# Real Estate Law Outline

LESSON 1

Ownership Rights (In Property)

### Real vs Personal Property
- Personal Property
- Real Property

#### Components of Real Property
- Subsurface Rights
- Air Rights
- Improvements
- Fixtures

The Four Tests of Intention
- Manner of Attachment
- Adaptation of the Object
- Existence of an Agreement
- Relationships of the Parties

Ownership of Plants and Trees
- Severance
- Water Rights
- Appurtenances

Interest in Land

### Estates in Land

#### Allodial System

#### Kinds of Estates

#### Freehold Estates
- Fee Simple Absolute
- Defeasible Fee
- Fee Simple Determinable
- Fee Simple Subject to Condition
- Subsequent
- Fee Simple Subject to Condition
- Precedent
- Fee Simple Subject to an Executory Limitation

#### Fee Tail

#### Life Estates
- Legal Life Estates
- Homestead Protection

#### Non-Freehold Estates
- Estates for Years
- Periodic Estate
- Estates at Will
- Estate at Sufferance

Common Law and Statutory Law
REAL ESTATE LAW
LESSON 1
OWNERSHIP RIGHTS (IN PROPERTY)

Types of Ownership

Sole Ownership (An Estate in Severalty) 20
Partnerships 21
    General Partnerships 21
    Limited Partnerships 21
Joint Ventures 22
Syndications 22
Corporations 22
Concurrent Ownership 23
    Tenants in Common 23
    Joint Tenancy 24
Tenancy by the Entirety 25
Community Property 26
Trusts 26
    Real Estate Investment Trusts 27
    Intervivos and Testamentary Trusts 27
    Land Trust 27

TEST ONE 29
TEST TWO (ANNOTATED) 39
A small glossary of key terms is presented at the beginning of each chapter in the Law and Practice Module. Study and memorize these terms. Also study and memorize the glossary of terms in the Colorado Real Estate Manual (Manual).

**Bundle of rights**—An ownership concept describing all those legal rights that attach to the ownership of real property, including the right to **control, use, possess, encumber, exclude, and dispose** (sell, lease, or will), and **enjoy** the property. Property is a thing or things owned—it is ownership. It may be a piece of land or real estate. Property is also the legal right to control, use, possess, enjoy, encumber, exclude, and dispose of something. It includes all valuable rights and interests in land. Technically, then, property is not only the thing owned, but also the rights and interests in the thing owned. These rights include the bundle of rights.

**Property**—The rights or interests a person has in a thing owned; not the thing itself, but rather the bundle of rights associated with ownership of the thing.

**Real Property**—All land and appurtenances to the land, including buildings, structures, fixtures, fences, and improvements erected upon or affixed to the same, excluding growing crops (emblements), however. That is, ownership rights in land and its improvements.

**Chattel**—an article of personal property.

**Title**—The right of ownership of something, and the physical evidence of ownership, such as a deed or bill of sale.

**Estate**—One’s legal interest or rights in land.

**Fee Simple**—the largest, most complete bundle of rights one can hold in land, the most complete kind of ownership.

**Estate in severalty**—sole ownership, owned by one person.

**Concurrent ownership**—ownership by two or more persons at the same time.

**Joint tenancy**—two or more natural persons with the right of survivorship. They can sell, encumber or lease but cannot leave the property to another by will. A sale by one tenant converts the joint tenancy into tenancy in common. Upon the death of a joint tenant, the
entire interest vests in the surviving tenant(s), without probate. It requires the four unities of Time, Title, Interest and Possession. A corporation cannot be a joint tenant because of its perpetual existence.

**Right of survivorship**—a feature of joint tenancy in which the surviving joint tenants automatically acquire all rights, title and interest of the deceased joint tenant.

**Tenancy in common**—shared ownership of a single property among two or more persons, interests need not be equal and there is no right of survivorship.

**Undivided interest**—ownership by two or more persons that gives each the right to use the entire property.

**Tenancy by the entirety**—a form of joint ownership reserved for married persons; the right of survivorship exists and neither spouse has a disposable interest during the lifetime of the other.

**Sole ownership**—when one person owns property, also known as tenancy in severalty, it could be by either a legal person or a natural person.

**Partition**—the dividing of common interests in real property owned jointly by two or more persons.

**Life estate**—an estate in real or personal property that is limited in duration to the life of its owner or that of some other designated person.

