Chapter 3
Real Estate Ownership
Correspondence Course Information

Please read and become familiar with this information prior to the class date.

This part of the class will be taken correspondence. You will be required to take a test on this information and the test must be returned prior to taking the classroom portion of the course. The remainder of the class may be taken in the classroom or by correspondence.

If you have registered for the correspondence course, the test as well as the evaluation sheet must returned for grading and issuance of you graduation certificate. You may take the tests all at once or one chapter at a time. The test may be taken open book and the answer sheet must be sent back to:

Email to info@AlaskaRealEstateSchool.com

Or Fax to 866-659-8458

Or Mail to:
AlaskaRealEstateSchool.com
Attn: Denny Wood
PO Box 241727
Anchorage, Alaska 99524-1727
Police Power

Police power is the capacity of a state to regulate behaviors and enforce order within its territory, often framed in terms of public welfare, security, morality, and safety. Police power is legally considered an inherent power, limited only by prohibitions specified in the constitution of a state, making it the most expansive authorized power exercised by a state.

The concept of police power in English common law dates back at least four centuries and roughly coincides with the breakdown of the feudal order in Europe and the development of towns and cities. The exercise of police power can be in the form of making laws, compelling obedience to those laws through physical means with the aim of removing liberty, legal sanctions, or other forms of coercion and inducements. Controversies over the exercise of police power, particularly the use of physical means, arise when it conflicts with the rights of sub-national states and individuals or civil liberties, such as the police power of American states for example, or police brutality.

In American legal history, police power has a particular significance for interpreting the constitutional division of power. Nineteenth-century Supreme Court rulings confirmed that the federal government had certain powers delegated by the constitution, but that all unspecified regulatory powers, or "police power," rested with the states. The concept was expanded in the New Deal era to grant police power to the federal government under the commerce clause of the constitution, extending it to the provision of services to enhance public welfare. US courts now rely on a "balance of interests" doctrine to settle contests over police power.

Philosophical origins

There are three primary legal theories as to the metaphysical origins of police power.

Inherent right

Some legal theorists regard states as having an "inherent" right to police power, meaning that it doesn't have to be explicitly written into any basic law or constitutional or other foundational document.

Divine right

Historic

Historically, European monarchs considered police power to be bestowed on them by the Christian God. This was known as the Divine Right of Kings.
French Economist Frédéric Bastiat advanced the following democratic theory of police power in his 1849 book, *The Law*: The police power is essentially derived from the individual power of self-defense. If someone attacks you, he argues, you have a right, given to you by God, to use force to resist, or detain this person, and as people come together by compact to form democratic forms of self-rule, it becomes practical for citizens to delegate this power to an external body, such as to a militia or police force.

**Uses of police power**

The most common use of police power over real property is for the adoption and enforcement of zoning regulations, building codes, and environmental protection regulations, by local, regional, and national governments.

Other uses of the police power include public health regulations, vice laws, traffic laws, and family law. However, it is impossible to give a complete list of the uses of police power because a state can write any command or prohibition as a law and make people obey it, as long as such laws do not contradict constitutions or other laws with precedent.

**Police power in the United States**

Under the 10th Amendment to the United States Constitution, the powers prohibited from or not delegated to the Federal Government are reserved to the states respectively, or to the people. This implies that the states do not possess all possible powers, since some of these are reserved to the people. The powers reserved to the states by the Constitution, include all powers the states retained prior to 1789 (*U.S. Term Limits, Inc. v. Thornton*). The framers of the U.S. Constitution believed that the states were empowered, like the British Parliament, with general authority to act on behalf of the welfare of their people but, unlike the British Parliament, subject to the restrictions of written state and federal constitutions.

Police powers are, from the point of view of state courts, also restricted by state constitutions. The concept of police power is used by federal courts which do not have jurisdiction to interpret state constitutions: from the point of view of federal constitutional law, states have general police powers except where restricted by the federal Constitution.

The U.S. Supreme Court has often held that police powers are limited, even before reaching specific Constitutional provisions. One of many such statements:

> Police powers, broadly stated and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals and general welfare of the public.
Cases such as *Lawrence v. Texas* suggest that intimate morals are no longer a legitimate subject of the police power except to the extent that health or safety are involved.

Because the Congress has limited powers granted in the Constitution, the Federal government does not have a general police power, as the states do. The exceptions are laws regarding Federal property and the military. On the other hand, Congress was granted by the New Deal Court a broad quasi-police authority from its power to regulate interstate commerce and raise and spend revenue.

**Eminent Domain: Taking Property for Public Use**

**The Government's Power of Eminent Domain**

Eminent domain is the power of government to take private land for public use. This power is limited by the federal Constitution and by state constitutions -- when the government does take private property for public use, it must fairly compensate the owner for the deprivation. Sometimes the operation of eminent domain is a straightforward matter, with the government providing the landowner a fair price, and the landowner yielding the property to public use. At other times, however, government and the landowner may disagree over whether a taking has occurred, and how much compensation is due.

**History of "Eminent Domain"**

The law of eminent domain is derived from the so-called "Takings Clause" of the Fifth Amendment, which states, "Nor shall private property be taken for public use, without just compensation." The men who created the Constitution were, for the most part, landholders with a certain mistrust of government power. To protect private landholders from abuses by government, the Founders limited the government's power to take property. At that time, the government action they likely envisioned was seizure of the land and its occupation by government. As the country's population continued to grow, however, local governments began to place increasing controls on the use of land. Where landowners believed that these restrictions impeded their use of the property, or damaged its value, they began to argue that these restrictions also constituted a taking of their land requiring adequate compensation. At first, the courts were reluctant to hear these claims. Over time, however, courts began to recognize them, adding a new dimension to the law of eminent domain.

**The Fifth Amendment "Takings" Clause**

The "Takings" Clause of the Fifth Amendment has several important components. First, it applies only to private property. Should the government decide to change the use of some piece of public land, i.e. build a bus terminal on what had been a public park, that action would not compel the government to pay citizens who used the park? It's possible, however, that the new use might infringe the rights of neighboring landowners so much that they could sue anyway, equating the infringement of their
property rights with an outright taking of their land. This process, known as an inverse condemnation proceeding, is discussed below.

The second requirement under the Fifth Amendment is that the land be taken for public use. This limitation prevents government officials from taking private land for their own purposes. For example, a member of Congress could not take the home of a private citizen for his or her own use under eminent domain. Sometimes, however, courts have upheld takings that ultimately resulted in a private party possessing the land. This has occurred, for example, to allow expansion of an auto plant felt to be beneficial to the local economy, and in instances of urban renewal, where a new neighborhood goes up in place of an old and dilapidated one.

"Just" Compensation

Finally, the Fifth Amendment requires just compensation. Fair compensation is typically determined using the market value of the land, that is, the price for which the landowner could reasonably expect to sell the land to some other buyer. What the land is worth depends on many things, including the size of the property and the buildings, crops, or timber upon the land. For permanent takings, courts use one of several methods to determine market value. Where the government's use of or encroachment upon the property is of limited duration or scope, the calculation of value may be trickier.

The Eminent Domain Process

In the classic case of eminent domain, the government determines that it needs certain privately owned land to create some public benefit, such as construction of a new highway. The government may offer the landowner a price to which he or she agrees, or it might initiate what is called a condemnation proceeding, when they cannot agree on value. The property owner has a right to notice of the government's decision and an opportunity to respond, and to just compensation for the land taken. The government pays the landowner, the landowner leaves the property, and the government builds the road.

Inverse Condemnation Proceedings

Sometimes, however, the government will deny that it has taken anything from the landowner. Thus, the landowner will commence an action, called an inverse condemnation proceeding, seeking compensation from the government. This situation can arise in a variety of ways. For example, the government might engage in conduct that destroys the landowner's ability to use and enjoy the property, such as by building an airstrip next to the property and flying planes over it, or cutting off or polluting the flow of water to the land. The government might also obstruct the landowner's access to the property with water or debris, as where dynamiting operations block the road to the landowner's property.

The government might also infringe a landowner's rights through regulation. This could occur where the landowner buys land and builds a dance club and then the local government passes a law, banning
dance clubs in the town. If the landowner's business is harmful to the public, the government's action in shutting it down may be a valid exercise of its police powers, as opposed to a taking. The government might also unduly restrict or diminish the property's use. A law raising minimum lot sizes from one acre to five acres robs a landowner with less than ten acres of the right to subdivide his or her property. A law denying sewer access or water access to certain plots would all but destroy their value for residential use. In these cases, the landowner could sue, arguing that the government has taken the property without paying for it.

When Has a Taking Occurred?

Another consideration in the area of eminent domain is to determine when the taking has occurred. Controversy over this question might arise when the government files some plan that affects the landowner's property, such as a zoning or development plan. If the government plans to build a highway or airport over or adjacent to plaintiff's land, does the plan alone constitute a taking at the time it is filed? The filing of the plan may hurt the value of the landowner's property, but the government may argue that it has not taken the land, nor infringed upon its use. Typically, such a filing alone does not constitute a taking. If the map or plan establishes reservations or limitations to the landowners' rights at the time it is filed, however, it may constitute a taking.

As our land and communities become more crowded, and governments impose further zoning and environmental regulations, cases involving eminent domain and inverse condemnation are likely to increase.

Getting Legal Help

The law of eminent domain gives the government power to act in the public interest. Any time private land is taken for public use, however, the rights of individuals are affected. So long as the government provides just compensation for a valid taking, its actions are justified. In many cases, however, the government intrudes on property rights without offering compensation. In those cases, affected landowners may have the right to seek compensation through inverse condemnation proceedings. The legal questions at issue in such matters are complex, and the courts have been somewhat inconsistent in their approach to these cases. Persons confronted with government intrusion on their property rights should consider seeking the assistance of an attorney.

Condemnation: How the Government Takes Private Property

As cities and towns expand and undertake improvements to roadways, sewer and power lines, communications, and other systems, the government must often secure or acquire access to private land. Without the government's power to do so, the size and capabilities of our public infrastructure would become inadequate to serve the needs of society. The right of the government to obtain private land for public purposes is known as eminent domain, and this right derives from federal and state constitutions and related laws. The power of eminent domain allows the government to take private land for public purposes only if the government provides fair compensation to the property owner. The
process through which the government acquires private property for public benefit is known as condemnation.

How the Government Takes Private Property

As the government makes its plans for expansion and improvement of publicly maintained roads and utilities, it determines which private parcels will be affected. Once it makes that determination, the government will work with its own appraisers to determine the appropriate price for the necessary property interests. When the government has established its estimation of the property value, it may offer the landowner a particular price for the property. If the property owner agrees, the government buys the land. If the property owner disputes the government's valuation and they cannot agree on a price, the matter will go to condemnation proceedings.

During condemnation proceedings, the property owner will get to offer his or her own valuation for the property. Typically, the property owner will work with an attorney and an appraiser. The attorney will protect the property owner's legal rights respecting the involved property, and the appraiser will work to establish the property's fair market value. The property owner may also oppose a forced sale by contesting the government's proposed use of the property. As long as the use is proper, however, this type of challenge will fail. As an alternative, the landowner may also claim that the extent of the property the government is attempting to condemn is too great and that its purposes can be fulfilled with less intrusion. Generally speaking, the government is only allowed to invade the property rights of individuals to the extent necessary to accomplish the intended public purpose.

Value of the Property

Most condemnation proceedings turn on the value of the property at issue. How much a piece of property (or an interest in property) is worth depends on many factors. For a piece of undeveloped land with a single owner and no exceptional or unusual features, establishing the property's value may be fairly straightforward. The zoning of the property and the value of surrounding tracts will provide useful guidance for the calculation. In urban settings, however, the property is likely to be developed. In this case, the current use of the property, the structures upon it, access to the property, the interests of any lessees, and many other issues will complicate the value determination. The many unique characteristics of the property often result in a different estimation of value between the property owner and the government. In addition to an appraiser and an attorney, each side may have additional experts, such as engineers and architects.

Factors that are considered in property valuation include: its size, how it is zoned, what kinds of buildings and roads are on it, what it's currently being used for, what it could be used for, how accessible it is, what other businesses or land uses are adjacent or nearby, and whether there are tenants or other leaseholders involved. The property may represent the owner's livelihood, so that to the owner it is worth everything he or she has invested in it, and all that can be derived from it. To the government, however, the relevant value is the property's market value -- what an interested buyer who is not obligated to buy might pay to an interested seller who is not obligated to sell. The valuation is
3 Real Estate Ownership

also made as of a particular date. This is because property values can fluctuate over time. To arrive at one price, the determination is established as of one date.

