Principles of Real Estate Notes  
*Fall Semester 2021*

# Real Estate legal foundations

Revocable – able to be revoked

Enduring – does not fade/diminish over time

## The 3 Key Rights

1. Possess/exclude – right to exclusive possession
2. Use/benefit – occupy/use/enjoy
3. Convery/dispose – sell/lease/pledge/gift(life)/devise

# Three markets of real estate.

These markets derive the value.

* **User Market** (supply/demand for **physical space** and resulting **rental rates** and **housing values)**
* **Capital Market** (supply/demand for $ and resulting required investor returns)
* **Property Market** (cash flows from user market and required investor returns from capital market determine investment property values)…much more to come!

## 1. User Market

* 1. **Producers** may be builders/developers (for sale) or investor/landlords (for rent)
  2. **Consumers** may be owner-occupants or tenants.

Supply and demand in the user market drive rental rates for investment properties (which drive investment values) and market values for owner-occupied properties.

**User Market all about supply & demand**

User need specific property **types and locations**…

* Types: residential/commercial/industrial (“food groups”)
  + Sub-types: single/multifamily residential; office/retail commercial; distribution/manufacturing/flex industrial
* Location: **Real Property Immovable!**
  + Every property is unique -> **“Heterogeneous”** Product
  + Values vary by location -> “**highly segmented”** markets (i.e. localized)
    - Cf. **homogenous products (**not unique and **integrated markets** (easily imported/not localized) (e.g., gas, autos, appliances, etc.)

**Location, location, location…**

All about access…

* **Literal access** (ingress/egress, topography, views…i.e., tangible attributes/contraints)
* **Figurative** access (customers, employees, suppliers, services, amenities, transportation…i.e., intangibles we want/need in relation to our use of the property)

*Figurative access: Demographics*

*Literal Access: how easy it is to get to it. (right turns v. left turns)*

Soft-Goods Box retailers seek out Anchor businesses (like Safeway, Walmart)

* Michaels, Office Depot, dicks, petsmart, bed bath and beyond.

Anchor businesses raise the property value of other nearby commercial rentals.

* So, every property is unique with a unique value
* Proof: legal remedy of secific performance = the right to sue for the property rather than money damages
  + **Buyer** automatically has the remedy of specific performance because $ can’t make the buyer whole because the buyer can’t buy an exact replacement property (cf. homogenous product…e.g., autos, etc.)

## Capital Market

Capital = $

* Real estate **requires large amounts of $**
* **Investors** with $ looking for investment opportunities
  + RE **does well competing for $** with other investments…
    - **Large amounts** relative to collateral ($$$)
    - **Long payback** periods (“amortization period”)
    - **Low interest** rates (%)
* Includes **private** and **public** **sources**
* Forms of capital: **equity (owner)** and **debt (lender)**
* **Equity** investor’s **return** -> **property cash flows** (sales/rents)
* **Debt** investor’s **return** -> **loan payments** (principal/interest)

### Sources of Capital

* Public Sources
* Capital invested in **publicly traded entity** (i.e., shares)
* **Low cost, Highly liquid, efficient** transaction (easy to buy/sell)
* **Forms…**
  + **Equity**: real estate investment trusts a/k/a “REIT”)
  + **Debt**: REITs and mortgage-backed securities)

### Private sources

* Capital invested in **private** **entities** (“syndication”I”joint venture”)
* **High cost, illiquid, inefficient** transaction (time and $
* **Forms…**
  + **Equity:** individuals, private firms
  + **Debt**: individuals, private firms, banks, Institutional Inestors (e.g., insurance companies, pension funds)

## Property Market… deferred to when we study investing.

# Government sector…

Levels of government and respective influence…

* **Local** – cities/counties have the **greatest influence** (land use and construction regulation, infrastructure/services)
* **Federal** – limited but important influence (taxation, finance, and environmental regulation)
* **State** – similar to Fed; however, primary in regulating professions (e.g., brokerage, appraisal, etc.)
* **Enables/influes the user/capital markets**
* **First/foremost, private property rights**
* **Lots of regulations on land use, building standards, etc.**
* **Provision of services and public**

# Easements:

**Exclusive easements**

**Non-processionary**

**Easement Appurtenant** – It benefits a nearby or adjacent parcel. Runs with the title, attaches to it, Can’t be sold or transferred. Ask, who owns this easement? Are they nearby?

