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CHAPTER 6

REAL PROPERTY

OWNERSHIP AND INTERESTS

Real property ownership involves not only the identification and valuation of a variety of different rights, but also the analysis of the many limitations on those rights and the effect that the limitations have on value. Some limitations on ownership, such as expropriation, are public while others such as title or deed restrictions are private. Holding a form of ownership in real property means having an interest in that real property. This chapter examines the bundle of rights theory, the types of real estate ownership interests, and the various forms of property ownership. Chapter 29 discusses the valuation of partial interests.

THE BUNDLE OF RIGHTS

The most complete form of ownership is the fee simple interest – i.e., absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the four powers of government: taxation, expropriation, police power, and escheat. These powers are discussed in detail in a later section of the chapter. Although fee simple interest represents the most complete form of ownership, often an appraiser will be asked to appraise something less than the fee simple interest, i.e., a partial interest or a fractional interest.

The bundle of rights concept compares real property ownership to a bundle of sticks. Each stick in the bundle represents a separate right or interest inherent in the ownership. These individual rights can be separated from the bundle by sale, lease, mortgage, donation, or another means of transfer. The complete bundle of rights includes the following:

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• The right to sell an interest
• The right to lease an interest
• The right to occupy the property
• The right to mortgage an interest
• The right to give an interest away

Ownership of the fee simple interest is equivalent to ownership of the complete bundle of sticks, while one or more of the sticks (or a portion of individual sticks) can represent a partial interest in a specific property (see Figure 6.1). Each individual right in the bundle has some potential value; if any or all are removed from the fee simple interest, one or more partial interests are created and will have to be valued.

A fee simple interest is subject only to the limitations imposed by the four powers of government. Although many appraisers state in their appraisals that the interest being valued is the fee simple interest, a true fee simple interest seldom exists. Often the valuation of a fee simple interest is hypothetical and is performed as the first step in the valuation of a partial interest. For example, in the valuation of a leased fee interest, the fee simple interest must also be valued to allow comparison between the two interests, which in turn will allow the appraiser to determine whether a leasehold interest is positive or negative. Since all partial and fractional interests are “cut out” of the fee simple interest, the appraiser must have an understanding of the fee simple interest in a property prior to appraising a fractional or partial interest.

PARTIAL INTERESTS IN REAL PROPERTY

Partial interests can be created in several ways:

• Economically
• Legally
• Physically
• Financially

Figure 6.2 illustrates alternatives an appraiser must consider when identifying the real property interest being appraised.

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Economic Interests

The most common type of economic interest is created when the fee simple interest is divided by a lease. In such a circumstance, the lessor and the lessee each obtain partial interests, which are stipulated in contract form and are subject to contract law. The divided interests resulting from a lease represent two distinct but related interests: the leased fee interest and the leasehold interest. Additional economic interests, including subleasehold (or sandwich) interests, can be created under special circumstances.
Leased Fee Interests

A leased fee interest is the lessor’s, or landlord’s, interest. A landlord holds specified rights that include the right of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the lessee (leaseholder) are specified by contract terms contained within the lease. Although the specific details of leases vary, a leased fee generally provides the lessor with the following rights:

- Rent to be paid by the lessee under stipulated terms
- The right of repossession at the termination of the lease
- Default provisions
- The right of disposition, including the rights to sell, mortgage, or bequeath the property, subject to the lessee’s rights, during the lease period

When a lease is legally delivered, the lessor must surrender possession of the property to the tenant for the lease period and abide by the lease provisions.

The lessor’s interest in a property is considered a leased fee interest regardless of the duration of the lease, the specified rent, the parties to the lease, or any of the terms in the lease contract. A leased property, even one with rent that is consistent with market rent, is appraised as a leased fee interest, not as a fee simple interest. Even if the rent or the lease terms are not consistent with market norms, the leased fee interest must be given special consideration and is appraised as a leased fee interest.

Leasehold Interests

The leasehold estate is the lessee’s, or tenant’s, estate. When a lease is created, the tenant usually acquires the rights to possess the property for the lease period, to sublease the property (if this is allowed by the lease and desired by the tenant), and perhaps to improve the property under the restrictions specified in the lease. In return, the tenant is obligated to pay rent, surrender possession of the property at the termination of the lease, remove any improvements the lessee has modified or constructed (if specified), and abide by the lease provisions. The most important obligation of a tenant is to pay rent.