The value determination also turns on the amount of the acquisition. In some instances, the government may need to take all of the owner's property. In other cases, the government's acquisition will be more limited. The government may need to acquire only a part of the property, or just an easement over it. The value of these interests depends on the land involved, and on the effect the loss or intrusion of that land will have on the rest of the property.

Valuation Methods

In determining the value for a particular piece of property, appraisers and courts generally recognize three approaches: the market approach, the cost approach, and the income approach. Under the market approach, the value for the subject property is established based on recent sales of comparable, nearby properties. Based on these sales, the appraiser forms an opinion as to the price the subject property would bring on the open market. The market approach may be inappropriate if there have been no recent comparable sales in the area. The cost approach (sometimes called depreciated replacement cost) looks at how much it would cost to replace the land and existing structures, after factoring in depreciation. The income approach considers the investment value of the property -- that is, how much one would pay at the moment of valuation in light of the property's income potential.

Time of Valuation

Another point a property owner may contest is the time of valuation. This can happen when the government unreasonably delays its acquisition of the subject property at the same time its actions substantially diminish the subject property's value. For example, the government cannot buy up and condemn adjacent properties, destroy them or let them decay, and then lowball the remaining property owner once his or her own property value has fallen as a result. Such a case is an exception to the general rule that the government does not have to compensate a property owner until it has taken his property or substantially impaired his ability to use it. The government may argue that it has not done so, but the property owner will argue that the government's actions have made his or her property all but useless in the real estate market.

Condemnation proceedings derive from the simple principle that the government may secure private property to benefit the public. Yet, because of the multitude of uses to which the property may be put, and the many factors that can influence the real estate market, condemnation proceedings can be quite complex. The valuation figure that the government reaches may differ from the landowner's, at which point the measurement of value will turn on the persuasiveness of the landowner's appraiser. What's more, the property owner's appraisal must meet specific legal requirements. Fair value will be based on the extent of the property taken and an analysis of the many interests involved. For anyone attempting to prove a different value for the property, or limit the extent of the government's intrusion, the assistance of an experienced attorney is a valuable asset.
Land use and zoning involves the regulation of the use and development of real estate. The most common form of land-use regulation is zoning. Zoning regulations and restrictions are used by municipalities to control and direct the development of property within their borders. Since New York City adopted the first zoning ordinance in 1916, zoning regulations have been adopted by virtually every major urban area in the United States.

What are Zoning Regulations?

The basic purpose and function of zoning is to divide a municipality into residential, commercial, and industrial districts (or zones), that are for the most part separate from one another, with the use of property within each district being reasonably uniform. Within these three main types of districts there generally will be additional restrictions that can be quite detailed -- including specific requirements as to the type of buildings allowed, location of utility lines, restrictions on accessory buildings, building setbacks from the streets and other boundaries, size and height of buildings, number of rooms, floor space or area and cubic feet, and minimum cost of buildings. These restrictions may also cover frontage of lots; minimum lot area; front, rear, and side yards; off-street parking; the number of buildings on a lot; and the number of dwelling units in a certain area. Regulations may restrict areas to single-family homes or to multi-family dwellings or townhouses. In areas of historic or cultural significance, zoning regulations may require that those features be preserved.

Regulation of Development

Land-use regulation is not restricted to controlling existing buildings and uses; in large part, it is designed to guide future development. Municipalities commonly follow a planning process that ultimately results in a comprehensive or master plan, and in some states the creation of an official map for a municipality. The master plan is then put into effect by ordinances controlling zoning, regulation of subdivision developments, street plans, plans for public facilities, and building regulations. Future developers must plan their subdivisions in accordance with the official map or plan. In recent years, an increasing emphasis has been placed on regional and statewide planning. Recognizing that the actions of one municipality will strongly affect neighboring cities, occasionally in conflicting and contradictory ways, these planning initiatives allow the creation of a regional plan that offers one comprehensive vision and one set of regulations.

Limits on Zoning Regulation

Since land-use and zoning regulations restrict the rights of owners to use their property as they otherwise could (and often want to), they are at times controversial. Additionally, the scope and limits of governments' ability to regulate land use is hard to define with specificity. Courts have held that a zoning regulation is permissible if it is reasonable and not arbitrary; if it bears a reasonable and substantial relation to the public health, safety, comfort, morals, and general welfare; and if the means
3 Real Estate Ownership

employed are reasonably necessary for the accomplishment of its purpose. Given the subjective nature of these factors, there is obviously a lot of room for disagreement, and on occasion litigation.

One extremely difficult question presented in this area of law is how far land-use regulations may go without running into the constitutional prohibition against taking private property for public use without just compensation. Recent court decisions have made it more difficult for municipalities to require that land developers give up part of their property for public purposes, such as access to lakeshores, sidewalks, access roads, and parks through the use of statutory regulation. These cases serve to define the point at which government demands for control over the land become such that it must compensate the owner by exercising its power of eminent domain and condemning the property.

Challenges to Zoning Regulations

There are numerous other restrictions on the power of government to regulate land use, any of which may provide a basis upon which such regulations can be challenged. Zoning ordinances must be reasonable based on all factors involved, such as the need of the municipality; the purpose of the restriction; the location, size, and physical characteristics of the land; the character of the neighborhood; and its effect on the value of property involved. The rationale behind zoning is that it promotes the good of the entire community in accordance with a comprehensive plan.

Spot zoning of individual parcels of property in a manner different from that of surrounding property, primarily for the private interests of the owner of the property so zoned, is subject to challenge unless there is a reasonable basis for distinguishing the parcel from surrounding parcels. Restrictions based solely on race or occupancy of property are not permitted, and a classification that discriminates against a racial or religious group can only be upheld if the state demonstrates an overwhelming interest that can be served no other way.

In many jurisdictions, statutes have created boards of zoning appeals to handle these issues. These are quasi-judicial bodies that can conduct hearings with sworn testimony by witnesses and whose decisions are subject to court review. Given both the complexity of zoning law and the specialized nature of zoning appeals boards, an owner who contests a zoning requirement is ill advised to try to argue his or her case without legal assistance. The members of the board, the municipal attorney, and the planning official involved in the process have substantial experience, knowledge of the law, and a tendency to favor their interpretations of the ordinances, and an owner who cannot bring equivalent legal experience to bear on the problem will be at a substantial disadvantage.

Non-Government Restrictions: Restrictive Covenants and Easements

Not all land use restrictions are created by governments. Land developers may also incorporate restrictions in their developments, most commonly through the use of restrictive covenants and easements. Restrictive covenants are provisions in a deed limiting the use of the property and prohibiting certain uses. Restrictive covenants are typically used by land developers to establish minimum house sizes, setback lines, and aesthetic requirements thought to enhance the neighborhood. Easements are rights to use the property of another for particular purposes. Easements also are now
used for public objectives, such as the preservation of open space and conservation. For example, an easement might preclude someone from building on a parcel of land, which leaves the property open and thereby preserves an open green space for the benefit of the public as a whole.

Freehold Estates

The concept of estates in Anglo-American law arose out of the feudal system in England. The concept underlies our present system of real property law. Estates in land are interests which presently are or may become possessory and which are measured by a period of time. Possessory estates give the holder the right to immediate possession. Future interests are estates that will or may become possessory in the future. Estates in realty are further categorized as freehold or non-freehold. Freehold estates continue indefinitely or until the occurrence of some event. Non-freehold estates (leasehold estates) end on a particular date.

The largest estate permitted by law is the fee simple absolute. The holder of this estate has full possessory rights now and in the future for an infinite duration. There are no limitations on its inheritability, it cannot be divested and it will not end upon the happening of any event. However, the holder of the estate can sell it or any part of it during his lifetime and dispose of it by will at his death.

Fee simple is an estate in land in common law. It is the most common way real estate is owned in common law countries, and is ordinarily the most complete ownership interest that can be had in real property short of allodial title, which is often reserved for governments. Fee simple ownership represents absolute ownership of real property but it is limited by the four basic government powers of taxation, eminent domain, police power, and escheat and could also be limited by certain encumbrances or a condition in the deed. How ownership is limited by these government powers often involves the shift from allodial title to fee simple such as when uniting with other property owners acceding to property restrictions or municipal regulation.

Types of fee simple

If previous grantors of a fee simple estate do not create any conditions for subsequent grantees to own the conveyed property in fee simple title, which is commonly the case these days, then the title is called fee simple absolute. Other fee simple estates in real property include fee simple defeasible (or fee simple determinable) estates. A defeasible estate is created when a grantor places a condition on a fee simple estate (in the deed). Upon the happening of a specified event, the estate may become void or subject to annulment. Two types of defeasible estates are the fee simple determinable and the fee simple subject to condition subsequent. If the grantor uses durational language in the condition such as "to A as long as the land is used for a park" then upon the happening of the specified event, the estate will automatically terminate and revert to the grantor or the grantor's estate. If the grantor uses language such as "but if alcohol is served" then the grantor or the heirs have a right of entry, but the estate does not automatically revert to the grantor. In the United States many of these concepts have been modified by statute in some states.
3 Real Estate
Ownership

Common law and history

In English common law theory, the Crown has radical title or the allodium of all land in England, meaning that it is the ultimate "owner" of all land. However, the Crown can grant an abstract entity—called an estate in land—which is what is owned. The fee simple estate is also called "estate in fee simple" or "fee-simple title" and sometimes simply freehold in England and Wales. In the early Norman period, the holder of an estate in fee simple could not sell it, but instead could grant subordinate fee simple estates to third parties in the same parcel of land, a process known as "subinfeudation." The Statute of Quia Emptores adopted in 1290 abolished subinfeudation and instead allowed the sale of fee simple estates.

The concept of a "fee" has its origins in feudalism. According to William Blackstone, the great common law commentator, fee simple is the estate in land that a person has when the lands are given to him and his heirs absolutely, without any end or limit put to his estate. Land held in fee simple can be conveyed to whomever its owner pleases; it can be mortgaged or put up as security as well.

The owner(s) of real property in fee simple title have the right to own the property during their lifetime and typically have a say in determining who gets to own the property after their death. In a sense, one might say fee simple owners "own" the property "forever".

Historically, estates could be limited in time, such as a life estate, which is an interest in lands that terminates upon the grantee's (or another person's) death, even if the land had been granted to a third party, or a term of years (a lease for a specified term, such as in an estate for years). It also could be limited in the way that it was inherited, such as by what was called an "entailment" which created a fee tail. Traditionally, fee tail was created by words of grant such as "to N. and the male heirs of his body"; which would restrict those who could inherit the property. When all those heirs ran out the property would revert to the original grantor's heirs. Most common law countries have abolished entailment by statute.

Life estate

Many common law jurisdictions retain the possibility of creating a life estate, although this is uncommon.

A life estate is a term used in common law to describe the ownership of land for the duration of a person's life. In legal terms it is an estate in real property that ends at death. The owner of a life estate is called a "life tenant".

Although the ownership of a life estate is technically temporary because it ends at a person's death (a tenancy), it is treated as complete ownership (fee simple) for the duration of the person's life, subject to limitations. Because a life estate ceases to exist upon death, the owner of the life estate cannot leave it to heirs, and the life estate cannot be inherited.
An owner of a life estate cannot also give a greater interest than is owned. That is, a life estate owner cannot give complete and indefinite ownership (fee simple) to another person because ownership in the property ends when the life tenant dies. If, however, the original grantee has sold his life estate [ex. from A to B], B's interest lasts until A dies, allowing B to bequest his interest, sell the land, etc. until that point. Once A dies, however, whoever possesses the land loses it (with the land likely reverting back to its original grantor). This is a life estate "pur autre vie," or the life of another. Such a life estate can also be conveyed originally, such as "to A until B dies."

Another limitation on a life estate is the doctrine of waste, which prohibits life tenants from damaging or devaluing the land, as their ownership is technically only temporary.

In the United States, a life estate is typically used as an estate planning tool. The use of a life estate can avoid probate and ensure an intended heir will receive title to real property. For example, A may own a home and desire that B inherit the home after A's death. A can effectuate that desire by transferring title to the home to B and retaining a life estate in the home. A keeps a life estate interest and B receives a vested fee simple remainder interest. As soon as A dies, the life estate interest merges with B's remainder interest and B has a fee simple title. This avoids the use of a will and the probate process. The danger to A though, is that the grant to B is irrevocable. "Beneficiary deeds" have been statutorily created in some states to address this issue.

