4 Interests in Real Property

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Key Terms

- Freehold estate
- Fee simple estate
- Fee simple absolute
- Fee simple defeasible
- Life estate
- Life tenant
- Pur autre vie
- Estate in remainder
- Remainderman
- Estate in reversion
- Waste
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- Estate for years
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- Lien priority
- Judgment lien
- Special assessment
- Homestead exemption

Chapter Overview

Interests in real property refer to the rights or claims people have in property. Do they actually "own" the property or are they simply leasing it? Do they have an immediate interest or a future interest? Do they have the right to possess the property, or is their interest an easement or lien?

The answers to these questions are significant to the seller, the buyer, and the real estate agent, since a person can only sell or transfer the interest that he owns. For example, if you are renting a house, you may assign your lease to someone else, but you can't sell the house because you don't actually own it.

Before purchasing property, a buyer must be sure the seller owns the type of interest that the buyer wants to purchase. It is also important to find out if other people have any interests in the property, such as mortgages, easements, or judgment liens.

This chapter describes the various interests in property, including how they are created and terminated and how they affect the property.

Estates

An **estate** is an interest in land that is—or may become—possessory. In other words, the person who holds the interest currently has, or may have in the future, the right to possess the property. The various types of estates can be distinguished both by their duration and when they may be possessed. A present interest gives a person the right to immediate possession of the property. A future interest gives a person the right to possess the property only at some future date.

Freehold Estates

Under the English feudal system, all land was owned by the king. The king parceled out land to his followers in return for certain services. These men often created subtenancies by renting out portions of their properties. The modern American system that allows several different people to possess interests or estates in the same piece of property grew out of that feudal system. Many of the legal terms still used in discussing real estate came out of that system.

The term "freehold" originally referred to the holdings of a freeman under the English system. A freeman was allowed to sell his rights in the property, as long as the new owner agreed to give the same services to the lord or king, who held a higher interest in the property.

In modern usage, a freehold estate may still be sold, and unless specifically stated otherwise, the new owner acquires the same type of ownership held by the previous owner.

A **freehold estate** is a possessory interest in real property that is of uncertain duration, which means that the length of time of ownership is unspecified and indefinite. There are two main categories of freehold estates:

- the fee simple estate, and
- the life estate.

Fee Simple Estates

Normally, when a person is referred to as the "owner" of property, it is assumed that she holds a fee simple estate. A **fee simple estate** is the highest and best interest that can exist in land. A fee simple is always:

1. inheritable,
2. transferable, and
3. perpetual.

That an estate is **inheritable** means quite simply that it can be inherited—left to someone in a will, or automatically passed to heirs upon death if there is no will. A fee simple

estate is also freely **transferable**, which means that it can be sold, divided, or even given away with no restrictions. Finally, a fee simple is **perpetual**, meaning that a person who holds a fee simple estate has the right to possess the property for an indefinite period of time. Since there is no specified termination date, a fee simple estate can theoretically be held forever (in perpetuity) by the titleholder or heirs.

The fee simple estate is divided into two subcategories:

1. fee simple absolute, and
2. fee simple defeasible.

Fee Simple Absolute. A **fee simple absolute** is essentially the same type of fee simple estate described above: inheritable, transferable, and perpetual. In a typical sale of property, the real estate agent and the buyer assume that the seller holds a fee simple absolute title and that this same interest will pass to the new buyer. However, it is important to recognize that not every estate is a fee simple absolute. The grantor of property can qualify the estate being transferred and specify that it is not a pure fee simple absolute. Such qualifications create what are called fee simple defeasible estates.

Fee Simple Defeasible. When transferring property, the grantor may want to include certain conditions on the use of the property. As long as these conditions are met or a specified future event does not occur, the **fee simple defeasible** is also for an indefinite period of time, just like the fee simple absolute. However, a defeasible estate can be defeated, or undone, upon the happening of the future event specified by the grantor.

There are two types of defeasible fees:

- fee simple determinable, and
- fee simple subject to condition subsequent.

A **fee simple determinable** estate will automatically revert back to the grantor, or the grantor's heirs, if certain conditions are not met. This type of estate is usually created by using the words "so long as," "which," "while," "during," or "until."

> **Example:** Wilmington Elementary School was located next to property owned by Mrs. Martin. In 1997, Mrs. Martin transferred her property as a gift to the Mountain View School District. The deed specified "so long as it is used for school purposes." For many years the property was used at recess as a playground by the children at Wilmington Elementary.
>
> In 2018, due to population changes and the failure of school levies, the Mountain View School District closes down Wilmington Elementary. After that point, none of the property is used for school purposes. Mrs. Martin's property automatically reverts back to her, or to her heirs.

A **fee simple subject to condition subsequent** is an estate that may revert back to the grantor if certain conditions are not met. The conditions are usually expressed with the words "if," "provided that," or "on the condition that." When the conditions are not met,

the grantor or heirs have the right, at their option, to terminate the estate and reacquire the property. This estate is similar to a fee simple determinable, except that the termination is not automatic. The grantor or heirs must take legal steps to terminate the estate; they are said to have the **power of termination**.

> **Example:** Consider the example used above. Suppose the deed said "provided that it is used for school purposes." When the property was no longer used for school purposes, it would not automatically revert to Mrs. Martin (or her heirs). She would have to take legal steps to terminate the estate.

The fee simple determinable estate can produce harsh outcomes, because if a condition is not met, the property automatically reverts back to the grantor. To avoid this inflexible result, courts generally try to construe the terms of a grant of a defeasible fee as conditional rather than determinable. Automatic reversion is thus avoided; action by the grantor is required to terminate the estate.

Life Estates

A **life estate** is an estate that is based on someone's lifetime. For example, Harrison dies, leaving his farm to a charity, but grants a life estate to his sister. Harrison's sister may possess and live on the property for the remainder of her life, but upon her death, the farm will automatically pass to the charity.

Life estates are often used to simplify the division of property in a will or to avoid the expense of probate. A life estate is usually measured by the life of the holder of the life estate.

> **Example:** To avoid the expense of probating his will after death, Bob deeds his property to his son Stan, but reserves a life estate for himself. Bob has the right to use and possess the property for the rest of his lifetime, but upon his death, the property automatically passes to Stan.

This example describes an **express reservation** of a life estate to the original owner of the property. A life estate may also be created by **express grant** to someone other than the original owner.

A life estate may also be based on the life of someone other than the holder of the life estate. This is called a life estate **pur autre vie** (for another's life). This type of estate is sometimes used to create security for ailing parents or disabled children who are unable to provide for themselves.

> **Example:** Bob's mother is afflicted with Alzheimer's disease, and his sister Charlotte is her caregiver. Bob deeds his property to Charlotte so long as their mother is still alive. Upon their mother's death, the property is to pass to Bob's son Stan.
>
> Charlotte has a life estate based on their mother's life. Charlotte has the right to use and possess the property only so long as their mother is alive. When their mother dies, the property automatically passes to Stan.

Their mother is the **measuring life**. The life estate lasts only as long as her lifetime. Charlotte is the holder of the life estate. She has the right to possess the property and is called the **life tenant**.

The life tenant has an ownership interest in the land that can be sold, leased, or mortgaged. Remember, however, that a person can only sell, lease, or mortgage the interest she owns. In the example above, if Charlotte, the life tenant, sells her interest in the property, the buyers are purchasing only a life estate. The buyers' interest will still terminate when the measuring life ends—that is, when Bob and Charlotte's mother dies—just as it would have if Charlotte still owned the life estate at that point.

Future Possessory Interests. When a life estate is given, an interest also passes to the person who will receive the property when the life estate ends. This is a **future possessory interest**, since he does not have the right to possess the property until sometime in the future (at the death of the measuring life). There are two types of future possessory interests:

- estates in remainder, and
- estates in reversion.

