

# Real Property

- Land and anything that is permanently attached to land (e.g., buildings, bridge, trees, crops, etc.)
- Includes:
  - buildings
  - Subsurface rights: beneath surface of the land
  - Plant life and vegetation: trees, plant life and vegetation on surface of land
  - air rights: air space parcels above the land

# Real Property

## **Fixtures:**

- Goods that are affixed to real estate so as to become part thereof
- start as personal property
- become part of real property
- owned by owner of real property after attached
- includes: roof added to house, trees that are planted, wall-to-wall carpet, plumbing and electrical fixtures, etc.

# Estates in Land

- Ownership rights in real property: Bundle of legal rights that the owner has to possess, use, and enjoy the property
- Type of estate: Determined from the deed, will, lease, or other document that transferred the ownership rights

# Freehold Estate

- **Freehold estate:**

An estate in which the owner has a present possessory interest in the real property with title

Highest estate in real estate

# Freehold Estate

- **Fee simple absolute:**

fullest bundle of legal rights that a person can hold in real property

right of possession for unlimited time; alienable (conveyance or sale); inheritable (devise under will); absolute (nothing cuts off rights)

words in deed: “To John Smith and his heirs” or  
“To John Smith and his blood issue”

# Freehold Estate

- **Fee simple defeasible:**

A type of ownership of real property that grants the owner all the incidents of a fee simple absolute except that it may be taken away if a specified condition occurs or does not occur

words in deed: “so long as” or “until such time as”

grantor could use “restrictive covenant” to restrict in a deed use of real property by grantee

# Freehold Estate

- **Life estate:** An interest in real property for a person's lifetime; upon that person's death, the interest is cut off and title is transferred to another party
- ***Estate pour autre vie:*** A life estate that is measured by the life of a third party

# Future Interests

The future (non-possessory) interest that a grantor retains for himself or herself or a third party

- **Reversion:** Right of possession returns to the grantor after the expiration of a limited or contingent estate
- **Remainder:** ownership goes to a third party upon the expiration of a limited or contingent estate ("remainderman")
- **Remainder:** can be "vested" (after life estate) or "contingent" (subject to event of defeasance)



# Concurrent Ownership

- Two or more persons own a piece of real property at the same time as co-owners  
(e.g., both could be co-tenants in fee simple absolute)

# Concurrent Ownership

## Tenancy in common:

- default rule
- can be equal or fractional (e.g., 60% and 40% instead of 50% and 50%)
- Deed: “To John and Fred as co-tenants in common”
- can be sold or left to heirs under a will
- interest of survivor passes to the deceased tenant’s estate and not to the co-tenants.

# Concurrent Ownership

## Joint tenancy:

- Form of co-ownership that includes the "right of survivorship"
- upon the death of one joint tenant the deceased person's interest in the real property automatically passes to the surviving joint tenant or joint tenants
- equal shares; must be created under a single deed and conveyance

# Concurrent Ownership

## **Tenancy by the entirety:**

- A form of co-ownership of real property available only to married couples
- recognized in 25 states (Pennsylvania, Delaware, Maryland, New York, New Jersey, etc.)
- neither can convey without consent of other
- upon divorce, reverts to tenants in common

# Concurrent Ownership

## Community property:

- Form of ownership in which each spouse owns an equal one-half share of the income of both spouses and the assets acquired during the marriage
- regardless of who has title (e.g., Husband has title individually but still owned 50% each)
- recognized in 9 states (California, Texas, Arizona, Nevada, NM, Idaho, Wisconsin)

# Concurrent Ownership

- **Condominium:** A common form of ownership in a multiple-dwelling building in which the purchaser has title to the individual unit and owns the common areas as a tenant in common with the other condominium owners
- **Cooperative:** A form of co-ownership of a multiple-dwelling building in which a corporation owns the building and the residents own shares in the corporation

# Nonpossessory Interests

- **Nonpossessory interest:** person holds an interest in another person's property without actually having title to any part of the property

# Easements

**Easement:** Right of limited use (e.g., walking or driving crossing) of someone else's land.

- **Easement appurtenant:** Owner of one property is given an easement over an adjacent property
  - **Servient estate:** The land over which an easement is granted
  - **Dominant estate:** The land that benefits from the easement



# Easements Appurtenant

<p data-bbox="324 596 853 656">Dominant estate</p> <p data-bbox="409 1113 776 1159">100 Main Street</p>	<p data-bbox="1097 596 1576 656">Servient estate</p> <p data-bbox="1193 1113 1561 1159">102 Main Street</p>
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# Easements & Non-Freehold Estates

- **Easement in gross:** Authorizes a person who does not own adjacent land to use land (e.g., walk or drive across)
- **License:** A document that grants a person the right to enter upon another's property for a specified and usually short period of time
- ***Profit-à-Prendre:*** A document that grants a person the right to remove something from another's real property
- **Mortgage:** Bank's contingent future interest

# Non-Freehold Estates

- **Leasehold estate:** possession but no title
  - tenancy for term: specified term of lease
  - tenancy at will: month to month lease

# Transfer of Ownership of Real Property

Title to real property can be transferred by:

- **Sale (conveyance):** The passing of title from a seller to a buyer for a price
- **Deed:** The written instrument that conveys an ownership interest in real property
  - **Grantor:** The party who transfers an ownership interest in real property
  - **Grantee:** The party to whom an interest in real property is transferred

# Transfer of Ownership of Real Property

## Types of deeds:

- **General Warranty deed:** A deed that protects a grantee of real property from defects in title caused by the grantor and prior owners of the property
- **Quitclaim deed:** A deed in which the grantor of real property transfers whatever interest he has in the property to the grantee

# Transfer of Ownership of Real Property

- **Recording statutes:** A state statute that requires a mortgage or deed of trust to be recorded in the county recorder's office of the county in which the real property is located
- **Quiet title action:** An action brought by a party, seeking an order of the court declaring who has title to disputed property

# Transfer of Ownership of Real Property

- **Marketable title:** Title to real property that is free from any encumbrances or other defects that are not disclosed but would affect the value of the property
  - **Title insurance:** A form of insurance obtained from a title insurer who agrees to reimburse the insured for losses caused by undiscovered defects in title
  - **Attorney's opinion:** In Delaware, attorney's give legal opinion on good title

# Transfer of Ownership of Real Property

- by gift or inheritance
- recording deed triggers realty transfer tax (usually about 4%, split between buyer and seller)
- based on sale price or fair market value



# Adverse Possession

- Person can obtain title to another's property if certain statutory requirements are met:
  - Prescribed time period (e.g., 10 or more years)
  - Open, visible, and notorious
  - Continuous and peaceful: actual possession
  - Hostile & adverse (contrary to rights of owner)
- can count possession by a prior owner
- Adverse possessor can get title from court in legal action to quiet title