The relationship between contract and market rent greatly affects the value of a leasehold interest. A leasehold interest may have value if contract rent is less than market rent, creating a rental advantage for the tenant. This relationship, in turn, is
likely to affect the value of the leased fee interest. The value of a leased fee interest encumbered with a fixed rent that is below market rates may be worth less than the unencumbered fee simple interest or the leased fee interest with rent at market levels. When contract rent exceeds market rent, the leasehold is deemed to have negative value. However, the contract advantage of the leased fee may not be marketable. Even in such circumstances, the tenant still has the right to occupy the premises and, despite the contractual disadvantage, may have other benefits that warrant continued occupancy. It is also possible that the contract disadvantage imperils the tenant’s business and increases the risk of continued occupancy.

Subleasehold or Sandwich Interests

Normally a tenant is free to sublease all or part of a property, but many leases require that the landlord’s consent be obtained. A sublease is an agreement in which the tenant in an existing lease conveys to a third party the interest that the lessee enjoys (the right of use and occupancy of the property) for part or all of the remaining term of the lease. In a sublease, the original lessee is “sandwiched” between a lessor and a sublessee (see Figure 6.3). The original lessee’s interest has value if the contract rent is less than the rent collected from the sublessee. Subleasing does not release the lessee from the obligations to the lessor defined in the lease agreement. A sublease may affect all the parties, including the owner of the leased fee interest, and such arrangements are common and increasingly upheld by the courts.

A lease contract may contain a provision that explicitly forbids subletting. Without either the right to sublet or a term that is long enough to be marketable, a leasehold position cannot be transferred and, therefore, has no market value. Furthermore, the value of the leased fee interest would likely be diminished in this case because a lessee who no longer has need of the leased premises and is not allowed to sublease the space is likely to default on the lease.

A tenant under a sublease may not have any of the rights of the leasehold interest under the original lease contract. It is also possible that the holder of the sandwich interest may offer various economic benefits that include allowing the new tenant to sublease the property. Thus, the contract between the original tenant and the subtenant may contain provisions that go beyond, but do not violate, the provisions of the original lease.

Legal Interests

Virtually every property is subject to some kind of easement or other legal restriction on use that creates a partial interest. Some are permanent easements, while others

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may only exist for a short time. Often appraisers have to either estimate the value of property subject to an easement or estimate the value of the easement itself. In certain ownership situations, a life estate may be created, which in turn creates several partial interests. Transferable development rights (TDRs) are another type of special partial interest that can be created by legal circumstances, where some or all of a property’s development capability is sold to another (e.g., increase allowable density of a neighbouring property).

**Life Estates**

A life estate is defined as the total rights of use, occupancy, and control of a specified property limited to the lifetime of a designated party. The designated party is generally known as the life tenant and is obligated to maintain the property in good condition and pay all applicable taxes during the term of the life estate. Two interests are created when a life estate is created, and both may need to be valued by an appraiser: the interest of the life tenant and the remainder interest, which acquires the possessory interest in the property upon the death of the life tenant. Life estates can be created in several ways:

- By operations of law
- By wills
- By deeds of conveyance
For example, a fee owner may leave a will that gives land to his widow for her remaining lifetime and, at her death, the land is passed on to their children. Thus, the widow acquires a life estate and functions as a life tenant with the children becoming the remainders. A living fee owner may deed his property to a family member as remainderman and, by the terms of the conveyance, retain a life estate for himself. This practice might eliminate the expense of probating the will after the owner dies, but it may also call for the assessment of a gift tax.

If the life estate generates income, the appraiser may estimate its probable duration from life expectancy statistics compiled in actuarial studies. Once the appraiser established the net operating income from the estate and its duration, an appropriate discount rate can be applied. If the life estate does not generate income, the appraiser may project its future value and then discount this value back to the current date. Because death is certain but its timing is indeterminable, discounting is generally accomplished by applying a safe rate or risk-free rate (the uncertainty of the timing may require the use of a range of years, which would call for a higher discount rate than the safe rate). The discount rate selected also depends on the age and life expectancy of the person who holds the life estate.

Variations exist in life estates. Someone might leave a residential property to a relative to live in for the remainder of his or her life, with the property to transfer to the individual with the remainder interest when the life estate holder dies or ceases to live in the home. In this circumstance, an appraiser might decide to increase the discount rate to reflect the uncertainty that the life estate holder might move from the property years before he or she dies.

