

## Unit 3: Interests in Real Estate

### LECTURE OUTLINE

- I. Estates in Land—defines the owner's degree, quantity, nature, and extent of interest in real property
  - A. Freehold estates—estates for an indeterminable period of time
    - 1. Fee simple estate—the highest type of interest in real estate recognized by law (see Figure 3.1)
      - a. Fee simple absolute—no limitations except for public and private restrictions, such as zoning laws and restrictive covenants
      - b. Fee simple defeasible—qualified (limited); subject to the occurrence or nonoccurrence of a specified event
        - (1) Fee simple determinable (qualified by a special limitation)—exists "so long as" limitation is met; former owner retains a possibility of reverter.
        - (2) Fee simple subject to a condition subsequent—exists provided condition is not violated; former owner retains a right of reentry if the condition is broken
    - 2. Life estate—limited to the duration of a lifetime, either that of the owner or of another designated person (see Figure 3.2)
      - a. Pur autre vie—created by the owner by deed or will for a life tenant for the life of a person other than the life tenant
        - (1) Remainder interest—a future interest in the fee simple estate for the remainderman (the person to whom the property will pass when the life estate ends)
        - (2) Reversionary interest—returns to the original owner (or the original owner's heirs) when the life estate ends.
      - b. Legal life estates—created by state statute rather than voluntarily by the owner
        - (1) Dower—historically, the life estate interest of a wife in the real property of her deceased husband
        - (2) Curtesy—historically, the life estate interest of a husband in the real property of his deceased wife
          - (a) Community property states do not use dower or curtesy
          - (b) Potential legal life estates may require both spouses to sign documents when property is conveyed
        - (3) Homestead rights—a legal life estate in real estate occupied as the family home; protects the equity in a residence from a judgment by unsecured creditors (during the occupant's lifetime)

- II. Encumbrances—claim, charge, or liability that attaches to real estate
  - A. Two classifications
    - 1. Liens—monetary charge
    - 2. Encumbrances—restrictions, easements, encroachments that affect the condition or use of the property
  - B. Lien—charge against property that provides security for the debts or other obligations of the property owner (see Unit 15)
  - C. Deed restriction—private agreement that affects the use of land (see Unit 20)
  - D. Covenants, conditions, and restrictions (CC&Rs)—maintain standards in a subdivision
  - D. Easement—right to use the land of another for a particular purpose
    - 1. Easement appurtenant—attached to the ownership of one parcel and allows this owner the use of a neighbor’s land (Figure 3.3)
      - a. Servient tenement
      - b. Dominant tenement
    - 2. Party wall easement—used for a wall that straddles the property line of adjacent properties with different owners.
    - 3. Easement in gross—an individual or company interest in or right to use the land of another (frequently for utilities) (Figure 3.4)
    - 4. Easement by necessity—arising because owners must have ingress to and egress from their land
    - 5. Easement by prescription—arises when use has been continuous, non-exclusive, and without the owner's approval
      - a. Open, notorious, visible, without owner’s approval
      - b. Tacking
    - 6. Terminating an easement
      - a. When the purpose for which it was created no longer exists
      - b. By the owner of either the dominant or the servient tenement becoming the owner of both (merger)
      - c. By release of the right of easement to the owner of the servient tenement
      - d. By abandonment of the easement
      - e. By the nonuse of a prescriptive easement by its owner
  - DI. License—the privilege to use another's land for a specific purpose; can be terminated or canceled by the licensor

- F. Encroachment—anything that illegally extends from one property across the property line onto another parcel or beyond legal building lines
  - G. Lis Pendens—Notice of pending legal action affecting title of property
- III. Governmental powers (PETE)—limitations on the ownership imposed by the government for the general welfare of community; supersede rights or interests of the individual owner
- A. P = Police power
    - 1. Enabling acts grant authority from the state to local governments to protect the public health and safety and general welfare.
    - 2. Zoning ordinances, building codes, environmental protection laws, and other regulations (see Unit 20 for details)
  - B. E = Eminent domain
    - 1. The *right* of the government to take privately owned real estate for public use; *condemnation* is the process by which this right is exercised.
    - 2. Legal protections for the property owner
      - a. In the past, the proposed use must be declared by the courts to be for a legitimate public use. However, condemnation for “public use” has been defined more broadly than in the past; reference *Kelo v. City of New London* case where the court found that the city properly invoked a state statute that authorized use of eminent domain to promote economic development.
      - b. Just compensation must be paid to the owner for both the property taken and the diminished value of what is left.
      - c. The rights of the owner must be protected under due process of law.
    - 3. Right extends to quasi-government bodies; can include renewal projects.
  - C. T = Taxation—a charge on real estate to raise funds to meet the costs of government operations (see Unit 15)
  - D. E = Escheat—provides that the ownership of real estate will revert to the state (or county) in which it is located when its former owner dies without a will (intestate) and has no heirs capable of being discovered by the state.