

3 Property Ownership

INTEREST IN REAL ESTATE

An individual's ownership rights are subject to the powers held by government. These powers include the **police power**, by which states can enact legislation such as environmental protection laws and zoning ordinances. The government may also acquire privately owned land for public use through the power of **eminent domain** through a legal process called **condemnation**. Real estate **taxes** are imposed to raise government funds. (*IRS Reg. passed in 1997: If a homeowner lived in the home for two of the last 5 years, up to \$500,000 of capital gains are tax exempt.*) When a property becomes ownerless, ownership of the property may transfer, or **escheat**, to the state. An **estate** is the degree, quantity, nature and extent of interest a person holds in land. **Freehold estates** are estates of indeterminate length. Less-than-freehold estates are called **leasehold estates**, and they involve tenants

Types of Leases:

A. Gross lease

1. The tenant pays a fixed rental amount.
2. The landlord pays all property charges.
3. The result is a gross income to the landlord.
4. Most often used for residential apartment rentals

B. Net lease

1. The tenant pays a fixed rental amount.
2. The tenant also pays some or all of the property charges (net or double-net or triple-net)
3. The result is a net income to the landlord.
4. Generally used for all non-residential property leases.

C. Percentage lease

1. The tenant pays a fixed rent plus a percentage of the gross income of the business.
2. The percentage and basis agreed to between the parties.
3. Most commonly used in retail locations
4. Specifics vary with the type of business and its location
5. Math Concept: Calculating percentage lease rents

D. Other lease types

1. Variable lease provide for increases in rent during the lease period

a. **Graduated lease** provides for increases in rent at set future dates in specified amounts the crop

b. Index lease periodic increase of decrease in rent based on changes in some economic index

2. Ground lease

a. Usually involves separate ownership of land and buildings

b. Allows the tenant to construct a building on land that he or she does not own and use the premises thereafter

c. Generally set up as a net lease

d. Typically for 50 years or more

3. Oil and gas lease

a. The owner receives cash for giving exploration rights.

b. If petroleum is found, the owner usually receives one-eighth of its value as a royalty.

4. Lease-purchase

a. The tenant leases the property in advance of its purchase usually for tax or financing reasons.

b. The purchase is the primary consideration, the lease is secondary.

5. Agricultural lease

a. Rent can be paid by the tenant in advance (cash rents).

b. The tenant and owner can share the profits from the sale of when it is sold (sharecropping).



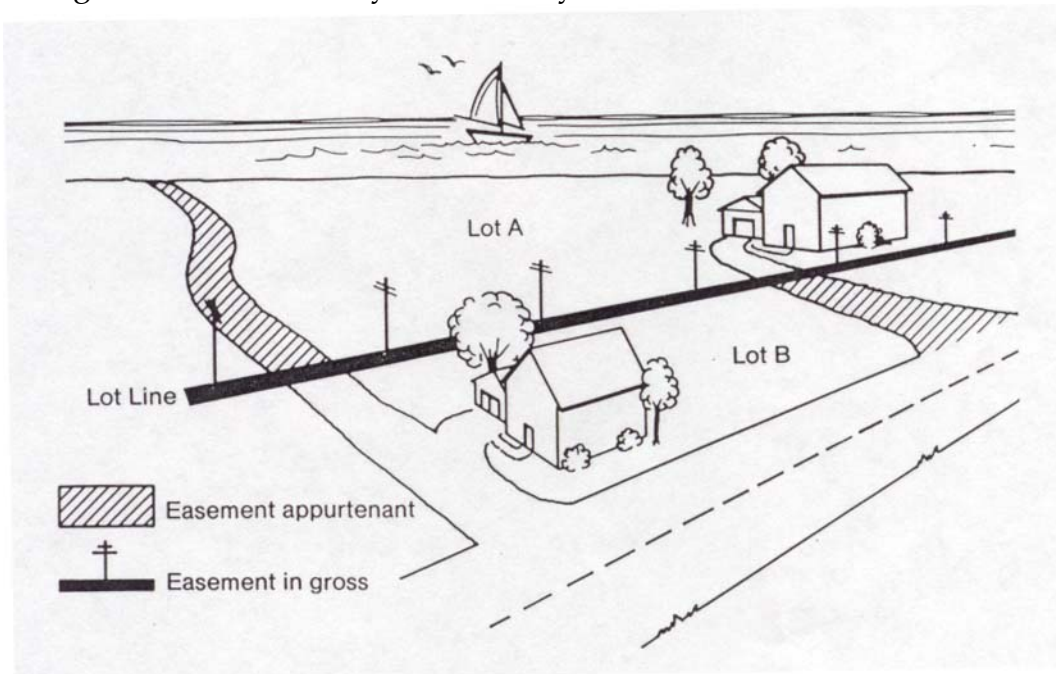
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A freehold estate may be a **fee simple estate** or a **life estate**. A fee simple estate can be absolute or defeasible upon the happening of some event. A conventional life estate is created by the owner of a fee estate; a legal life estate is created by law. Legal life estates include **curtesy, dower** and **homestead**.

Encumbrances against real estate can be liens, deed restrictions, easements, licenses or encroachments.

An **easement** is the right acquired by one person to use another's real estate. Easements are classified as interests in real estate but are not estates in land. **Appurtenant easements** involve two separately owned tracts. The tract benefited is known as the **dominant tenement**; the tract that is subject to the easement is called the **servient tenement**. An **easement in gross** is a personal right, such as that granted to utility companies to maintain poles, wires and pipelines. Easements may be created by agreement, express grant or reservation in a deed, necessity, prescription or condemnation. They can be terminated when the purpose of the easement no longer exists, by merger of both interests, with an express intention to extinguish the easement by release or by abandonment of the easement.



A **license** is permission to enter another's property for a specific purpose. A license is usually created orally, is temporary and can be revoked. An **encroachment** is an unauthorized use of another's real estate.