**Easements**

An easement is an interest in real property that transfers use, but not ownership, of a portion of an owner's property. Easements usually permit a specific portion of a property to be used for identified purposes, such as access to an adjoining property or as the location of a certain underground utility. Although surface easements are the most common, subterranean and overhead easements are used for public utilities, subways, and bridges. Other easements may prohibit the owner of the underlying fee simple interest from certain uses of the property without giving the owner of the easement any possessory interest in the real estate, e.g., scenic easements and facade easements.

Clearly, a property that enjoys the benefit of an easement gains additional rights, while a property that is subject to an easement is burdened. The easement attaches to the property benefitted and is referred to as an *easement appurtenant*. The property whose owner acquires an easement is known as the *dominant tenement*; the property that is subject to the easement is called the *servient tenement*. Easement rights can be

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**life tenant**

One who owns an estate in real property for his or her own lifetime, the lifetime of another person, or an indefinite period limited by a lifetime.

**remainder interest**

A person who is entitled to an estate after a prior estate or interest has expired; also called remainderman or remainder.
A restriction that prohibits certain physical changes in a historic property; usually based on the property’s condition at the time the easement was acquired or immediately after proposed restoration of the property.

**Transferable Development Rights**

Transferable development rights (TDRs), sometimes referred to as severable use rights, emerged in the real estate industry of the United States during the 1970s. A transferable development right is a development right that is separated from a land owner’s bundle of rights and transferred, generally by sale, to another land owner in another location. Some TDRs preserve property uses for agricultural production, open space, or historic buildings. In this arrangement, a preservation district and a development district are identified. Land owners in the preservation district are assigned development rights, which they cannot use to develop their own land but can sell to land owners in the development district. These land owners can use the transferred rights to build at higher densities than zoning laws in the development district would normally permit.

In Canada, some municipalities allow for the transfer of development rights from a particular site in the form of density. This might arise as part of a heritage preservation arrangement, where a developer rejuvenating a heritage facility would receive bonus density to offset the cost of the heritage preservation effort. The municipality might require the bonus density to be used only on the heritage site, or on other specified sites. Sometimes, the bonus density becomes available for sale and transfer to a particular area, with no specific development site identified at the time of the density grant.

Density transfers have also been allowed where the density is sold to an adjacent development site, thus allowing consolidation of development onto a particular site. In Vancouver, a large high-rise office development, e.g., Park Place, was constructed in
part using density purchased and transferred from an adjacent house of worship, which remains as a low-rise development.

Another situation in which development rights are transferred results from the constrained capacity of an existing utility. For example, consider a community that decides to impose a construction moratorium pending the expansion of its present sewage plant or the building of a new plant. Before the moratorium, a land owner was granted the right to hook up 100 projected single-family residences to the existing plant. A second land owner, however, did not obtain the right to link up his 50 proposed single-family residences to the sewage treatment plant and will have to wait for expansion of the plant’s capacity. The second land owner risks financial loss if he cannot develop the land immediately, so he eagerly purchases the right to link up his 50 residential units to the plant from the first land owner.

Although such rights may vary from province to province, TDRs are generally an interest in real property only as long as they are attached to the land. When they are sold, they become personal property, becoming real property again when they are attached to another tract of land.

**Physical Interests**

Physical interests in real property can be achieved either horizontally or vertically. The most common methods of creating horizontal divisions of real property are through **subdivision** and **assemblage**. In subdivision, a large tract of land is broken down into smaller units, which are then marketed individually. In assemblage (or plottage), two or more parcels of real estate are combined into one parcel and a higher value is created for the assembled parcel than exists for the individual parcels. Consider two adjacent, half-acre industrial sites in an area where one-acre sites are most desirable. The value of the half-acre sites is $200,000 each, but when assembled the one-acre site has a value of $500,000. Conversely, when the market seeks smaller sites, the unit values of larger sites will likely be lower. Most appraisers are familiar with the valuation of horizontal interests, and traditional valuation techniques are usually applicable.

Vertical interests in real property may have to be considered separately by the appraiser in sales, leases, mortgages, and other realty transactions. The most common vertical interests in real property are **sub-surface rights** and **air rights**. A sub-surface right is the right to the use of and profits from the underground portion of a designated property. The term usually refers to the right to extract minerals from below the earth’s surface and to construct tunnels for railroads, motor vehicles, and public utilities. Air rights are the property rights associated with the use, control, and regulation of air space over a parcel of real estate. Both of these fractional interests represent portions of a fee simple estate, and each embodies the idea of land as a three-dimensional entity.