**Easement In Gross** – A grant of permission. Typically recreational, such as to snowmobile. Does not have to be nearby or adjacent. Can be sold, gifted, left to someone when they die. A grant of permission.

A **license** is like a ticket to a game, can be revoked arbitrarily.

**Affirmative –** an allowance TO DO something.

**Negative** – agreement owner of parcel will NOT do something. E.g. will never build an apartment building, or turn it into a parking lot. Conservation as well.

**Subsurface mineral estate** – can sell land underneath the surface. They in essence become your neighbor, but below you.

09/15/21

Insert chart1.2.27 (comparing estates and easements

FANTASTIC LATTICEWORK STUDY CHART!

# Restrictive Covenants

Rules to play nice on the playground.

**Non-possessory interest #2** (generally no possession at all!)

**Private restrictions/obligations** intended to **minimize negative spillover effects, enhance use/enjoyment** and **values.**

**Common Restrictions…**

* Architectural standards (size, design, materials, colors, height, etc.)
* No RVs, boats and other “toys” in view
* Control over outside/visible areas generally
* Limitations regarding pets and other animals.

Common Obligations (affirmative)

* Submit architectural plans
* Animals must be on leashes

## Creating restrictive covenants (includes HOAs)

* In a deed at time of transfer (“deed restriction”)
* E.g., no alcohol or only single-family residential use
  + Cf., fee simple conditional (reverter)
* Grantor reserves the covenant and holds the right (pencil)
* Affects only that property
* For an **entire subdivision** (condos, residential lots, etc.) by a **separate instrument** created by the owner/developer at time of **subdivision** “a/k/a “**Declaration”** a/k/a “**Covenants**” a/k/a “**CC&Rs”)**
  + When a piece of land is subdivided, pencils can be withheld or controlled for all the lots.
  + All those withheld rights are then shared **appurtenant** by all the individual owners.
  + They could be changed with a super majority vote (declaration will specify how they can be influenced)

## Enforcing restrictive covenants

Private!... enforcement by civil court… not city/police

* Remedy: a court “injunction” (you must do, or stop doing, something. Not a fine or fee) compelling conformance
* HOAs may also impose fines, etc. if provided within CC&Rs

Enforcement only by **parties with interest** in affected property

* Deed restriction: **grantor or grantor’s successor**
* Declaration: all **interest holders** of the **affected properties**
* Courts **reluctant to enforce** if delayed enforcement
  + CO: **1 year statute of limitations** (must enforce rule within 1 year or house stays pink)

# Liens

* Non-possessory interest #3 (again, no possession)
* Secures/collateralizes performance of an obligation (e.g., $)

Two Types:

* General liens: Arise from events **unrelated** to the property and **involuntary** (imposed pursuant to low)…
  + Judgement liens (for court awarded damages)
  + Income tax liens (for non-payment of income taxes)
* Can force sale of the debtors real estate to pay lawsuit judgement.

Specific liens: Arise from **ownership and use** of the property and either **voluntary** or **involuntary…**

* Mortgage liens (voluntary)
* Mechanic’s liens (involuntary)
* HOA liens (involuntary)
* Property tax liens (involuntary)

**Priority** of multiple liens 🡪 first in time, first in right

# Co-ownership of property rights

Serveralty – mean individually

* If you are severalty liable with your 5 roommates, and all 5 skip town, your landlord could decide to sue you for ALL the rent.