It is less well known that the intestacy laws of certain American states, such as Arkansas, Delaware, and Rhode Island, still limit the surviving spouse's rights to the deceased spouse's real estate to a life estate.

Life estates are measured either by the life of the property recipient, or by the life of some other person; these latter are called life estates *pur autre vie*, (French for "for the life of another"). A life estate *pur autre vie* is most commonly created in one of two circumstances.

- First, when the owner of property conveys his interest in that property to another person, for the life of a third person. For example if A conveys land to B during the life of C, then B owns the land for as long as C lives; if B dies before C, B's heirs will inherit the land, and will continue to own it for as long as C lives.
- Second, if A conveys land to C for life, C can then sell the life estate to B. Again, B and B's heirs will own the land for as long as C lives.
- In either scenario, once C dies, the ownership of the land will revert to A. If A has died, ownership will revert to A's heirs. The right to succeed to ownership of the property upon the expiration of the life estate is called a *remainder*.

The early common law did not recognize a life estate in personal property, but such interests were cognizable in equity. Thus, although life estates in real estate are still created today, the life estate is more commonly used in trust instruments, typically in an attempt to minimize the effect of the inheritance tax or other taxes on transfers of wealth.
3 Real Estate Ownership

The law of England and Wales no longer recognizes the life estate at law in relation to land, instead the holder of legal title to the land (whether the freehold fee simple or a lease) will hold that land on trust first for the life tenant and then for the remainder man.

Leasehold

Leasehold is a form of property tenure where one party buys the right to occupy land or a building for a given length of time. A lease is a legal estate, leasehold estate can be bought and sold on the open market and differs from a tenancy where a property is let on a periodic basis such as weekly or monthly. Until the end of the lease period (often measured in decades - a 99 year lease is quite common) the leaseholder has the right to remain in occupation as an assured tenant paying an agreed rent to the owner. Terms of the agreement are contained in a lease, which has elements of contract and property law intertwined.

The term estate for years may occasionally be used. This refers to a leasehold estate for any specific period of time (the word "years" is misleading). An estate for years is not automatically renewed.

Colloquially, a "lease" is often a formalization of a longer, specific period as compared with a "rental" that created a tenancy at will, terminable or renewable at the end of a short period.

History

Whilst landlord-tenant laws had existed in places such as al-Andalus, the common law of the landlord-tenant relation evolved in England during the Middle Ages. That law still retains many archaic terms and principles pertinent to a feudal social order and an agrarian economy, where land was the primary economic asset and ownership of land was the primary source of rank and status. See also Lord of the Manor.

Modern leasehold estates can take one of forms — the fixed-term tenancy or tenancy for years, the periodic tenancy, the tenancy at will, and the tenancy at sufferance, all discussed below.

When a landowner allows one or more persons, called "tenants," to use his land in some way for some fixed period of time, the land becomes a leasehold, and the resident (or worker) - landowner relation is called a "tenancy." A tenant pays rent (a form of consideration) to the landowner. The leasehold can include buildings and other improvements to the land. The tenant can do one or more of: farm the leasehold, live on it, or practice a trade on it.

Tenancy was essential to the feudal hierarchy; a lord would own land and his tenants became his vassals. However, it still happens today in many parts of the world. In the U.S.A., there are food co-ops which supply tenants with a place to grow their own produce. Rural tenancy is also a common practice. Under a rural tenancy, a person buys a large amount of land and the rural community uses it agriculturally as a source of income.
Fixed-term tenancy or tenancy for years

A fixed-term tenancy or tenancy for years lasts for some fixed period of time. Despite the name tenancy for years, such a tenancy can last for any period of time — even a tenancy for one week would be called a tenancy for years. At Common law the duration did not need to be certain, but could be conditioned upon the happening of some event, (e.g. "until the crops are ready for harvest", "until the war is over"). In many jurisdictions that possibility has been partially or totally abolished.

Termination of a fixed-term tenancy

The tenancy will come to an end automatically when the fixed term runs out, or, in the case of a tenancy that ends on the happening of an event, when the event occurs. It is also possible for a tenant, either expressly or impliedly, to give up the tenancy to the landlord. This process is known as a surrender of the lease.

Periodic tenancy

A periodic tenancy, also known as a tenancy from year to year, month to month, or week to week, is an estate that exists for some period of time determined by the term of the payment of rent. An oral lease for a tenancy of years that violates the Statute of Frauds (by committing to a lease of more than—depending on the jurisdiction— one year without writing) may actually create a periodic tenancy, the construed term being dependent on the laws of the jurisdiction where the leased premises are located. In many jurisdictions the "default" tenancy, where the parties have not explicitly specified a different arrangement, and where none is presumed under local or business custom, is the month-to-month tenancy.

Termination of a periodic tenancy

The landlord may terminate the lease at any time by giving the tenant notice as required by statute. Typically, the landlord must give six months' notice to terminate a tenancy from year to year. Tenants of lesser durations must typically receive notice equal to the period of the tenancy - for example, the landlord must give a month's notice to terminate a tenancy from month to month. However, many jurisdictions have varied these required notice periods, and some have reduced them drastically.

The notice must also state the effective date of termination, which, in many jurisdictions, must be on the last day of the payment period. In other words, if a month-to-month tenancy began on the 15th of the month, in such a jurisdiction the termination could not be on the 20th of the following month, even though this would give the tenant more than the required one month's notice.
Tenancy at will

A tenancy at will is a leasehold such that either the landlord or the tenant may terminate the tenancy at any time by giving reasonable notice. It usually occurs in the absence of a lease, or where the tenancy is not for consideration. Under the modern common law, tenancy at will is very rare, partly because it can only come about if the parties expressly agree that the tenancy is at will and not for rent. However, tenancy at will is common where a family member is allowed to live in the home (a nominal consideration may be required) without any formal arrangements. In most residential tenancies for consideration, the tenant may not be removed except for cause, even if there is no written lease.

If a lease exists at the sole discretion of the landlord, it grants the tenant by operation of law a reciprocal right to terminate the lease at will. However, a lease that explicitly exists at the will of the tenant (e.g. "for as long as the tenant desires to live on this land") does not imply that the landlord may terminate the lease, even for cause; rather, such language may be interpreted as granting the tenant a life estate or even a fee simple.

A tenancy at will is broken, again by operation of law, if the:

- Tenant commits waste against the property;
- Tenant attempts to assign his tenancy;
- Landlord transfers his interest in the property;
- Landlord leases the property to another person;
- Tenant or landlord dies.

Tenancy at sufferance

A tenancy at sufferance (sometimes called a holdover tenancy) exists when a tenant remains in possession of property after the expiration of his lease, and until the landlord acts to eject the tenant from the property. Although the tenant is technically a trespasser at this point, and possession of this type is not a true estate in land, authorities recognize the condition in order to hold the tenant liable for rent. The landlord may evict such a tenant at any time, and without notice.

The landlord may also impose a new lease on the holdover tenant. For a residential tenancy, this new tenancy is month to month. For a commercial tenancy of more than a year, the new tenancy is year to year; otherwise it is the same period as the period before the original lease expired. In either case, the landlord can raise the rent, so long as the landlord has told the tenant of the higher rent before the expiration of the original lease.
Duties of the landlord

The landlord has two common-law duties. The first is to put the tenant in possession of the land at the outset of the lease (the 'English' rule); the second is to provide the premises in a habitable condition — there is an implied warranty of habitability. If landlord violates either, the tenant can terminate the lease and move out, or stay on the premises, while continuing to pay rent, and sue the landlord for damages (or withhold rent and use breach of implied warranty of habitability as a defense when the landlord attempts to collect rent).

The lease also includes an implied covenant of quiet enjoyment — landlord will not interfere with tenant's quiet enjoyment. This can be breached in three ways.

1. Total eviction of the tenant through direct physical invasion by landlord.
2. Partial eviction — when the landlord keeps the tenant off part of the leased property (even locking a single room). Tenant can stay on the remaining property without paying any rent.
3. Partial eviction by someone other than landlord — where this occurs, rent is apportioned. If landlord claims to lease tenant an area of 1000 square meters but 400 square meters of the area belongs to another person, tenant only has to pay 60% of the rent.

Landlord's tort liability

Under the common law, the landlord had no duties to the tenant to protect the tenant or the tenant's licensees and invitees, except in the following situations:

1. Failure to disclose latent defects of which the landlord knows or has reason to know. Note that the landlord has no duty to repair, just to disclose.
2. For a short term lease (3 months or less) of a furnished dwelling, the tenants are treated as invitees, and the landlord is liable for defects even if the landlord neither knows nor should know of them.
3. Common areas under landlord's control (e.g. hallways in an apartment building), if the landlord failed to use reasonable care in maintaining them.
4. Injury resulting from landlord's negligent repairs — even if the landlord used all due care.
5. Public use, if the following three factors exist:
   1. Landlord knows or should know that the tenant makes public use of the land (e.g. the land is rented for use as a restaurant or a store);
   2. Landlord knows or should know that there is a defect; and
   3. Landlord knows or should know that the tenant will not fix the defect.
Duties of the tenant

Under the common law, the tenant has two duties to the landlord. These are to pay rent when it is due, and to avoid waste or destruction of the property.

A tenant is liable to third party invitees for negligent failure to correct a dangerous condition on the premise — even if the landlord was contractually liable.

Effects of condemnation

If land under lease to a tenant is condemned under the government's power of eminent domain, the tenant may be able to earn either a reduction in rent or a portion of the condemnation award (the price paid by the government) to the owner, depending on the amount of land taken, and the value of the leasehold property.

A partial taking of the land by the government does not release the tenant from paying full rent, but the tenant may collect a portion of condemnation award equal to the apportioned rent for property taken. For example, suppose a tenant leases land for 6 months for $1,000 per month, and that two months into the lease, and the government condemns 25% of the land. The tenant will then be entitled to take a portion of the condemnation award equal to 25% of the rent due for the remaining four months of the lease — $1,000, derived from $250 per month for four months.

A full taking, however, extinguishes the lease, and excuses all rent from that point. However, the tenant will not be entitled to any portion of the condemnation award, unless the value of the lease was greater than the rent paid, in which case the tenant can recover the difference. Suppose in the above example that the market value of the land being leased was actually $1,200 a month, but the $1,000 per month rate represented a break given to the tenant by the landlord. Because the tenant is losing the ability to continue renting the land at this bargain rate (and probably must move to more expensive land), the tenant will be entitled to the difference between the lease rate and the market value — $200 per month for a total of $800.

Effects of tenancy

Many adverse effects come from this system. Tenants have to pay the landowner even though they are doing all of the agricultural work. In a sense, it is a cycle where the tenant is never really able to become a landowner because they constantly to pay the landowner, as well as other expenses. If a crop does not flourish, the tenant will still have to pay for the use of the land. The landowner, since he is ultimately owner of the land, also can have a say in what the tenant uses the land for or what he can or cannot grow. On the contrary, rural tenancy has advantages. If a person owns too much land for just their family to use, tenants can rent it out and make use of the land. Also, if a landowner rents out the land, it can be a source of economic income for the tenant which may not have previously existed. In poorer communities, rural tenancy can give the tenants a chance to grow crops to sell in markets and to feed their families.
An easement is the right to do something or the right to prevent something over the real property of another. At common law, an easement came to be treated as a property right in itself and is still treated as a kind of property by most jurisdictions. In some jurisdictions, another term for easement is equitable servitude, although easements do not have their origin in equity.

The right is often described as the right to use the land of another for a special purpose. Unlike a lease, an easement does not give the holder a right of "possession" of the property, only a right of use. It is distinguished from a license that only gives one a personal privilege to do something on the land of another. An example of a license is the right to park a car in a parking lot with the consent of the parking lot owner. Licenses in general can be terminated by the property owner much more easily than easements. Easements also differ from licenses in that they are attached to the land, not to a person. This means that a property that enjoys an easement over another will continue to enjoy the easement even if the property gets transferred to a different owner.

Easement concepts differ substantially from country to country, and in the U.S. from state to state. Historically, it was limited to the right-of-way and rights over flowing waters, although this is no longer true. Traditionally, it was a right that could only attach to an adjacent land and was for the benefit of all, not a specific person; this is also no longer true in many jurisdictions.

Classification of easements

Public easements versus private easements

Easements may be considered public or private. A private easement is limited to specific individuals or entities such as the owner of an adjoining land. A public easement is one that grants the right to a large group of individuals or to the public in general, such as the easement on public streets and highways or of the right to navigate a river.

