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.
Estate 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
<table>
<thead>
<tr>
<th>Dominant estate</th>
<th>Servient estate</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 Main Street</td>
<td>102 Main Street</td>
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</tbody>
</table>
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