

Unit 4: Forms of Real Estate Ownership

LECTURE OUTLINE

- I. Ownership in severalty—title vested in one natural or legal person, such as a corporation
- II. Co-ownership—concurrent owners; co-owners. Forms of co-ownership include:
 - A. Tenancy in common (see Figure 4.1)
 1. Two or more natural or legal owners
 2. Each owner holds an undivided fractional interest
 3. Unity of *possession*
 - B. Joint tenancy (with right of survivorship) (see Figures 4.2 and 4.3)
 1. Two or more natural owners only
 2. Inherent right of survivorship among the owners
 3. Creation of joint tenancy requires four unities (PITT)
 - a. Unity of possession—all joint tenants hold an undivided right to possession
 - b. Unity of interest—all joint tenants hold equal ownership interest
 - c. Unity of time—all joint tenants acquire their interest at the same time
 - d. Unity of title—all joint tenants acquire their interest by the same document
 4. Termination of joint tenancy occurs when any one unity is terminated.
 - C. Termination of co-ownership by suit for partition. The court may physically divide the property or order it sold and divide the proceeds among the disputing owners.
 - D. Ownership by married couples
 1. Tenancy by the entirety
 - a. Special form of ownership for married couples in certain states
 - b. Each spouse has undivided interest with inherent right of survivorship
 - c. Both spouses must sign any documents to encumber or convey the property.

2. Community property rights
 - a. Special form of ownership for married couples only
 - b. Property acquired during the marriage is community property.
 - c. Spouses are considered equal partners, with both signatures required for conveying or mortgaging community property.
 - d. Property brought to the marriage or acquired during the marriage by gift or inheritance is separate property; income earned from separate property is also considered separate property.
 - e. Does not have a right of survivorship as joint tenancy does. When one spouse dies, one-half of the property is inherited by the decedent's heirs (which may or may not be the other spouse).

III. Trusts and Business Organizations

A. In a trust, a person transfers ownership of property to someone else to hold or manage for the benefit of a third party.

1. Parties to a trust are:
 - a. Trustor—the person who creates the trust
 - b. Trustee—the party who holds legal title and must carry out the trustor's instructions regarding the purpose of the trust; has a fiduciary responsibility
 - c. Beneficiary—the person who receives the benefits of the trust
2. Living trust—created while the trustor is alive, usually by a detailed trust agreement
3. Testamentary trust—created at the grantor's death through the grantor's will
4. Land trust—real estate is the only asset
 - a. Public records do not name beneficiary.
 - b. Property can be pledged as security without having mortgage recorded; beneficial interest is personal property.
 - c. Continues for a definite term; if not extended, it expires.

B. Ownership of Real Estate by Business Organizations

1. Partnership—two or more people who carry on a business for profit as co-owners
 - a. General partnership—all partners participate in the partnership; share full liability

b. Limited partnership—the general partner or partners provide the management for the limited (nonparticipating) partners; limited partners are only liable to the extent of their investment

2. Corporation

- a. A legal entity (“artificial person”); chartered under state law.
- b. Exists in perpetuity until formally dissolved.
- c. Managed and operated by board of directors.
- d. Provides its shareholders with limited liability.
- e. Corporate profits are usually subject to double taxation unless a Chapter S corporation.

3. Limited liability company (LLC)

- a. Combines features of limited partnerships and corporations.
- b. Members have the limited liability of a corporation plus the tax advantages of a partnership.

IV. Condominiums, Cooperatives, and Time-Shares (see Figure 4.5)

A. Condominium ownership (see Figure 4.6)

- 1. Created under condominium laws (often called horizontal property acts).
- 2. The purchaser is a fee simple owner who receives a deed to
 - a. individual ownership of an identified unit
 - b. tenant-in-common interest for the common elements
- 3. Can be for any type of real estate, not just residential.
- 4. Requires periodic fees for common area expenses and assessments for special expenses.
- 5. Individual ownership unit is assessed for real property tax.
- 6. Administered by association of unit owners.

B. Cooperative ownership

- 1. Title to the land and building is held by a corporation.
- 2. The purchaser is a shareholder who receives
 - a. shares of stock
 - b. a proprietary lease to an apartment
- 3. Operated and managed by board of shareholders.

4. Shareholders pay fees to support the corporation's expenses, including real property taxes; if shareholder defaults on fees, the burden falls on the remaining shareholders to support the cooperative.
5. Method of transfer of ownership is an important issue; may require approval by board of directors and selling of stock back to corporation.

C. Time-share ownership

1. Can be either a *time-share estate* (fee simple interest) or a *time-share use*, (right to use only; developer owns the real estate).
2. The purchaser usually receives the right to occupy a certain unit for a specified time-frame each year.
3. State laws that govern time-shares are complex and varied, requiring specialized competent legal counsel.
4. Time-shares are frequently regulated as subdivisions and sales may be subject to federal securities laws.
5. Some states have adopted versions of the Model Real Estate Time-Share Act.