Appurtenant easements compared to easements in gross

In the U.S., an easement appurtenant is one that benefits the dominant tenement (i.e. attached to adjoining land), as compared to an easement in gross that is personal to holder of the easement and does not pass automatically to another person when the easement holder's property is sold and bought.

An easement in gross is one that is attached to an individual person or legal entity rather than a parcel of real estate served by the easement. This easement can be personal (like an easement to use one's boat ramp) or commercial (like an easement given to a railway company to build and maintain a rail line across one's property) in nature. In earlier times, easements in gross were considered neither assignable nor inheritable, but today, most courts hold that commercially oriented easements in fee are freely alienable.
3 Real Estate Ownership

Floating easements

A floating easement is when there does not exist any fixed location, route, method or limit to the right of way. For example, a right of way may cross a field, without any visible path, or allow egress through another building for fire safety purposes. A floating easement may be public or private, appurtenant or in gross.

One case defined it as: "(an) easement defined in general terms, without a definite location or description, is called a floating or roving easement...." Furthermore, "a floating easement becomes fixed after construction and cannot thereafter be changed."[6]

Dominant tenement versus servient tenement

Where an easement is appurtenant, it will typically require the existence of two parcels of land, known as tenements. There is the dominant tenement, which is the plot of land to which the benefit an appurtenant easement is attached. Second, there is the servient tenement, which is the plot of land which bears the burden of the easement.

For example, where a driveway is owned by house A, but the owners of house B are permitted to drive over it to gain access to their house, there is an easement of way, with house B the dominant tenement and house A the servient tenement.

Creation of easements

Easements may be created in a number of ways. In most of the United States, using someone else's property, for example, for ingress and egress over a certain number of years, regularly and without the consent of the property owner, can give the user the right to continue using the property for the same purpose for as long as the user wishes. This method of acquiring an easement is called a "prescriptive easement" or "easement by prescription."

In most of the United States, "prescriptive easement" cannot be used to acquire the right to protect a view over a neighboring property no matter how long a property owner has had a view over the neighbor's property. This concept, known as "ancient lights" in some common law jurisdictions, has recently been recognized in California.

Prescriptive easements can be contrasted with adverse possession, which involves the taking of complete title to land rather than just taking the right to use the property.

Implied easements versus express easements

An easement may be implied or express. An express easement may be "granted reserved" and is typically included in a document such as a deed or other officially recorded document, or incorporated...
Easement by necessity

Similarly, parcels without access to a public way may have an easement of access over adjacent land, if crossing that land is absolutely necessary to reach the landlocked parcel. There is an implied easement arising from the original subdivision of the land for continuous and obvious use of the adjacent parcel (e.g., for access to a road, or to a source of water). This easement is extinguished upon termination of the necessity (for example, if a new public road is built adjacent to the landlocked tenement). An easement by necessity is distinguished from an easement by implication in that the former easement arises only when "strictly necessary," whereas the latter can arise when "reasonably necessary."

However, the landlocked owner might be required to obtain a license for a new commercial use or to cause damage during access (e.g., a logging road or blazed trails). Some states, also, frown on granting easements by necessity when the need was created by the owner's own actions, say, by selling off plots of land resulting in a landlocked parcel.

Some U.S. state statutes grant a permanent easement of access to any descendant of a person buried in a cemetery on private property.

Easement by prescription

Easements by prescription, also called prescriptive easements, are implied easements that give the easement holder a right to use another person's property for the purpose the easement holder has used the property for a certain number of years, which varies from state to state. Prescriptive easement is not the same as adverse possession, which allows a party to acquire title to real property by asserting possession over it for the statutory period. Requirements vary among states to successfully claim adverse possession. In California, for example, an adverse possessor is required to assert possession of the property AND pay all property taxes for at least five years. Prescriptive easements are a type of implied easement, in that they arise even though they are not expressly created or recorded. Unlike other implied easements, however, prescriptive easements are hostile (i.e., without the consent of the true property owner). Prescriptive easements do not convey the title to the property in question, only the right to utilize the property for a particular purpose. They often require less strict requirements of proof than fee simple adverse possession.

Once they become legally binding, easements by prescription hold the same legal weight as written or implied easements. Before they become binding, they hold no legal weight and are broken if the true property owner acts to defend his ownership rights. Easement by prescription is typically found in
Laws and regulations vary among local and national governments, but some traits are common to most prescription laws. Generally, the use must be open (i.e. obvious to anyone), actual, continuous (i.e., uninterrupted for the entire required time period), and adverse to the rights of the true property owner. The use also generally must be hostile and notorious (i.e., known to others). Unlike fee simple adverse possession, prescriptive easements typically do not require exclusivity.

The period of continuous use for a prescriptive easement to become binding is generally between 5 and 30 years depending upon local laws (usually based on the statute of limitations on trespass). Generally, if the true property owner acts to defend his property rights at any time during the required time period the hostile use will end, claims on adverse possession rights are voided, and the continuous use time period resets to zero.

In some jurisdictions, if the use is not hostile but given actual or implied consent by the legal property owner, the prescriptive easement may become a regular or implied easement rather than a prescriptive easement and immediately becomes binding. In other jurisdictions, such permission immediately converts the easement into a terminable license, or restarts the time for obtaining a prescriptive easement.

Government owned property held for common use is generally immune from prescriptive easement in most cases, but some other types of government owned property may be subject to prescription in certain instances.

Prescription may also be used to end an existing legal easement. For example, if a servient tenement holder were to erect a fence blocking a legally deeded right-of-way easement, the dominant tenement holder would have to act to defend his easement rights during the statutory period or the easement might cease to have legal force, even though it would remain a deeded document.

Right-of-way for access is among most common easement by prescription.

**Easements taken by the government**

In the United States, easements may be acquired by the government using its power of "eminent domain" in a "condemnation" proceeding in the courts. Note that in the U.S., in accordance with the Fifth Amendment to the U.S. Constitution, property cannot simply be taken by the government unless the property owner is compensated for the fair market value of what is taken. This is true whether the government acquires full ownership of the property ("fee title") or a lesser property interest, such as an easement.
Termination of easements

Generally, mere non-use does not end an easement. One or more of the following factors may also have to be present:

- Agreement to terminate by grantor and the grantee of the easement
- Expiration of the time allowed for the easement
- Abandonment or expressed intent to discontinue use of the easement
- Merger where one person buys both dominant and servient tenement
- End of necessity which gave rise to easement by necessity
- Estoppel, where a holder of the easement stops making use of the easement and a third party detrimentally relied on the stopped use
- Prescription where a holder of the easement uses someone else to use the easement for a period of statute of limitations
- Condemnation where the government terminates easement through eminent domain

Examples of easements

Easements include:

- **Aviation easement.** The right to use the airspace above a specified altitude for aviation purposes. Also known as **avigation easement,** where needed for low-altitude spraying of adjacent agricultural property.
- **Railroad easement.**
- **Utility easements** including:
  - **Storm drain easements.** These carry rainwater to a river or other body of water.
  - **Sanitary sewer easements.** These carry used water to a sewage treatment plant.
  - **Electrical power line easements.**
  - **Telephone line easements.**
  - **Fuel gas pipe easements.**
  - **Communications easement.** This easement can be used for wireless communications, cable lines, and other communications services. This is a private easement and the rights granted by the property owner are for the specific use of communications.[9]
- **Sidewalk easements.** Usually sidewalks are in the public right-of-way, but sometimes they are on the lot.
- **Solar easements.** Prevents someone from blocking the sunlight.
- **View easements.** Prevents someone from blocking the view of the easement owner, or permits the owner to cut the blocking vegetation on the land of another.
- **Driveway easements,** also known as **easement of access.** Some lots do not border a road, so an easement through another lot must be provided for access. Sometimes adjacent lots have "mutual" driveways that both lot owners share to access garages in the backyard. The houses are so close together that there can only be a single driveway to both backyards. The same can also be the case for walkways to the backyard: the houses are so close together that there is...
only a single walkway between the houses and the walkway is shared. Even when the walkway is wide enough, easements may exist to allow for access to the roof and other parts of the house close to a lot boundary. To avoid disputes, such easements should be recorded in each property deed.

- **Beach access.** Some jurisdictions permit residents to access a public lake or beach by crossing adjacent private property. Similarly, there may be a private easement to cross a private lake to reach a remote private property, or an easement to cross private property during high tide to reach remote beach property on foot.
- **Dead end easement.** Sets aside a path for pedestrians on a dead-end street to access the next public way. Could be contained in covenants of a homeowner association, notes in a subdivision plan, or directly in the deeds of the affected properties.
- **Recreational easements.** Some U.S. states offer tax incentives to larger landowners if they grant permission to the public to use their undeveloped land for recreational use (not including motorized vehicles). If the landowner posts the land (i.e., "No Trespassing") or prevents the public from using the easement, the tax abatement is revoked and a penalty may be assessed. Recreational easements also include such easements as equestrian, fishing, hunting, hiking, biking (e.g., Indiana's Calumet Trail) and other such uses.
- **Conservation easements.** Grants rights to a land trust to limit development in order to protect the environment.
- **Historic Preservation Easement.** Similar to the conservation easement, typically grants rights to a historic preservation organization to enforce restrictions on alteration of a historic building's exterior.
- **Easement of lateral and subjacent support.** Prohibits an adjoining land owner from digging too deep on his lot or in any manner depriving his neighbor of vertical or horizontal support on the latter's structures e.g. buildings, fences, etc.

**Trespass upon easement**

Blocking access to someone who has an easement is a trespass upon the right of easement and creates a cause of action for civil suit. For example, putting up a fence across a long-used public path through private property may be a trespass and a court may order the obstacle removed. Turning off the water supply to a downhill neighbor may similarly trespass on the neighbor's water easement.

Open and continuous trespassing upon an easement can lead to the extinguishment of an easement by prescription (see below), if no action is taken to cure the limitation over an extended period.

**Restrictive easement**

Restrictive easements are also called "negative easements," as their "use" is normally prohibitive, such as a common "non-vehicular access" easement as shown along a main thoroughfare where the governmental entity needs to restrict access. Therefore a restrictive easement is a condition placed on land by its owner or by government that in some way limits its use, usually regarding the types of structures which may be built there or what may be done with the ground itself. For instance, if a
leased piece of land is not precluded by zoning laws (probably because it is not in a township) from having people inhabit it, and the government feels that for some reason living there would be especially unsafe, it may place a restrictive easement on the property stating that no one may live there. Restrictive easements are also frequently placed on wetlands (i.e., a conservation easement) to prevent them from being destroyed by development.

Concurrent Estates

An estate in land in which two or more parties have a contemporaneous interest in the same realty is a concurrent estate.

**Tenancy in Common:** In a tenancy in common, each tenant has an undivided interest in the entire property. Each tenant has the right to possession of the whole property. There is no right of survivorship. Each tenant has a distinct proportionate interest in the property, which is alienable by inter vivos or testamentary transfer and passes by succession. There is a presumption that a conveyance to two or more persons is a tenancy in common. **Joint Tenancy:** In this type of tenancy each tenant owns an undivided share of the estate. There is a right of survivorship. Thus, on the death of one joint tenant the survivor retains an undivided right to the entire estate, which is not subject to the rights of the deceased co-tenant.

**Tenancy by the Entirety** This is a marital estate which can only be created between a husband and wife. It is similar to a joint tenancy except that the right of survivorship cannot be destroyed, since severance by one tenant is not possible. An existing marriage is requisite for a tenancy by the entirety. In many states there is a presumption that a tenancy by the entirety is created in any conveyance to a husband and wife. Half of the states however have abolished this type of tenancy. In New York, the tenancy by the entirety exists as to realty but not personalty.

Leaseholds

A leasehold is an estate in land. It is a non-freehold estate, capable of a definitively ascertainable period of possession. The tenant has an interest in the premises which is presently possessory and the landlord has a future interest.

Types of Tenancies

The major types of tenancies are listed below:

**Periodic Tenancy:** This is a tenancy that continues for successive periods from year to year or fractions thereof. There is no definite termination date and it continues until terminated by either the landlord or tenant. It is terminated by proper notice, which is usually statutorily prescribed. This tenancy may be created by express agreement or by operation of law.
Tenancy at Will: The landlord and tenant both have the right to terminate the tenancy at will. The parties must have an agreement or understanding that either party can terminate at any time. The tenancy has no stated duration and lasts as long as the landlord and tenant desire. In most states, the acceptance by the landlord of regular rent will cause the courts to consider the tenancy to be a periodic tenancy. No notice was required to terminate a tenancy at will at common law. However, in most states, statutes require notice of termination to be given at least one month in advance.