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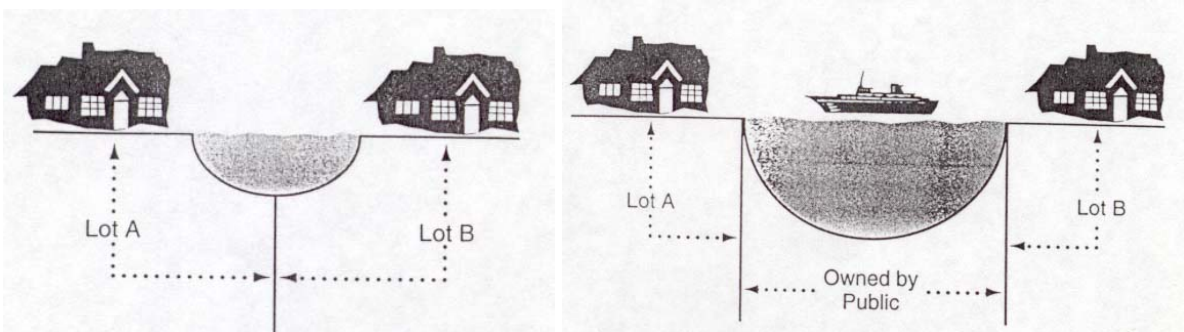
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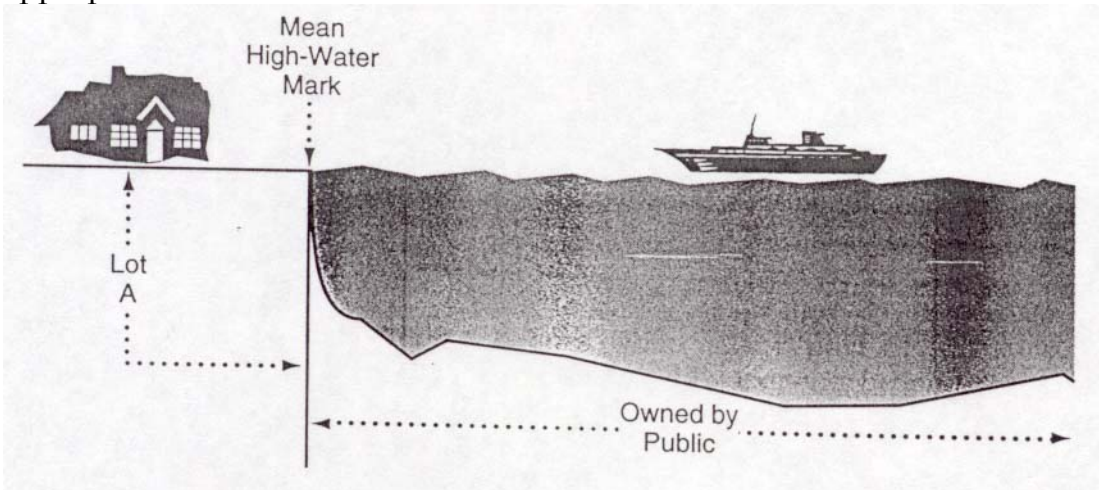
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Ownership of land encompasses not only the land itself but also the right to use the water on or adjacent to it. Many states subscribe to the common law doctrine of **riparian rights**, which gives the owner of land adjacent to a non-navigable stream ownership of the stream to its midpoint.



Littoral rights are held by owners of land bordering large lakes and oceans and include rights to the water and ownership of the land up to the high-water mark. In states where water is scarce, water use is often decided by the doctrine of prior appropriation.



Under **prior appropriation**, water belongs to the state and it is allocated to users who have obtained permits.

Accretion is the slow addition of land by natural causes. **Alluvion** is the soil that is deposited. **Avulsion** or **erosion** is the loss of land through natural causes. **Reliction** is the process of a lake drying up which creates more land.



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KEY TERMS

appurtenant easement _____

curtesy _____

deed restriction _____

dower _____

easement _____

easement by condemnation _____

easement by necessity _____

easement by prescription _____

easement in gross _____

eminent domain _____

encroachment _____

encumbrance _____

escheat _____

estate in land _____

fee simple absolute _____

fee simple defeasible _____

freehold estate _____

future interest _____

homestead _____



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leasehold estate _____

license _____

lien _____

life estate _____

littoral rights _____

party driveway _____

party wall _____

police power _____

prior appropriation _____

remainder interest _____

reversionary interest _____

riparian rights _____

taxation _____



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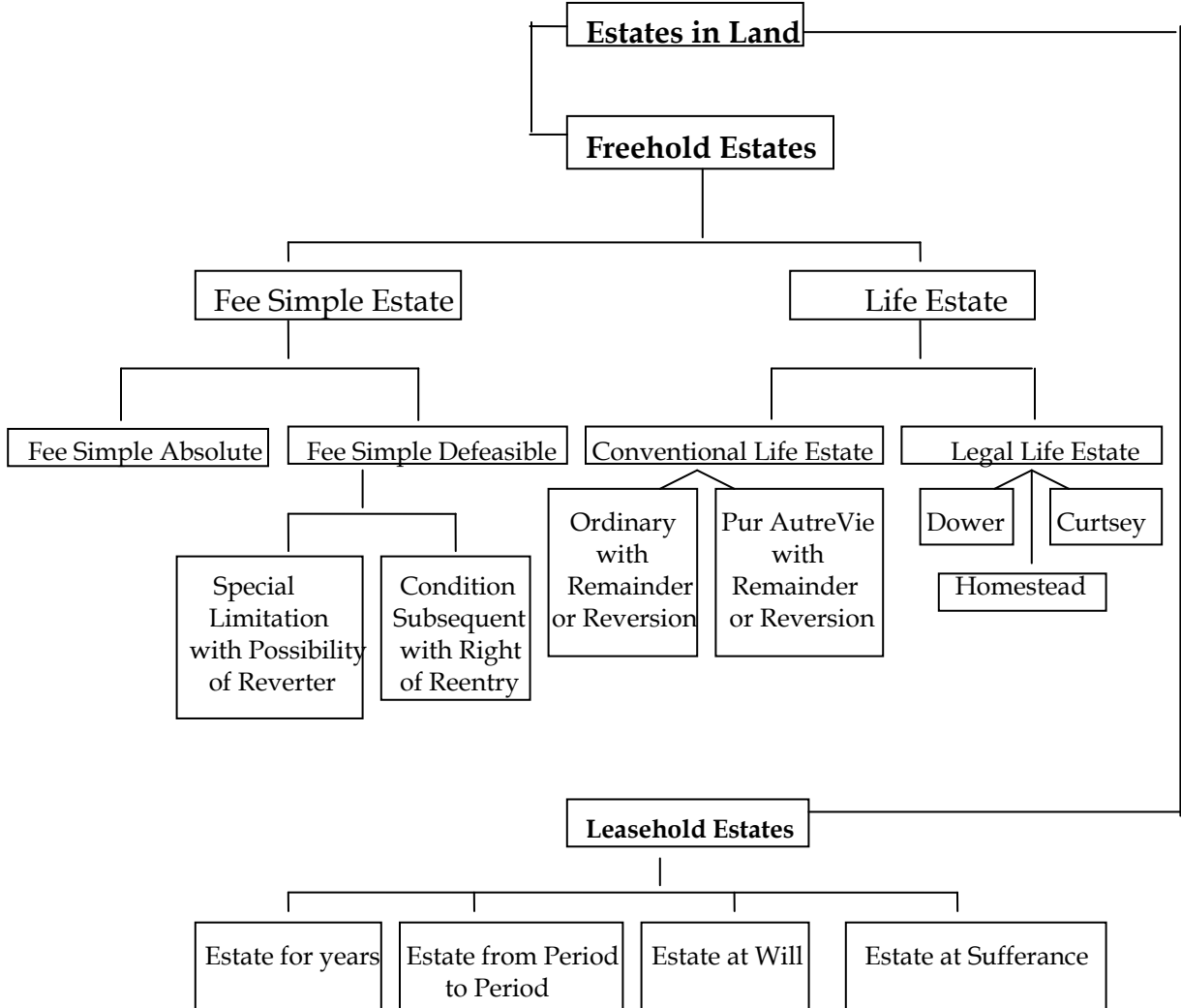