Case Example:

In his will, George left his second wife, Wilma, a life estate in the family home, with the remainder interest to his six adult children from a previous marriage.

After George's death, Wilma had the right to use and possess the property for the rest of her lifetime. Upon her death, the property was to pass automatically to the children. *In re Estate of Campbell*, 87 Wn. App. 506 (1997).

In this case example, George's children hold an **estate in remainder**. Although they do not have the right to possess the property right now, they have a current interest in the remainder of the estate (the estate that will begin when the life estate terminates). George's children are called the **remaindermen**.

When the property is designated to return to the original grantor at the end of the life estate, the grantor has an **estate in reversion**. The grantor (or the grantor's heir) may be known as a reversioner.

A life tenant has certain duties towards the property. A life tenant may not use or abuse the property in any way that would permanently damage the property or reduce its market value. Such abuse is called **waste**. This term implies neglect or misconduct, and does not include ordinary depreciation of property due to age and normal use.

A life tenant must allow for reasonable inspection of the property by the holder of the future possessory interest. He is permitted to check for possible waste. If waste is discovered, the holder of the future possessory interest may bring a legal action for damages. An action for waste may be brought at any time, against either the life tenant, or if the life tenant has died, against the life tenant's estate.

Trusts. In modern practice, life estates are seldom used because trusts provide the same benefits, with the additional safety factor of a trustee who looks out for the interests of the specified party.

When a trust is created, a trustee is given legal title to property that she holds for the life of the beneficiary. Upon the death of the beneficiary, the property is disposed of as provided for by the creator of the trust.

Leasehold Estates

A **leasehold estate** is a more limited interest in property than a freehold estate. The holder of a leasehold estate—the **tenant**—does not own the property but merely leases or rents the property. This gives the tenant the right to exclusive possession of the property for a time.

Although most real estate agents deal with the sale of property, many are also involved in renting or leasing property. Even for an agent who deals only with sales, a knowledge of the different types of leasehold estates is important. If a sale involves rental property, the potential buyer may want to know what kind of leases the current tenants hold, and if or when their leases could be terminated.

In Washington, three different kinds of leasehold estates are recognized:

- tenancy for a specific term (also called estate for years or term tenancy),
- periodic tenancy, and
- tenancy at will.

We'll also discuss the tenancy at sufferance, which is similar to the above tenancies but isn't actually an estate.

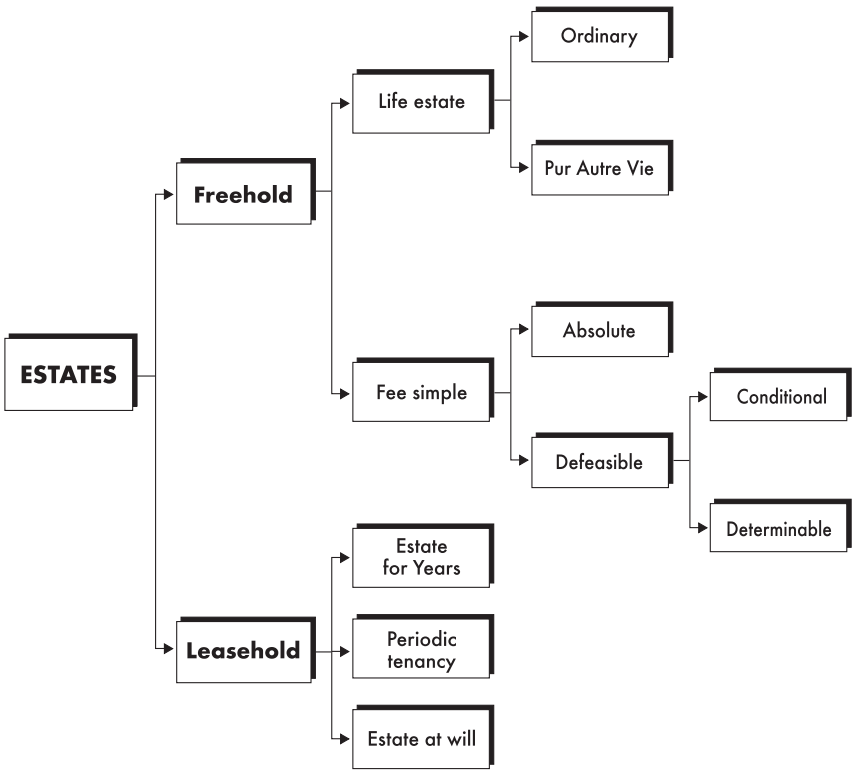
Estate for Years

The **estate for years** lasts for a specific time period. Despite its name, this type of estate is not required to have a term of one year or a period of years. It may be for three months, six months and five days, two years, or any period with a specific beginning and ending date.

> **Example:** Ramon is a college student renting an apartment for one semester. The lease gives him the right to possess the apartment from August 20 until December 31. Ramon's tenancy is an estate for years because it is for a specific time period.

With an estate for years, neither party is required to give notice to terminate the lease agreement. The lease terminates automatically at the end of the specified rental period. If the parties want to terminate the lease before the specified end of the lease period, they may do so by mutual consent. The termination of an estate for years by mutual consent is called **surrender**.

Fig. 4.1 Types of estates



Unless specifically prohibited by the lease, an estate for years is assignable by the tenant. This means that a tenant may sublease or assign the interest in the lease to another party. The lease agreement is not terminated, but is merely taken over by someone else.

Periodic Tenancy

A **periodic tenancy** continues from period to period until terminated by proper notice from one of the parties. The length of the period is usually one month, but may be any specified time period. A periodic tenancy automatically renews itself from period to period, and thus continues for an indefinite length of time. No specific or automatic termination date exists; the tenancy ends only when one of the parties gives proper notice of termination. In Washington, a periodic tenancy may be terminated by written notice from either party (landlord or tenant) 30 days or more before the end of the rental period.

Example: Carl Schmidt is leasing office space on a month-to-month basis. His landlord gives Carl written notice of termination on March 10. Since it is less than 30 days until

the end of March, Carl has the right to continue to occupy the space through March and April. The March 10 notice is more than 30 days before the end of the April rental period, so Carl has to vacate the space by the end of April.

If the tenancy is covered by the Residential Landlord-Tenant Act (RLTA), it may be terminated by written notice from either party 20 days or more before the end of the rental period.

Example: Now suppose that Carl Schmidt is renting an apartment on a month-to-month basis. His landlord gives Carl written notice of termination on March 10. Since it is more than 20 days until the end of the month, Carl will have to vacate the apartment by April 1.

Many residential apartment leases begin as estates for years, with a specified time period such as one year or six months. After the specified time period is up, the tenancies often continue as periodic tenancies, usually from month to month.

Tenancy at Will

Under a **tenancy at will**, the tenant is in possession of the property by permission or at the will of the owner. A tenancy at will has no specified termination date and no periodic time limits. Usually no rent is paid, or else rent is given in some form that has no reference to periods of time.

In Washington, a landlord may terminate a tenancy at will at any time, and must simply give the tenant a "reasonable time" in which to vacate.

Case Example:

Paul Najewitz occupied a house on some property in return for keeping the property in repair. This was considered a tenancy at will because it was for an indefinite term and no periodic rent was required.

The tenancy was terminated when demand for possession was made by the owner. The only right Najewitz had after that was a reasonable time in which to vacate. *Najewitz v. Seattle*, 21 Wn.2d 656, 152 P.2d 722 (1944).

Note that unlike the estate for years or the periodic tenancy, a tenancy at will cannot be assigned. Also, the tenancy at will automatically expires upon the death of either the landlord or the tenant.

