

## Unit 3: Interests in Real Estate

### LECTURE OUTLINE

- I. Estates in Land—an estate 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 or persons (see Figure 3.2)
      - a. Pur autre vie—life estate created by the owner by deed or will for the life of a person other than the life tenant
      - b. 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)
      - c. Reversionary interest—returns to the original owner (or the original owner's heirs) when the life estate ends.
    - 3. Legal life estates—created by state statute rather than voluntarily by the owner
      - a. Dower—historically, the life estate interest of a wife in the real property of her deceased husband
      - b. Curtesy—historically, the life estate interest of a husband in the real property of his deceased wife
        - i. Community property states do not use dower or curtesy
        - ii. Potential legal life estates may require both spouses to sign documents when property is conveyed
      - c. 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. Lien—charge against property that provides security for the debts or other obligations of the property owner (see Unit 15)
  - B. Private agreement that affects the use of land (see Unit 20)—Covenants, conditions, and restrictions (CC&Rs)—maintain standards in a subdivision
  - C. Easement—right to use the land of another for a particular purpose
    - 1. Easement appurtenant—attached to the ownership of a parcel and allows that 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—arises because owners must have ingress to and egress from their land
    - 5. Easement by prescription—arises when use has been visible, open, notorious, and without the owner's approval
      - a. Open, notorious, visible, without owner’s approval
      - b. Tacking possible if successors in interest
    - 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
  - E. 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 property 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
- 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. Inverse condemnation is an action brought by a property owner seeking just compensation for loss in land value when adjacent land is used for a public purpose
- 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.