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ILLUSTRATIONS

Study the following illustration and fill in the accompanying blanks completely.



1. The most general classifications of estates in land are _____

2. A type of freehold estate, fee simple estate, may be described as _____

3. Life estates are either _____ or _____

4. Types of leasehold estates are _____



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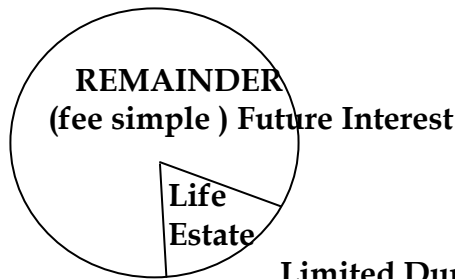
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FEE SIMPLE ESTATE
 * **Greatest Possible Rights**
 * **No Time Limit**



5. An estate in land where the owner receives complete ownership, or the "full share of the pie" as shown in the illustration, is known as a(n) _____ estate.

LIFE ESTATE AND REMAINDER



Limited Duration
Restricted Rights
Present Interest

6. This estate passes to the owner's heirs (or others designated by will) on the owner's death. In other words, it is an estate of _____.

7. Unlike a fee simple estate, which is said to last forever, a life estate ends at the death of the _____ (or other person if so named).

This is why the illustration shows a life estate as only a slice of the whole ownership pie. The person to whom the ownership will pass on termination of

the life estate is called the _____.

8. What are the limitations of owning a life estate?

- _____
- _____

9. Can a life tenant sell his or her interest in the life estate? Explain.



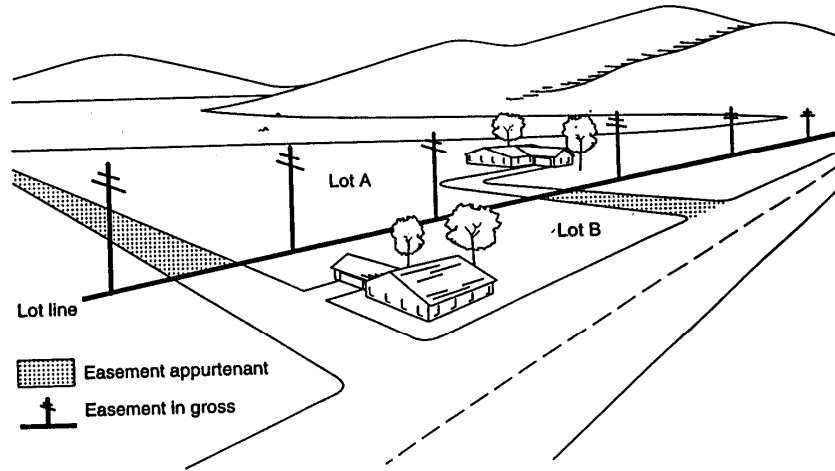
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10. The two adjacent lots owned by different parties include an easement

For access to his property, the owner of Lot A has a _____ estate, while the owner of Lot B has a _____ estate.

11. The utility company has what type of easement across both Lot A and Lot B? _____

12. For access to the ocean, the owner of Lot B has a(n) _____ across Lot A and has the _____ estate.

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SELF-EVALUATION QUESTIONS

- Your neighbor's fence extends over your property line. Your best course is to:
 - knock down the fence.
 - claim ownership of the fence.
 - sue your neighbor for encroachment
 - call the sheriff.
- Jane and Sam are next-door neighbors. Jane tells Sam that he can store his camper in her yard for a few weeks until she needs the space. Jane does not charge Sam rent for the use of her yard. Jane has given Sam a(n):
 - easement appurtenant.
 - easement by necessity.
 - estate in land.
 - license.
- The process by which land is increased by the deposit of soil washed up naturally from a river, lake or sea is called:
 - Erosion.
 - Reliction.
 - accretion.
 - alluvion.
- The statutory right that a family has in their residence and that provides protection from creditors is called:
 - a homestead.
 - a survivorship.
 - an entirety.
 - a life estate.
- A party wall is:
 - a wall with half on one owner's lot and half on the neighbor's.
 - owned by one of the parties, the other has an easement.
 - the one owner's responsibility to maintain.
 - illegal in most condominium ownerships.
- When real estate is pledged as security for a debt, this creates:
 - a restriction.
 - an easement.
 - An encroachment.
 - a lien.
- Lloyd owned two acres. He sold one acre to Ann and reserved an easement appurtenant for entrance and exit over Ann's acre to reach the public road. Ann's land:
 - is called the dominant tenement.
 - is called the servient tenement.
 - can be cleared of the easement when Ann sells to a third party.
 - is subject to an easement in gross.



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8. If the dominant estate **merges** with the servient estate:

- a. the easement is temporarily suspended.
- b. a party wall must be erected.
- c. a court of law must solve the dilemma.
- d. the easement is terminated.

