its value, and securing whatever income it may produce. The trustee may also be ordered to sell the property at a given point. The beneficiary receives all income and sales proceeds, net of the trustee's fees.

Testamentary trust. A testamentary trust is structurally and mechanically the same as a living trust, except that it takes effect only when the trustor dies. Provisions of the decedent's will establish the trust.

Living and testamentary trusts may involve personal property as well as real property.

Land trust

A land trust allows the trustor to convey the fee estate to the trustee and *to name himself or herself the beneficiary.* The land trust applies only to real property, not to personal property. The agreement, or **deed in trust**, grants the beneficiary the rights to possess and use the property, and to exercise control over the actions of the trustee.

Conventional trust structure. The trustee holds legal title and has conventional fiduciary duties. The trustor must be a living person, but the beneficiary may be a corporation.

The distinguishing features of the land trust are:

- **beneficiary controls property**
  this includes occupancy and control of rents and sale proceeds
- **beneficiary controls trustee**
  the trustee is empowered to sell or encumber the property, but generally only with the beneficiary's approval

- **beneficiary identity not on record**
  public records do not identify the beneficiary; the beneficiary owns and enjoys the property in secrecy
- **limited term**
  the term of the land trust is limited and must be renewed or else the trustee is obligated to sell the property and distribute the proceeds

Beneficial interest. The beneficiary's interest in a land trust is *personal property*, not real property. This distinction offers certain advantages in transferring, encumbering, and probating the beneficiary's interest:

- **transferring**
  the beneficiary may transfer the interest by assignment instead of by deed
- **encumbering**
  the beneficiary may pledge the property as security for debt by collateral assignment rather than by recorded mortgage
- **probating**
  the property interests are probated in the state where the beneficiary resided at the time of death rather than the state where the property is located

OWNERSHIP BY BUSINESS ENTITIES

Corporation
Partnership
Limited liability company

Corporation

A corporation is a legal entity owned by stockholders. An elected board of directors oversees the business. Officers and managers conduct day-to-day activities. Officers and directors may be held fully liable for the corporation's actions, while shareholders are liable only to the extent of the value of their shares. Corporations, like individuals, may own real estate in severalty or as tenants in common.

Partnership

In a partnership, two or more persons agree to work together and share profits. A general partnership is not a distinct legal entity like a corporation. All the partners bear full liability for debts and obligations. A limited partnership has two or more partners, one or more being general partners and the others limited partners. The general partners run the business and are liable for debts and obligations. The limited partners are liable only to the extent of their investment in the partnership. Both general and limited partnerships may own real estate.

Limited liability company

A limited liability company (LLC) combines features of the corporation and the limited partnership. The LLC offers its members limited liability like a corporation, but income is passed directly to the members and is taxed to them as individual income. The management structure is flexible. Like a corporation or a partnership, an LLC may own real estate.

CONDOMINIUMS

Airspace and common elements
Interests and rights
Condominium creation
Organization and management
Owner responsibilities

A condominium is a hybrid form of ownership of multi-unit residential or commercial properties. It combines ownership of a fee simple interest in the **airspace** within a unit with ownership of an undivided share, as a tenant in common, of the entire property's **common elements,** such as lobbies, swimming pools, and hallways.

A condominium **unit** is one airspace unit together with the associated interest in the common elements.

