

DIFFERENT INTERESTS IN REAL PROPERTY

A. FEE SIMPLE

1. "Full Ownership" - An absolute or fee simple estate is one in which the owner is entitled to the entire property (whole bundle of sticks), with unconditional power of disposition during his life and descending to his heirs and legal representatives upon his death.
2. Largest possible estate or interest that a person can have

B. FEE SIMPLE DETERMINABLE

1. Right of reverter - property automatically reverts to grantor upon occurrence of a certain event. Common language - until, while, so long as or during.
2. Power of Termination - Grantor has the right to take property back on occurrence. Common language - but if, provided that, upon condition that.
3. Statute now limits the duration and requires the holder of reverter or termination rights to record a notice of continuance between 28 and 30 years after the right has been created, and then each 30 years thereafter.

C. LIFE ESTATES

1. An estate whose duration is limited to the life of a specified party holding it, or of some other person.
2. Can be either conveyed (granted) in a deed or passes via will or it can be reserved in a conveyance.

DIFFERENT MEANS OF HOLDING TITLE:

A. Tenancy in Common

1. The holding of an estate in land by different parties, ordinarily each party has the right to occupy.
2. Co-tenants are presumed to have the same undivided interest, but is rebuttable, and can be provided otherwise.
3. Statues provide that conveyance creates a tenancy in common unless stated otherwise (with exception of Tenancy by the Entirety)
4. Interest can be conveyed, devised or levied upon separately.

B. Tenancy by the Entirety

1. Created by a conveyance to husband and wife, whereupon each becomes seized and possessed of the entire estate and, after the death of one, the deceased persons' interest disappears leaving the survivor with the whole.
 2. Conveyance to parties, designating them as husband and wife, (if married in fact) creates tenancy by the entirety
 3. Interest is non-terminable/destructible without consent. If the interest of one is conveyed/levied upon, the remaining spouse becomes tenant by the entirety with new party, but the "conveying" spouse still remains the measuring life.
- (continued)

HUMAN ENTITIES

TENANTS BY THE ENTIRETY

- Can only be created between a husband and wife
- Based on common law concept that husband and wife are one person
 - Being viewed as such under the law, spouses as co-owners each own the entire estate, rather than having half interests which might be split up.
- To create this estate, a deed must be recorded which states "John Doe and Sally Doe, as husband and wife" or "John Doe and Sally Doe, as tenants by the entirety".
- If person comes into title alone (whether married or single at the time), and then wishes to put spouse into title, may either:
 - Deed from self to self and spouse as T/E or
 - Use S/Ness form "Deed to Create Estate by the Entirety" which contains all appropriate language to change status.
- T/E is an estate which can not be split. In other words, one spouse may not deed his or her interest to a stranger.
- Tenancy by the entirety creates a survivorship estate. When one spouse dies, the survivor becomes the sole fee title holder. The death of the first spouse terminates their interest in the estate, thereby passing complete ownership of the whole parcel to the surviving spouse.
 - This is one way to avoid probate. If couple owned property as T/E and one has since died, the title insurance company will require only a death certificate on the deceased spouse. No probate is necessary.
 - For children, or anyone other than surviving spouse to take title or interest in title, would need to have deed from surviving spouse.

TENANTS IN COMMON

- The holding of an estate in land by different persons under different titles, but there must be unity of possession and each must have the right to occupy the whole in common with co-tenants.
- Tenants in common may hold percentage interests in the property, but the percentages must be clearly stated in the vesting:
 - John Doe and Sam Smith, each as to an undivided $\frac{1}{2}$ interest; or
 - John Doe as to an undivided 70% interest and Sam Smith as to an undivided 30% interest; or
 - Absent a specific percentage interest, the parties will be vested as: John Doe and Sam Smith, each as to an undivided interest, as tenants in common.
- The interests if each of the tenants in common may be sold separately. Thus if John Doe owns 70% and Sam Smith owns %30, either of them may sell his interest, in whole or in part, to a third party or to the other vested owner.

- Tenants in common have no survivorship rights among themselves. If one of the tenants in common dies, his interest will pass on to his or her heirs, rather than to the co-owner(s).
- It is possible to modify the status of tenants in common so that a survivorship estate is created. To create the estate, the deed must contain the following language: "Not as tenants in common, but with the right of survivorship". This means that the surviving party will become the sole owner of the property.
 - This is often the case when family members are involved or when unmarried couples are coming into title together.
- It is possible to combine several different interests in the ownership of a single parcel. For example:
 - John Doe and Sally Doe, tenants by the entirety, as to an undivided 70% interest, and Dagwood Jones, as to an undivided 30% interest, all as tenants in common.
 - If John Doe dies, the vesting would become: Sally Doe as to an undivided 70% interest and Dagwood Jones, as to an undivided 30% interest, as tenants in common.
 - If Dagwood Jones should die then the vesting would become: John Doe and Sally Doe, tenants by the entirety as to an undivided 70% interest, and the Heirs and Devises of Dagwood Jones, deceased, as to an undivided 30% interest, all as tenants in common.

LIFE ESTATE

- An estate whose duration is limited to the life of the party holding it, or of some other person:
- The effect of this status is that the person retaining (or receiving) the life estate has the right to use the property in any manner they wish during the term of the life estate. Once the life estate is terminated, the property becomes solely vested in the fee title holder.
 - For example, Mom and Dad deed property to Son, but reserve life estate for themselves. As long as either Mom or Dad are alive, they have the right to use the property however they wish. When the last parent dies, the son will own the property absolutely. If the property is sold during the lifetime of the parents, one of two things may happen:
 - If the surviving parents join in the deed and surrender their life estate interest, the new buyer will take the property free and clear and the parents will have to give up possession; or Parents may either join in the deed with Son and deed out to new buyer, or they may deed to Son and he deeds to buyer.. depending on the structure or the sale.
 - If the surviving parents do not join in the deed, the new buyer takes the property subject to the life estate, and can not take possession of the property until both parents die.