The vertical division of real property is significant because engineering advances have dramatically affected land use and, therefore, highest and best use considerations. The development of steel-framed building construction, the passenger elevator, deep tunnel excavation techniques, and communications technology have
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sub-surface rights
The rights to the use and profits of the underground portion of a designated property; usually refers to the right to extract coal, minerals, oil, gas, or other hydrocarbon substances as designated in the grant; may include a right of way over designated portions of the surface.

air rights
The right to undisturbed use and control of designated air space above a specific land area within stated elevations. Such rights may be acquired to construct a building above the land or building of another or to protect the light and air of an existing or proposed structure on an adjoining lot.

all helped to shape the modern urban landscape. As the density of building in urban areas increases, fewer sites are available for new construction and land values escalate. This trend has produced a growing interest in developing air rights.

Air rights can be sold in fee, with the seller retaining one or more easements for a specialized use such as the operation of a railroad. They may also be subdivided, as when the owner of the fee simple interest sells or leases only the land and air that are to be occupied by a particular improvement. Air rights can be transferred in various ways as well. Often the air rights to one property are shifted to another within the same building zone under legal planning regulations. The transfer of air rights allows developers to adjust the density of land use without putting adverse pressure on owners, neighbourhoods, or districts. This practice underscores the importance of local zoning authorities, which regulate building heights, building functions, setbacks, and other variables involved in the development of air rights.

Financial Interests

The financial aspects of property interests have a major impact on real estate investment practices. The analysis of mortgage and equity components is of particular importance. Mortgage funds are secured debt positions, while equity investments are venture capital. Fee simple, leased fee, and leasehold interests can all be mortgaged, thereby subdividing these interests into mortgage and equity components. Other possible financial arrangements include senior and subordinated debt, sale-leaseback financing, and equity syndications.

Equity Interests

The equity in real property is the owner’s interest after all claims and liens have been satisfied. An equity interest, like a mortgage loan, represents a financial interest in real property. Equity ownership in real property can be legally accomplished in several ways, e.g., as an individual owner, joint owner, partner, or shareholder in a corporation. The legal form of equity ownership does not affect property value in most appraisal assignments. However, an appraiser is sometimes called upon to render an opinion of the value of a specific legal form of equity interest.

For example, an appraiser may be asked to value a limited partner’s equity interest in a partnership that was created solely to make the individual the legal owner of certain limited rights in the real property. Partial interests can have value less than their pro rata share of ownership, especially if the holder of the partial interest does not have any voice in the management or control of the asset. An assign-
ment to value a limited partnership interest may be undertaken to appraise assets for estate tax purposes or for sale or purchase decisions.

**Mortgage Interests**

The purchase and ownership of real property often involves debt capital secured with the real estate as collateral. Mortgage investments have a great impact on real property value and equity yield rates.

**REAL PROPERTY OWNERSHIP**

**Public and Private Ownership**

One major distinction in real property ownership is the difference between private ownership and public ownership. Public ownership of real property takes many forms. Streets and roads, municipal utility systems, and other public facilities such as city halls, prisons, and public works facilities are usually owned by governmental bodies for the benefit of all citizens in a jurisdiction. School districts own land on which school buildings, athletic fields, and other facilities are maintained. Library districts create public libraries. Park, recreation, and conservation entities acquire land for recreation, conservation, and preservation.

Response to public necessity or public demand creates most public ownership. For example, in one community it might be necessary to acquire land for a school using the power of expropriation. In another community, there might be sufficient demand by residents to acquire land for the development of soccer fields using money generated by real estate taxation. Rather than being concerned with the economic issues that are of importance to private owners of real property, a governmental entity often is more concerned with how publicly owned real property, which is usually not subject to real estate taxation, can be used in the best interests of the public.

Police power also regulates land use, and its application can reflect the difference in a property viewed from the perspective of public versus private ownership. For example, a large municipal park might be an ideal location for industrial development, but the zoning imposed through the application of police power will ensure that the park continues to be used for recreational purposes. Also, government regulations will dictate how property acquired by a governmental entity through the process of escheat (i.e., when someone dies intestate) will best benefit the general public.