Property is a thing or things owned--it is ownership. It may be a piece of land or real estate. Property is also the legal right to **control, use, possess, enjoy and dispose** of something. It includes all valuable rights and interests in land. Technically, then, property is not only the thing owned, but also the rights and interests in the thing owned. These rights include the following:

The right to **possess** the property. Possession is controlling the occupancy of the property.

The right to **quiet enjoyment** of the property. Quiet enjoyment is the right to use the property without legitimate challenges to the use or title.
The right to \textit{dispose} of a property is the right to transfer its ownership. The right to transfer interest in property includes the right to sell, lease, bequeath, assign or simply give away ownership.

The right to \textit{encumber} the property. This is the right to mortgage property as collateral (security) for a debt.

The right to \textit{exclude} or keep others off the property and to remove trespassers.

Property may also include \textit{easements}, \textit{franchises}, \textit{hereditaments} and \textit{tenements}. Hereditaments are things capable of being inherited, including real and personal property, tangible and intangible property. Tenements include buildings and other improvements that relate to the land and pass with it, and the real property rights associated with them.

**REAL vs. PERSONAL PROPERTY**

Property is either real or personal. If property is not real, it is personal. Both may be \textit{corporeal} or \textit{tangible}, of a material, physical, or perceptible nature; or \textit{incorporeal} or \textit{intangible}, of a non-material, non-physical nature. Tangible property is the physical object itself; intangible property has no physical nature, such as a \textit{right}. An easement, for example, is the right to use the land of another.

\textbf{Personal Property}

Personal property is something that is moveable or temporary, such as a pen, chair, clothing, money, bank account, etc. It is also composed of temporary interests in real estate--leasehold estates. Personal property is referred to as \textit{personalty} or \textit{chattel}. The word chattel is the old English word for cattle, which are personal property.

Mobile homes are considered personal property because they are moveable. On the other hand, once they are permanently affixed to land, they become real property.

\textbf{Real Property}

We tend to use the terms land, real estate, and real property interchangeably. However, there are important differences between them. Although we usually think of \textit{land} as only the surface of the earth, it is more than that. Land starts at the center of the earth,
passes through the earth to the surface, and continues into space. Land also includes that which is permanently attached to it by nature, such as trees and water.

**Real Estate** is land and the man-made improvements to the land -- such as buildings, fences, streets, etc.

**Real Property**, on the other hand, is land, man-made improvements to the land, and the interests and rights coming with the ownership of real property.

**Components of Real Property**

**Subsurface Rights**

Subsurface rights are rights to substances in the ground, extending form the surface of the earth to the center of the earth, such as minerals, water, gas, and oil. Minerals, etc., are real property. Subsurface rights may be leased or sold while maintaining surface rights. The separation of subsurface rights from surface rights is called *lateral severance*. Such separation could give one with a subsurface estate (rights to minerals) the right to drill on the land of someone who owns the surface estate. If the surface estate owner wants to prevent the mineral estate owner from drilling, the surface estate owner must obtain and reserve sole rights to the surface estate. Thus the mineral estate owner would have to enter through an adjacent property.

**Air Rights**

Just as mineral rights can be sold separately from surface rights, so can air rights. Air rights ownership has been limited by the emergence of air travel. Air flights over one's property are not trespassing. Colorado law, for example, states that estates, rights, and interests in areas above the surface of the ground, whether or not contiguous thereto, may be validly created in persons or corporations other than the owners of the land below such areas and shall be deemed to be estates, rights, and interest in land.

**Improvements**

Anything attached to land in a permanent way is considered a part of the land and so is real estate. Thus buildings, fences, roads landscaping, and so on are real estate. These are called *improvements* because they improve or develop the land.
Knowing what is real estate and what is not is very important. In conveying ownership of a house, for example, only the lot is described in the deed. There is no need to describe the house, landscaping, driveway, wiring, plumbing, etc. Items that are not attached to the land—furniture, automobiles, farm machinery, and so on—are personal property. If their ownership is to be transferred, it is done so with a bill of sale, not a deed. Remember, everything that is not real property is personal property and vice versa.