Tenancy for Years: This tenancy continues for a fixed period of time and has certain beginning and termination dates. Since the parties know when the tenancy will end, the term expires at the end of the period without notice required by either party.

Holdover Tenant: A tenant who was rightfully in possession and holds over at the end of the tenancy is called a tenant at sufferance. This tenancy lasts until the tenant is evicted by the landlord or until the landlord elects to hold the tenant to an additional term.

Statute of Frauds: In most states today, the Statute of Frauds requires a lease to be in writing and signed by the party to be charged if it is greater than one year. An oral lease for a greater period creates a tenancy at will.

Rent Regulations

The types of rent regulations in existence, if any, vary between different states, as well as between cities and counties within the same state. The New York State Division of Housing and Community Renewal is responsible for the system of rent regulation in New York City. The two major forms of rent regulation in New York City are rent control and rent stabilization. Rent control applies to apartments in buildings constructed prior to 1947 which have not been vacant since 1971. Apartments in buildings constructed after 1946 and containing six or more units, unless subject to an exception, are subject to rent stabilization. Furthermore, apartments in buildings constructed prior to 1947 which became vacant after 1971 are also rent stabilized. Rent stabilization uses leases to regulate rents while rent control uses statutes.

Acquiring Title to Property

Finding the Property

Real estate is often purchased and sold with the assistance of a real estate broker. Brokers may be employed to sell property, in which case their duty is to act honestly toward the principal and obtain the highest price possible. They may also be employed by a purchaser to locate property, in which case their duty is to secure the property at the lowest possible price. The broker's duty is a general one of an agent to principal. A broker's contract is not required to be in signed and in writing in many states including New York, as the Statue of Frauds only applies to direct transfers of realty, and not actions to enforce brokerage contracts.
3 Real Estate Ownership

It is a general rule that the broker becomes entitled to a commission when they complete the services they are hired to perform. In the event that the brokers are employed to obtain purchasers, they are entitled to their commission when they introduce a person to the principal who is ready, willing and able to purchase on the terms requested. Accordingly, it is advisable for the person who hires brokers to enter into an agreement with them whereby it is agreed the broker will not be entitled to a commission until the transaction and closing are fully completed. There are various types of brokerage agreements which are as follows;

Non-exclusive Agreement: This is also known as an open listing. Under this type of agreement several brokers may be hired by the owner. A broker is only entitled to commission when a buyer is procured;

Exclusive Agency Agreement: Under this type of agreement the seller can only hire one broker. The owner, however, can sell or lease the property without a broker, in which case the owner is not liable to the broker his or her commissions;

Exclusive Right to Sell: Under this type of agreement, the broker has the exclusive right to sell, and receives a commission if the sale is consummated by him or herself or the owner.

Multiple Listings: This is an arrangement among a group of brokers whereby a participating broker can sell property that is exclusively listed with any of the other participating brokers. The "listing broker" obtains the listings and the "selling broker" sells the property. These two brokers split the commission and the listing service receives a small fee.

Net Listings: This is an agreement whereby the seller indicates a specific price for which the property is to be sold. The broker's commission is the difference between that price and the sales price received. These types of listings are prohibited in New York.

Contract of Sale

The first step in a real estate sale is the contract. The contract defines the rights and liabilities of the seller and purchaser. The contract must be in writing, signed by the parties involved and must contain all material terms.

The specific procedures for the signing and negotiating of a contract of sale, as well as the formalities to be followed at the closing where the actual transfer of the deed occurs, vary between states as well as between counties and cities within states. The procedures described in this article reflect the procedures generally followed in New York State.

The seller's counsel generally prepares and negotiates the initial contract. In order to determine the specific parameters of the contract, he or she obtains and reviews the following documents: the deed, survey, title insurance policy, promissory notes or mortgages on the property, certificates of occupancy, tax bills, fuel and utility bills, leases, permits for elevator, pools, etc.
The purchaser's counsel reviews and negotiates the contract and insures that the seller is obligated to convey good and marketable title. Purchaser's counsel must review the contract, deed, title search and title insurance policy, as well as the documents referred to in the title policy, such as survey, certificate of occupancy, real property tax bill, heating, cooling and electric bills. In New York City it is common practice for attorneys to prepare the contract, whereas in upstate New York brokers usually prepare the contract, with a right to cancel, and it is not reviewed by an attorney prior to execution.

A survey is reviewed by the purchaser's attorney to evaluate boundaries of the property, its physical features, building improvements and any encroachments.

The purchaser should arrange for an inspection of the premises by an engineer, architect, contractor or home inspection company prior to the signing of the contract, or, in the alternative, the contract should set forth the consequences if defects are found with the premises. The purchaser must also consider various factors, such as the date on which the property may be occupied, the terms of the mortgage presently on the property and whether it is to be discharged, assumed by the purchaser or whether the purchaser will take possession of the property subject to it. The purchaser's attorney should also investigate the zoning ordinances and restrictions to see if the property can be used for the purchaser's intended purpose. It is necessary to verify that there is a certificate of occupancy on file, to examine the certificate of occupancy to determine if there have been any alterations, and if so, to insure that there has been compliance with all applicable building codes and regulations.

The purchaser's counsel should obtain the heating, cooling and insulation costs of the building as well as the legal grade of the street, and should also review any applicable laws and/or regulations such as multiple dwelling laws. There are also a number of environmental land use laws that should be investigated.

The contract generally provides for the apportionment of outstanding expenses at closing. Closing apportionments are adjustments to income, expenses or charges, usually to the date of closing. The expenses are generally apportioned so that the seller pays its expenses prior to closing and the purchaser pays the expenses subsequent to the conveyance of the deed. The contract is often contingent on the purchaser obtaining financing within a certain time period.

If the sale involves a co-op or condominium, the contract will be somewhat different as a result of different considerations involved.

Additionally, other factors must be considered by counsel when the property involved is commercial in nature. Some of these considerations are service contracts, mortgages and ground leases, spaces leases, management contracts, and employee unions. Additionally, the possibility of environmental problems related to the property must be considered. Persons owning, transferring or developing real property can be held liable if hazardous substances are found on the property. Liability is imposed by Federal legislation as well as various state laws. Waste Disposal Sites generally deal with remedial programs, as well as identification and reporting of hazardous substances. Counsel for a purchaser and/or lender should review all documentation and public records to determine if there are hazardous substances on the property. Purchaser's counsel should incorporate environmental provisions into the contract of sale,
such as requiring seller to; test the property, provide reports from experts and the government, provide escrows for clean-up of hazardous substances and to reduce the sales price in the event hazardous substances are located on the property. In certain cases, particularly if the prior use of the property indicates there is a likelihood that hazardous substances may have been present on the property, an inspection by an environmental expert may be prudent.

**Risk of Loss**

The common law rule with regard to risk of loss is that if the property is destroyed between the time the contract is signed and the time of transfer of the deed, and such destruction is not the fault of either party, then as a result of the doctrine of equitable conversion, equitable title was passed to the buyer upon signing the contract. Consequently, the risk of loss has passed to the buyer. However, some states, including New York, have adopted the Uniform Vendor and Purchasers Risk Act, which puts the risk of loss on the seller until the buyer takes title or possession.

**Title To The Property**

A purchaser of real estate has the right to receive marketable title to real property unless he agrees otherwise. In New York City, a purchaser generally obtains a title examination and title insurance through a title company. In other locations such as upstate New York, it is somewhat common to rely on an abstract of title and not to obtain title insurance. If the purchase is financed through a bank, the bank will generally require title insurance. The total cost of a title insurance policy varies depending on several factors including, the amount insured and the searches requested.

**Deed**

The actual transfer of title to real property generally occurs by a deed. It usually occurs at a closing where it is executed, acknowledged and delivered. There are various types of deeds. The principal types are quitclaim deed, warranty deed with full covenants, and bargain and sale deed. A quitclaim deed contains no covenants by the grantor. A warranty deed with full covenants contains covenants by the grantor of seisen, of right to convey, against encumbrances, of further assurances, and of quiet enjoyment and warranty. A general warranty deed warrants title against defects arising before as well as during the time the grantor has title. A special warranty deed contains the same covenants, but only warrants against defects arising during the time the grantor has title. A bargain and sale deed contains the basic covenants against grantor's acts.

A deed must be in writing, it must identify the parties and the land involved and it must be acknowledged and delivered.
In order to protect a purchaser or lender from the subsequent rights of third parties over the real estate, it is essential to record the relevant documents by filing in a public recording office. Generally the recordation of contracts, deeds and mortgages occurs at the county level. Significant differences with regard to recording procedures and requirements exist from county to county.

**Contracts:** There is no requirement that a real estate contract be recorded, and quite often it is not recorded. However, if an executory contract is recorded, the purchaser may enforce his right to performance against a person who after the recording, purchases or acquires by exchange, the same realty or any part thereof from the seller's devisees or distributees.

**Deeds:** There are three major types of recording statutes that may protect subsequent bona fide purchasers of land by putting them on notice of competing interests in land. Most states have adopted one of the three types of statutes. 1) Notice Statutes invalidate the purchase of a subsequent bona fide purchaser with actual or constructive notice of another grantee. Approximately half of the states have adopted notice statutes. 2) Race Statutes: Under these types of statutes whoever records first regardless of notice is deemed to be the legitimate owner of the property. 3) Race Notice Statutes: Under these statutes a subsequent bona fide purchaser is only protected if he or she records before the other person claiming on the interest and without notice of that interest.

Most recording statutes provide that the deed must be acknowledged before a notary public to be recorded. There are differences from jurisdiction to jurisdiction as to the formalities required for recordation. Approximately half of the states including New York are "race-notice" jurisdictions. Every prior conveyance not recorded is void as against any such person who subsequently purchases in good faith without notice and whose conveyance contract or assignment is fully recorded.

**The Closing**

The closing is the ceremony at which the property transaction is consummated. Closing practices are dictated by custom, which varies from region to region. Generally, all necessary parties are present, their identity is verified, the documents are finalized, financial calculations and adjustments are reviewed and documents, money and information are exchanged. The closing usually takes place at the office of the seller's attorney but occasionally at the office of the lenders' counsel. There are various costs which are payable at closing, which vary according to jurisdiction. Costs typically paid by a purchaser include fees to record the deed and the mortgage, utility bills, escrow fees, attorneys fee for the bank attorney, taxes, special assessments, financing charges, inspection fees, origination fees, rent payable if possession is taken before closing and adjustments.
Purchasers of real property obtain financing from various sources. Mortgages are commonly used to finance the acquisition of real property, since the lender receives a lien that may be enforced on the default of the purchaser. The buyer retains title to the property unless the mortgage lien is foreclosed. The lender, who may be the seller or a third party, can enforce the mortgage by foreclosing the lien. The borrower can redeem the property by reinstatement or payment of the loan prior to foreclosure. Certain states are considered "title theory states" and treat title to mortgaged premises as being in the mortgagee. Other states are considered "lien theory states" and consider that the legal title to the mortgaged premises remains in the mortgagor and the mortgagee merely has a lien on the property. A mortgage loan can be structured in a variety of ways and can have fixed or adjustable rates.

Purchasers of condominiums also obtain financing from various sources. Commonly, as with the purchase of a home, a mortgage which can be foreclosed upon is held as security for the loan.

The loans which are obtained by purchasers of cooperative apartments are generally secured by pledges of the purchaser's stock in the entity and an assignment of the proprietary leases.

**Purchase of Land by Non-Nationals**

Generally, the regulation of the rights of individuals who are not citizens ("Non-Nationals") of the United States to hold real property is left to the states. Under New York law, for instance, a Non-National may take, hold, convey and devise real property. There are not many federal restrictions on Non-Nationals owning or investing in real property in the United States. A few of these are as follows: The Agricultural Foreign Investment Disclosure Act of 1978 (FIDA); The International Investment Survey Act of 1976 (IISA); The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA).

**Planning and Development Controls**

The primary controls on planning and development are zoning ordinances, which regulate the allowable uses of land. These ordinances vary from municipality to municipality. A municipality can establish a certain zone where only certain uses of property are allowed, and where the size and location of structures are regulated, as long as the zoning regulations are pursuant to a comprehensive plan. One common type of zoning ordinance separates residential and non-residential uses of property. If a property owner desires to use property for a purpose restricted by a zoning ordinance he or she would generally have to apply for a "variance". A variance is generally granted where adherence to the requirements of the zoning ordinance would result in "practical difficulties or unnecessary hardship and where the requested relief would preserve the public safety and welfare and achieve substantial justice."
Riparian water rights (or simply riparian rights) is a system of allocating water among those who possess land about its source. It has its origins in English common law. It is used in the United Kingdom and states in the eastern United States.

