

Chapter 1

Real Estate Investment: Basic Legal Concepts

Acknowledgement: These slides were developed in part from material originally provided by *McGraw-Hill Companies*.

Property Rights and Estates

- Real property vs. personal property
 - Real: Land and attachments
 - Personal: Movables and intangibles
- Estate: All that a person owns
 - Based on Rights
 - Possession and use of real estate
 - Rights can be separated and conveyed to other parties
- Estates
 - Estates in Possession (typical)
 - Future Estates: Not yet in Possession

Estates (*rights*)

- **Estates in Possession** (*Possessory rights*)
 - Freehold
 - Leasehold
- Freehold examples
 - **Fee Simple** (most complete form of ownership)
 - Life Estates
- Leasehold Examples
 - Estate for Years (typical commercial lease)
 - Periodic Tenancy or Estate from Period to Period (months, years)

Terminology

- Fee Simple *Estate* (simplest most complete)
- Leased Fee *Estate* (subject to leases – ie. an owner/landlord)
- Leasehold *Estate* (the tenant's rights)
- Nonpossessory Estates: (Future Estates – somewhat rare)
 - Reversion (perhaps due to condition)
 - Remainder (future, say after a “life estate”)

Additional “Interests”

- A right or claim on real property, its revenues, or production.
 - A common example of an interest is when an owner of real estate *pledges* or *encumbers* or *mortgages* his property as a condition for obtaining a (mortgage) loan. The lender is said to have a *secured interest*.
 - A *lien* is a secured interest for a debt
- An *easement* is a nonpossessory interest in land. The right is for the use of the land for a special purpose.
 - Examples include rights of way for road access and utility lines.

Summary: Ownership rights can be divided or encumbered such that the owner has less than a fee simple interest.

Title Assurance (getting comfortable with your set of rights)

- The Meaning of Title
 - Meaning of “title” not always clear
 - Quantity/quality of Rights Conveyed
 - Abstract of Title
 - Title Chain
- Title Assurance
 - How do you know you have “good” title?

Title Assurance

1. Trust the seller – who provides a Deed
 - Covenants in the “Deed”
 - (Deed is the document that **conveys** title)
 - Different “qualities” of deeds (*Slides follow*)
2. Due diligence search
 - Abstract and legal opinion
3. Title Insurance (*contrast with Title Assurance*)
 - Insurance

1. Title Assurance – **Deeds** (used for conveyance/transfer between a Grantor & Grantee)

- Deeds with full warranties
 - **General Warranty Deed** (highest quality)
 - Covenant that the grantor has good title
 - Covenant that the grantor has the right to convey the property
 - Covenant to compensate the grantee for loss of property or eviction as a result of a superior claim
 - No encumbrances on title except those noted

Title Assurance - Deeds

- Deeds with limited or no warranties
 - **Special Warranty Deed**
 - Limits the covenants to the ownership duration of the current grantor.
 - No guarantees on the ownership of prior grantors.
 - Bargain and Sale Deed
 - Conveys property without seller warranties
 - Sometimes called an “as-is” deed
 - Quitclaim Deed
 - No Covenants
 - The least protection to the grantee
 - Grantor conveys whatever right “may exist”

Title Assurance - Deeds

- Deeds Executed by Courts
 - Sheriff's Deed-Trustee Deed
 - Bargain and sale deed received by a buyer from a foreclosure or other forced sale by sheriff or trustee
 - No warranties are added
- Contrast:
 - Deed of trust (subsequent chapters on mortgage financing)

2. Title Assurance – Due Diligence with Abstract

- Abstract & Opinion
 - Title search
 - Study of relevant records
 - Lawyer's opinion on title
 - Is it good and marketable?
 - Are there any **clouds on title**?
 - Is there a break in the chain of title?



3. Title Assurance – Title Insurance

- Title Insurance
 - One time premium
 - Elimination of risk for *unseen hazards* in the public record
 - Risk is spread among many property owners
 - Owners' Policy
 - Insures the interest of a new owner
 - Lender's Policy
 - Insures the interest of the lender

Title Insurance

Why Title Insurance and not Abstract and Opinion?

1. Definite contract liability to the premium payer
2. Reserves sufficient to meet insured losses
3. Supervision by the state
4. Protection to the policyholder against financial loss for any kind of title defect, disclosed or hidden

While an abstract and opinion method may still be used because of cost considerations, in general title insurance is used. As a general rule, **lenders will require that a buyer use title insurance.**

Recording Acts

- Government undertakes record-keeping task
- Recording documents protects the interest of the owner
 - Timing of the recording matters
 - Lien priority usually established by time of recording
- **Constructive Notice** – legal concept
 - A person is deemed to have whatever information is in the public record
- **Mechanics Liens** (may not be in public record)
 - May be recorded “after the fact” (usually 60 days)
 - Seller’s affidavit (sworn statement that no liens exist)
 - Lien waiver (requested from contractors & suppliers if applic.)

Limitations on Property Rights

- Government Restrictions
 - Police Power
 - Zoning, building codes, etc.
 - Eminent Domain
 - Right of government to “take” property for public good
 - Depending on the state, government has relatively broad powers on what property they may take possession of through eminent domain and for what purpose.

Limitations on Property Rights

- Private Restrictions
 - Deed restrictions
 - Subdivision restrictions
 - CC&Rs (covenants, codes and restrictions)