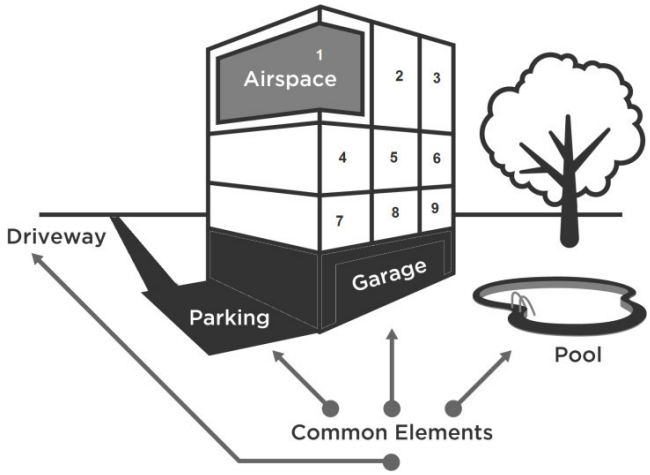
Airspace and common elements

The unique aspect of the condominium is its fee simple interest in the airspace contained within the outer walls, floors, and ceiling of the building unit. This airspace may include internal walls which are not essential to the structural support of the building.

Common elements are all portions of the property that are necessary for the existence, operation, and maintenance of the condominium units. Common elements include:

- the land (if not leased)
- structural components of the building, such as exterior windows, roof, and foundation
- physical operating systems supporting all units, such as plumbing, power, communications installations, and central air conditioning
- recreational facilities
- building and ground areas used non-exclusively, such as stairways, elevators, hallways, and laundry rooms

Exhibit 3.4
The Condominium



A buyer who purchases Unit #1 of the condominium illustrated obtains a fee simple interest in the airspace of apartment 1 and a tenancy in common interest in her pro rata share of the common elements. If all units in the building have the same ownership interest, the buyer would own an indivisible one-ninth interest in the common elements -- pool, parking lot, garage, pool, building structure, tree, etc.

Interests and rights

The condominium unit can be owned jointly, in severalty, in trust, or in any other manner allowed by state law. Unit owners hold an exclusive interest in their individual apartments, and co-own common elements with other unit owners as tenants in common.

Possession, use, and exclusion. Unit owners exclusively possess their apartment space, but must share common areas with other owners. The property's legal documents may create exceptions. For example, unit owners may be required to join and pay fees for use of a health club.

Unit owners as a group may exclude non-owners from portions of the common area, for instance, excluding uninvited parties from entering the building itself.

Transfer and encumbrance. Condominium units can be individually sold, mortgaged, or otherwise encumbered without interference from other unit owners. As a distinct entity, the condominium unit may also be foreclosed and liquidated. An owner may not sell interests in the apartment separately from the interest in the common elements.

Resale of a unit interest may entail limitations, such as the condominium association's prior approval of a buyer.

Condominium units are individually assessed and taxed. The assessment pertains to the value of the exclusive interest in the apartment as well as the unit's pro rata share of common elements.

Condominium creation

Condominium properties are created by executing and recording a condominium declaration and a **master deed**. The declaration must be legally correct in form and substance according to local laws. The party creating the declaration is referred to as the **developer**. The condominium may include ownership of the land or exclude it if the land is leased.

Declaration provisions. The condominium declaration may be required to include:

- a legal description and/or name of the property
- a survey of land, common elements, and all units
- plat maps of land and building, and floor plans with identifiers for all condominium units
- provisions for common area easements
- an identification of each unit's share of ownership in the overall property
- organization plans for creation of the condominium association, including its bylaws
- voting rights, membership status, and liability for expenses of individual owners
- covenants and restrictions regarding use and transfer of units

Organization and management

Organization. Condominium declarations typically provide for the creation of an **owner's association** to enforce the bylaws and manage the overall property. The association is often headed by a board of directors. The association board organizes how the property will be managed and by whom. It may appoint management agents, hire resident managers, and create supervisory committees. The board also oversees the property's finances and policy administration.

Management. Condominium properties have extensive management requirements, including maintenance, sales and leasing, accounting, owner services, sanitation, security, trash removal, etc. The association engages professional management companies, resident managers, sales and rental agents, specialized maintenance personnel, and outside service contractors to fulfill these functions.

Owner responsibilities

Individual units. Owner responsibilities relating to the apartment include:

- maintaining internal systems
- maintaining the property condition
- insuring contents of the unit

Common area assessments. Unit owners bear the costs of all other property expenses, such as maintenance, insurance, management fees, supplies, legal fees, and repairs. An annual operating budget totals these expenses and passes them through as **assessments** to unit owners, usually on a monthly basis.