Under the riparian principle, all landowners whose property is adjacent to a body of water have the right to make reasonable use of it. If there is not enough water to satisfy all users, allotments are generally fixed in proportion to frontage on the water source. These rights cannot be sold or transferred other than with the adjoining land, and water cannot be transferred out of the watershed.

Riparian rights include such things as the right to access for swimming, boating and fishing; the right to wharf out to a point of navigability; the right to erect structures such as docks, piers, and boat lifts; the right to use the water for domestic purposes; the right to accretions caused by water level fluctuations; the right to view and protection of view. Riparian rights also depend upon "reasonable use" as it relates to other riparian owners to ensure that the rights of one riparian owner are weighed fairly and equitably with the rights of adjacent riparian owners.

Prior appropriation water rights, sometimes known as the "Colorado Doctrine", is a system of allocating water rights from a water source that is markedly different from Riparian water rights. Water law in the western United States generally follows the appropriation doctrine which developed due to the scarcity of water in that area.

Overview

The legal details vary from state to state; however, the general principle is that water rights are unconnected to land ownership, and can be sold or mortgaged like other property. The first person to use a quantity of water from a water source for a beneficial use has the right to continue to use that quantity of water for that purpose. Subsequent users can use the remaining water for their own beneficial purposes provided that they do not impinge on the rights of previous users.

Beneficial use is commonly defined as agricultural, industrial or household use. Ecological purposes, such as maintaining a natural body of water and the wildlife that depends on it, were not initially deemed as beneficial uses in some Western states but have been accepted in some jurisdictions. The extent to which private parties may own such rights varies among the states.[1]

Each water right has a yearly quantity and an appropriation date. Each year, the user with the earliest appropriation date (known as the "senior appropriator") may use up to their full allocation (provided the water source can supply it). Then the user with the next earliest appropriation date may use their full allocation and so on. In times of drought, users with junior appropriation dates might not receive their full allocation or even any water at all.
When a water right is sold, it retains its original appropriation date. Only the amount of water historically consumed can be transferred if a water right is sold. For example, if alfalfa is grown, using flood irrigation, the amount of the return flow may not be transferred, only the amount that would be necessary to irrigate the amount of alfalfa historically grown. If a water right is not used for a beneficial purpose for a period of time it may lapse under the doctrine of abandonment. Abandonment of a water right is rare, but occurred in Colorado in a case involving the South Fork of San Isabel Creek in Saguache County, Colorado.

For water sources with many users, a government or quasi-government agency is usually charged with overseeing allocations. Allocations involving water sources that cross state borders or international borders can be quite contentious, and are generally governed by federal court rulings, interstate agreements and international treaties.

**Accretion**

In science, accretion is a process in which the size of something gradually increases by steady addition of smaller parts. Accretion (coastal management) is the process where coastal sediments return to the visible portion of the beach following storm erosion.

**Avulsion**

Avulsion in general refers to a tearing away. Specifically, it can refer to in the law (also real estate, geology), "avulsion" refers to the sudden loss of land by the action of water.

**How Ownership is Held**

**Ownership in Severalty**

Sole ownership, or ownership in severalty, means that title is held by one natural person or legal entity (such as a corporation).

**Tenancy in common**

Tenancy in common is the default form of concurrent estate, in which each owner, referred to as a tenant in common, is regarded by the law as each owning separate and distinct shares which may differ in size. This form of ownership is common where the co-owners are not married or have contributed different amounts to the acquisition of the property. Also, if joint owners had attempted to use another form of joint ownership such as a joint tenancy with right of survivorship or a tenancy by the entirety, and the effort was for some reason invalid, the joint owners would then be tenants in common. If conclusive evidence is not available of the desire to create a tenancy with rights of
Tenants in common have no right of survivorship, meaning that if one owner dies, that owner's interest in the property will pass by inheritance to that owner's devisees or heirs, either by will, or by intestate succession.

Destruction of a tenancy in common

Where any party to a tenancy in common wishes to destroy the joint interest, he or she can do so through a partition of the property - a division of the land into distinctly owned plots if such division is legally permitted based upon zoning and other local land use restrictions or, where such division is not permitted, a forced sale of the property followed by a division of proceeds.

If the parties are unable to agree to a partition, any or all of them may seek the ruling of a court to determine how the land should be divided up, physically divide it between the joint owners (partition in kind), leaving each with ownership of a portion of the property representing their share. Courts may also order a partition by sale in which the property is sold and the proceeds are distributed to the owners. Where local law does not permit physical division, the court must order a partition by sale.

Each co-owner is entitled to partition as a matter of right, meaning that the court will order a partition at the request of any of the co-owners. The only exception to this general rule is where the co-owners have agreed, either expressly or impliedly, to waive the right of partition. The right may be waived either permanently, for a specific period of time, or under certain conditions.

Joint tenancy with right of survivorship

A joint tenancy with right of survivorship or JTWROS is a type of concurrent estate in which the joint owners have a right of survivorship, meaning that if one owner dies, that owner's interest in the property will automatically pass to the remaining owner or owners. On the death of one of the tenants, the whole of the property passes to remaining tenant(s); this is the "right of survivorship." The deceased tenant's property interest simply evaporates by operation of law, and cannot be inherited by his heirs (which means it avoids going through probate). Under this type of ownership, the last owner living takes all.

It is important to note, however, that creditors' claims against the deceased tenant's estate may, under certain circumstances, be satisfied by the portion of ownership previously owned by the deceased, but now owned by the survivor or survivors. In other words, the deceased's liabilities can sometimes remain attached to the property.

This form of ownership is common between husband and wife, and parent and child, and in any other situation where parties want absolute ownership to immediately pass to the survivor. For bank and
3 Real Estate Ownership

brokerage accounts held in this fashion, the acronym JTWROS is commonly appended to the account name as evidence of the owners' intent.

In order to create this type joint ownership, the party or parties seeking to create it must use specific language indicating that intent. For example, if Joey wishes to convey property for Kelly and Lisa to share as joint tenants with right of survivorship, Joey must state in the deed that the property is being conveyed "to Kelly and Lisa as joint tenants with right of survivorship, and not as tenants in common."

The four unities

In order for a JTWROS to be created, the co-owners must share the "four unities":

- Time = the property interest must be acquired by both tenants at the same time.
- Title = both tenants must have the same title to the property in the deed - if the deed places a condition on one tenant and not the other, they do not have the same title, and the attempt to create a JTWROS is invalid.
- Interest = all tenants must have the same interest in the property, e.g. one tenant can't have a life estate and another a fee simple absolute.
- Possession = both tenants must have the right to possess the whole property - if one owner can prove that he or she has been improperly excluded from the property by the other, the JTWROS will be invalidated.

If any one of the four unities is missing, the JTWROS is invalid, and becomes a tenancy in common.

Breaking a JTWROS

The co-tenant in property owned by a JTWROS can break the JTWROS as to their interest in the property at any time by conveying their interest in the property to another person. Under the old common law, this required an actual exchange with a straw man - another person who would buy the property from the co-tenant for some nominal consideration, then sell it back to the co-tenant at the same low price. Many states now permit a joint tenant to break the JTWROS without a straw man, simply by executing a document to that effect - even if that owner does not inform the other owners. In either case, the JTWROS will, again, revert to a tenancy in common as to that owner's interest in the property.

There is a big problem that is possible with the simple document execution method. In the straw man approach, there are witnesses to the transfer. With the document, there may not be witnesses. With either method, as soon as the break occurs, it works both ways. Because there may not be witnesses, the party with the document could take advantage of that fact and hide the document when the other party dies.

It is important to note, however, that if there are three or more owners, and only one of the owners breaks the JTWROS, the other owners remain in the JTWROS as to each other. For example, suppose
Real Estate Ownership

Joey, Kelly, and Lisa own a piece of property as joint tenants with right of survivorship, but then Joey conveys his share in the property to Ryan. If Ryan dies, his 1/3 share will go to his heirs. But if Kelly dies, her 1/3 share will go to Lisa, because they still owned their total 2/3 share in JTWROS.

Effect of a mortgage

Where one party takes out a mortgage on the jointly owned property, this may break the JTWROS, depending on the law of the state. Some states use a lien theory, which posits that the taking of a mortgage merely places a lien on the property, leaving the joint tenancy undisturbed. However, other states that use a title theory, contending that a mortgage actually conveys title from the mortgagor [co-tenant] to the mortgagee [lender] until the mortgage is paid. In such states, the taking of a mortgage by one owner breaks the joint tenancy as to that owner.

A creditor's judgment lien is not enough, no severance, if debtor dies before creditor sues, the creditor has no interest in the property left to collect against.

Tenancy by the entirety

Tenancy by the entirety is a type of concurrent estate available only to married couples, wherein ownership of the property is treated as though the couple are a single legal person. Like a JTWROS, the tenancy by the entirety also encompasses a right of survivorship, so if one spouse dies, the entire interest in the property passes to the surviving spouse, without going through probate.

In order for a tenancy by the entirety to be created, in some jurisdictions the party or parties seeking to create it must specify in the deed that the property is being conveyed to the couple "as tenants by the entirety". Also, the parties must share the four unities necessary to create a joint tenancy with right of survivorship - time, title, interest, and possession - plus a fifth unity, marriage. However, unlike a JTWROS, neither party in a tenancy by the entirety has a unilateral right to sever the tenancy by the entirety - if it is to be undone, or if any part of the property is to be conveyed to another person, this must be carried out by both spouses. A divorce breaks the unity of marriage, leaving the default tenancy, which may be a tenancy in common. Many US jurisdictions no longer recognize tenancy by the entirety. Where it is recognized, benefits can include the ability to shield entirety property from creditors of only one spouse, as well as the ability to partially shield entirety property where only one spouse is filing a petition for bankruptcy relief.

Condominium

A condominium, or condo, is a form of housing tenure. It is the legal term used in the United States and in most provinces of Canada. Colloquially, the term "condo" is often used to refer to the unit itself in place of the word "apartment". Technically, the condominium is the whole collection of individual home units along with the land upon which they sit. Individual home ownership is composed of only of the air-space within the boundaries of the home, as defined by a document known as a Declaration, filed of record with the local governing authority. Typically these boundaries will include the
sheetrock surrounding a room, allowing the homeowner to make some interior modifications without impacting the common area. Anything outside this boundary is held in an undivided ownership interest by a corporation established at the time of the condominium’s creation. The corporation holds this property in trust on behalf of the homeowners as a group—it does not have ownership itself. Big cities, including Chicago, New York City, Los Angeles, Miami, and Toronto, are major condo users.

The primary attraction to this type of ownership is the ability to obtain affordable housing in a highly-desirable area that typically is beyond economic reach. Additionally, such properties benefit from having restrictions that maintain and enhance value, providing control over blight that plagues some neighborhoods.

Overview

Typically, a condominium consists of multi-unit dwellings (i.e., an apartment or a development) where each unit is individually owned and the common areas, such as hallways and recreational facilities, are jointly owned (usually as "tenants in common") by all the unit owners in the building. It is also possible for condominiums to consist of single family dwellings: so-called "detached condominiums" where homeowners do not maintain the exteriors of the dwellings, yards, etc. or "site condominiums" where the owner has more control and possible ownership (as in a "whole lot" or "lot line" condominium) over the exterior appearance. These structures are preferred by some planned neighborhoods and gated communities.

A homeowners association, consisting of all the members, manages the condominium through a board of directors elected by the membership. The same concept exists under different names depending on the jurisdiction, such as "unit title", "sectional title", or "tenant-owner's association", "body corporate", "Owners Corporation", "condominium corporation" or "condominium association." Another variation of this concept is the "time share" although not all time shares are condominiums, and not all time shares involve actual ownership of (i.e., deeded title to) real property. Condominiums may be found in both civil law and common law legal systems as it is purely a creation of statute.

The restrictions for condominium usage are established in a document commonly called a "Declaration of Condominium". Rules of governance are usually covered under a separate set of Bylaws. Finally, a set of Rules and Regulations providing specific details of restrictions and conduct are established by the Board and are more readily amendable than the Declaration or Bylaws. Typical rules include mandatory maintenance fees (perhaps collected monthly), pet restrictions, and color/design choices visible from the exterior of the units. Condominiums are usually owned in fee simple title, but can be owned in ways that other real estate can be owned, such as title held in trust. In some jurisdictions, such as Ontario, Canada or Hawaii USA, there are "leasehold condominiums" where the development is built on leased land.

