

## 6: EXAMINING PROP LAW

- *pers prop*: any prop that isn't real prop/land
- title:
  - legal ownership of prop
  - highest right to prop that a person can acquire
  - *possession*: having control or custody of prop, but not necessarily title/ownership
- 3 features of ownership
  - right to exclude others from use/enjoyment of prop
  - right to pass valid title of prop
  - obligations of ownership (ex: pay taxes, use prop in way that doesn't interfere w/ others' rights)
- intellectual prop rights
  - (legal entitlement attached to intellectual prop)
  - copyrights
    - exclusive right to copy or reproduce a work, except for fair use (teaching, research, commentary)
    - factors used to define fair use
      - purpose of use
      - nature of work
      - amt & substantiality of portion used
      - effect of use on works' value
      - extent to which the use might deprive copyright owner of financial benefit
    - for works created during or after 1978, copyright lasts 70 yrs after date of author's death
  - trademarks (ex: slogan, logo, product names)
  - trade secrets (ex: secret recipe)
  - patents
    - exclusive right granted by fed gov to own & control a new, useful, and non-obvious invention
    - lasts 17 yrs
    - **cannot** be renewed
- accession
  - increase, addition, or improvement to prop that results in increase to prop value
  - usually is a result of a process or transformation
  - examples:
    - livestock produces offspring
    - cut down tree & turn it into lumber
    - painting house
  - owner of original prop usually owns accession too, unless someone took & changed prop w/o knowing it had an orig owner
    - if prop is taken innocently:
      - compare value of new good to old good
      - if very disproportionate, innocent party might be allowed to keep finished goods if they reimb orig owner for value of orig goods
- confusion
  - when goods owned by diff owners are intermingled in a way that it's impossible to tell them apart
  - if intermixture was intentional or fraud, innocent party gets title to wrongdoers portion
  - if intermixture was innocent/accidental, parties jointly own entire mass in proportion to their interests

- gift
  - voluntary & gratuitous transfer of prop w/o consideration
  - 3 elements
    - donative intent (**present** intent to donate)
      - promise to make future gift is **not** enforceable
    - **delivery**
      - donor must give up all control & possession
      - donee must assume control & possession over item
    - acceptance (including burdens of ownership such as paying tax)
- *bailment*:
  - any situation where an owner gives temporary possession to of prop to someone else
  - *bailor*: original owner
  - *bailee*: person taking temporary possession
  - 3 elements:
    - transfer of possession **w/o** transfer of title
    - bailee's acceptance of bailed prop
    - bailee's agreement to deliver the prop to a designed 3<sup>rd</sup> party or back to bailor
  - bailee's rights/duties
    - if for **bailor's** sole benefit
      - ex: you ask someone to watch your car while you're on vacation
      - bailee can use/handle prop only to extent necessary to preserve/protect prop
      - owes only slight degree of care (if dmg foreseeable & bailee could've prevent w/o substantial trouble or expense)
    - if for **bailee's** sole benefit
      - ex: you borrow someone's truck b/c you are moving
      - right to use of prop is limited to what bailor intended to let bailee use prop for
      - extraordinary degree of care
    - if for **mutual** benefit
      - ex: you rent car from Avis (you get to use car, Avis gets to make money)
      - bailee can only use prop as specified in agreement/contract
      - reasonable degree of care
    - **possessory lien**:
      - right to retain possession of bailed prop as collateral
      - can be asserted by bailee if compensation wasn't paid
    - bailment contract can extend/limit liab for ordinary neg, but not willful or wanton misconduct
    - bailee has insurable interest, but is **not** required to get ins unless by law or contract
    - bailee must surrender prop on request, unless bailment is for specified time period
    - bailee's attempt to sell goods or cause extensive dmg terminates bailment & entitles bailor to immediately recover goods + repair/replacement costs
  - bailor's rights/duties
    - that prop is reasonably fit for purpose
    - reasonable inspection of goods for defects & to notify bailee beforehand of known defects
    - **not** liab for bailee's negligent use of bailed prop, except in negligent entrustment
      - ex: giving keys to drunk person

- real property ownership
  - refers to land & everything in/on/above
  - types of ownership
    - fee simple: full ownership w/ unconditional right to transfer/dispose of it
    - life estate:
      - entitled to possession & income for duration of a specific individual's life
      - what happens to prop at end of lifetime is predetermined
    - concurrent estates (ownership by 2+ people)
      - joint tenancy
        - all parties have **equal** shares
        - if someone dies, their share gets split to remaining owners
      - tenancy by entirety (joint tenancy, but specifically for a husband/wife)
      - tenancy in common
        - parties can have unequal shares
        - if someone dies, their share stays separate & can be passed down to heirs
      - community prop (spouses automatically get ½ interest in any prop acquired during marriage)
    - coop ownership
      - a corp holds title to prop & coop owner purchases stock in corp in exchange for long-term lease for a certain apartment
      - typical duties of corp:
        - arrange for financing
        - construct the bldg
        - operate & maintain the bldg
        - collect monthly assessments/fees to pay mortgage & prop expenses
      - (+) provides for operation/maint by someone other than you, while still guaranteeing your right to occupancy for as long as desired
      - (-) if you want to sell your share, finding buyer can be difficult
      - (-) if other tenants do not keep up their payments, creditor can foreclose on prop
    - condo ownership (individual ownership of a unit plus an undivided interest in common elements)
- real property sales
  - vocabulary
    - deed: legal doc that actually transfer title for real prop
    - vendor: party selling their real estate interest
    - vendee: party buying a real estate interest
    - grantor: party giving title to someone, after sale or as a gift
    - grantee: party receiving title
  - 3 types of sales
    - warranty
      - general
        - grantor has valid title
        - no one else has better title than grantor
        - guarantees there are no encumbrances (loans, prior claims) on prop at all
        - i.e., if you buy prop & anyone else then claims they have stake in it, you can sue seller