Two forms of co-ownership

* **Indirect** co-ownership using **legal entities…**
  + Partnerships, limited liability companies, corporations, trusts are “**legal person´🡪** legal status to own property, etc.
  + Individual owners/persons **own the entity directly**
    - As partners, members, shareholders, beneficiaries
  + Entity owns the property 00 individual owners/persons **own the property “indirectly”** via the entity
    - Property rights controlled by entity’s control structure (good thing)
  + Entity liable for property related liabilities providing protection for individual owners/persons
* **Direct** co-ownership with 2+ owners on the deed/title
  + Individual owners/persons **share ownership directly**
  + Individual **owners/persons liable** …

## Direct Co-Ownership

Multiple owners (2+ owners on the deed)

Cannot control what they do with their rights to the property.

* Undivided interests in (1) possession/exclusion and (2) use/benefit
* No distinction in space or time… every owner may possess/use all the property all the time
* Regardless of relative ownership interest
* Cannot obstruct others possession/use
* No control over possession/use by others

Bad for investment/business purposes

* No control -> (1) possession/exclusion,   
  (2) use/benefit or (2) convey/dispose!

Nature of interest to **convey/dispose** ($) and consequences of individual owner conveying/disposing **separately** from others **depends** on form.

## Tenants in Commons

* **Default form** of direct co-ownership if not otherwise provided in deed.
* **Undivided interests** in (1) possession/exclusion and (2) use/benefit (**always)**
* **Owners can sell, lease, etc. his/her interest** without permission of, or liability to, other owners (**always)**
* Interests to (3) convey/dispose ($) are separate and distinct
  + Divided pie chart w/ each owner holding **separate interests** (bundles)
    - Called separate “titles”
  + Individual owner conveying/disposing his/her interests does not change the form of co-ownership
  + Full inheritability

## Indirect Co-Ownership

Such as:

* General Partnership
* Limited Partnership
* Limited Liability Co.
* Corporation (co-op)
* Trust

## Direct Co-Ownership

Deed has multiple peoples names on it

* Undivided interests in (1) possession/exclusion and (2) use/benefit.
* Able to (3) convey/dispose without permission of, or liability to, other owners (e.g., sell, lease, pledge, etc.)
* Full inheritability.
* All the rights are divided and can be sold or obtained in those separately owned divided segments. (everyone has their own bundles)

## Joint tenancy (w/ Right of Survivorship)

Has to be expressly created, deed has to say it “as joint tenants” or will default to “tenants in common”.

* “Right of Survivorship”? 🡪 Big difference. Upon death, surviving joint tenants continue on. Interest ends on death. (Lets go of bundle)
* No inheritability!
* Its done when you want the person to inherit it IS the person you’re joint tenants with. Its for “Certain and expedient”

## Condominiums (“Condos”)

* Individual condo units owned separately by owner(s)
  + Defined by **demising** walls/ceilings/floor (cf. air/subsurface rights)
  + **Air rights!** (cf. **townhomes** -> ownership of land under unit)
    - Condos can be stacked; townhomes can’t
* Common elements (everyint outside unites) owned as **teants in common**  by all unit owners (appurtenant to units)
* Created by **condo declaration + map** (3-dimensional survey)
  + Declaration defines complicated rights/obligations -> major impact on bundle of rights (owner’s -> smaller; shared -> bigger) and **value** (condos lowest $ value per sf -> bundle = value!)

## Metes and bounds concluded:

N 89’10’09’ E  
 65.68ft

Surveyer is facing N, turns 89 degrees E, 10’minutes’09 seconds (not sure what that means) Then that boundary length is 65.68ft long.

Then do it all again, for every boundary length.

Its just a compass guided walk-through of the property boundaries.

### Recorded Plat Map

* A **recorded metes and bounds survey** with each **separately surveyed parcel** identified by a **name**
  + E.g., “Lot 1, Block 2,” “Parcel A,” “Outlot B,” etc.
* Once the plat is recorded in the public record, **conveyances reference the plat and parcel names**
  + Example: Lot 3, Block 5, Forest Glen Subdivision, City of Boulder, Couty of Boulder, State of Colorado.
* Used for **single parcels or entire subdivisions**
  + Recorded plat maps often identify and convey public rights-of-way, utility and other easements, outlots for storm water detention, open spaces, etc.