Tenancy at Sufferance

A **tenancy at sufferance** is created when a tenant comes into possession of a property lawfully and under a valid lease, but then holds over after the lease has expired. The tenant continues in possession of the property, but without the consent of the landlord.

> **Example:** Joe has a one-year lease with Landlord Sam. At the end of the term, Joe refuses to move out. Joe initially obtained possession of the property legally (under a valid lease), but is remaining on the property without Sam's consent.

The tenancy at sufferance technically isn't an estate at all. The tenant, referred to as a **holdover tenant**, has no possessory interest in the property. Even so, the landlord must follow proper legal procedures to evict a holdover tenant, as we explain below. The key difference between a holdover tenant and a trespasser is that a holdover tenant initially occupied the property with the owner's (the landlord's) permission. A trespasser, in contrast, entered the property without the owner's permission. (Trespass is discussed later in this chapter.)

Wrongful Possession

A tenant is in **wrongful possession** of the property if he no longer has the legal right to remain. A landlord may bring an action for unlawful detainer against tenants in wrongful possession. **Unlawful detainer** is the legal action taken to evict a tenant. Evictions will be discussed in more detail in Chapter 13. Some examples of tenants in wrongful possession are:

- tenants who hold over after the expiration of a specific lease term (tenants at sufferance);
- tenants who continue in possession after being given proper notice of termination; and
- tenants who fail to pay the rent and continue in possession after being given notice requiring payment of rent or surrender of the premises.

Encumbrances

A freehold estate is a possessory interest in real property with ownership rights; a leasehold estate is a possessory interest without ownership rights. The third type of interest in real property is a nonpossessory interest. Someone who holds a nonpossessory interest in property has a claim or right concerning the property, but does not have the right to possess the property. Nonpossessory interests are called **encumbrances** because they encumber or burden the title.

Encumbrances may be financial or nonfinancial in nature. Nonfinancial encumbrances, such as easements, affect the use or physical condition of the property. Financial encumbrances, referred to as liens, affect only the title.

Easements (Nonfinancial Encumbrances)

An **easement** is a right owned by one party to use the land of another for a particular purpose. Easements affect the value and use of property, so real estate agents and prospec-

tive buyers should find out whether a property is subject to any easements. A standard title insurance report will list the recorded easements, but usually won't list unrecorded easements. Agents and buyers should ask the seller about easements, and should also keep an eye out for any indication that the property is used by someone other than the seller (a neighbor, for instance).

An easement may be either positive or negative. A **positive easement** authorizes a party to do something on another person's land or to take something from the land. The most common example of a positive easement is the right to cross another's land, often called a right-of-way easement or access easement.

> **Example:** Johnson has an easement to cut across the corner of Eldridge's property to reach her mailbox, instead of having to go the long way around by the road. This is a positive easement because it grants Johnson the right to do something on another person's land.

Instead of granting a right, a **negative easement** prohibits a landowner from doing something on her own land.

> **Example:** A planned unit development contains areas that are to be maintained as "greenbelts" (in their natural condition). The property owners in the development are restricted from placing any buildings or cutting down any trees or plants in the greenbelt areas.

The greenbelt rule is a negative easement, because it prevents the owners from doing something on their own property that they would otherwise be permitted to do. "Negative easement" is really just another name for a restrictive covenant. Restrictive covenants are explained in Chapter 11. This chapter focuses on positive easements.

Positive easements are classified as either:

- appurtenant easements, or
- easements in gross.

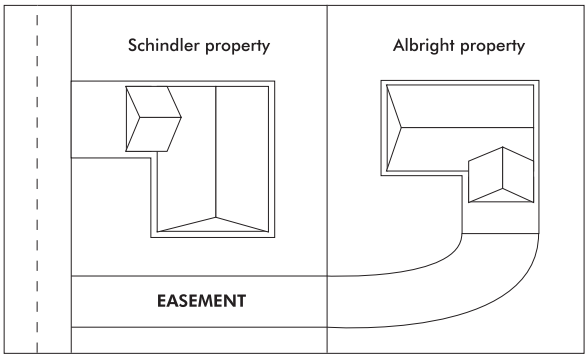
Appurtenant Easements

An **appurtenant easement** burdens one parcel of land for the benefit of another parcel of land. The parcel that receives the benefit of the easement is called the **dominant tenement**. The burdened parcel over which the easement runs is the **servient tenement**. ("Tenement" is an old property law term that refers to the land and all of the rights that go along with the land.) The owner of the dominant tenement is referred to as the dominant tenant, and the owner of the servient tenement is the servient tenant.

Probably the most common example of an appurtenant easement is a right-of-way easement providing access across one parcel of land to another parcel.

> **Example:** Albright owns a landlocked piece of property with no access to the road. Albright has a right-of-way easement to travel over Schindler's neighboring property to reach the road.

This is a positive easement because it grants Albright the right to do something. The Schindler property is the servient tenement because the easement runs across it. The Albright property is the dominant tenement because it benefits from the easement.



An appurtenant easement **runs with the land**, which means that when either parcel of land—the dominant or the servient tenement—is transferred (sold, inherited, or given away), the benefit or the burden of the easement is also transferred. That's true even if the easement is not mentioned in the deed.

Example: In the example above, if Albright sells her property (the dominant tenement) to Crowley, then Crowley also acquires the easement across the Schindler property. If Schindler sells his property (the servient tenement) to Rodriguez, Rodriguez must allow Crowley, or whoever owns the dominant tenement, to continue using the easement.

Note that an appurtenant easement cannot be sold separately from the land. Whoever owns the dominant tenement also owns the easement.

Easements in Gross

An **easement in gross** belongs to an individual or a commercial entity. Although there is a dominant tenant, there is no dominant tenement involved with an easement in gross. The only parcel of land involved is the servient tenement across which the easement runs.

Example: Andy lives down the road from Carter. Carter grants Andy a personal easement to cross Carter's property and fish in Carter's pond. Andy is the dominant tenant, but there is no dominant tenement. Carter's property is the servient tenement, and if he sold the property, the new owners would still have to allow Andy to fish in the pond.

A personal easement in gross such as the one in the example can't be assigned to another party. In other words, Andy can't sell or give away his easement rights to someone else. If Andy dies, the easement will be extinguished; no one can inherit it from him.

Most easements in gross are commercial rather than personal. Unlike personal easements in gross, commercial easements in gross are freely assignable and transferable.

Example: The Greentown Electric Company has an easement in gross to enter property to install and service its power lines. When Mega-Electric buys Greentown Electric, it also purchases the easement.

Note, however, that a commercial easement for a specific purpose cannot normally be sold for another purpose. For example, the electric company could not sell its easement for power lines to the local sewer district to run sewer lines through the easement.

When showing property to prospective buyers, a real estate agent should be able to explain all utility easements affecting the property. An average residence may be subject to easements for the water company, electric company, gas company, cable company, and telephone company, just to name a few. Utility easements can have an impact on the value of the property.

> **Example:** If the electric company has an easement running through your backyard and installs unsightly power lines, this easement may seriously decrease the value of the property.

Creation of Easements

An easement (whether appurtenant or in gross) may be created in any of the following ways:

- express grant or reservation,
- plat maps,
- implied from prior use or necessity,
- dedication,
- condemnation,
- estoppel, or
- prescription.

Express Easement. An **express easement** is generally written in a deed or other legal document that sets forth the boundaries and specifications of the easement.

The most effective way to create an easement is to describe the easement in a deed. The easement may be described in the deed passing title to the property, or there may be a separate deed describing only the easement.

A deed or other document may create an easement by either express grant or express reservation.

When an easement is created by **express grant**, the property owner expressly grants a specific right to use the property (the easement) to another.

