CHAPTER 6 - REAL PROPERTY OWNERSHIP AND INTERESTS

INTRODUCTION

Ownership involves the identification and valuation of different rights, the limitations of these rights and how they affect the property’s value.

THE BUNDLE OF RIGHTS

- Fee simple is the purest form of ownership, unencumbered by other interests or estates, subject only to the governmental restrictions such as taxation, expropriation, police power and escheat.
- The bundle of rights is the rights a person has when they own property and what they can do with it.
- The bundle of rights include the right to sell, lease, mortgage, donate, another means of transfer or to do nothing at all.
- Each right has some value and if one or more is removed, then a partial interest is created and valued accordingly.

PARTIAL INTEREST IN REAL PROPERTY

Appraisers will appraise the fee simple interest or an interest less than fee (a partial interest). They can be created economically, legally, physically, or financially.

Economic Interests

- The most common economic interest is created when a property is divided by a lease. Both the lessor and lessee each obtain a partial interest, the leased fee and the leasehold interest.

Leased Fee Interests

- The lessor’s or landlord’s interest in the property - the right in a lease contract to grant the lessee use of the property for a certain period of time.
- The lessor has the right to be paid rent, repossession on the termination of the lease, default provisions, and the right of disposition including sale, mortgage or bequest of the property, subject to the lessee’s interest during the lease period.
- Lessor is the landlord. “OR” of lessor is the “OR” of landlord.

Leasehold Interests

This is the lessee’s or tenant’s interest in the property, created by a lease contract giving them an interest in the property for the period of the lease. They may be able to sublease and improve the property if allowed by the lease. The tenant’s main obligation is to pay the contracted rent. If market rent has increased since signing the lease, then the tenant has an economic advantage. The tenant “holds” the lease, hence the term “leasehold”.

Sub-leasehold or Sandwich Interests

The lease may allow the tenant to sublease the premises to a third party for all or part of the remaining term of the existing lease. In a sublease, the original lessee is “sandwiched” between a lessor and a sublessee. Important to read the lease to fully understand its terms and seek legal advice if necessary.
Legal Interests

Easements or other legal restrictions may restrict the use of a property creating a partial interest and may either be for a short period of time or ad infinitum.

Life Estate

- Defined as, *the total rights of use and occupancy of a property limited to the lifetime of a designated party.*
- The designated party is the life tenant.
- The remainderman is the person who acquires the interest of the property upon the death of the life tenant.

Easements

- An easement is an interest in a property that *conveys use,* but *not* ownership, over a portion of an owner’s property.
- They have very *specific uses,* as defined in the agreement, and can be surface, sub-surface, or overhead easements, or a combination of them.
- The property that enjoys the benefit of an easement has gained while the property subject to the easement is burdened. *Easement appurtenant* attaches to the property benefitted. The property that enjoys the benefit of the easement is referred to as the *dominant tenement* while the property subject to the easement is the *servient tenement.*
- They can be *public* or *private* easements created by contract, or by government entities through expropriation.
- Easements have taken away some of the bundle of rights and therefore the property is worth less than market. They could possibly be worth more depending on the easement agreement.
- Appraisers should *search title* to see if an easement is present and how it may affect value.

Transferable Development Rights / Several use Rights

- The development rights are separated from the property and sold and transferred to another land owner in another location who can use it for a higher density development not normally permitted under the zoning laws for that area.
- Used in the preservation of agricultural production, open space or historic buildings.

Physical Interests

- Physical interests can be achieved both horizontally or vertically.
- *Horizontal* is through subdivision and assemblage.
- *Vertical* either sub-surface or air rights which can be sold or leased separately. This is becoming more significant with the engineering advances affecting land use and those highest and best use considerations. An example in Vancouver is the sale by the Christ Church Cathedral of its air rights to the adjacent development of Park Place. The Church received monies for maintenance and the developer was able to build a higher and more dense structure, subject to zoning guidelines. This is a common arrangement in the preservation of historic buildings and different municipalities determine the rules for these transfers.

Financial Interests

Properties can be mortgaged, and so can be subdivided into mortgage and equity components.
Equity Interests

The equity in a property is the owner’s interest after all claims and liens have been paid out and or satisfied.

Mortgage Interests

The purchase and ownership of real property may involve a debt secured with the real estate as collateral.

REAL PROPERTY OWNERSHIP

Public and Private Ownership

- Public ownership is that of roads, sidewalks, utility systems, and other public facilities.
- Private ownership is that of property by private individuals, subject to regulations placed on it by the various levels of government (e.g., zoning, expropriation).

Public Restrictions on Ownership

Private ownership of real property rights subject to those restrictions known as the four powers of government:

1. **Taxation**: the right to property taxes by provincial and local government.
2. **Expropriation**: the right to take property for a public good, subject to reasonable compensation for the taking.
3. **Police Powers**: the right to regulate property for the public safety and protection (building standards, zoning, etc.).
4. **Escheat**: the right of government to take property when there are no rightful heirs.

Private Restrictions on Ownership

- Private restrictions can limit the use, development, or ownership of a property.
- This can be done by easements, right of way, restrictive covenants, party wall agreements, etc.
- These are registered against the property’s title in the Land Title or Registry office.