Should an owner fail to pay periodic assessments, the condominium board can initiate court action to foreclose the property to pay the amounts owed.

The unit's pro rata share of the property's ownership as defined in the declaration determines the amount of a unit owner's assessment. For example, if a unit represents a 2% share of the property value, that unit owner's assessment will be 2% of the property's common area expenses.

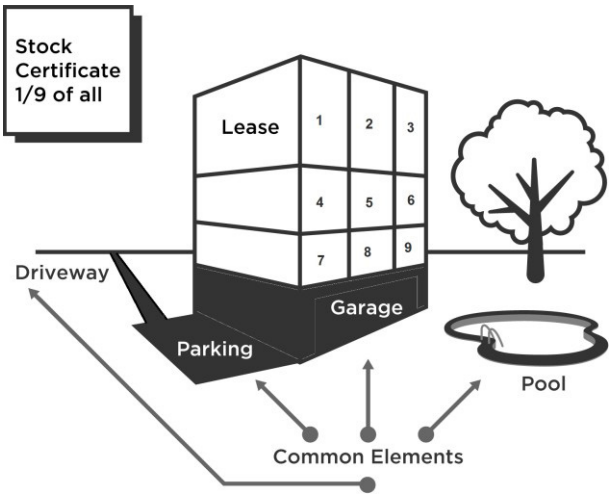
COOPERATIVES

Interests, rights, and obligations
Organization and management

In a cooperative, or co-op, one owns **shares** in a non-profit corporation or cooperative association, which in turn acquires and owns an apartment building as its principal asset. Along with this stock, the shareholder acquires a **proprietary lease** to occupy one of the apartment units.

The number of shares purchased reflects the value of the apartment unit in relation to the property's total value. The ratio of the unit's value to total value also establishes what portions of the property's expenses the owner must pay.

Exhibit 3.5
The Cooperative



The exhibit shows a nine-unit apartment building. A cooperative corporation buys the building for $900,000. All nine units are of equal size, so the corporation decides that each apartment represents a value of $100,000, or 1/9 of the total. The co-op buyer pays the corporation $100,000 and receives 1/9 of the corporation's stock. The shareholder also receives a proprietary lease for apartment 1. The shareholder is now responsible for the apartment unit's pro rata share of the corporation's expenses, or 11.11%.

Interests, rights and obligations

Cooperative association's interest. The corporate entity of the cooperative association is the only party in the cooperative with a real property interest. The association's interest is an undivided interest in the entire property. There is no ownership interest in individual units, as with a condominium.

Shareholder's interest. In owning stock and a lease, a co-op unit owner's interest is *personal property* that is subject to control by the corporation. Unlike condominium ownership, the co-op owner owns neither a unit nor an undivided interest in the common elements.

Proprietary lease. The co-op lease is called a proprietary lease because the tenant is an owner (proprietor) of the corporation that owns the property. The lease has no stated or fixed rent. Instead, the proprietor-tenant is responsible for the unit's pro rata share of the corporation's expenses in supporting the cooperative. Unit owners pay monthly assessments. The proprietary lease has no stated term and remains in effect over the owner's period of ownership. When the unit is sold, the lease is assigned to the new owner.

Expense liability. The failure of individual shareholders to pay monthly expense assessments can destroy the investment of all the other co-op owners if the co-op cannot pay the bills by other means.

Since the corporation owns an undivided interest in the property, debts and financial obligations apply to the property as a whole, not to individual units. Should the corporation fail to meet its obligations, creditors and mortgagees may foreclose *on the entire property.* A completed foreclosure would terminate the shareholders' proprietary lease, and bankrupt the owning corporation. Compare this situation with that of a condominium, in which an individual's failure to pay endangers only that individual's unit, not the entire property.