> **Example:** David sells the west half of his property to Martha. In the deed, he expressly grants Martha the right to use the private road located on his half of the property.

An **express reservation** is similar to an express grant, except that instead of giving away the easement, the landowner reserves it for himself or a third party.

> **Example:** David sells the east half of his property to Martha. In the deed, he expressly reserves to himself the right to use the private road now located on Martha's half of the property.

Plat maps. Another way of creating an express easement is by recording a **plat map**. If a landowner subdivides and sells land according to a recorded plat, the purchasers acquire easements to use the roads, alleys, and all common areas shown on the plat. These areas are considered dedicated for public use.

Case Example:

In 1956, Haven Lake Development Company recorded the Haven Lake plat map. Approximately one year later, a map entitled "Access Easement-Lots 251 thru 256" was also recorded, showing an easement access road that originated on lot 255 and crossed lot 254.

Forty years later, the current owner of lot 255 attempted to access his lot via the easement across lot 254. The owners of lot 254 sued to quiet title.

The original plat map did not reflect any easement, and the mere filing of the subsequent document was insufficient to amend the original plat. Therefore, no grant of easement existed. *McPhaden v. Scott*, 95 Wn. App. 431, 975 P.2d 1033 (1999).

Implied Easement. An **implied easement**, or easement by implication, is presumed to exist because of certain facts that tend to show that the parties meant to create an easement. This type of easement arises only when the tract of land was originally under common ownership (owned by the same individual) and then was severed or divided into two or more parcels.

There are two situations in which an easement by implication may develop. An easement may be implied from prior use, or may be implied because of obvious necessity.

For an easement to be **implied from prior use**, the use giving rise to the easement must have been going on for a long time, and must be apparent from a visual inspection of the property at the time of sale. The use must also be reasonably necessary for the enjoyment of the dominant tenement.

Example: John owns two adjacent, heavily forested mountain properties. Parcel A is accessible only by two roads. One road is often impassable due to weather conditions; the other road is located on Parcel B.

John sells Parcel A to Tina, but objects when Tina wants to reach her property using the road located on Parcel B, which John still owns. If a court determines Tina's use of the road is reasonably necessary, she will have an easement by implication.

If the easement is essential to a parcel of property, the court may find an **easement by necessity** even if there is no apparent prior use.

Example: If a lot is completely landlocked with no access to roads, and no express easement has been given, an easement by necessity may be found to provide access to the road.

Dedication. A private landowner may grant an easement to the public to use some portion of his property for a public purpose, such as a sidewalk. The dedication may be expressly stated or it may be implied. It may be philanthropic in nature, or required by a local government as a condition for permission to develop the land.

Condemnation. As we'll discuss in Chapter 9, the government can exercise its power of eminent domain to take ownership of private property and put it to a public use, if compensation is paid to the private owner. This process, called condemnation, can also be used to obtain an easement for a public purpose, such as a road or a bike path.

Estoppel. Easements can also be created by estoppel. The legal doctrine of **estoppel** prevents a person from asserting rights or facts that are contrary to previous acts or conduct.

> **Example:** Bianca has a house on several acres. It is too far out in the country to be connected to the city sewer system, so the house is connected to a large septic system capable of handling several houses. Bianca divides her property and sells half to Carl. No mention is made of the septic system. Carl builds a house on his property. Bianca watches and says nothing as Carl hooks up his plumbing to the septic system on her property.
>
> An easement has been created by estoppel. Because of her failure to object, Bianca cannot now claim that Carl had no right to hook up to the septic system.

Prescription. An **easement by prescription** is created when someone makes long and continuous use of another's property without the permission of the owner. To acquire an easement by prescription, use of the easement must be **open and notorious**. This means that the use must be obvious and visible to any landowner who keeps reasonably well informed about the property.

The use must also be **hostile** or **adverse**, meaning without the permission or consent of the owner, or against the owner's interests. An owner may acquiesce to the use, but not give permission. In other words, if the owner is aware of the use and does not object—but also does not give permission—the use is hostile. But if the owner gives consent or permission, a license has been granted, and an easement by prescription cannot develop.

In Washington, the use must be **continuous and uninterrupted** for ten years. Continuous does not mean constant use, but only a continuous use that is normal for that property.

> **Example:** Mr. Rose and Mr. Green both own summer cottages on a hill above the beach. There are steps to the beach cut into the rocky hillside on Mr. Rose's property. Every summer for the last 12 years, Mr. Green has used these steps to get to the beach. This is a continuous use even though Mr. Green never uses the steps in winter.

Note also that a continuous and uninterrupted use does not necessarily mean use by only one person.

> **Example:** Michael and Patrick own adjoining property. For two years, Michael drives across a corner of Patrick's property without Patrick's permission. Then Michael sells his property to Donovan. For another four years, Donovan drives across the same

corner. Then Donovan sells to Maureen. Maureen drives across Patrick's property for another five years.

Maureen may be able to claim a prescriptive easement. The time periods in which Michael, Donovan, and Maureen drove across the property can be added together to make up the required ten years. This adding of time periods is called **tacking**.

Note that there can be no prescriptive easements against government property.

Maintenance and Repair of Easements

Neither party has a duty to maintain or repair an easement unless this duty is specifically spelled out in the easement grant. However, if an easement is allowed to fall into such a state of disrepair that it is totally unusable, the easement may be lost.

Example: Consider our previous example of the right-of-way easement. Albright has the right to drive across the Schindler property. Unless spelled out in a written agreement, if the Schindlers do not use this driveway, they have no duty to maintain it. They cannot block or obstruct the drive, but they are not responsible for any repairs or upkeep.

The easement holder also has no duty to repair or maintain the driveway. Albright can let it fall into disrepair if she likes. Although Albright has no duty to repair, she has the right to take all steps necessary to make the easement usable. If she chooses, she can repair or maintain it as much as needed.

Where a private road or driveway is used by the landowner and an easement gives another party the right to use the same road or driveway, both parties must divide the cost of repairs in proportion to their use of the road.

Termination of Easements

There are several methods by which easements may be terminated or cease to exist. These correspond roughly to the ways easements are created.

Express Termination. Just as easements may be expressly created, they may be expressly terminated.

Written agreement. The parties may agree on an express termination date that is specified when the easement is granted, or there may be a later written agreement, called a **release**.

Automatic termination. Most easements do not expire automatically. However, if the grant of the easement specifies a time period, the easement expires or automatically terminates at the end of the time period. An easement may be granted for life. This type of easement automatically terminates upon the death of the person who was the measuring life.

Condemnation. As discussed above, an easement can be created through the condemnation process. An easement may also be terminated through condemnation. If the state condemns and takes title to either the dominant or the servient property, the easement may

be lost. However, the easement holder (the owner of the dominant property) is entitled to compensation for the value of the easement.

> **Example:** Adams has an easement to maintain a billboard on Barton's property. The state condemns Barton's property because they are going to build a new highway across it. The state compensates Barton for the value of his property, and it must also compensate Adams for loss of the value of her easement.

Implied Termination. An easement may be terminated without any express agreement, by the actions of the parties or by circumstances beyond the control of the parties.

Merger. When the owner of the easement (the dominant property) also becomes the owner of the property subject to the easement (the servient property), the easement is extinguished by **merger**. The need for an easement no longer exists. You cannot have an easement in your own property, since an easement is defined as an interest in another's land.

Necessity ends. If an easement is created by necessity, the easement automatically terminates once the necessity disappears.

Abandonment. An easement may cease to exist if the owner abandons it. Although non-use alone is not enough to terminate an easement, it may be evidence of an intent to abandon. Abandonment is usually proven by a clear act or expression of the owner's intent to abandon.