9. A person who has the most possible control of a parcel of real estate is said to own a:

- a. leasehold estate.
- b. fee determinable.
- c. life estate
- d. fee simple.

10. The Jones's owned property that the city wanted to use to extend the airport runway 'The Jones's refused to sell. The city may acquire this property by its right of:

- a. eminent domain.
- b. Easement.
- c. accession.
- d. recapture.

11. The power of eminent domain is exercised through the court proceeding known as:

- a. specific performance.
- b. Condemnation.
- c. escheat.
- d. adverse possession.



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SOLUTIONS

KEY TERMS

appurtenant easement-An easement that passes with the land when conveyed. This is a pure easement and it requires two adjoining parcels of land: a dominant tenement, which benefits from the easement, and a servient tenement over which the easement runs.

curtesy-A life estate, usually a fractional interest, given by some states to the surviving husband in real estate owned by his deceased wife.

deed restriction-A limitation on future use of property, placed by the seller.

dower-The legal right or interest, recognized by some states, that a wife acquires in the property her husband held or acquired during their marriage.

easement -A right to use the land of another for a specific purpose. It is not an estate in land; it is an incorporeal or nonpossessory interest in land.

easement by condemnation-An easement acquired by a public body through the power of eminent domain; Just compensation must be paid to the owner of the servient tenement for such acquisition.

easement by necessity-An easement allowed by law as necessary for the full enjoyment of a parcel of real estate; an easement of ingress and egress.

easement by prescription-An easement acquired by the continuous, open, uninterrupted, exclusive and adverse use of the property for the period of time prescribed by state law.

easement in gross-An easement that is not created for the benefit of any land owned by the owner of the easement, but which attaches personally to the easement owner.

eminent domain-The right of a government or quasi-public body to acquire property for public use through a court action called condemnation.

encroachment A building or some portion of it--a wall or fence, for instance--that extends beyond the land of the owner and illegally intrudes upon some land of an adjoining owner.

encumbrance - A claim, charge or liability that attaches to and is binding on real property and that may diminish the value of the property.

escheat-The reversion of property to the state or county, as provided by state law, in cases where a property owner dies without leaving any ascertainable heirs and without leaving a will.

estate in land-The degree, quantity, nature and extent of interest that a person has in real property; an estate always involves possession, presently or in the future.

fee simple absolute The maximum possible estate or right of ownership in real property; continuing forever.



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fee simple defeasible-An estate in land where the holder of the estate has fee simple title that may be divested on the occurrence or nonoccurrence of a specified event. There are two categories of defeasible fee estates: determinable fee and fee simple subject to a condition subsequent.

freehold estate-An estate in land in which ownership is for an indeterminable length of time.

future interest-A person's present right in real property that will not result in use, possession or enjoyment until some time in the future.

homestead-Land that is owned and occupied as the family home. In many states, a portion of the area or value of this land is protected or exempt from judgments for unsecured debts.

leasehold estate-A tenant's right to occupy real estate during of the lease.

license -A revocable permission for a temporary use of land--a personal right that cannot be sold or assigned to another.

lien-A right given by law to certain creditors to have their debt paid out of the property of a defaulting debtor, usually by means of a court sale.

life estate-An interest in real or personal property that is limited in duration to the lifetime of the owner or some other designated person.

littoral rights-A landowner's claim to use water in large, navigable lakes and oceans adjacent to his or her property; also, the ownership rights to land bordering these bodies of water up to the high-water mark.

party driveway-One that is shared by adjoining parcels of real estate; a "common driveway." Each landowner may obtain an easement over the neighbor's portion of the driveway.

party wall-One supporting two adjoining buildings on two different lots. Each landowner owns half the wall and has an easement to use the other half.

police power-The government's right to impose laws, statutes and ordinances, including zoning ordinances and building codes, to protect the public health, safety and welfare.

prior appropriation-A concept of water ownership in which the landowner's right to use available water is based on a gov't-administered permit program.

remainder interest-The remnant of an estate that has been conveyed to take effect and be enjoyed after the termination of a prior estate, such as when an owner conveys a life estate to one party and the remainder to another (a remainderman).

Reversionary interest-The remnant of an estate that the grantor holds after granting a life estate.

riparian rights-An owner's rights in land that borders on or includes a stream, river, or lake' these rights include access to and use of the water.

taxation-The process by which a government or quasi-municipal body raises moneys to fund its operation.



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ILLUSTRATIONS

1. freehold estates and leasehold estates
2. fee simple absolute or fee simple defeasible
3. conventional life estates; legal life estates
4. estate for years; estate from period to period; estate at will; estate at sufferance
5. fee simple
6. inheritance
7. owner (the life tenant); remainderman
8. * may not be passed on to heirs of owner;
 - * estate terminates upon the death of the owner or other person if so named
9. Yes. However, the prospective purchaser should be made aware of the limitation of his or her ownership rights and that the estate will end upon the death of the person on whose life it is based.
10. appurtenant; dominant; servient
11. easement in gross
12. appurtenant easement; dominant

SELF-EVALUATION QUESTIONS

1. **c.** Your neighbor's fence is encroaching on your real estate. If this encroachment were to continue for the prescriptive period, it could ripen into an easement by prescription. You have no right to knock down the fence without being liable for damages, and the ownership of the fence still lies with your neighbor. The appropriate remedy sought in a suit for encroachment is an injunction whereby the court orders the encroachment removed by its owner.
2. **d.** This is not an estate in land, like fee simple, nor is it an easement. The difference between an easement and a license is that an easement is a formal, enforceable arrangement between landowners, whereas a license is a temporary use that can be canceled at any time by the landowner. A lease requires the payment of rent to the landowner.
3. **c.** Erosion is the washing away of land by moving water. Reliction is the receding or drying up of water, leaving more dry land. Alluvion refers to the increase of soil resulting from accretion.
4. **a.** Homestead is a statutorily created interest that protects a portion of the equity in the family home from unsecured creditors.
5. **a.** A party wall is co-owned, is the responsibility of both parties to maintain and is necessary for condominium ownership. Choice "a" defines party wall and is the correct answer.