Although many appraisal assignments involve the valuation of publicly owned real property, most involve the valuation of private ownership interests. As discussed in this chapter, ownership of property can take many forms. The form of ownership is usually selected based on the needs of the owner or owners. For example, a husband and wife might own a single-unit residence in joint tenancy with the right of survivorship. However, a more appropriate type of ownership for a chain of food stores might be as a beneficial interest in a bare land trust or a limited
Public Restrictions on Ownership

In Canada, private ownership of real property rights is subject to certain restrictions, known as the four powers of government:

1. Taxation
2. Expropriation
3. Police power
4. Escheat

Taxation is the right of government to raise revenue through assessments on goods, products, and rights. The Canadian constitution effectively precludes the federal government from taxing real property directly. The right to tax property is reserved for provincial and local governments.
Eminent domain is the right of government to take private property for public use upon the payment of just compensation. This right can be exercised by a government agency or by an entity acting under governmental authority such as a housing authority, school district, park district, or right of way agency. Expropriation is the act or process of enforcing the right of eminent domain.

Police power is the right of government through which property is regulated to protect public safety, health, morals, and general welfare. Examples of police power include zoning ordinances, use restrictions, building codes, air and land traffic regulations, public health codes, and environmental regulations.

Escheat is the right of government that gives the government titular ownership of a property when its owner dies without a will or any statutory heirs.

Private Restrictions on Ownership

Private restrictions on property ownership can limit the use or development of a property and might limit the manner in which ownership can be conveyed. The purchaser of a property may be obligated to use the property subject to a private restriction such as right of way or a party wall agreement. The systems used to register interests in land vary across Canada, and appraisers must have competence in researching the system that applies to individual properties under appraisal.

Under the land registry system of some provincial jurisdictions, usually an appraiser must look into past actions of a property owner or developer to determine if private restrictions currently affect the property. Deed restrictions and subdivision covenants and restrictions are relatively easy to discover: they can be found in deeds recorded at the registry or in information provided by a property owner. Restrictions such as easements and rights of way may be more difficult to uncover. They may only be found in title reports or through a diligent search of public records. Other restrictions such as an unrecorded agreement relative to water rights may be nearly impossible to discover. Under the land titles system of some provinces, a single title status report can be obtained that shows all the claims registered against the title of a property, and that lists some public agency notifications and interests such as easements that benefit the property.
FORMS OF OWNERSHIP

Concurrent Ownership of Real Property

Real estate can be owned by one or more entities. Individual ownership is legally known as ownership in severality. However, individuals can hold ownership under certain legal entities, such as 100% ownership of the beneficial interest in a land trust or 100% ownership of the stock of a corporation that owns real estate. Tenancy is defined as the holding of property by any form of title.

Concurrent ownership includes joint tenancy, tenancy by the entirety, and tenancy in common. Joint tenancy is joint ownership by two or more persons with the right of survivorship. Under this arrangement, each party has an identical interest and right of possession. Upon the death of one joint tenant, ownership is automatically vested in the remaining joint tenant or tenants. Tenancy by the entirety is an estate held by a husband and wife in which neither has a disposable interest in the property during the lifetime of the other, except through joint action. It has the same survivorship provision as a joint tenancy, but tenancy by the entirety applies only to spouses. Tenancy in common is an estate held by two or more persons, each of whom has an undivided interest. In this estate, the undivided interests might or might not be equally shared by the holders and there is no right of survivorship. One tenant in common may sell off an undivided interest without the approval or knowledge of the other tenant or tenants in common.

Legal Entity Ownership of Real Property

In addition to individual ownership, real property can be owned by a variety of different legal entities:

- Land trusts
- Partnerships
- Corporations and companies
- Syndications

Like individuals, these entities can own a fee simple interest or partial interests in real property.

Land Trusts

Trusts are sometimes used as legal vehicles to create partial ownership interests in real property. In a land trust, one or more properties are conveyed by special deed...
to a trustee, which then owns the real property. Either the original owners or some other designated individual or persons become the owners of the beneficial interest in the trust. A trust agreement is established outlining the duties and functions of the trustee. A trustee is usually a separate, specialized company or an independent department of a bank.

A trustee can take no actions other than those specified and allowed in the trust agreement without written permission of the owner or owners of the beneficial interest. For example, in one trust agreement a trustee may be required to manage a property actively and collect rents. However, in another trust agreement regarding a different property, the same trustee will be prohibited from managing the property and collecting rents. One important legal aspect of a trust arrangement is that a judgment against a beneficiary is not a lien against the real estate.