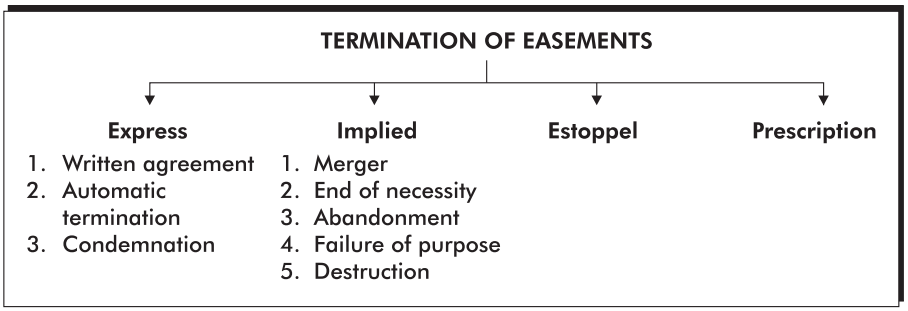
> **Example:** Abernathy has an easement that allows her to cross Simpson's property to reach the lake. Abernathy has not used the easement for nine years and has planted a rose garden across the area where the path to Simpson's property used to be.

Case Example:

The High Line is a popular tourist attraction in Lower Manhattan, where an old railroad viaduct has been converted to an elevated "linear" park. When the viaduct was built back in the 1930s, the railroad obtained easements allowing the viaduct to be constructed over existing properties. The railroad stopped using the viaduct in the 1970s, and the rails were removed by 1982. The viaduct was converted to a park in 2005, under the authority of the federal National Trails System Act.

In 2011, Romanoff Equities, an owner of property crossed by the viaduct, filed a lawsuit claiming that conversion of the viaduct into a park was a taking of its property, for which it should be compensated. Romanoff argued that the easement over its property was limited to railroad use, and, moreover, the easement had been abandoned when the railroad stopped operating there decades earlier. However, the court held that the 1932 grant of easement was broad enough in nature to allow for non-railroad use. The court also ruled that decades of mere non-use were not enough to terminate the easement, and that the easement holders had taken no affirmative actions to terminate it. The easement was still in effect, the park was a valid use of the easement, and the plaintiffs were not entitled to compensation. *Romanoff Equities, Inc. v. U.S.*, No. 15-5034 (Fed. Cir. 2016).

Fig. 4.2 How easements may terminate



Failure of purpose. If an easement has been created for a particular purpose, it terminates when the purpose ceases or has been fulfilled.

> **Example:** B&D Railroad had an easement for railroad tracks across a corner of Farmer Brown's property. B&D discontinued using this track, removed the rails, and subsequently went bankrupt. The easement terminated because the purpose of the easement ceased.

Destruction of servient tenement. When an easement exists in a building rather than in the land, the involuntary destruction of the building will terminate the easement.

Estoppel. In the same way that they may be created, easements may also be terminated by estoppel. If the conduct of the easement holder (dominant property owner) leads the servient property owner to assume that the easement holder does not intend to use the easement, and the servient property owner takes some action in reliance on this, the easement holder may be prevented from later trying to enforce the easement.

> **Example:** Max sold half of his property to Sylvia but reserved to himself an easement to walk across the corner of Sylvia's property to get to his mailbox. After several years, Max put up a fence blocking off the path to the mailbox.
>
> Sylvia naturally assumed that Max was no longer going to use the path, so she set up her garden shed in the corner over the path. Two years later Max took down the fence and told Sylvia she would have to move the shed so that he could use the easement to get to his mailbox.
>
> By building the fence, Max led Sylvia to believe that he did not intend to use the easement. Sylvia reasonably relied on his conduct when she built the shed. Max could be estopped (prevented) from now claiming the right to use the easement.

Prescription. Actions by the owner of the servient property that interfere with the easement could extinguish the easement by prescription. There must be an open, continuous, and uninterrupted interference with the easement for ten years.

Example: Consider the example just above. Now suppose Sylvia (the owner of the servient property) built the fence across the easement. The fence has been in place blocking off the easement for 14 years. Max's easement has probably terminated by prescription.

Easements vs. Licenses

Like an easement, a **license** grants permission to enter another's property for a specific purpose. But a license does not create an interest in the property.

There are several differences between easements and licenses. Easements are often for an indefinite period of time, but licenses are usually more temporary. While an easement cannot be revoked, a license may be revoked by the grantor at any time. If revoked, money damages may have to be paid, but a court could not force the grantor to reinstate the license.

Easements are usually created by written agreement or through action of law, while licenses are often created by simple verbal agreement. A license is a purely personal right that cannot be sold or transferred and becomes invalid if the licensee dies.

Example: Carl is having his driveway repaved, so he makes arrangements with his neighbor Karen to park his car in her driveway for two weeks. After only one week, Carl dies. The license automatically terminates. Carl's son does not have the right to park the car in Karen's driveway for the remaining week unless he makes a new arrangement with Karen.

Note that since a license is revocable by the landowner, it is not actually considered an encumbrance or an interest in the property.

Also, because a license is created through permission of the landowner, the use is not hostile. Therefore, no claim of adverse possession or prescriptive easement can be brought by the licensee.

Encroachments, Trespass, and Nuisance

Disputes between neighbors typically arise in one of three ways: encroachment, trespass, or nuisance.

Encroachment. An **encroachment** is a structure or object, such as a fence or garage, that extends over the property line and intrudes onto an adjacent neighbor's land. Most encroachments are unintentional, resulting from a mistake concerning the exact location of the property line.

A court can order an encroachment to be removed through an ejectment action. Alternatively, if the cost of removal would be too high, the court may order the encroacher to pay damages to the neighbor.

Technically, an encroachment is not an encumbrance because it is not a right or interest held by the encroacher. However, if an encroachment is ignored, it could ripen into a prescriptive easement or even title by adverse possession.

Trespass. A **trespass** is entry onto another's land without permission or legal authority, violating the landowner's right to exclusive possession. (In the case of leased property, it violates the tenant's right to exclusive possession.)

A trespass is a tort—that is, an injury against a person or property. Under certain circumstances, a trespass may also be considered a criminal act.

Climbing over a fence and walking around or engaging in other activities on someone else's land is the simplest example of a trespass. However, trespass also includes the physical invasion of property with an object or a substance.

> **Example:** Glen keeps his RV parked behind his house. He doesn't realize that the vehicle is straddling the property line, so that the back end is on his neighbor's property. The presence of the RV on the neighbor's property is a trespass.

A trespass may be a one-time event, as when hunting without permission on someone's property, or it may be a **continuing trespass**, which occurs when a person fails to remove himself or an object from another's land. The RV parked on the neighbor's property is an example of a continuing trespass. Of course, at this point, the trespass could also be called an encroachment.

Nuisance. A **nuisance** is any activity or conduct that substantially interferes with an owner's use and enjoyment of her property, or with the general welfare of the community. A public nuisance affects a community or neighborhood, or a large number of people. A private nuisance affects only one person or just a few people.

> **Example:** Anthony loves to practice the drums in his garage for hours, often late into the evening. However, since the houses in his neighborhood are very close together, his neighbors can hear every drumbeat. While he's practicing, they can't sleep, read, or watch television. Anthony's drumming could be considered a private nuisance.

It's possible for an activity to be completely legal and nevertheless have the effect of creating a nuisance. As long as Anthony's drumming doesn't violate any laws (such as noise ordinances) or other restrictions, it's not illegal—but it still may be a nuisance. The neighbors could sue and ask the court for an injunction ordering Anthony to stop or limit his drumming.