- **special**
  - grantor has valid title
  - guarantees there are no encumbrances created since grantor took the title (no promises that prop is free of **prior** encumbrances)
  - i.e., if you buy prop & anyone else then claims they have stake in it, you can only sue seller if that person's claim was dated after seller initial owned prop
- bargain & sale
  - grantor has valid title
  - **no** warranties against someone having a better title
  - **no** warranties against any encumbrances
  - i.e., if you buy prop & anyone else then claims they have stake in it, you can only sue seller if it turns out seller had no right to sell b/c they never legally owned prop
- quit-claim
  - **no** warranties whatsoever
  - if someone asserts rights, grantee has **no** recourse against grantor
- requirements for sales deeds
  - in writing (per statute of frauds)
  - grantor must be legally competent, have their name on deed, and sign deed
  - names grantee
  - states consideration
  - contains words that specify transfer of prop is occurring
  - contains description of prop
  - dated
  - contains paragraph on who transferred prop to grantor, date of transfer, and location of recorded copy of deed
  - (in some states) grantor's signature under seal
  - (in some states) witness to grantor's signature
  - (in most states) acknowledgment (formal written statement by public official, such as notary, confirming grantor appeared before him/her to transferred title voluntarily)
  - deed must be delivered in order to effect transfer
- recording
  - filing a record of transfer w/ gov
  - gives notice to world that transfer of real prop has occurred
  - if parties dispute ownership:
    - person who recorded will prevail over party who didn't record
    - if neither party recorded deed, person who took ownership more recently prevails
- situations where others might have **financial** interest in your prop
  - mortgage
    - mortgagor (borrower)
    - mortgagee (lender)
    - mortgage refers to actual loan document, which lender holds
    - if mortgagor defaults, mortgagee/lender will seek foreclosure in court
    - even if mortgagor sells prop, they are still liab for mortgage debt unless mortgagee releases them

- trust deed / deed of trust / trust indenture
  - similar to mortgage, except 3<sup>rd</sup> party trustee holds mortgage deed instead of lender
  - refers to secured prop interest that is held by a trustee, to protect lender (beneficiary) until loan is repaid by borrower (trustor)
  - (+) if loan in default, trustee handles foreclosure (not lender)
  - (+) in some states, foreclosure can be done outside of court (saving time & money)
  - (+) facilitates borrowing large sums of money
  - (+) it's easier to sell a bond secured by a trust deed than to sell a mortgage note
  - disadvantages, usually when # of beneficiaries/bondholders is large
    - (-) trustee must ensure all bondholders are paid otherwise trustee is personally liab
    - (-) a minimum # of beneficiaries/bondholders must be involved to complete foreclosure
- land contract
  - parties have a sales agreement, but seller doesn't transfer title until certain amt is paid
  - frequently used when buyers have bad credit or insufficient down pay
  - buyer assumes all burdens of ownership but doesn't hold title
- mechanic's lien
  - lien granted by law to anyone who repairs a specific piece of prop, to secure payment for repairs
  - contractor must show:
    - substantial performance of contract
    - improvement to specific prop
    - specific mention in contract of prop to be improved
  - notice of lien must state:
    - amt claimed
    - claimant's (mechanic's) name/addy
    - type of improvement
    - description of the land
    - owner's name
  - 4 alternatives to determine when mechanic's lien attaches to a prop
    - (most states) attaches on day 1 of any **work started** under **overall** contract
      - subcontractor's rights attach on day 1, even if subcontractor's portion of job is not done until later
      - ex: if project starts Day 1, bank loan signed Day 5, subcontractor starts his portion Day 7 → subcontractor has priority over bank
    - (some states) attaches when contractor does their portion of work
      - contractor would **not** have priority over any mortgage recorded earlier
      - ex: if project starts Day 1, bank loan signed Day 5, subcontractor starts his portion Day 7 → bank has priority over subcontractor
    - lien attaches on date mechanic **makes** contract
    - lien attaches on date of a formal notice filing (if there is a filing sytem)
  - waiver of right to place lien
    - can be made in contract, but state law dictates validity:
      - might not be valid unless contract filed w/ state
      - might be valid only against general contractor
      - might be valid against everyone including subcontractors
    - may be done in part, as work progresses & payments made
  - once debt paid, debtor can clear mechanic's lien