Fixtures

Many things can be either real or personal property, depending on their use. When items that are personal property, such as uninstalled or loose doors and windows, are attached to the building they become real property. On the other hand, a growing tree is considered realty; when cut down, or severed, however, it becomes personalty. An item of personal property when permanently attached to real estate becomes a fixture—that is, it becomes realty and is governed by the laws of real property. Thus a fixture is the property of the landowner and when the land is conveyed to a new owner, it is automatically included with the land, unless excluded in the sales contract.

The Four Tests of Intention

As a general rule, the primary way of distinguishing real from personal property is whether the item is permanently attached to the land or to a structure attached to the land. Also, whether an object becomes real estate depends on whether it was attached with the intention of being permanently affixed. Four considerations determine whether something was intended to be attached permanently and thus is a fixture: (1) manner of attachment, (2) adaptation, (3) existence of an agreement and (4) relationships of the parties.

Manner of Attachment

The point here, obviously, is how the object is attached to the land. When an item of personal property is attached to the land by being imbedded or affixed by means of cement, nails, bolts, etc., it becomes a fixture. For instance, lumber, pipes, doors, sinks, furnaces, etc. change from personal property to real property when they become a part of the building. Items brought into the house that are not permanently affixed—furniture, clothes, etc. remain personal property. On the other hand, an item may be considered a fixture even though not securely attached if it is vital to the operation of a building, such as a window air conditioner.
Adaptation of the Object

Sometimes the manner of attachment test alone is not enough to determine whether something is a fixture. For example, are those storm windows that for a few months are temporarily clipped to a house a fixture? The only way to know is to apply this second test. That is, is the article uniquely adapted to the building? If so, it may be considered real property, whether easily removed or not. If the storm windows specifically fit the windows of the building, they are fixtures and are included in the sale. Another example is draperies; most are made specifically for one house. Yet another example is a key, which is specifically adapted to a building, and so is a part of it. On the other hand, a lamp would not have to be used in just one building, and thus is personal property.

Existence of an Agreement

The third test is the existence of an agreement between the parties. A seller can stipulate in the contract for sale what he considers personal property and will take with him and what he considers real property and so will leave behind. When it is not clear whether an item is real or personal property, the existence of an agreement (a contract) can avoid later arguments or even lawsuits. That is, clearly state in a written contract what is included in the sale and what isn’t.

Relationships of the Parties

The fourth test of whether an item of personal property has become a fixture is the relationship of the parties. If in a landlord-tenant relationship, items are affixed to real property to conduct a business or trade, the items remain personal property, and thus the property of the tenant, even though attached. This involves a special class of fixtures, trade fixtures, ones that enable a tenant to carry on a business or trade. For example, assume a school moves into a rental building, bolting desks to the floor and attaching blackboards to the walls. These desks and blackboards are trade fixtures. When the school later moves out, these tenant-owned trade fixtures remain the property of the tenant (school owner). Tenant-owned trade fixtures, then, do not become the property of the landlord. However, such items must be removed before the lease expires and without causing serious damage to the building. If they are not, they become the real property of the landowner. When the landowner acquires fixtures in such a way, it is ownership by accession.
Ownership of Plants and Trees

Trees, cultivated perennial plants, and uncultivated vegetation, such as forests and wild berries, (called *fructus naturales*), are considered part of the land. Landscaping, then, is included in the sale of a house. If a tenant plants a tree or bush in the ground while renting, the tree or bush remains when the lease expires unless agreed by the landlord and tenant that it will not. Plants and trees in moveable pots, on the other hand, are personal property and are not included in the sale or lease. Annually cultivated crops, *emblements*, are personal property, even though attached to the soil. These are called the *fruits of industry*. For example, a tenant farmer is entitled to his crops even if the landlord terminates the lease during the growing season. When property with harvestable crops is offered for sale or lease, the contract should stipulate who has the right to harvest the crop.

**Severance**

Real property can be changed to personal property by *severance*. A growing tree, for example, is real estate. Once cut down by the owner, though, it becomes personal property, since it was severed from or separated from the land. It is no longer permanently attached. Real property, then, can become personal property by detaching it from the land or structure affixed to the land, and personal property can become real property by attaching it to the land or a structure attached to the land.

**Water Rights** (See Chapter 14 in the Manual.)

The owners of land bordering on a stream have the right to use the water. This is called a *riparian right*. This is not to say that the landowner has absolute ownership of water flowing past his land, but that he may use it in a reasonable manner. In some states (Colorado is one) riparian rights have been changed by the doctrine of *prior appropriation*. This doctrine says that the first owner to divert water for usage may continue to do so, even though it may be unfair to other landowners along the stream.