Private Restrictions

Private restrictions (also known as deed restrictions) are restrictions on the use of a property that were imposed by a previous owner. Like easements, private restrictions are encumbrances that limit a property owner's use of her land. Private restrictions are discussed in Chapter 11.

Liens (Financial Encumbrances)

A **lien** is a financial interest in property that gives a creditor the right to have a debt paid out of the debtor's property if the debtor fails to pay. The lienholder does not own or have a right to possess the property, but could cause the property to be sold to satisfy the lien.

Both buyers and sellers will be concerned about liens against property because liens decrease the property's value. Existing liens against a property will not prevent its transfer or sale, but the transfer does not eliminate the liens. The new owner takes the property subject to those liens. Thus, it is extremely important for a buyer to know what liens are attached to a property before purchasing it.

A real estate agent should always find out if there are any outstanding liens on the property. Liens are generally filed in the office of the county recorder in the county where the property is located.

Voluntary liens are liens the owner places against his own property. These liens are usually placed in order to secure repayment of a debt.

> **Example:** Mortgages and deeds of trust are voluntary liens. A property owner borrows money and provides a lien on specific property as security for the debt.

Involuntary liens (sometimes called statutory liens) arise through operation of law without the property owner's consent. Involuntary liens are created to protect those who have valid financial claims against the owner of the real property.

> **Example:** When taxes are assessed, a tax lien arises against the property. If the taxes are not paid, the property can be sold to satisfy the lien.

Liens are also classified as either general or specific. A **general lien** attaches to all of the debtor's property. A **specific lien** attaches only to a particular piece of property. A deed of trust is an example of a specific lien. It attaches only to the particular property offered as security for the loan.

Some of the most common types of liens against real estate are:

- mortgages and deeds of trust,
- construction liens,
- judgment liens, and
- tax liens.

Mortgages and Deeds of Trust

Mortgages and deeds of trust are voluntary, specific liens created by a contract between a borrower and a lender. The borrower's property is used as security for the loan. If the borrower fails to repay the loan as agreed, the lender can sell the property and use the proceeds to repay the loan.

When property transfers to a new buyer, it remains subject to any existing mortgages or deeds of trust. So whether the seller will pay off an existing mortgage or deed of trust—or whether it is assumable by the buyer—are questions that must be answered before the sale closes.

Construction Liens

A person who supplies materials or performs work on property may be entitled to claim a **construction lien** against the property to secure payment for the labor or materials. For example, if a general contractor is building a house on a site and is not paid for his services, he can obtain a lien against the property for the amount owed. The lien allows the property to be sold to satisfy the debt. A construction lien is created by filing a notice of the claim at the office of the recorder in the county where the property is located.

In addition to (or instead of) filing the lien, a laborer or supplier could sue the property owner for the amount due. However, litigation is time-consuming and expensive, and even if you win, it is sometimes difficult to collect the judgment.

The right to file a construction lien can be waived. When a construction contract is drawn up, it may include a provision that states that liens may not be filed on the property. This type of provision is called a **waiver**. Such a waiver must be stated clearly and unambiguously in the contract.

Every state now has some type of construction lien law. It's important to be aware of the time limits contained in Washington's construction lien law.

Time Limits. Initially, to establish and preserve the right to a construction lien, laborers and suppliers must give the general contractor and property owner a written **pre-claim notice** of the right to claim a lien. This pre-claim notice must be served personally or by certified or registered mail. For new construction of a single-family residence, notice must be given within ten days of first supplying services or materials. For remodels, repairs, or commercial projects, notice must be given within 60 days of beginning work. Pre-claim notices are not required, however, from claimants who have contracted directly with the owner.

A **lien claim** must be filed within 90 days after last performing work or furnishing materials for the project. A lien filed more than 90 days after labor or materials were last furnished is invalid. The 90-day time period starts to run when the particular claimant stops providing labor or supplies, not when the entire project is completed.

Foreclosure. Construction liens must be foreclosed judicially (through the court system). A legal action to foreclose this type of lien must be brought within eight months after the lien was recorded, in the county where the real estate is located.

> **Example:** New plumbing is being put into the Montgomery Building. Karl is the one who supplied the new pipes. The last load of pipes was delivered on January 15. When Karl still had not been paid by March 1, he filed a construction lien against the property.

On November 5, Karl attempts to file a legal action to foreclose. However, Karl will not be successful because it has been just over eight months since the lien was recorded.

Priority. Often, there is more than one construction lien against the same piece of property. If the property is sold to satisfy these liens, the proceeds from the sale will be applied according to the order of priority (see Figure 4.3).

Termination of Construction Liens. A construction lien is terminated by the payment of the debt upon which the lien is based. In Washington, an owner may also release an existing construction lien by giving a bond or paying the amount owed into court to cover any potentially valid claims. The funds are controlled by the court. This system benefits the property owner, since the property is not tied up by a lien. It also benefits the lienholder, since the funds are available to pay any valid claims and cannot be withdrawn by the property owner.

If a lien foreclosure action is filed, but is not prosecuted to judgment within two years, the court has discretion to dismiss the action for want of prosecution. This dismissal cancels the lien. The purpose of this rule is to prevent property from being encumbered by a lien for an unreasonable amount of time.

Example: A contractor filed a construction lien and subsequently filed a legal action for foreclosure on February 4, 2016. However, the foreclosure action still had not been prosecuted by February 5, 2018. Since more than two years have elapsed, the court can dismiss the action.

Judgment Liens

Judgment liens arise from a court's determination that one party owes money to another. The court enters a judgment, and the winner (the judgment creditor) can obtain a **judgment lien** against property owned by the loser (the judgment debtor). This type of lien is involuntary and general. It arises by operation of law and automatically attaches to

Fig. 4.3 Construction lien priority

CONSTRUCTION LIEN PRIORITY

1. First, to people who performed labor;
2. Next, any contributions owed to employee benefit plans;
3. Then to people who furnished materials or equipment;
4. Then to the subcontractors; and
5. Finally, to the original or general contractor.

Fig. 4.4 Types of liens

LIENS				
	Voluntary	Involuntary	General	Specific
Mortgages	X			X
Deeds of trust	X			X
Construction liens		X		X
Special assessments		X		X
Judgment liens		X	X	
IRS liens		X	X	

all of the debtor's property in the county where the judgment was entered, except for the debtor's homestead (principal residence). The judgment will attach to homestead property only if the judgment creditor records an **abstract of judgment** with the county recorder.

If the debtor owns property in other counties, the judgment creditor may file an abstract of judgment in other counties and attach those additional properties. The judgment lien also attaches to any property acquired by the debtor during the lien period.

> **Example:** Glen owns two acres of land in Snohomish County. A lawsuit was filed against him. Glen lost the case and a judgment was entered against him. The winner obtained a lien against Glen's property for the judgment amount. Two months later, Glen's father died, leaving Glen ten acres of property, also in Snohomish County. The judgment lien also attaches to this property.

Once a judgment lien has attached to property, the debtor must pay the judgment to free the property from the lien. If it is not paid, the property can be sold to satisfy the judgment.

Termination of Judgment Liens. Like any lien, a judgment lien is terminated by payment of the amount owed. Judgment liens also terminate according to statutory limitations.

In Washington, a judgment lien is generally valid for ten years after the date of entry of the judgment. However, within 90 days before a judgment lien expires, the lienholder can apply for an order extending the period for an additional ten years. The lienholder must apply to the court that issued the judgment and pay a filing fee.

Also, note that a judgment lien for child support lasts for ten years after the child's 18th birthday.

Tax Liens

Tax liens are another common type of lien. Property taxes, special assessments, federal income taxes, and various other taxes create liens against the taxpayer's real property. For the government, these liens are a key tool in tax collection.