- incidental prop rights (when you may have limited rights to use someone else's prop)
  - adverse possession
    - if you use someone's prop & they don't do anything about it, they may lose right to evict you
    - commonly known as *squatter's rights*
    - 4 elements:
      - had exclusive possession of prop & occupied it in intended manner of prop (ex: squatter lived in residential bldg)
      - possession was open & obvious
      - possession was w/o owner's consent
      - possession was continuous for statutory period
  - rights to what is under, above, and on land's surface (ex: mineral or oil rights)
  - lateral support
    - right to have your **land** supported by adjacent **land**
    - if they excavate land, they are liab for dmg to your **land** (but not things on the land)
  - subjacent support
    - right to have your land supported by earth below it
    - ex: if someone w/ mineral rights digs & your lot collapses, you can sue for dmg
  - water rights
  - fixtures
    - fairly permanent installations or attachments that become part of the bldg/land
    - improvements and betterments:
      - alterations/additions made to bldg by party who doesn't own bldg (ex: tenant)
      - for ins purposes, these become part of leased structure
      - party may lose rights to these to bldg owner
    - factors to decide if something is a fixture
      - article can't be removed w/o major dmg to original prop, **even if dmg can be repaired**
      - specifically constructed or fitted for use in building, or is installed to enable people to use bldg
      - if party who attached item intended it to become part of land/bldg
        - when tenant rents for biz purposes, this test is usually in tenant's favor
        - trade fixtures
          - installed by tenant solely for trade purposes & can be removed w/o permanent inj to land/bldg
          - are removable by law
    - **examples:**
      - baseboard heaters installed and hard-wired into the apartment
      - decorative tile wall panel installed in bathroom
- land use restrictions (when your freedom to use your land however you want might be restricted)
  - incorporeal interests
    - nonmaterial interests in real property (when someone can affect/control your prop use)
      - easement:
        - non-possessory **permanent** right to use another's prop for a particular purpose
        - ex: if Lot A totally blocks Lot B from any rd, Lot B may have easement to go thru Lot A
      - profits à prendre: right to extract substances from soil or take products from soil
      - **seller's restrictions on buyer's use of prop**
      - lease/rental

- license: **temporary** perm to use a prop for a particular purpose
- govt controls
  - zoning
    - exclusionary zoning: prohibiting addt construction, or requiring high standards to build
    - spot zoning: allowing small area to follow totally diff zoning from surrounding area
    - special exception:
      - explicit perm for certain land use w/ certain limitations (ex: church)
      - zone type already allows for this use, but requires applicant to confirm they've met pre-set rules first
    - variances: allowing you to break one or a few rules of your zoning's requirements
      - hardship variance: exception for lots that don't conform to ordinance requirements of zone due to **physical** characteristics of prop
      - use variance:
        - generally allowed if use would benefit general welfare
        - non-conforming use:
          - use that is impermissible under current zoning, but is allowed b/c use was lawful before restrictions took effect
          - i.e., being grandfathered in
  - bldg codes
  - eminent domain:
    - govt right to seize private prop for a public use
    - 2 conditions:
      - land must be used for a public benefit
      - **govt must pay just compensation**
- landlord-tenant relationships
  - types of tenancy
    - tenancy at will:
      - tenant has perm to occupy as long as landlord desires w/ **no** formal term of duration
      - most flexible option
      - very risky for tenant as landlord can end lease w/ very little notice
    - estate for yrs:
      - lease created for a specific time period
      - commonly known as "fixed lease"
      - unless lease explicitly renewed, tenant must move out at end of period
    - periodic tenancy:
      - predefined period (ex: month, quarter) that automatically renews until someone gives notice of intent to end lease
      - ex: month-to-month lease
      - if someone ends lease, tenant has until end of the period to move out
    - holdover tenant: tenant who continues to occupy premise even after lease ends
  - landlord
    - has duty to deliver possession of premise to tenant at lease start date
    - has right to receive rent & recover premise in same condition
    - remedies against tenant's breaches:
      - **eviction** (order of repossession, generally followed by a warrant of removal)
      - **distraint** (take tenant's prop & sell for rent)

- liab for inj to 3<sup>rd</sup> parties:
  - limited to landlord's own neg or for latent defects on premises
  - generally not liab for tenant's actions
  - if landlord forces tenant to sign waiver of liab, waiver doesn't extend to 3<sup>rd</sup> parties
- tenant
  - has duty to pay rent & return premise in same condition
  - has right to occupy premise for agreed time period
  - does **not** need to pay rent if this happens sequentially:
    - tenant demanded landlord to correct a situation
    - landlord didn't correct w/i reasonable time
    - tenant left premise at end of reasonable time
      - tenant choosing to stay on premise may constitute waiver of right to withhold rent
- ins pol is a type of intangible prop