**Partnerships**

A partnership is a business arrangement in which two or more persons jointly own a business and share in its profits and losses. Partnerships are used extensively in real estate acquisition because they pool individual funds for property ownership and operation. Two types of partnerships are prevalent in the ownership of real property: general partnerships and limited partnerships.

In a general partnership, all partners share in business gains and each is personally responsible for all liabilities of the partnership.

One important aspect of a general partnership is that the agreement automatically terminates when a general partner dies.

Limited partnerships have both general partners and limited partners. All partners participate by pooling funds. However, unlike general partnerships in which all partners actively participate in the business of the partnership, in a limited partnership the partners can be either active or passive. General partners are active members of the partnership who manage the business and assume full liability for partnership obligations. Limited partners, on the other hand, are passive members of the partnership. They are not actively involved in the business of the partnership, and their liability is restricted to the amount of their capital contribution. Through a limited partnership, a group of investors can jointly acquire real property that they might be unable to acquire as individuals.

**Stock Corporations**

Like partnerships, stock corporations allow many investors to pool funds to purchase and own real property. However, unlike partnerships, the individual investors in a partnership

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**partnership**
A business arrangement in which two or more persons jointly own a business and share in its profits and losses.

**general partnership**
An ownership arrangement in which all partners share in investment gains and losses and each has personal and unlimited responsibility for all liabilities.

**limited partnership**
An ownership arrangement consisting of general and limited partners. General partners manage the business and assume full liability for partnership debt, while limited partners are passive and liable only to the extent of their own capital contributions.
stock corporation do not hold an interest in the real property; rather, they own shares of stock, usually recognized as personal property. The owner of the real property is the legal entity, the corporation.

A stock corporation may be organized to hold title to a single asset, such as a parcel of real estate, or multiple assets, such as a portfolio of property investments. Ownership of the corporate entity is divided into partial interests by selling shares to an investment group. Any specific stock holding represents a percentage of total corporate ownership. For example, if a particular investor owns 250 shares out of 10,000 total shares issued by the corporation, that investor owns 2.5% of the corporation. This percentage is an ownership share in the corporation, not a percentage of any real property in the corporation.

**Limited Liability Companies**

A limited liability company incorporates features of both a corporation and a partnership. The owners of a limited liability company are members, rather than shareholders or partners. Unless otherwise specified, management is generally vested in the members in proportion to their contributions of capital. Members may separate their right to a share of the company profits from the right to participate in management or to vote on matters affecting the company. These separated rights can then be assigned to a transferee.

**Syndications**

Syndications are another means for selling interests or rights in real property. A syndication creates a private or public partnership to pool funds for the acquisition, development, holding, management, and/or disposition of real estate. Syndications are established when an individual or group purchases interests in real property for the purpose of transferring them to a limited partnership, which in turn sells the interests to investors.

At one time, syndications were popular because the investment value of syndicate shares usually included income tax shelter benefits. Such investments offered small income returns during the early years, when the value of the investment was perceived to lie largely in its income tax benefits, i.e., tax deductions and tax deferrals. However, tax reforms have significantly reduced the use of real estate investments as income shelters.\(^1\)

Although syndications usually involve some sort of partnership, they differ from partnerships insofar as the rights of investors in a syndication are different from the rights of general or limited partners in a partnership. In theory, syndication arrange-

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1. Rules 6.2.9 and 7.10 of Appraisal Standards Rule of CUSPAP require an appraiser identify and analyze timesharing interests arising from real property.

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ments may be simple, but in practice they are often complex because syndications frequently purchase more than real estate, e.g., management services.