Transfers. The co-op interest is transferred by assigning both the stock certificates and lease to the buyer.

Organization and management

A developer creates a cooperative by forming the cooperative association, which subsequently buys the cooperative property. The association's articles of incorporation, bylaws,

and other legal documents establish operating policies, rules, and restrictions.

The shareholders elect a board of directors. The board assumes the responsibility for maintaining and operating the cooperative, much like a condominium board. Cooperative associations, however, also control the use and ownership of individual apartment units, since they are the legal owners. A shareholder's voting power is proportional to the number of shares owned.

TIME-SHARES

Time-share lease
Time-share freehold
Regulation

Time-share ownership is a fee or leasehold interest in a property whose owners or tenants agree to use the property on a periodic, non-overlapping basis. This type of ownership commonly concerns vacation and resort properties. Time-share arrangements provide for equal sharing of the property's expenses among the owners.

Time-share lease

In a leasehold time-share, the tenant agrees to rent the property on a scheduled basis or under any pre-arranged system of reservation, according to the terms of the lease. Generally, the scheduled use is denominated in weeks or months over the duration of the lease, a specified number of years.

Time-share freehold

In a freehold time-share, or **interval ownership estate**, tenants in common own undivided interests in the property. Expense prorations and rules governing interval usage are established by separate agreement when the estate is acquired.

For instance, the Blackburns want a monthly vacation in Colorado once a year. They find a time-share condominium that needs a twelfth buyer. The available month is May, which suits the Blackburns. The total price of the condominium is $240,000, and annual expenses are estimated to be $9,600. The Blackburns buy a one-twelfth interest with the other tenants in common by paying their share of the price, $20,000. They are also obligated to pay one-twelfth of the expenses every year, or $800. They have use of the property for one-twelfth of the year, in the month of May.

Interval owners must usually waive the right of partition, which would enable an owner to force the sale of the entire property.

Regulation

The development and sale of time-share properties has come under increased regulation in recent years. Developers and brokers in many states face more stringent disclosure requirements regarding ownership costs and risks. Other laws provide for a cooling-off period after the signing of a time-share sales contract, and require registration of advertising.

Ownership Snapshot Review

SOLE OWNERSHIP

Tenancy in severalty

- sole ownership of a freehold estate

CO-OWNERSHIP

- ownership by two or more owners

Tenancy in common

- co-tenants enjoy an individually owned, undivided interest; any ownership share possible; no survivorship

Joint tenancy

- equal, undivided interest jointly owned, with survivorship
- requires four unities to create: **time, title, interest, possession**

Tenancy by the entireties

- equal, undivided interest jointly owned by husband and wife

Community property

- per state law, joint ownership of property by spouses as opposed to separate property
- separate: acquired before marriage or by gift or inheritance

Tenancy in partnership

- ownership by business partners

TRUSTS

- property granted by trustor to fiduciary trustee for benefit of beneficiary

Living trust

- personal and real property ownership created to take effect during one's lifetime (living trust) or after one's lifetime (testamentary)

Land trust

- real property ownership where grantor and beneficiary are same party; beneficiary uses, controls property, does not appear on public records

OWNERSHIP BY BUSINESS ENTITIES

Corporation

- owned by stockholders; board of directors, officers, directors run business; liability of shareholders limited to value of shares; may own real estate in severalty or tenant in common

Partnership

- two or more partners; in general partnership, all partners run business and share liability; in limited partnership, general partners run business and are liable, limited partners liable only to the extent of their investment; both types may own real estate

Limited liability company

- members liability limited like in corporation, management flexible, income passed through and taxed as personal income; may own real estate

CONDOMINIUMS

- freehold ownership of a unit of airspace plus an undivided interest in the common elements as tenant in common with other owners
- may be sold, encumbered or foreclosed without affecting other unit owners
- creation: by developer's declaration