In general, condominium unit owners can rent their home to tenants, similar to renting out other real estate, although leasing rights may be subject to conditions or restrictions set forth in the declaration
Non-residential condominiums

Condominium ownership is also used, albeit less frequently, for non-residential land uses: offices, hotel rooms, retail shops, and group housing facilities (retirement homes or dormitories). The legal structure is the same, and many of the benefits are similar; for instance, a nonprofit corporation may face a lower tax liability in an office condominium than in an office rented from a taxable, for-profit company. However, the frequent turnover of commercial land uses in particular can make the inflexibility of condominium arrangements problematic.

History

The first condominium law passed in the United States was in the Commonwealth of Puerto Rico in 1958. English Common law tradition holds that real property ownership must involve land, whereas the French civil law tradition recognized condominium ownership as early as the 1804 Napoleonic Code; thus, it is notable that condominiums evolved in the United States via a Caribbean government with a hybrid common-civil legal system. In 1960, the first condominium in the Continental United States was built in Salt Lake City, Utah. Initially designed as a housing cooperative (Co-op), the Utah Condominium Act of 1960 made it possible for "Graystone Manor" (2730 S 1200 East) to be built as a condominium. The legal counsel for the project, Keith B. Romney is also credited with authoring the Utah Condominium act of 1960. Romney also played an advisory role in the creation of condominium legislation with every other legislature in the U.S. Business Week hailed Romney as the "Father of Condominiums". He soon after formed a partnership with Don W. Pihl called "Keith Romney Associates", which was widely recognized throughout the 1970's as America's preeminent condominium consulting firm.

Although often mistakenly credited with coining the term "condominium", Romney has always been quick to point out that it harks back to Roman times, and that he merely borrowed it.

Nowadays, the leadership of the industry is dominated by Community Associations Institute or CAI.

Section 234 of the 1961 National Housing Act allowed the Federal Housing Administration to insure mortgages on condominiums, leading to a vast increase in the funds available for condominiums, and to condominium laws in every state by 1969. Many Americans' first widespread awareness of condominium life came not from its largest cities but from south Florida, where developers had imported the condominium concept from Puerto Rico and used it to sell thousands of inexpensive homes to retirees arriving flush with cash from the urban Northern U.S.

In recent years, the residential condominium industry has been booming in all of the major metropolitan areas such as Miami, Seattle, Boston, and New York. It is now in a slowdown phase. According to Richard Swerdlow, CEO of Condo.com, "You're not going to see this giant overbuild
again. It's hard to imagine that you'd see in the next decade what we just saw. Real estate brokers and the developers were in almost a ticket-collecting mode. They were processing orders because there was so much business to go around. Now that sort of investor phenomenon has gone away." He added, "That phenomenon has stopped."

An alternative form of ownership, popular in the United States but found also in other common law jurisdictions, is the "cooperative" corporation, also known as "company share" or "co-op", in which the building has an associated legal company and ownership of shares gives the right to a lease for residence of a unit. Another form is leasehold or ground rent in which a single landlord retains ownership of the land on which the building is constructed in which the lease renews in perpetuity or over a very long term such as in a civil law emphyteutic lease. Another form of civil law joint property ownership is undivided co-ownership where the owners own a percentage of the entire property but have exclusive possession of a specific part of the property and joint possession of other parts of the property; distinguished from joint tenancy with right of survivorship or a tenancy in common of common law.

Cooperative

A cooperative (also co-operative or co-op) is defined by the International Co-operative Alliance's Statement on the Co-operative Identity as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise. A cooperative may also be defined as a business owned and controlled by the people who use its services. Cooperative enterprises are the focus of study in the field of cooperative economics. Cooperatives have a sponsored top level internet domain .coop, which informs users that they are dealing with a co-operative.

Meaning

Cooperatives as legal entities

A cooperative is a legal entity owned and democratically controlled by its members. The defining point in a cooperative is that the members have a close association with the cooperative as producers or consumers of its products or services, or as its employees. However, it is the principle of "one member - one vote" which separates it from capital stock corporations.

In the United States cooperatives are generally organized according to state law. They are often organized as non-capital stock corporations under state-specific cooperative laws, which often restrict the use of the words "cooperative" and "co-op" to such organizations. However, they may also be organized as business corporations or unincorporated associations, such as Limited Liability Companies (LLCs) or partnerships; such forms are useful when the members want to allow some members a greater share of the control, which may not be allowed under the laws for cooperatives. Cooperatives do not generally pay dividends, but return savings or profits, sometimes known as patronage, to their members. Cooperatives can have special income tax benefits in the United States;
Co-operative identity

Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, cooperative members believe in the ethical values of honesty, openness, social responsibility and caring for others." Such legal entities have a range of unique social characteristics. Membership is open, meaning that anyone who satisfies certain non-discriminatory conditions may join. Unlike a union, in some jurisdictions a cooperative may assign different numbers of votes to different members. However most cooperatives are governed on a strict "one member, one vote" basis, to avoid the concentration of control in an elite. Economic benefits are distributed proportionally according to each member's level of economic interest in the cooperative, for instance by a dividend on sales or purchases. Cooperatives may be generally classified as either consumer or producer cooperatives, depending largely on the mutual interest (see mutual organizations) that their membership shares, although multi-stakeholder cooperatives, bringing together the interests of all key stakeholders in the enterprise, are increasingly common. Classification is also often based on their function, which often leads to confusion arising from taxonomies using both approaches.

Housing cooperative

A housing cooperative is a legal mechanism for ownership of housing where residents either own shares (share capital co-op) reflecting their equity in the co-operative's real estate, or have membership and occupancy rights in a not-for-profit co-operative (non-share capital co-op), and they underwrite their housing through paying subscriptions or rent.

Condos and Coops FAQs

Q: What is the difference between a condominium and a co-op?

A: A condominium is a common-interest community in which individual units are separately owned but the owners share an interest in common areas, for example, hallways, roofs, and exteriors. With a cooperative, or co-op, buyers purchase shares of stock in a corporation that owns a building. A condominium owner has title to his or her unit; a co-op owner receives a proportionate amount of shares in the corporation that owns the building, based on the unit's proportion of the building.

For the purposes of income tax laws and other laws regarding real estate, a condominium is treated as a single-family home. But an association has the right to impose maintenance fees, demand escrow payments for large repair bills, and manage the overall operation of the entire building. Owners of co-ops must abide by the corporation rules; additionally, if they fail to pay their fees, they may be evicted.
Q: Can I obtain a mortgage for a co-op?

A: The law defines owning a condominium as owning a piece of real estate. Owning a co-op, however, means that you own shares of stock in a building. Formerly, it was not easy to get a mortgage to buy a co-op. That was why prices on co-ops usually were much lower than condominium prices. Once the federal government amended the law to allow the Federal National Mortgage Association (Fannie Mae) to buy co-op loans, it made it much easier for prospective co-op buyers to obtain mortgages. Today, it is only slightly more difficult to obtain a mortgage for a co-op than for a condominium, but prices generally remain lower because of the extra restrictions placed on co-op owners.

Q: How does a planned community work?

A: A planned community, also called a "homeowner association," is a hybrid subdivision combining certain aspects of cooperatives and condominiums. In these developments, each owner holds title to a unit—in many cases, a single-family, detached house. But all common areas, such as parks and playgrounds, belong to the incorporated association, which all owners are required to join. The association is responsible for maintaining common areas and, in some cases, house exteriors. Homeowners pay a periodic assessment for common area expenses and reserves.

Some planned communities include sections organized as condominiums or cooperatives. Others include commercial or even industrial areas, designed to allow people to live within walking distance of stores and work. Some of these developments are huge—such as Reston, Virginia, a planned community of 19,000 units. Further, several adjoining community associations may belong to a master association, also known as an "umbrella association," a "master planned community," or a "mixed-use association," which charges an additional assessment to pay for certain community-wide services.

Q: What is a common interest community?

A: Thanks to creative developers, common interest communities exist in various configurations with a confusing array of names and forms of ownership. Still, certain characteristics are shared—they are designed specifically for a certain type of community living by a single developer (or in the case of existing buildings, a single converter). They are created by a specific set of documents, usually drawn up by the developer and subject to change by the membership. And when the developer or converter departs, the community's affairs are governed by an association of all unit owners through its elected board. The board has the authority to enforce the restrictions and collect assessments to pay for maintenance and improvements.

Because these ownership forms are governed by the laws of so many different states, the terminology can be confusing. Whatever the general term, there are three distinct types of common interest communities with three distinct types of ownership: the cooperative, the condominium, and the
planned community or planned unit development (PUD). You can't tell which is which by looking at the architectural form of the buildings. For example, in some states, "site condominiums" look just like single-family detached homes but the land—not the home—is part of the condominium. However, the form of ownership has significant legal implications. Be sure you know what type yours is the form of ownership is specified in the community's declaration, which is essentially its constitution.

Q: How do state laws apply to common interest communities?

A: Most of the substantive law—and confusion—lies in an ever-changing patchwork of state statutes. The governance of cooperatives falls under state statutes governing corporations and non-profit corporations, because residents of a cooperative own stock in the corporation that owns their building. The same statutes apply to the associations governing planned communities, which likewise own the common areas.

Condominiums, however, do not have a corporation responsible for liabilities, taxes, and governance. That is why each state has a special set of laws detailing how condominiums must be organized and operated. These laws require each condominium to file a declaration and bylaws, with specific requirements regarding the rights and duties of the association. Planned communities require no specific statute, but some states include them in an act governing all common interest communities.

Condominium statutes vary considerably, from state to state, and many lack protections for consumers. While some states provide only the barest framework for creating a condominium, others are incredibly complex and detailed. For example, Florida, where nearly three million people live in condominiums, understandably has the most complex, extensive regulation of all the states.

Q: What federal laws apply to common interest communities?

A: Few federal laws directly affect the organization and operation of common interest communities, but two consumer-oriented federal laws apply directly. Under the Fair Housing Amendments Act, effective since March, 1989, developments may no longer discriminate against families with children unless the development meets the act's strict qualifications for senior citizen developments. Otherwise, it is no longer legal to advertise a development as being for adults only or to steer would-be buyers elsewhere because their children wouldn't be welcome. It is still legal to prohibit occupancy by, for example, people forty years old or younger, but even then a forty-five-year-old with legal custody of a child under 18 couldn't be denied access to housing.

The Fair Housing Amendments Act also prohibits discrimination against disabled persons. Developments must permit construction of facilities for disabled residents, although the disabled resident may be required to remove the construction upon leaving. Further, all new multi-family buildings must provide access for the disabled in every unit on the ground floor or accessibility by elevator. Under HUD regulations, this includes wide doors, free passage for wheelchairs through units, bathroom walls strong enough for grab bars, and access to at least a representative portion of the amenities.
3 Real Estate Ownership

Q: What is the role of the board of directors in managing a multi-unit dwelling?

A: Typically, the board has broad powers under state law. The board may raise or lower assessments and impose special assessments to cover specific repairs or improvements. It also may insist that unit owners obey the policies of the association. Major restrictions on the purchaser's right to lease, finance, or resell his or her unit may exist.

Many multi-unit associations grant the board of directors a right of first refusal to buy a unit. The way this generally works in practice is that the owner must offer to sell the unit to the board before offering it for sale to any other person.

Q: How does the board enforce the association's rules?

A: When a unit owner ignores the rules, the board usually levies fines against the owner. If the fines pile up and the owner refuses to pay, the board may file a lien against the property and, if necessary, foreclose on it to get the money. Another approach is for the association to sue the violator, seeking an injunctive order to stop the practice in question. A violator who refuses to follow the court order could be in contempt of court.

In theory, any unit owner may sign a complaint against a neighbor to initiate a process that could lead to fines. In practice, though, most unit owners are hesitant to sign formal complaints against people next door, even though they voice their concerns loudly to the board. If the community hires a management company-standard practice in larger communities-the company's routine maintenance inspections include checking for violations of the rules. The employee who discovers the infraction then serves as a complaining witness to the board, which more than likely will start by sending someone to talk to the violator. Most board members try to be even-handed in their enforcement, as they don't want to be criticized for punishing one violator and showing leniency towards another.

If the board decides to resort to the courts, it must do so promptly or risk losing the authority to enforce the rule. If the rules say you cannot build a tool shed and you do it anyway, board members cannot walk past it every day for a year and then sue to have you remove it.