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6. **d.** A restriction is a limit on use of a property. An easement is a right to use someone else's land. An encroachment is the improper use of a neighbor's land for part of a building.
7. **b.** The acre sold to Ann must "serve" Lloyd's land by allowing passage over it to the public road, so it, is the servient tenement. Lloyd's holding is the dominant, or benefiting, tenement.
8. **d.** When a merger takes place, the easement is terminated, not just suspended. After Hilt the owner of the dominant tenement can't own an easement over his or her own property.
9. **d** Fee simple or fee simple absolute, is the most complete estate that can be owned. It goes on forever.
10. **a.** Eminent domain is the government's right to take private property for public purposes.
11. **b.** Condemnation is the court proceeding by which the right of eminent domain is exercised.

PLANNING AND ZONING

Zoning ordinance -Exercise of police power of a municipality in regulating and controlling the use of property.

Note: The Municipality of Anchorage has a zoning Regulation.

Nonconforming Use -A use which was lawfully established and maintained but which, because of the application of a zoning ordinance to it, no longer conforms to the use regulation of the zone in which it is located.

Nonconforming use is sometimes called **grandfather rights**. In the Municipality of Anchorage a nonconforming use of a structure can be continued:

1. If the structure is not enlarged or altered in a way which increases its nonconformity.
2. If the structure is damaged and the destruction is not more than 50% of its replacement cost- Ordinary repairs in any twelve consecutive months cannot exceed 10% of the current replacement cost of the structure.
3. If the nonconforming use is not discontinued for more than one year.

Spot zoning -The rezoning of a small area for a nonconforming use in a large area zoned for a specific use.

Set back -The distance between a building line and a lot line or other established line.

Zoning exception -A change in the use of property at a particular location which does not conform to the regulated use set forth in the zoning ordinance. It is not a change of the legally applicable zoning.



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*(In the Municipality of Anchorage a **Planned Unit Development** may be granted as a conditional use to circumvent a zoning exception which is not allowed in the regulation.)*

Zoning variance -A change in the structure at a particular location which does not conform to the regulated use set forth in the zoning ordinance.

Buffer zone -A strip of land separating one land use from another.

Building Code -Ordinances specifying minimum standards of construction of buildings for the protection of the public for fire, health, and safety.

Building Permits are used to enforce zoning regulations.

The Municipality of Anchorage, a zoning history

Prior to the Greater Anchorage Area Borough the City of Anchorage was zoned under the City of Anchorage zoning ordinance. Platting was a function of the Greater Anchorage Area Platting Board. On March 24, 1969, the Borough adopted a Borough wide zoning ordinance. Planning, zoning, and platting became a function of the Greater Anchorage Area Borough. On November 27, 1972, the Borough adopted Land Subdivision Regulations. As the area grew, the Borough Planning Commission could not handle planning, zoning, and platting. As a result, platting became a function of a separate Borough Platting Board. With unification in the fall of 1975, planning, zoning, and platting became a function of the Municipality of Anchorage, Hill Building, 632 West 6th Avenue (Planning and Zoning), (Platting), (Graphics)- The policies of the Municipality of Anchorage Planning Department are set by the Municipality of Anchorage Planning Commission, the Municipality of Anchorage Platting Board, the Municipality of Anchorage Assembly, and state law. Members of the Planning Commission and the Platting Board are appointed by the Mayor of the Municipality of Anchorage and confirmed by the Assembly.

New subdivisions must be approved by the Platting Board. A **subdivision** is the dividing of a parcel of land into two or more parts.

Zoning takes precedence over subdivision restrictions. However, if the subdivision restrictions are more restrictive than the zoning, property owners in the subdivision can go to court to enforce the restrictions. **Court action must be started before construction is completed or the restrictions will not be enforceable.**

Many tools for a real estate broker, associate real estate broker, or real estate salesmen are available at the Planning Department. Some of these are:



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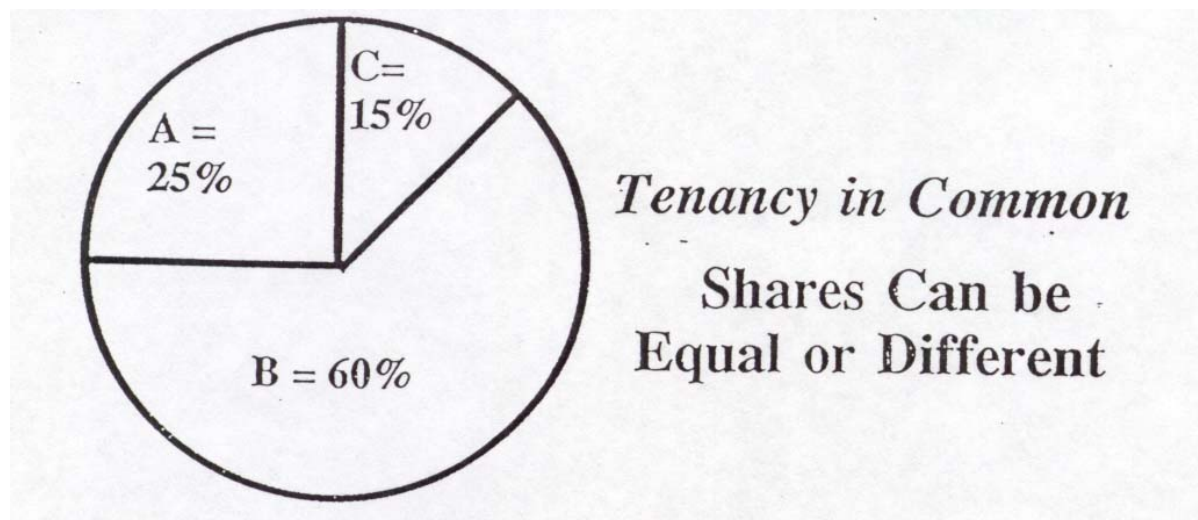
Land use regulation (comprehensive plan, zoning regulations, subdivision regulations), zoning maps, house numbers, subdivision names and plat numbers, trailer court ordinance, trailer court list, street names, etc.

Copies of approved filed subdivision plats are available at the Municipality Surveyor's Office, 3500 East Tudor Road.

The Municipality of Anchorage has a Building Code. This comes under the Public Works Department, Building Safety Section, 3500 East Tudor Road.

HOW OWNERSHIP IS HELD

Sole ownership, or **ownership in severalty**, means that title is held by one natural person or legal entity. Under **co-ownership** title can be held concurrently by more than one person in several ways.