Whereas riparian rights are associated with flowing waterways, *littoral rights* are associated with non-flowing bodies of water. Land bordering on a lake or sea carries littoral rights. Littoral rights allow a landowner the use of water touching his land as long as he does not change the water's line.

Whether riparian or littoral usage, unless otherwise defined, the priority of unappropriated water is first for domestic use, then
agricultural, then industrial. The amount of land owned by someone can be increased by accession. Accession can result from natural or man-made causes. With regards to natural causes, it results from alluvial deposits (the gradual accumulation of rock, sand, and soil) along streams, rivers, and oceans through accretion. Accretion, then, is the gradual building of land by alluvial deposits through natural causes along water lines. Reliction, or dereliction, results when a sea or lake permanently recedes, exposing dry lands. Avulsion, on the other hand, results when land is washed away by water.

If one owns land bordering a navigable stream or lake, ownership extends to the low water mark; with land bordering a non-navigable stream or lake, ownership extends to the middle of the body; with ocean or tidal waters, to the high water mark.

Man-made accession occurs when someone (perhaps a renter) attaches personal property to the land. For example, if someone builds a fence on someone else's property without provision for its removal, the fence accedes to the property owner.

Land ownership usually includes the right to drill for and use subsurface water. If subsurface water is not in a defined waterway, it is percolating water. In some states, a landowner has the right to draw his share of percolating water along with neighbors. Other states, including Colorado, ascribe to the Doctrine of Prior Appropriation, which does not embrace equity in use. The water table refers to the upper limit of percolating water below the earth’s surface. The water table, also called the groundwater level, may be a few feet or hundreds of feet below the surface.

Appurtenances

An appurtenance is something that passes with the land, but is not necessarily a part of the land. An appurtenance may also be defined as something that belongs to the land, but not forever. Appurtenances are those rights, privileges, and improvements that transfer with the property, unless the contract for sale states otherwise, but are not necessarily actually a part of the property. Deeds usually describe the property granted, then state "together with all appurtenances." Examples of appurtenances are easements, water rights, condominium storage and parking spaces, buildings, fences, and so on.
INTERESTS IN LAND

An interest in the real estate is the ownership of one or more of the rights to real property. The rights, again, would be to control, use, possess, enjoy, and dispose of the property. An undivided interest is ownership by two or more people with each having the right to use the entire property. Some examples of interests in land are:

an owner with his rights of ownership;

a tenant who temporarily has the right of possession;

a lender with the right to encumber the property through a mortgage or trust deed;

a utility company with the right of access through an easement; or

a buyer with the right to receiver ownership at a certain future time under a sales contract.

An interest holder with the right of possession has an estate in land. An interest holder without the right of possession has an encumbrance. An encumbrance is any impediment restricting clear title or fee simple title to property, such as mortgages, leases and easements. The restriction may be either private or public.

ESTATES IN LAND

An estate is the character of ownership in land. It determines the duration of the individual's right of possession and use. An estate is the degree, quality, nature, and extent of one’s interest in land or other property. Estate refers to the quantity of ownership; title, to be discussed later, the quality of ownership. Understand that the word estate refers to one's legal interest or rights, not to the physical land itself.

1. Alodial System

Our laws of real property stem from the English feudal system of land ownership, the system wherein the king owned all the land. The first major change to the feudal system came in 1285 when King Edward I gave his lords the right to pass their rights to land to their heirs. In time (1650 in England) the feudal system was replaced by the alodial system, giving individuals the right to own land. Under the alodial system, land can be held independently by individuals owing no rent, service, or acknowledgment to the state as overlord. (The
REAL ESTATE LAW  
LESSON 1  
OWNERSHIP RIGHTS (IN PROPERTY)

The state does retain certain rights in land, as will be discussed later). The allodial system, then, is the free, full ownership of rights in land by individuals. It is the basis of real property law in the U.S.