Property Taxes. Real property is assessed (appraised) and then taxed according to its value. Property taxes are involuntary and specific liens. In Washington, property taxes become a lien on the first day of January in the year in which the taxes are levied. The levy of property taxes takes place in October.

Therefore, taxes levied in October are actually considered to have become a lien against the property on the previous January 1, even though the taxes are not payable until the next year.

Tax bills are typically mailed around the middle of February. One-half of the property tax is due and payable by April 30, and the second half must be paid by October 31. Delinquent taxes are subject to interest and penalties.

A buyer usually pays all of the real estate taxes that become due in the year following the purchase, even though the lien for these taxes arose prior to the time of purchase.

Taxpayers in Washington are given a three-year grace period before property is foreclosed on because of property tax liens. The owner must be given notice of the impending foreclosure sale. In other words, three years after the taxes became delinquent, the owner is given notice of application for a judgment foreclosing the lien.

The taxpayer has the right to redeem the property at any time up to the date of the foreclosure sale by paying the delinquent amount plus any interest and costs or penalties. Once the foreclosed property has been sold, the purchaser takes title immediately. The former owner has no further redemption rights at that point.

Special Assessments. Municipalities may levy taxes called **special assessments** to pay for local improvements such as road paving or sewer lines. In order to distribute the costs of the improvement fairly, special assessments are levied only against those properties that actually benefit from the improvement. If a special assessment is not paid, it becomes an involuntary, specific lien against the property.

After a special assessment becomes delinquent by two installment payments, or if the final installment is over one year late, the local taxing authority can begin foreclosure proceedings. These proceedings must commence within ten years after the last installment becomes delinquent.

Income Tax Liens. If federal income taxes are not paid, another type of tax lien will arise. Income tax liens are involuntary and general. They apply to all property owned by the taxpayer, both personal and real.

Other Tax Liens. Counties, cities, and nonpolitical units with taxing powers (such as school and irrigation districts) are also authorized to use liens as security devices when taxes are not paid.

Lien Priority

It is not unusual for one piece of property to have several types of liens placed against it. One property may be subject to a mortgage, a construction lien, and a tax lien. Often the total amount of the liens is more than the property will bring at a forced sale, and all the liens cannot be paid in full. Since liens are not paid on a pro rata basis, it must be determined which liens should be paid first.

As a general rule, the priority of liens depends on the order in which they were created. **Lien priority** is established by date of recording. In other words, the lien recorded first gets first priority for payment.

However, there are some exceptions to this rule. Property tax liens and special assessment liens are superior to all other liens against the property. They have first priority, even if another lien was created first. (The lien for general property taxes is superior to a lien for a special assessment, even if the special assessment lien was created first.) Also, the date used to determine the priority of construction liens is the date work first started on the project, rather than the date the lien was recorded.

Example: Margaret Smith's property has the following liens against it:

- a mortgage recorded March 9, 2007;
- property tax liens that attached January 1, 2016 and January 1, 2017;
- a lien for a judgment entered June 2, 2016;
- a special assessment lien that attached July 6, 2016; and
- a construction lien recorded August 16, 2016 (but work on the project started May 19, 2016).

When the property is sold at a foreclosure sale, the liens would be paid out of the proceeds of the sale in the following order:

1. property tax liens
2. special assessment lien
3. mortgage
4. construction lien
5. judgment lien

Protecting the Debtor

When a creditor forecloses a lien, the amount of money obtained from the foreclosure sale is not always enough to cover the amount owed on the debt. To recover any remaining balance, the creditor may get a **deficiency judgment**, which is a personal judgment against the debtor ordering the debtor to pay the creditor the remaining amount owed.

Example: The Osgoods borrowed money from the bank to buy some property. When the Osgoods defaulted on the loan, the lender foreclosed on the mortgage. The amount owed was $225,000, but the proceeds of the foreclosure sale only came to $215,000. The lender may obtain a deficiency judgment against the Osgoods for the $10,000 shortfall.

There are, however, some limitations on the right to obtain a deficiency judgment. For example, no deficiency judgment is available after a trustee's sale under a deed of trust.

An alternative to foreclosure is a **short sale**, where an owner sells the property for whatever it will bring (something "short" of the amount owed on the mortgage), and the lender accepts the sale proceeds and releases the property from the mortgage lien. In a short sale involving an owner-occupied principal residence, Washington law requires the lender to notify the seller whether it is waiving or retaining the right to collect a deficiency judgment. If retained, the lender's right to collect a deficiency judgment expires three years after the short sale.

Homestead Laws. Another way of protecting debtors is through homestead laws. While homestead laws do not protect family residences from all types of liens, they can sometimes protect families from the forced sale of their homes. Homestead laws reflect a belief by the legislature that a person's obligation to support dependents is as important as the payment of debts.

Washington law provides for an automatic **homestead exemption** for certain property used as a principal residence. Under the law, a **homestead**—a family dwelling, along with the land and any outbuildings—is exempt from the foreclosure of judgment liens for up to the total net value of the property, or $125,000, whichever is less. (The legislature increases the homestead exemption amount periodically.) The exemption begins as soon as the owner begins residing on the property.

Case Example:

In 1995, RMC, a construction company, attempted to foreclose on a judgment lien against a home owned by the Hyppas. At that time, the homestead exemption amount was $30,000. The property, valued at $145,000, was encumbered by liens totaling more than $130,000.

The total of the $30,000 homestead exemption and the $130,000 in liens exceeded the home's market value. The court thus held that there was no net value on which RMC could execute. *Miller Constr. Co. v. Coltran*, 87 Wn. App. 112, 940 P.2d 661 (1997).

An owner can obtain homestead protection in advance, for property he is planning to reside on, by recording a **declaration of homestead** for that property. The declaration of homestead must contain a legal description of the property and an estimate of its cash value. A person can have only one homestead at a time, so if the owner already has a homestead, she must record a declaration of abandonment of homestead on the other property.

Use of the homestead exemption is fairly rare, mainly because the exemption does not protect the debtor against all claims. The homestead exemption does not offer protection against:

- mortgages or deeds of trust,
- construction liens,
- tax liens,

- liens for child support or spousal maintenance obligations, or
- liens imposed by a condominium or homeowners association.

Conclusion

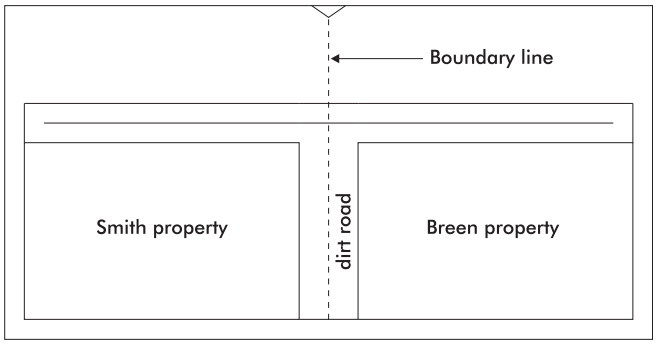
As you can see, many different people may have various interests in the same piece of property. The interests others may have in your property affect your right and ability to use, possess, or sell the property. Encumbrances and conditions on your title affect your right to use your property. And liens affect the value of your property and your ability to sell it quickly and easily.

Case Problem

The following is a hypothetical case problem. Most of the facts are taken from a real case. Using what you've learned from this chapter, make a decision on the issues presented, and then check to see if your answer matches the real decision by the court.

The Facts

Doris Smith and Eugene Breen owned adjoining land. A dirt road leading to the back of both their properties ran astride the boundary line. The road had existed since at least the 1930s and had been used jointly and amicably by the various owners of both pieces of property for over 30 years.