Timeshare

A timeshare is a form of vacation property ownership. With timeshares, the use and costs of running the resort are shared among the owners. While the majority of timeshares are condominiums or cooperatives at vacation destinations, developers have applied the timeshare model to houseboats, yachts, campgrounds, motor homes, cruises and private jets.

The notion of a timeshare was originally created in Europe in the 1960s. A ski resort developer in the French Alps innovatively marketed his resort by encouraging guests to "stop renting a room" and instead "buy the hotel". The developer was successful in increasing occupancy and the idea spread...
3 Real Estate Ownership

worldwide. While a useful tool for many, the timeshare industry has also become a magnet for attracting illegal and barely legal methods for the sale and resale of property.

Methods of use

Timeshare is a business model whereby a company buys something and sells small *timeslices* of it to customers. This concept is most frequently used for vacation condominiums/homes, but it has also been used for high end private jets. In general, "timeshare" refers to the former rather than the latter.

- Use their usage time
- Rent out their owned usage
- Give it as a gift
- Exchange internally within the same resort or resort group
- Exchange externally into thousands of other timeshare resorts

Recently, with most point systems, owners may elect to:

- Assign their usage time to the point system to be exchanged for airline tickets, hotels, travel packages, cruises, amusement park tickets;
- Instead of renting all their actual usage time, rent part of their points without actually getting any usage time and use the rest of the points;
- Rent more points from either the internal exchange entity or another owner to get a larger unit or more vacation time or at a better location;
- Save or move points from one year to another.

Some developers, however, may limit which of these options are available at their properties.

Timeshare owners can elect to stay at their resort during the prescribed period, which varies depending on the nature of their ownership. In many resorts, they can rent out their week or give it as a gift to friends and family.

Timeshares offer owners the possibility of exchanging their week, either independently or through several exchange agencies, to stay at one of the thousands of other resorts worldwide. There are many exchange agencies, of which the two largest are Resort Condominiums International (RCI) and Interval International (II). They have resort affiliate programs and members can only exchange to affiliate resorts. It is most common for a resort to be affiliated with only one of the larger exchange agencies, but it isn't rare to find a dual affiliate resort. Together they have over 7,000 resorts. The timeshare resort one purchases determines which of the major exchange companies can be used to make exchanges. RCI and II charge a yearly membership fee and fees for when they find an exchange. They also bar members from renting weeks for which they already have exchanged.

Timeshare owners can also exchange their timeshare with the smaller independent timeshare exchange companies. Dial an Exchange, Trading Places, Hawaii Timeshare Exchange, Platinum Interchange,
3 Real Estate Ownership

AlaskaRealEstateSchool.com

The San Francisco Exchange, Timex and Redweek.com are the main independent exchange companies. Owners can exchange with these independent exchange without needing the resort to have a formal affiliation agreement with the companies.

Timeshare owners may also arrange a direct exchange. This requires locating a timeshare owner with the location and weeks both mutually desire. This form of exchange is rare but since it can save in exchange fees it is often sought after. Several bulletin boards have been created to help timeshare owners meet others and swap.

Timeshares take different forms depending on the seller. The vast majority consist of one week of ownership, i.e. 1/52 year, but some developers sell point based systems that are a different form of vacation currency that allow hotel stays, car rentals, and stays at large networks of resorts.

Kinds of Time Shares

Deeded vs. Right to Use

A major difference in types of timeshare ownership is that between deeded and right to use contracts.

With deeded contracts the use of the timeshare resort is usually divided into week long increments and these are sold as fractional ownership and are real property. As with any other piece of real estate the owner may use his or her week, rent his or her week, give it away, or leave it to his or her heirs. While this form of ownership can offer additional security to the owner as a form of physical ownership, deeded timeshare ownership can be as complex as outright property ownership in that the structure of deeds varies according to local property laws. Leasehold deeds are common and offer ownership for a fixed period of time after which the ownership reverts to the Freeholder. Occasionally, leasehold deeds are offered in perpetuity however many do not convey ownership of the land but merely the apartment or 'unit' of accommodation.

With right to use, the timeshare purchaser has the right to use the property in accordance with the contract but at some point the contract ends and all rights revert to the property owner. In other words, the right to use contract grants the right to use the resort for a specific number of years. In many countries there are severe limits on foreign property ownership, so this is a common method for developing timeshare resorts in countries such as Mexico. Disney Vacation Club is also sold as a right to use. Care should be taken with this form of ownership as the right to use often takes the form of 'club membership' or right to use the reservation system. Where the reservation system is owned by a Company not in the control of the owners, the right of use may be lost with the demise of the controlling Company.

Fixed Week Ownership

The most basic timeshare unit is a fixed week; the resort will have a calendar enumerating the weeks roughly starting with the first calendar week of the year. An owner may own a deed to use a unit for a
3 Real Estate Ownership

single specified week. For example, week 26 normally includes the Fourth of July Holiday. If an owner owned Week 26 at a resort he or she could use that week every year.

Floating

Sometimes a timeshare is sold as floating weeks. The ownership will be specific on how many weeks the owner owns and from which weeks the owner may select for the owner's stay. An example of this, a timeshare may be a floating summer week where the owner may request any week during the summer season generally weeks 22 through 36. In this example there would be competition for prime holidays such as the weeks of Memorial Day, Fourth of July and Labor Day. The weeks when schools may still be in session would not be so high in demand. Some floating contracts exclude major holidays so they may be sold as fixed weeks.

Rotating

Some timeshares are sold as rotating weeks. In an attempt to give all owners a chance for the best weeks, the weeks are rotated forward or backward through the calendar, so one year the owner may have use of week 25, then week 26 the next year and then week 27 the year after that. This method does give each owner a fair opportunity for prime weeks but it is not flexible.

Vacation Clubs

Vacation clubs are organizations that may own timeshare units in multiple resorts in different locations. Some clubs consist only of individual weeks at other developer's resorts. They are sold both as deeded or right to use and club members may reserve vacation time at any of the owned resort units based on availability. Vacation clubs cater to a wide range of economic backgrounds and income levels.

Points Programs

Resort based points programs are also sold as deeded and as right to use. Points programs annually give the owner an amount of points equal to the level of ownership. The timeshare owner in a points program can then use these points to make travel arrangements within the resort group. Many points programs are affiliated with large resort groups offering a large selection of options for destination. Many resort point programs provide flexibility from the traditional week stay. Resort point program members, such as Worldmark, may request from the entire available inventory of the resort group.

Exchange company point programs are not a method of ownership nor are specifically associated with one resort or resort group. With the exchange company points programs the members may be limited to exchanging for weeks deposited by other members.
A points program member may often request fractional weeks as well as full or multiple weeks stays. The number of points required to stay at the resort will vary based on a points chart. The points chart will allow for factors such as:

- The popularity of the resort;
- The size of the accommodations;
- The number of nights;
- The popularity of the season;
- and the specific nights requested.

There is flexibility as well as complexity in point programs.

**Types and sizes of timeshare units**

Timeshare properties tend to be apartment-style units ranging in size from studio units (with room for two) to three and four-bedroom units. These larger units can comfortably house large families. Timeshare units normally include fully equipped kitchens with a dining area, dishwasher, televisions, VCRs and more. It is not uncommon to have washers and dryers either in the unit or easily accessible on the resort. Kitchens are equipped to the size of the unit, so that a unit that sleeps four should have at least four glasses, plates, forks, knives, spoons, and bowls so that all four guests can sit and eat at once.

Timeshare units are usually listed by how many the unit will sleep and how many the unit will sleep privately.

- Sleeps 2/2 would normally be a one bedroom or studio
- Sleeps 6/4 would normally be a two bedroom with a sleeper sofa

Sleep privately refers to the number of guests who will not have to walk through another guests sleeping area to use a restroom. Timeshare resorts tend to be strict on the number of guests per unit. Unit size can effect demand at a given resort where a two-bedroom unit may be in higher demand than a one-bedroom unit at the same resort. The same does not hold true comparing resorts in different locations. A one bedroom with a great location may still be in higher demand than a resort with less demand. An example of this may be a one bedroom at a great beach resort compared to a two bedroom unit at a resort located inland from the same beach.

The concept of vacation timeshare has also been extended to luxury items such as planes and luxury cars.

**Scope of timeshare industry**

The scope of today's timeshare industry in the USA is well-documented. The ARDA International Foundation ("AIF"), which is the research arm of the American Resort Development Association ("ARDA"), reports there are 1,604 timeshare resorts, with 154,439 units, in the USA as of January 1,
2006 (AIF 2006). Though reportedly fewer than six percent of U.S. households own a timeshare, the prevalence of timeshare ownership continues to expand (Scoviak 2005). Approximately 4.4 million households own one or more U.S. timeshare weekly intervals or points-equivalent as of January 1, 2007, an increase of sixteen percent from the prior year.

About half of the resorts in the USA are currently selling timeshares, generating sales of $8.6 billion in 2005 (AIF 2006).

The global scope of the industry is not as readily quantified. Interval International, one of the two major timeshare exchange companies, reports there are 5,400 resorts in nearly 100 countries, with 2004 worldwide timeshare sales estimated at nearly $11.8 billion (Interval International 2006).
1. Life estates are not created by:
   a. will.  c. deed.
   b. gift.  d. lease.

2. Frank conveyed a one-acre parcel of land to the Tiny Tom Preschool. In his deed, Frank stated that the property was to be used only as a playground and he reserved a right of reentry. Frank has granted a:
   a. leasehold estate.
   b. fee simple estate.
   c. fee simple estate subject to a condition subsequent.
   d. fee simple subject to a special limitation.

3. The rights of an owner of property along the banks of a stream or river are called:
   a. Hereditaments.  c. less than freehold estate.
   b. riparian rights.  d. littoral rights.

4. If the government acquires privately owned real estate through a condemnation suit, it is exercising the power of:
   a. Escheat.  c. license.
   b. Reversion.  d. eminent domain.

5. The ownership estate that is of an indefinite duration is called:
   a. an estate at will.  c. a freehold estate.
   b. a leasehold estate  d. a dominant estate.

6. Ned owns a large parcel of land accessible only by a navigable river. He sells the narrow strip of land that is on the river bank to Carol's Canoe Club. In order for Ned to gain access to his remaining land from the river, he must claim by implication of law an easement:
   a. by prescription.  c. by restriction.
   b. in gross.  d. by necessity.

7. Pedro and Juan own an apartment building together as joint tenants. They share equally in the expenses and profits. One day Pedro decides to end this relationship. If Pedro sells his interest to Carlos and signs and delivers his deed to him:
   a. Carlos will become a joint tenant with Juan,
   b. Carlos will be a tenant-in-common with Juan and a joint tenant with Pedro.
   c. Carlos and Juan will be tenants-in-common.
   d. the sale will be invalid, so Juan will become the sole owner.
8. Gerald conveyed an undivided one-half interest in his farm to his daughter Belinda in February of this year. In March, he conveyed the remaining one-half interest in the same farm to his son Chester. The deed to Chester contained the statement: "My son Chester is to be a joint tenant with my daughter, Belinda." Both deeds were recorded. In your opinion, which of the following statements is correct?
   a. Chester and Belinda hold title to the farm in joint tenancy.
   b. Chester and Belinda are tenants-in-common.
   c. Chester and Belinda are life tenants.
   d. Belinda owns the entire farm.

9. A person owning a fee simple interest in a unit in a multi unit building together with a specified undivided percentage of all common elements therein would be the owner of a:
   a. Cooperative.
   b. share in a real estate investment trust
   c. condominium.
   d. share in a partnership

10. Bill and Charles are co-owners of a fee simple estate in a parcel of real estate. Bill dies intestate and leaves no estate to be distributed to his heirs; Charles is not related to Bill nor is he a creditor of Bill. If Charles received Bill's interest, they must have been:
    a. tenants in Common
    b. life tenants.
    c. joint tenants.
    d. tenants by the entirety.

11. When full title to real estate is vested in a corporation, the corporation owns the property in:
    a. Trust.
    b. Severalty.
    c. joint tenancy.
    d. tenancy in common.

12. A holds a proprietary lease on her apartment and directs that shares of stock in the corporation that owns the building be registered in the name of A. She owns a:
    a. condominium.
    b. real estate investment trust
    c. cooperative
    d. syndicated venture
Chapter 3
Real Estate Ownership

Answer Sheet

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I certify that I, ____________________________

Print Name

personally answered these questions.

Student Signature: __________________________

Please Print this answer sheet and after finishing, email to
denny@akhomes.co or FAX to 866-659-8458 or mail to:

AlaskaRealEstateSchool.com
Attn: Denny Wood
PO Box 241727
Anchorage, Alaska 99524-1727