Under **tenancy in common** each party can hold a separate title but shares possession with other tenants. Individual owners may sell their interests. Upon death a tenant in common's interest passes to the tenant's heirs or according to a will. There are no special requirements for creating this interest. When two or more parties hold title to real estate, they will hold title as tenants in common unless another intention is expressed.



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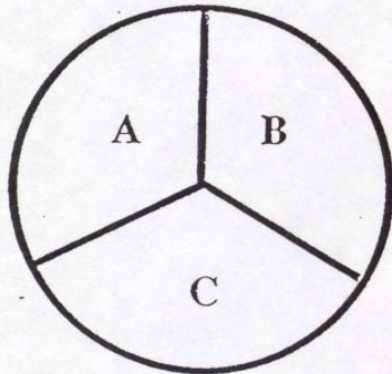
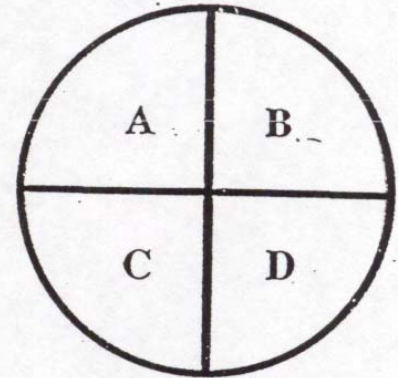
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Four Joint Tenants
Each=25%



Survivorship in Joint Tenancy
If D dies A, B, C=33.3%

Joint tenancy indicates two or more owners with the right of survivorship, The intention of the parties to establish a joint tenancy with right of survivorship must be stated clearly. The four unities of **possession, interest, time** and **title** must be present.

Tenancy by the entirety, in those states where it is recognized, is actually a joint tenancy between husband and wife. It gives the husband and wife the right of survivorship in all lands acquired by them during marriage. During their lives both must sign the deed for any title to pass to a purchaser. **Community property** rights exist only in certain states and pertain only to land owned by husband and wife. Usually the property acquired by combined efforts during the marriage is community property and one-half is owned by each spouse. Properties acquired by a spouse before the marriage and through inheritance or gifts during the marriage are termed **separate property**.

Real estate ownership may also be held in trust. To create a trust, the **trustor** conveys title to the property to a **trustee**, who owns and manages the property.



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Various types of business organizations may own real estate. A **corporation** is a legal entity and can hold title to real estate in severalty. While a **partnership** is technically not a legal entity, the *Uniform Partnership Act* and the *Uniform Limited Partnership Act*, adopted by most states, enable a partnership to own property in the partnership's name.

A **syndicate** is an association of two or more people or firms to make an investment in real estate. Many syndicates are **joint ventures** and are organized for only a single project. A syndicate may be organized as a co-ownership trust, corporation or partnership.

Cooperative ownership indicates title in one entity (corporation or trust) that must pay taxes, mortgage interest and principal, and all operating expenses. Reimbursement comes from shareholders through monthly assessments. Shareholders have proprietary, long-term leases entitling them to occupy their apartments.

Under **condominium ownership** each owner/occupant holds fee simple title to a unit plus a share of the common elements. Each unit owner receives an individual tax bill and may mortgage the unit. Expenses for operating the building are collected by an owners' association through monthly assessments.

Time-sharing enables multiple purchasers to own an estate or use interest in real estate, with the right to use it for a part of each year.

KEY TERMS

beneficiary _____

common elements _____

community property _____

condominium _____

cooperative _____

co-ownership _____

corporation _____

general partnership _____



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joint tenancy _____

limited partnership _____

partition _____

partnership _____

right of survivorship _____

separate property _____

severalty _____

syndicate _____

tenancy by the entirety _____

tenancy in common _____

time-sharing _____

trust _____

trustee _____

trustor _____

undivided interest _____



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ILLUSTRATION

Refer to the chart of ownership and answer the following questions.

Forms of Ownership							
State	Severalty		Concurrent				
	Individual	Tenancy in Common	Joint Tenancy	Tenancy by the Entirety	Community Property	Trust	Condominium
Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana ¹
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio ²
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin ³
Wyoming

¹In Louisiana, real estate can be owned by one person and by two or more persons, but these ownership interests are created by Louisiana statute. There are no estates comparable to those of joint tenancy, tenancy by the entirety, or community property, nor is there any statutory estate giving surviving co-owners the right of survivorship. Two or more persons may be co-owners under indivision, or joint, ownership.

²Ohio does not recognize joint tenancy, but permits a special form of survivorship by deed through an instrument commonly called a "joint and survivorship deed."

³As of 1986, Wisconsin recognizes "marital property" that is similar to community property.



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1. The _____ form of ownership is available in all states.
2. Community property ownership is available in the states of _____

3. In addition to condominium ownership, a majority of states also recognize which form(s) of ownership? _____

Study the following illustrations and fill in the accompanying blanks completely.

CO-OWNERSHIP TWO TYPES

1. Tenants in Common

Mr Jones 1/2	Mr Smith 1/4	Mr Brown 1/4
-----------------	-----------------	-----------------

2. Joint Tenants

Mr. Galaty Mr. Allaway Mr. Kyle

4. When real estate is owned by two or more owners and each owner's interest is held in severalty and may be sold, conveyed, mortgaged or transferred, just as though he or she were a sole owner, this form of concurrent ownership is known as _____.

5. Where only one title exists and it is vested in one estate made up of two or more persons who hold a right of survivorship, this form of concurrent ownership is known as _____.

6. In which form do the remaining owners automatically receive the interest of a deceased tenant? _____.



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COMBINATION OF TENANCY

UNDIVIDED 2/3 INTEREST

UNDIVIDED 1/3 INTEREST

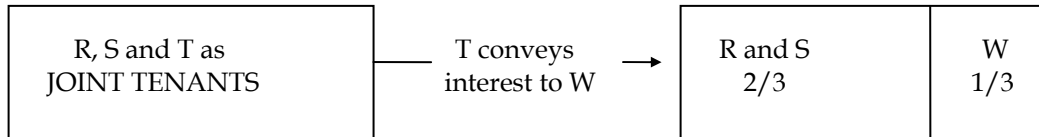
JERRY AND JANE SMITH AS JOINT TENANTS	PAUL AND MARY JONES AS JOINT TENANTS
---	--

7. What is the tenancy relationship between Mr. and Mrs. Jones?

8. What is the tenancy relationship between Mr. and Mrs. Smith?

9. What is the tenancy relationship between the Smiths and the Joneses?

TERMINATION OF JOINT TENANCY BY CONVEYANCE



In the example shown, R, S and T are joint tenants. T sells her interest to W.