In 1966, Smith and Breen both tried to assert ownership of the entire road. Breen began parking his truck on the road, blocking Smith's passage. Smith's attorney wrote Breen a letter requesting that he not block the road. The letter apparently had no effect, so Smith brought a lawsuit to enjoin Breen from blocking the road, and claiming sole ownership of the road (Smith claimed that she alone maintained the road). Breen counterclaimed, asserting that he had acquired title to the entire roadway by blocking Smith's access.

The Questions

Who was the rightful owner of the road? Had Breen obtained ownership by blocking Smith's use of the road? Could Smith claim sole ownership because she had been the only one to maintain the road? If an easement existed, what type was it and how was it established?

The Answer

Neither party had sole ownership of the road, and both had the right to use it equally. If Breen had successfully blocked the road from use by Smith for over ten years, he might have been able to terminate Smith's easement by prescription. However, Smith objected to the blocking, and the time period was not nearly long enough.

Nor did Smith have a valid claim simply because she maintained the road. There is no specific requirement that the owner of an easement make repairs or perform maintenance.

A prescriptive easement may be acquired by clear proof that the land was used in an open, notorious, continuous, and uninterrupted manner for ten years, that the use was adverse to the owner, and that the owner had knowledge of the use.

In this case, both parties' predecessors had been using the entire width of the roadway as if it belonged to them. For more than 30 years neither asked the other for permission to use the road, and there was no challenge to the use of the road.

In the case of *Smith v. Breen*, 26 Wn. App. 802, 614 P.2d 671 (1980), the court found that the use of Smith's property by Breen and his predecessors, and the use of Breen's property by Smith and her predecessors, had ripened into mutual easements by prescription. Both Smith and Breen had an equal right to use the roadway because both had acquired a prescriptive easement.

Chapter Summary

- An estate is an ownership interest in property that is or may become possessory. The highest and best interest is the fee simple. There are two types of fee simple estates: the fee simple absolute and the fee simple defeasible.
- A defeasible fee may end if certain events occur or conditions are not met. A defeasible fee may be determinable or conditional.
- The duration of a life estate is measured by someone's lifetime. A life estate based on someone else's life is called a life estate "pur autre vie." The person who will receive the property when the life estate ends has an estate in remainder or an estate in reversion. Today, trusts are used more frequently than life estates.
- A leasehold estate is a non-ownership, possessory interest in property. There are three types of leasehold estates: the estate for years, the periodic tenancy, and the tenancy at will. The tenancy at sufferance is not a true leasehold estate.
- An encumbrance is a nonpossessory interest in real property. Encumbrances may be nonfinancial or financial in nature.
- Easements may be appurtenant or in gross. Creation of an easement may be express, implied, by dedication, by condemnation, by estoppel, or by prescription.
- A license is similar to an easement but is not considered an interest in property. A license is usually more temporary than an easement. An encroachment is a structure or object that extends over the property line onto an adjacent property.
- A lien is a financial interest in property that gives a creditor the right to have the property sold upon default and the debt paid out of the sale proceeds. A lien is either specific or general, and either voluntary or involuntary. Some examples of liens are mortgages, deeds of trust, construction liens, judgment liens, and tax liens.

Checklist of Problem Areas

Real Estate Licensee's Checklist

- ❑ When taking a listing, determine whether the sellers own the property in fee simple absolute. Although they almost certainly do, it's not out of the question that they have a defeasible fee or a life estate instead. If the sellers aren't sure, check their deed for language that could indicate that they have less than a fee simple absolute estate.
- ❑ Besides the lien for annual property taxes, are there any other liens against the sellers' property?
- ❑ Look for visible signs of easements on the property and ask the sellers whether there are any. If so, how do the easements affect use of the property?

Seller or Lessor's Checklist

- ❑ What liens will have to be paid off out of the sale proceeds?
- ❑ If the property has been leased, does the lease have a specific termination date? If not, how much notice of termination is the tenant entitled to? Does the Residential Landlord-Tenant Act (RLTA) apply to this tenancy? If so, the notice period may be different.

Buyer or Tenant's Checklist

- ❑ Buyers should verify that the seller will be conveying a fee simple absolute.
- ❑ Buyers should also find out whether any easements burden the property. If so, what practical and aesthetic impact do they have on the property, and how do they affect its value?
- ❑ A buyer takes title subject to any valid lease on the property. If a tenant is currently occupying the property, the new owner must comply with the terms of the existing lease. A periodic tenancy can be ended by giving the tenant proper notice of termination, but it's necessary to wait for a term tenancy to expire, unless there are grounds for eviction.
- ❑ Tenants who have a periodic tenancy should be aware of how much notice they're required to give the landlord in order to end their tenancy. Tenants who don't give sufficient notice could be liable for an additional rent payment, even if they have already vacated the premises. Remember that notice of termination must be in writing.

Chapter Quiz

1. The highest and best interest that can exist in land is called a:
   a. leasehold estate
   b. fee simple estate
   c. conditional fee
   d. life estate

2. The type of estate called a fee simple subject to condition subsequent is based on certain express conditions. If these conditions are not met:
   a. the property will automatically revert back to the grantor
   b. the grantor has the "power of termination" but must take legal steps to terminate
   c. the property automatically reverts to the state
   d. None of the above

3. Jean grants Mary a life estate in some property. Upon Mary's death, the property is to pass to David. David is called:
   a. the reverter
   b. a pur autre vie
   c. the remainderman
   d. the primary holder

4. When discussing life estates, waste is defined as:
   a. the years until the life tenant dies
   b. lost revenue while the property cannot be sold
   c. permanent damage or abuse to property which reduces its market value
   d. None of the above

5. Roger rents a house in Yakima. The lease gives him the right to possess the house for an eight-month period. This type of tenancy is called a:
   a. periodic or month-to-month tenancy
   b. tenancy for a specific term
   c. tenancy at will
   d. tenancy at sufferance

6. Alice is renting an apartment on a month-to-month basis. The tenancy is covered by the Residential Landlord-Tenant Act. If Alice wants to move, she must give her landlord:
   a. 10 days' written notice
   b. 20 days' written notice
   c. 30 days' written notice
   d. No notice is required

7. Lori owns a landlocked piece of property, but she has a right-of-way easement to drive across her neighbor's property. This is a(n):
   a. appurtenant easement
   b. negative easement
   c. easement in gross
   d. None of the above

8. The Riverside Power Company has a commercial easement in gross to run a power line through your backyard. The power company is purchased by Mega-Corp Power. The easement:
   a. is automatically extinguished
   b. may not be sold since it is an appurtenant commercial easement
   c. may be sold since it is a commercial easement in gross
   d. may be sold since it is a negative easement

9. In order to acquire an easement by prescription in Washington, the use must be continuous and uninterrupted for:
   a. 5 years
   b. 10 years
   c. 15 years
   d. 20 years

10. Jones owns an easement to walk across Farley's property to reach his mailbox. Then Farley sells his property to Jones. The easement no longer exists because it has terminated through:
   a. merger
   b. abandonment
   c. failure of purpose
   d. destruction of the dominant tenement

11. A mortgage is a(n):
   a. involuntary, specific lien
   b. involuntary, general lien
   c. voluntary, specific lien
   d. voluntary, general lien

12. A construction lien in Washington must be filed within how many days after cessation of work on the project?
   a. 30 days
   b. 45 days
   c. 60 days
   d. 90 days

13. In Washington, one-half of the assessed property tax is due and payable before:
   a. January 1
   b. March 15
   c. April 30
   d. June 1

14. In paying liens:
   a. mortgages always have first priority
   b. lien priority is established by date of recording
   c. property tax liens are superior to other liens
   d. Both b) and c)

15. In Washington, the homestead exemption is:
   a. $30,000
   b. $40,000
   c. $75,000
   d. $125,000