Kinds of Estates

Estates are commonly classified as freehold estates and non-freehold (leasehold or less-than freehold) estates. Freehold estates are governed by real property laws and non-freehold estates by personal property laws. The distinguishing features of a freehold estate are (1) there must be actual ownership of the land, and (2) the estate must be of an unpredictable duration. The distinguishing features of a leasehold estate are (1) though there is possession of the land, there is no ownership interest, and (2) the estate is for a definite duration. Freehold estates are inheritable by the heirs of the owner; non-freehold estates are not. Freehold equals ownership; less-than-freehold (leasehold) equals rental. Notice that in either case, an estate in land includes the right of possession. If there is no right of possession, it’s an encumbrance.

Freehold Estates

Freehold estates differ, depending on the duration of the estate and what happens when one dies. There are three kinds of freehold estates--fee estates, which are of an unknown duration; life estates, which are limited to someone’s life; and legal estates, which are created by statute.

Fee Simple Absolute

A fee simple absolute estate, often called a fee estate or a fee simple estate, is the most complete ownership in land. A fee simple is often said to have the most complete bundle of ownership rights. These rights include the right to control, use, possess, enjoy, encumber, exclude and dispose of the property. The interest must be for at least one individual's lifetime—that is, for an uncertain duration—and it may be freely passed to heirs—thus it is often called an Estate of Inheritance. Although a fee simple estate is the highest degree of ownership in land recognized by law, it is not absolute ownership in that it is subject to rights reserved by the government and to the obligation not to interfere with the rights of other landowners. In 39 states, including Colorado, estates are considered to be fee simple absolute unless clearly stated otherwise. In the remaining 11 states this is partially true.
Defeasible Fee (think defeatable)

Fee estates may be indefeasible (indefeatable), such as a fee simple absolute estate, or defeasible (defeatable). A defeasible fee, often called a base fee or qualified fee, is a fee simple estate subject to limitations. There are four defeasible fees: (1) fee simple determinable, (2) fee simple subject to condition subsequent, (3) fee simple subject to condition precedent, and (4) fee simple subject to an executory limitation. An executory interest is an interest in real property that shifts title from one transferee to another.

Fee Simple Determinable
A fee simple determinable, also known as fee simple subject to special limitations, exists as long as a certain use or condition continues and automatically terminates when the prescribed use or condition does so. Such an estate would be created by a deed or will conveying the property subject to a special limitation and would be terminated automatically upon the happening of that limitation. A fee simple determinable estate indicates that the duration of the estate can be determined from the deed itself. For example, Mr. Cornell, owner in fee simple absolute, conveys to Mr. Smith and Mr. Smith’s heirs so long as the land is used for a university named Cornell. That is, Mr. Cornell conveys to another entity for as long as the land is used for a university named after him. Mr. Smith's interest is fee simple determinable, also called a fee simple subject to a special limitation, and it may last forever. But if the land stops being used for a university named Cornell, Mr. Smith's interest in the land automatically ends and the property returns to Mr. Jones or to Mr. Jones’ successors in interest. It is important to realize that when the particular use or condition stops, the estate terminates and reverts back to the grantor or his heirs automatically, or by an eo instanti reversion (automatically at that instant). Also rather than reverting back to the owner or his heirs, the estate can go forward to a third party remainderman. The person holding the reversion or remainder has an executory interest.

Suppose, for example, that someone with a large parcel of land wanted to start a wildlife sanctuary. If he believed that the increase in land values in the future might tempt the owner to sell the land for development, he could convey ownership with the limitation that the land be used for such a sanctuary or it would revert back to him or his heirs.
A fee simple subject to condition subsequent, just as a fee simple determinable, gives the grantor or the grantor's successors in interest the right to terminate the grantee's estate upon the happening of a certain event. That is, the estate would be terminated after, or subsequent to, a certain event taking place. The difference between this Condition Subsequent and Fee Simple Determinable is the eo instanti clause. For instance, in the school example above, if the land stops being used for a school, Mr. Cornell (grantor) or Mr. Cornell’s heirs have the right to re-enter for breach of said condition. Upon breach of the condition, Mr. Smith’s (grantee's) interest does not automatically terminate, but continues until Mr. Jones exercises his power of termination by re-entry. The original grantor (or his heirs or remainderman), then, must physically retake possession through the right of re-entry. Reversion doesn't happen automatically through the eo instanti method.