10. When T conveys her interest to W, what is the effect upon R and S?

11. What is W's relationship with R and S?

12. What unity (or unities) has T destroyed? _____



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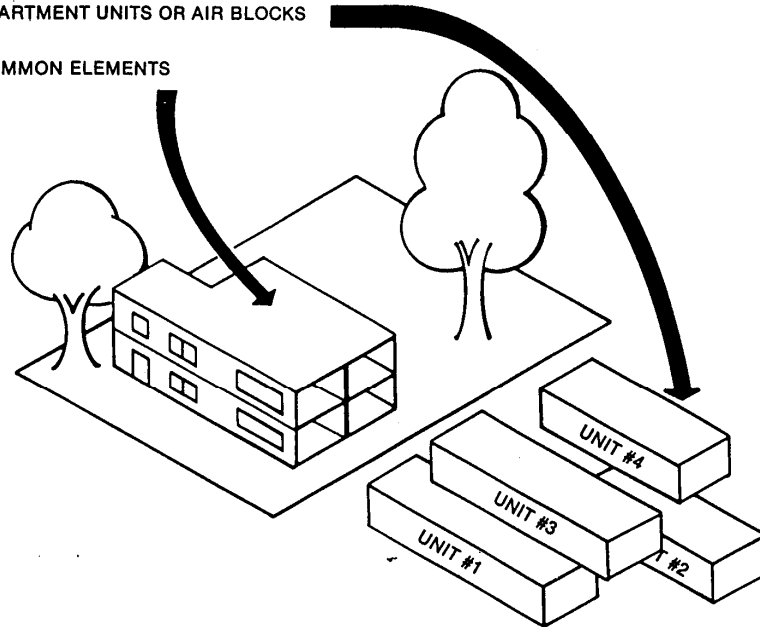
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CONDOMINIUMS

REAL ESTATE SUBDIVIDED INTO:

1. APARTMENT UNITS OR AIR BLOCKS
2. COMMON ELEMENTS



Under condominium ownership, each occupant/owner holds title to his or her own unit and also has a percentage interest in the common elements.

13. If the occupant/owner of Unit 3 defaults in payment of her mortgage, resulting in a foreclosure sale of her unit, how will this affect the owners of the other units?

14. List some examples of common elements in a condominium building.

SELF-EVALUATION QUESTIONS

1. Which of the following best describes a life estate?

- a. An estate held by Jane and Sally, each with the right of survivorship
- b. An estate subject to condition with right of reentry to Sally
- c. An estate conveyed to Jane and upon Jane's death to Sally
- d. An estate given by operation of law to a spouse

2. If two partners own the highest estate in land in joint tenancy, the kind of title or estate the survivor would receive on the other's death is:

- a. fee simple.
- b. dower.
- c. remainder
- d. a life estate.



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3. Ralph has an ownership interest in one unit of a resort complex in Hawaii. This interest entitles each owner to use the facilities and occupy the unit for only two weeks of the year.

Which of the following is most likely **not** true regarding Ralph's interest?

- a. The interest is a time-share estate
- b. Ralph holds title as a joint tenant.
- c. Common maintenance expenses must be shared by all owners pro rata.
- d. The sale of this interest was strictly controlled by state law.

4. Three sisters, Alice, Brenda and Carol, own a farm in joint tenancy. Carol wants the land to be used for the production of tobacco, whereas her two sisters desire to grow soybeans. Carol attempts to buy out her sisters' interest, but they refuse.

Carol's best solution to this dilemma would be to file:

- a. a right of survivorship suit.
- b. a writ of severalty.
- c. An eviction suit.
- d. a partition suit.

5. Ann, and Beth are co-owners of a fee simple estate in a parcel of real estate. In the event of Ann's death, her interest will pass to her heirs or devisees. Ann and Beth's co-ownership is:

- a. tenancy in common.
- b. community property.
- c. joint tenancy.
- d. a devise.

6. Stacy occupies an apartment in a multiunit building and, at time of move-in, received a proprietary lease, as well as stock in the corporation that holds title to the land and building. Stacy's form of ownership is by the plan known as a:

- a. condominium.
- b. cooperative.
- c. townhouse.
- d. planned unit development (PUD).

7. John joined with three others in a limited partnership of which Kendall was the general partner. Kendall made some bad investments, and the partnership went into debt. In this case, John:

- a. must pay one-quarter of the partnership debt.
- b. is not responsible for debts beyond his original investment.
- c. can be held liable for the entire debt.
- d. is entitled to a refund of his investment.



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8. A brother and sister hold title to a parcel of real estate as joint tenants. The sister marries and conveys her interest into a joint tenancy with her husband. The brother now holds title to his share as:
- a tenant-in-common of a one-half interest in the property.
 - a tenant-in-common of a one-third interest in the property
 - one of three joint tenants.
 - sole owner.
9. Which of the following is **not** generally true about a condominium?
- A declaration must be filed before any units may be sold.
 - Each unit owner has a fractional undivided interest in the common areas.
 - Each unit owner receives a separate tax statement.
 - Each owner has a proprietary lease with the association that covers his or her unit.
10. When full title to real estate is vested in a corporation, the corporation owns the property in:
- Trust.
 - Severalty.
 - joint tenancy.
 - tenancy in common.
11. Which of the following statements is **not** generally a characteristic of a land trust?
- A judgment against the beneficiary will not create a lien against the real estate.
 - The beneficiary's identity is not made a part of the public record
 - The trustor is not usually the beneficiary.
 - The beneficial interest is treated as real property for probate and tax purposes.
12. A purchaser in a townhouse development usually receives:
- a proprietary lease to one living unit.
 - title to the land on which the unit stands.
 - ownership and use for a certain portion of each year.
 - a life estate.
13. The term condominium refers to:
- an apartment.
 - a type of ownership.
 - a type of building
 - a PUD



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SOLUTIONS

KEY WORDS

beneficiary-The person for whom a trust operates or in whose behalf the income from a trust estate is drawn.