COOPERATIVES

- ownership of shares in owning corporation, plus proprietary lease in a unit; corporation has sole, undivided ownership

TIME SHARES

- a lease or ownership interest in a property for the purpose of periodic use by the owners or tenants on a scheduled basis

Rights and Interests in Real Estate Review Questions

1. **Three unique physical characteristics of land are immobility, indestructibility and _____.**
   a. Heterogeneity
   b. Air rights
   c. Surface rights
   d. Personalty

2. **Which of the following statements is true regarding the "bundle of rights"?**
   a. An owner cannot transfer subsurface rights without transferring air rights
   b. An owner can transfer subsurface rights without transferring air rights
   c. An owner cannot relinquish the right to own the subsurface rights
   d. An owner can never divide the "bundle of rights"

3. **Real estate includes such things as fences, streets, buildings, wells, sewers, sidewalks, and piers. Such Man-made structures attached to the land are called _____.**
   a. Chattels
   b. Emblements
   c. Trade fixtures
   d. Improvements

4. **The right to _____ the property includes the right to mortgage the property as collateral for debt.**
   a. Enjoy
   b. Transfer
   c. Encumber
   d. Use

5. **Which of the following is the primary regulatory entity for the real estate brokerage business?**
   a. Federal government
   b. State government
   c. County government
   d. Local government

Answers:
1. A, 2. B, 3. D, 4. C, 5. B

Interests and Estates Review Questions

6. **Which of the following represents the highest form of estate ownership?**
   a. Leasehold estate
   b. Homestead estate
   c. Pur autre vie estate
   d. Fee simple absolute estate

7. **What type of leasehold estate does not have a definitive end date?**
   a. An estate for years
   b. A tenancy for years
   c. An estate at sufferance
   d. An estate at will

8. **Lisa grants a life estate for Caregiver Joanne, over the lifetime of Lisa's mom. Upon the death of Lisa's mom, Lisa grants her niece the right to receive the property. What type of conventional life estate did Lisa create?**
   a. Legal
   b. Pur autre vie
   c. Fee simple estate
   d. Defeasible estate

9. **Municipalities have the right to enact ordinances and zoning laws for the public good within their jurisdiction. This governmental power is known as _____.**
   a. Eminent domain
   b. Escheatment
   c. Police power
   d. Taxation

10. **Which of the following statements regarding the general provisions of the homestead laws is true?**
    a. The homestead exemption is also known as the homestead tax exemption, which exempts a portion of the property's value from taxation.
    b. The homestead interest can be conveyed by one spouse; both spouses do not need to sign the deed conveying the homestead property.
    c. The homestead laws can be applied to any investment property that that is owned by a married couple.
    d. The homestead laws protect family members against losing their homes to general creditors attempting to collect on debts.

Answers:
6. D, 7. D, 8. B, 9. C, 10. D

11. Ownership in severalty is synonymous with which of the following terms?

a. Estate in common
b. Co-owners
c. Joint tenancy
d. Sole ownership

12. Community property consists of property _____.

a. Owned by either spouse at the time of the marriage
b. Acquired by either spouse through inheritance during the marriage
c. Acquired with separate property funds
d. Acquired by either party during the marriage

13. The distinguishing features of the land trust are all of the following EXCEPT _____.

a. The beneficiary controls the property
b. The trustee controls the beneficiary
c. The beneficiary is not identified on public records
d. The term of the land trust is limited

14. Which type of ownership is described as a fee or leasehold interest in a property whose owners or tenants agree to use the property on a periodic, non-overlapping basis?

a. Cooperative ownership
b. Hotel condominium ownership
c. Periodic tenancy ownership
d. Time share ownership

15. Which of the following terms is defined as "ownership of shares in owning corporation, plus proprietary lease in a unit; corporation has sole, undivided ownership"?

a. Cooperatives
b. Condominiums
c. Partnerships
d. Trusts

Answers:
11. D, 12. D, 13. B, 14. D, 15. A