

Real Property with Liberty Weekly

(this is NOT legal advice and is for non-profit educational purposes only).

Ownership of Real Property

Real property ownership interests:

- 1) Present
 - a. Fee
 - i. Absolute
 - ii. Defeasible
 - iii. Tail
 - b. Life
 - c. Term
 - 2) Concurrent Ownership Interests
 - a. Joint Tenancy
 - b. Tenancy in Common
 - c. Tenancy by the Entirety
 - 3) Future Interests
 - a. Grantor
 - i. Possibility of Reverter
 - ii. Right of entry/power of termination
 - iii. Reversion
 - b. Third Party
 - i. Executory Interest
 - ii. Remainder
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- 1) Present Possessory Estates
 - a. Types of Freehold Estates (there's only one)
 - i. **Fee Simple Absolute**
 1. This is the best estate
 2. The Largest possible estate in land
 3. Includes all possible rights that a person may have in that piece of land
 4. May last forever
 5. One way to terminate
 - a. Death of owner w/o heirs
 - b. Property then escheats to the STATE
 6. Common Law vs. Modernly
 - a. CL: "to A and his heirs"
 - b. MO: presumed when "to A" is used
 - b. Defeasible Estates (means the estate terminates upon some condition, happening or event).
 - i. **Fee Simple Determinable**
 1. Created by durational language

- a. "A to B so long as democrats continue to be physically removed"
 - b. "A to B while the school has an Austrian Economics Program"
 - c. "A to B until the school installs safe spaces"
 - 2. Terminates automatically on the happening of the listed future event.
 - 3. If the future event happens, the estate **reverts** to the grantor through **possibility of reverter**.
 - ii. **Fee Simple Subject to a Condition Subsequent**
 - 1. Pretty much the same as a **FSD** except the event only opens up the grantor's ability to revert the estate.
 - a. "A to B, but if B does not read Fool's Errand within one week, A has the power to terminate the estate."
 - b. "A to B. but if B advocates socialism in any way, then A may reenter and retake the estate."
 - 2. If the language in the conveyance regarding the power to terminate is ambiguous, then the courts will try to find a **FSSCS**, but they usually fail, and find a **FSA** instead. This means **NO RESTRICTIONS** (except damages).
 - a. Courts disfavor forfeitures
 - b. Usually looks like "A to B, so that Voluntaryism may be taught."
 - i. Court would find Fee Simple Absolute, but may award A damages for the breach.
 - ii. Broken Covenant
 - iii. **Fee Simple Subject to Executory Interest**
 - 1. Can be created with either express or conditional language
 - 2. Except on the passing of the terminating event, the property passes, not to the grantor, but to a third party.
 - a. "A to B so long as the NAP is abided by, if not, then to C."
 - b. "A to B on the condition that Cannibal Corpse is played every morning at 10 am, if not, then to C."
- c. **Fee Tail**
 - i. At Common Law: A freehold estate only descended to the grantee's biological children.
 - 1. "A to B and the heirs of his body."
 - 2. Could not be willed, sold, or assigned away
 - ii. Modernly:
 - 1. No courts like it
 - 2. **FSA**
- d. **SUMMATION:**
 - i. **Freehold Estates:**
 - 1. **Fee Simple Absolute**
 - ii. **Defeasible Estates:**
 - 1. **Fee Simple Determinable**
 - 2. **Fee Simple Subject to Condition Subsequent**
 - 3. **Fee Simple Subject to Executory Interest**

iii. Fee Tail

1. Lineal Descendants

2) Life Estate

- a. Lasts for the duration of SOMEONE's Life, usually the grantee
- b. Could be measured by someone life other than the grantee
 - i. *Pur autre vie*
 - ii. "A to B for the life of C" as long as C is alive, the estate is part of B's estate
- c. Life Estates can also be made defeasible.

3) Non-Freehold Estates

a. Term Estate

- i. Limited in Duration
- ii. Essentially just a landlord tenant relationship

4) Concurrent Ownership Interests

- a. Joint Tenancy
- b. Tenancy in Common
- c. Tenancy by the Entirety

1) Concurrent Ownership Interests (Cotenancy)

- a. Comes about whenever property is being transferred to more than one person to be held jointly.

b. Tenancy in Common

- i. Form of concurrent ownership
- ii. Each co-tenant owns an undivided interest in the whole of the property

c. Joint Tenancy

- i. Form of Concurrent ownership
- ii. Each co-tenant owns an undivided interest in the whole of the property
- iii. Each tenant has **Right of survivorship**

1. Right of Survivorship

- a. If a property that is jointly owned and one of the cotenants dies, the property passes to the surviving cotenants automatically.

2. Common Law: Conveyance to two or more people assumed a joint tenancy unless explicitly stated otherwise

3. Modernly: Conveyance to two or more people assumed a tenancy in common unless explicitly stated otherwise.

4. Right of survivorship trumps a will or inheritance by intestacy.

5. If there is a tenancy in common without right of survivorship, the joint interest held in a tenancy in common may be willed away or inherited through intestacy.

2) How to create joint tenancy or tenancy in common?

a. Joint Tenancy:

- i. the 4 unities under Common Law
 - 1. Time (take title at same time)
 - 2. Title (must take the same title)

3. Interest (equal shares of the same type).
4. Possession (each tenant has the right to possess the whole)
- ii. Most modern jurisdiction only require unity of:
 1. Interest
 2. Possession

b. Tenancy in Common:

- i. Only requires unity of possession.
- ii. Each owns the entire parcel, but only a percent interest in the whole
- c. Biggest Difference is between the two:
 - i. Right of survivorship (only joint tenancy)
 - ii. Joint tenancy needs unity of interest and possession.

3) SEVERANCE of a Joint Tenancy or Tenancy in Common.

- a. Through inter vivos act of one of the parties (made during the lifetime)
- b. Severing a joint tenancy creates a tenancy in common
 - i. One party seeks a partition action
 - ii. Joint tenant sells the interest to the other
 - iii. Joint tenant mortgages his interest in the property
 1. Majority sees the mortgage as a lien, does not sever
 2. Minority sees mortgage as a title to the property, then it is seen as a severance

4) PARTITION

- a. Each co-tenant has the right to seek partition of the property
- b. Voluntary partition is done by exchange of deeds or selling the property and dividing the proceeds.
- c. Involuntary partition is the result of a partition action filed by one or more co-tenants in court.

5) Rights and duties of Co-tenants

- a. Each co-tenant is entitled to possess the whole property
 - i. If denied: they can bring suit for damages or ejection
- b. Profits:
 - i. If produced by one co-tenants efforts, then the others have no right to the proceeds unless they have been deprived of possession.
 - ii. If from rent: all parties are due their ownership share of the rent.
- c. Expenses:
 - i. Each must pay a proportionate share of taxes and/or mortgage payments
 - ii. Repairs: there is no duty for co-tenants to repair, but if one co-tenant does, they have a right to be reimbursed through rent or through partition of the estate.
 - iii. Improvements: there is no duty to improve or right for compensation for the improvements unless the land is sold and the price can be attributed to the improvements. Then the improving co-tenant gets that compensation.