common elements-Parts of a property that are necessary for or convenient to the existence, maintenance and safety of a condominium or are normally in common use by all condominium residents; each condominium owner has an undivided interest in such areas.

community property-A system of property ownership based on the theory that each spouse has an equal interest in the property acquired by the efforts of either spouse during marriage.

condominium -the absolute ownership of an apartment or unit based on the legal description of airspace the unit actually occupies, plus an undivided interest in the common elements, which are owned jointly with the other unit owners.

cooperative-A residential multiunit building whose title is held by a trust or corporation that is owned by and operated for the benefit of persons living within the building, who are the beneficial owners of the trust or stockholders of the corporation, each holding a proprietary lease.

co-ownership-Ownership of one parcel of real estate that is vested in more than one owner concurrently.

corporation-An entity or organization, created by operation of law, whose rights of doing business are essentially the same as those of an individual. The entity has continuous existence until it is dissolved according to legal procedures.

general partnership-An association of two or more individuals who carry on a continuing business for profit; all co-owners are general partners and share full liability for any debts and losses. (See partnership.)

joint tenancy-Ownership of real estate between two or more parties who have been named in one conveyance as joint tenants. Upon the death of one tenant, his or her interest automatically passes to the surviving joint tenant or tenants.

limited partnership-A business arrangement whereby the operation is administered by one or more general partners and funded, by and large, by limited or silent partners, who are by law responsible for losses only to the extent of their investments.

partition-A court suit whereby tenants-in-common or joint tenants terminate their co-ownership and divide their interests when the parties do not all agree to its termination.

partnership-An association of two or more individuals who carry on a continuing business for profit as co-owners; regarded by law as a group of individuals rather than as a single business entity.



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right of survivorship-One of the distinguishing characteristics of joint tenancy; provides that as each successive joint tenant dies, the surviving tenant or tenants acquire the interest of the deceased tenant.

separate property-In states that operate under community property laws, property that is owned solely by either spouse before the marriage or is acquired by gift or inheritance during the marriage.

severalty-Ownership of real property by one person only; sole ownership.

syndicate-A combination of people or firms formed to accomplish a business venture of mutual interest by pooling resources.

tenancy by the entirety-The joint ownership, recognized in some states, of property acquired by husband and wife during marriage. Upon the death of one spouse, the survivor becomes the owner of the property.

tenancy in common-A form of co-ownership by which each owner holds an undivided interest in real property as if he or she were sole owner. Unlike joint tenants, tenants in common have rights of inheritance.

time-sharing-Ownership interest that may include an estate interest in real property and that allows use of the property--usually a resort hotel or condominium--for a fixed or variable period of time.

trust-A fiduciary arrangement whereby property is conveyed by a trustor to a person or institution, called a trustee, to be held and administered on behalf of another person called a beneficiary.

trustee-See trust.

Trustor See trust.

undivided interest-A unit of possession among co-owners of real estate, whether held under a tenancy in common or a joint tenancy.

ILLUSTRATIONS

1. condominium
2. Arizona; California; Idaho; Louisiana; Nevada; New Mexico; Texas; Washington
3. in severalty; tenancy in common; joint tenancy; tenancy by the entirety; trust
4. tenancy in common
5. joint tenancy
6. joint tenancy
7. joint tenancy
8. joint tenancy
9. tenancy in common
10. R and S are still joint tenants, owning the undivided two-thirds interest.
- 11 W becomes a tenant-in-common, with R and S as joint tenants. W becomes sole owner of an undivided one-third interest.
12. T has destroyed the unities of time and title.



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13. The owner's default does not affect the title of the remaining owners. The lender who holds the mortgage on Unit 3 only has a lien on that one unit.
14. elevators; hallways and stairs; grounds; garage; swimming pool and other amenities; roof

SELF-EVALUATION QUESTIONS

1. **c.** The wording of choice "c" clearly indicates that Jane's interest will end at Jane's death, a statement that best describes a life estate.
2. **a.** Remember that joint tenancy is the way or form in which the estate is held. Because fee simple is the highest and best estate in land, this is what the survivor would be left with.
3. **b.** From the facts, it is obvious that this is a time-share estate, and unit owners hold title as tenants-in-common in such an estate. Choices "a," "c" and "d" are all true of time-shares. In the past few years many states have passed laws controlling their sale.
4. **d.** Regardless of the underlying reasons for their disagreement, when co-owners of property disagree and there is no voluntary solution, a partition suit is the legal remedy that is always available. The courts will order the property sold and the sale proceeds divided according to the owners' fractional interests.
5. **a.** This is not joint tenancy or Beth would take title to the entire property by survivorship (that is, because she lived longer). A devise is a gift of real estate under the will of the deceased owner. Tenancy in common is an inheritable estate and, therefore, can be left as a devise in a will.
6. **b.** Cooperative ownership is evidenced by the stock in the building corporation and the proprietary lease to the apartment. But stock and the lease are personal property, so Stacy owns no real estate. Condominiums involve fee ownership of a unit and of common elements PUDs and townhouses are property types and can be either owned or rented.
7. **b** John, as a limited partner, can never risk or lose more than the amount he paid as his investment in the limited partnership. Kendall, as general partner, is responsible for all unpaid debts of the limited partnership.
8. **a.** The key to solving this problem is the meaning of the phrase "... and has her interest placed in joint tenancy ..." To do this, the sister had her attorney prepare a deed for her to sign, conveying her undivided one-half interest to herself and her husband as joint tenants, and this deed was delivered and recorded. By signing and delivering her deed, the sister broke the joint tenancy with her brother. He is now a tenant-in-common and still owns his undivided one-half interest. The sister and her husband, as joint tenants of an undivided one-half interest, are tenants-in-common with the brother.



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9. **d.** Choice "d" is the only statement not true about a condominium.
10. **b.** Corporations are treated as individual artificial persons according to the law. Since the facts mention that there are no co-owners involved, the corporation must own the real estate in severalty (one owner). If title were held in trust, the corporation would not be vested in title, a trustee would.
11. **d.** The beneficial interest in a land trust is treated by the law as personal property. All of the other choices are true.
12. **b** When townhouse is a form of ownership, it usually includes title to land directly under the unit.
13. **b.** Condominium is the term for a form of ownership, not an architectural unit. Condominium ownership could be used for two houses on the same lot, or for offices.



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