### PLSS

(Public Land Survey System)

* a/k/a U.S. Gov’t. Rectangular Survey System
* Rapid expansion into the **Western Territories** following the Revolutionary War required an **efficient means of surveying/conveying** vast lands.
* Beginning in 1785 developed this new system
* Each survey area has two axes as references…
  + Principal meridian (n/S; vertical)
    - Name of the PM identifies the survey area
  + Baseline (E/W; horizontal)

# Government Regulation of Real Estate

Gov’t intervention essential to markets

* Incomplete information…
  + Unknown/uncertain **quality** and **safety** of **existing structures** (e.g., building standards…need for **building codes controlling design/construction**
* **Spillover** effects…
  + **Externalities** (e.g., spillover effects from traffic, noise, light, etc., severely impact neighbors… need for **land use regulations controlling impacts)**
* **Uncertainty of Surrounding uses…**
  + Risk of **detrimental neighboring uses** makes assessing and quantifying risk impossible (e.g., can’t value…need for **zoning controlling use**)
* Uniqueness of location…
  + Public infrastructure/services often must go in specific locations (e.g., monopolistic effect…need for **eminent domain/condemnation controlling pricing**)

Police powers to regulate land use…

* US Supreme Court: Building/land use regulation is a legitimate exercise of states’ “police powers” -> to Preserve and Protect health, safety and welfare
  + Regulatory laws must serve a **legitimate public interest**
  + **Cannot go farther** than **necessary** to address need
  + Law **meeting those test,** though they depreive owners of property rights, do **not** constitute “taking” requiring compensation unless…
    - Laws that totally deprive an owner of all beneficial use, even if they meet the tests, are deemed **regulatory takings** requiring payment of just **compensation** (US Constitution)
    - Cf. actual takings for **public use** (e.g., govt’l/public uses)

Building Codes/regulations…

* First regulatory intrusion -> Structures (circa 1900)
  + Regulate the Design of structures for safety…
    - Fire: materials, electrical and gas systems, egress (exits)
    - Structural safety: strength/stability
    - Sanitation: water, sewer, heating and air quality
* Constantly Evolving
  + Design: hurricanes, earthquakes, etc
  + New tech
  + Changing perception of needs
  + Accessibility
  + “green/sustainability”

Zoning

* Separate/isolate **land uses/densities** to maximize compatibility and thereby **minimize negative spillover effects**
  + By use classification
  + By Densities/impacts within classification (e.g., low vs. high density residential and low vs. high impact industrial) Like single family being separated from apartment complexes.
* Zoning Districts and map
* USR (Use by special review)
* Uses with unique impacts on surrounding properties require case-by-case approval (hospitals, churches, cemeteries, adult uses, dispensaries, etc.
* Non-conforming uses (pre-existing “grandfathered” uses)
* Variances (compelling need for exception) e.g. applying for a variance to allow you to build your house 5ft from the property line instead of 10ft as is typically required
* Planned Unit Development (“PUD”) allows customized zoning/land use per negotiated agreement… commonly used for mixed-use projects due to limits of conventional zoning

Suburbanism vs. new urbanism

**Suburban**

* Separated uses & uniform densities
* **Automobile oriented**
  + Garages are king
  + Wide/unobstructed streets
* Cul-de-sacs & curves
* Large lots w/ private yards/recreation
* Result: **urban sprawl**characterized by lower densities and homogenous uses and users

**New Urban**

* Mixed uses & densities
* Public transportation and pedestrian oriented
  + Auto unfriendly (restricted)
  + Minimize garages/parking
* Narrow, straight, grid streets
* Small lots w/ shared open spaces

Enviromental Assessment  
step 1: Phase 1 EA

* Search historical records
* Site inspecgtion
* Noninvasive (no testing)

Step 2: Phase II EA

* Invasive tests (air