FORMS OF OWNERSHIP

Concurrent Ownership of Real Property

- Real estate can be owned by more than one entity such as individuals, partnerships, corporations, or trusts.
- When the bundle of rights is owned as separate interests, tenancy is created.
- Tenancy is holding property by any form of title.
- Concurrent ownership includes joint tenancy, tenancy in common, and tenancy by the entirety.

*Joint Tenancy* - the joint ownership by two or more persons with the right of survivorship. Each has the same interest and upon the death of one, ownership automatically goes to the other person(s).
Tenancy in Common – an estate held by two or more persons each having an undivided interest. The interests need not be equal and there is no right of survivorship. One can sell their interest without the other’s approval.

Tenancy by the Entirety - an estate held by husband and wife in which neither has a disposable interest during the lifetime of the other, except by joint action. It is the same as joint tenancy, but only applies to spouses.

Legal Entity Ownership of Real Property

Land Trusts

A special deed transfers the property to a trustee / trustees who become owners of the beneficial interest in the trust. The duties and functions of the trustees are outlined in a trust agreement which must be carefully followed. Note that a judgement against a beneficiary is not a lien against the real estate.

Partnerships

This is a business arrangement where two or more persons/companies jointly own a business and share in the profits/losses. Partnerships can be general or limited.

- In general partnerships, the partners are active and all share the assets and are responsible for all liabilities equally. Liability is unlimited. The agreement automatically terminates on the death of any partner.
- Limited partnerships have both general and limited partners. All the partners participate by pooling funds, but the limited partners are passive in that they do not participate in the management of the business with their liability limited to the amount of their investment.

Stock Corporations

Shareholders own shares in a company and their liability is limited to their share investment. They do not hold an interest in the real property. The owner of the real property is the legal entity, the corporation.

Limited Liability Companies

Limited liability companies combine the features of corporations and partnerships. Owners are members and not shareholders or partners. Management is usually given to the members in proportion to their capital contribution. The rights to profit-sharing, management participation and voting may be separated and are transferable. Not allowed in Canada at this time.

Syndications

A creation of private or public partnerships to pool funds for some specific real estate purpose. Originally set up for tax shelter benefits. Although they involve a partnership, the rights of investors in syndication differ from those of general or limited partners.
Special Forms of Ownership

Condominium or Strata Title Ownership

Each owner holds title to their own unit and an undivided partial interest in common area of the property. Usually defined by local legislation (British Columbia it is the Strata Property Act) as to how the boundaries of the units are drawn up, how the unit entitlement is calculated, how the strata/condominium association/corporation will operate, and the responsibilities of the officers. Owners pay a monthly strata fee allocated for general maintenance and a reserve for major replacements: roof, painting, equipment, etc. Stratas are common in residential, commercial, industrial and mixed-use buildings (i.e., residential and retail/office uses combined). Almost all real estate can be stratified if allowed under the local legislation.

In British Columbia a “condo” is referred to as an apartment type strata unit, meaning a suite in a multi-storey building. A “townhouse” is an attached unit usually with its own entrance and a small backyard area. A “strata warehouse unit” refers to a warehouse unit in a multi-tenanted complex with its own entrance and loading bay doors, either at the front or rear of the unit. A “strata retail unit” refers to a retail space within a shopping mall complex. “Bare land strata” refers to unimproved land, usually subdivided and ready for development.

Cooperative Ownership

A stock corporation acquires an apartment building, prices the various apartment units and issue shares to individuals who occupy the units through a lease agreement.

- The value of the unit is based on the number of shares they must purchase.
- The title is held by the company so individual units cannot be mortgaged; instead, the shares are used to secure a loan.
- Each owner is required to make a monthly payment that represents a proportionate share of operating expense and debt service on the mortgage. These maintenance fees are adjusted by the corporation’s board of directors.
- On a sale of shares, shareholders can veto the sale if the new shareholder is unacceptable to the present shareholders.

Timesharing

This involves the sale of either limited ownership interests in or right to use and occupy residential apartments or hotel rooms. There are two forms: fee and non-fee timeshares.

- Fee-timeshare - the owner receives a deed for a specified part of the year, thereby limiting ownership. The timeshare can be sold, leased or bequeathed. The interest can be mortgaged and title recorded. Value is based on the number of weeks and the time of the year.

Two types of fee-timesharing are ownership and interval:

- In ownership, each purchaser receives a deed to particular unit as a tenant in common with the agreed use stipulated in the deed.
- In interval, the period may only last for the duration of the project. On expiry, the interval ownership reverts to tenancy in common. The option then is to either, sell the property, divide the interests or continue as tenants in common and renew the interval estate.
- Non-fee timeshare does not convey legal title with only a right of use attached to the unit and related premises.
Three types of non-fee timesharing are leasehold interest, vacation license, and club membership.

- **Leasehold** is a prepaid lease arrangement for a certain period of time.
- **Vacation license** allows the right to use a given unit for specific times over the life of the vacation license contract.
- **Club membership**, timeshare patrons purchase a membership for a specified number of years in a club that own, lease or operate the timeshare property.