**Special Forms of Ownership**

In addition to concurrent ownership and ownership by legal entities, there are several special forms of ownership, including the following items:

- Condominium ownership
- Cooperative ownership
- Timesharing

**Condominium Ownership**

A condominium is a form of ownership of separate units or portions of multi-unit buildings. While residential and retail properties were once the main types of property held in condominium ownership, most property types now exist in condominium ownership, including offices, industrial buildings, retail structures, and even garden plots, marina slips, and undeveloped land where the access roads and utilities are the common property. A condominium unit is a separate ownership, and an individual owner holds title. The unit may be separately leased, sold, or mortgaged. In a traditional condominium, the owner holds title to an individual unit and an undivided partial interest in the common areas of the total condominium project, e.g., the land, the public portions of the building, the foundation, the outer walls, and the spaces provided for parking and recreation. Thus, the owner possesses a three-dimensional space within the outer walls, roof or ceiling, and floors and, along with other owners, has an undivided interest in common areas. In certain condominium projects, limited common elements also exist. In this arrangement, certain common elements – e.g., parking stalls, storage units, plots of surrounding land – are reserved for the use of some, but not all, of the condominium owners. The owners of units in a condominium project usually form an association to manage the project in accordance with adopted by-laws. The expenses of management and maintenance are divided proportionately among the owners, who pay a monthly fee.

**Cooperative Ownership**

In certain areas, cooperative (co-op) ownership of apartments is popular. In a co-op, a stock corporation is organized, acquires title to an apartment building, prices the various apartments, and issues an authorized number of shares at a specified par value. Individual owners purchase shares of stock, with the price per unit determining the number of shares that an occupant must purchase. In cooperative ownership, each owner of stock receives a proprietary lease on a specific apartment and is obligated to make a monthly payment that represents the proportionate share of

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cooperative ownership
A form of ownership in which each owner of stock in a cooperative apartment building or housing corporation receives a proprietary lease on a specific apartment and is obligated to pay a monthly maintenance charge that represents the proportionate share of operating expenses and debt service on the underlying mortgage, which is paid by the corporation. This proportionate share is based on the proportion of the total stock owned.

operating expenses and debt service on the underlying mortgage, which is paid by the corporation. The lease obligates the occupant to pay a monthly maintenance fee, which may be adjusted at times by the corporation’s board of directors. The fee covers the expenses of management, operations, and maintenance of public areas. Since the shareholders can vote their shares in electing directors, they have some control over property conditions.

Cooperatives are less attractive forms of ownership than fee simple ownership for a variety of reasons. It can be difficult to obtain financing based on a cooperative interest, and control over individual units can be less.

In Canada, cooperative ownership is often associated with government subsidy programs aimed at low and moderate-income households. Shares in these projects often have nominal value, due to restrictions arising from the cooperative and subsidy agreements. Provincial and local government restrictions aimed at the preservation of rental housing stock can make creation of a private housing cooperative difficult.

Timesharing

Timesharing involves the sale of either limited ownership interests in or rights to use and occupy residential apartments or hotel rooms. There are two forms of timesharing: fee timeshares and nonfee timeshares. It is imperative that appraisers distinguish between the forms when appraising timeshare projects or analyzing timeshare comparables. In the first form, fee timesharing, the purchaser of a fee timeshare receives a deed that conveys title to a unit for a specific part of a year, thereby limiting the ownership. The purchaser has the right to sell, lease, or bequeath the timeshare. The interest can be mortgaged and title can be recorded. The second form of timesharing, non-fee timesharing, does not convey a legal title in the property. Typically, a purchaser receives only the right to use a timeshare unit and related premises.

There are subcategories for both types of timesharing. The two types of fee timesharing are timeshare ownership and interval ownership. In timeshare ownership, a purchaser receives a deed to a particular unit as a tenant in common. Each purchaser agrees to use the unit only during the time stipulated in the deed. In interval ownership, the ownership period may only last for the duration of the project. At the end of the specified time, the ownership reverts to the interval owners as tenants in common. They then have the option of selling the property and dividing the proceeds, or continuing as tenants in common and renewing the interval estate. Timeshare owners and interval owners pay operating expenses, including a proportionate share of taxes, insurance, and other costs and a fee for common area maintenance (CAM) and management. In many projects, 50 one-week intervals are created; the remaining two weeks of each year are reserved for maintenance and major repairs.
The three types of non-fee timesharing are leasehold interest, vacation license, and club membership. The leasehold interest type of timesharing is essentially a prepaid lease arrangement. A vacation license involves the transfer of a license from the developer to the purchaser, giving the latter the right to use a given type of unit for specified times over the life of the vacation license contract. In the club membership form of ownership, timeshare patrons purchase membership for a specified number of years in a club that owns, leases, or operates the timeshare property. The purchaser receives the right to use a particular type of unit for a specified period during each year of membership.

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2 Under the laws of some provinces, vacation licenses and club memberships are not considered interests in real estate, but personal property.