Fee Simple Subject to Condition Precedent

With this type of defeasible fee, a change in ownership does not come about until something else happens. Something must precede a title change. For example, an owner could deed land to a school with the condition precedent that the deed would not take effect until a library is constructed. Another example would be when Mr. X grants to Mr. Y, in fee simple determinable on the condition precedent that Mr. Y lives to be 21 years old. Mr. Y would get conditional title that would become fully vested upon his reaching the age of 21. If Mr. Y never becomes 21, title would revert back to the grantor or his heirs.

Fee Simple Subject to an Executory Limitation

Occasionally one may hear of a Fee Simple Subject to an Executory Limitation. This type of defeasible fee can be any of the above. Its distinguishing characteristic is that upon the happening of a specific event, the estate does not return to the grantor, but passes automatically to someone else instead. For example, Mr. X, owner in fee simple absolute, conveys to Mr. Y and his heirs, but if Mr. Y dies without surviving children, the conveyance is to Mr. Z and his heirs. If Mr. Y dies leaving no children, then Y’s defeasible fee automatically terminates and the property passes to Z, not back to Mr. X.
Fee Tail

This is a freehold estate which is generally considered unsuitable in the U.S. A fee tail is an estate in which the right of inheritance is limited to a fixed line of succession consisting of blood relatives. In almost all states, fee tail estates are automatically converted to fee simple absolute estates. In Colorado the first taker has a life estate (to be explained below) and the first taker’s heirs have a fee simple title. With a fee tail one could not convey land, but the estate would continue as long as there were any lineal descendants. Where there were none, the land would automatically revert back to the donor or his heirs.

Life Estates

Life estates convey an estate in real or personal property for the duration of someone’s life, either the owner’s or someone else’s. Although classified as freehold estates because they last for an indefinite time, life estates are not estates in inheritance. Life estates may arise by agreement of the parties, conventional life estates, or by law, legal life estates. The duration of the estate can be determined by the life of the owner (the life tenant) or by that of someone other than the owner, a life estate pur autre vie. Moreover, the estate can revert back to the original owner (the grantor) or his/her heirs, a reversion, or it can go to a third person, a remainderman. For instance, George could convey an estate to Aunt Matilda, which upon her death will pass to George's son Bill. As an example of a pur autre vie estate, one measured by the lifetime of a person other than its owner (the life tenant), consider one in which George conveys to Aunt Matilda for the life of George, or in which George conveys to Aunt Matilda for the life of his mother. Again, when the one by whom the life estate is measured dies, the estate reverts back to the grantor (George), his heirs, or goes on to a specified remainderman. If Aunt Matilda should die before George in the one example above, or before George’s mother in the other example above, the life estate would be inherited by Aunt Matilda's heirs. Since those heirs would lose the estate upon someone’s death (that is, they inherit a life estate) the inheritance is not a true one.

The life tenant may sell or encumber an interest subject to any deed restrictions. When a life tenant conveys an interest, the estate converts to a pur autre vie if it were not already so. The purchaser's interest, then, can last no longer than the initial life estate. The life tenant can convey no greater interest than owned—that is, an estate ending at the death of the specified person.
Obviously, it is difficult to sell a life estate. A life tenant may sell only the interest owned; may encumber the property only for the duration of the life estate; may possess, use, and profit from the land, just as if he were owner; must keep the property in repair and not damage the property so as to impair the interest of the one holding the reversion or remainder; and must pay property taxes.

**Legal Life Estates**

Legal life estates, also called statutory estates, are created by law. They are dower and curtesy. Dower is a life interest in real estate given to a wife upon her husband's death, consisting of a one-third share (in some states one-half share) of all real estate owned by the husband during coverture (the state of marriage). Dower grants the wife legal ownership to the one-third of the family's real property for the rest of her life. This prevents the husband from conveying ownership without the wife's permission and protects the wife even if she is left out of the will. When a husband and wife sell the property, however, the wife relinquishes her dower rights. In some states, adultery of the wife defeats dower. For dower to exist, the man must be or have been owner of the property, the estate must be one of inheritance, and the man must have acquired the property during marriage. In short, dower is a wife's life estate interest in her husband's property, giving her the right to claim a portion of the husband's property upon his death.

Curtesy gives the husband benefits in his deceased wife’s property for as long as he lives. Unlike dower, however, the wife can defeat those rights in her will. In some states, the couple must have had a child for the husband to qualify. For curtesy to exist, there must have been a valid marriage, the estate must be one of inheritance, and the wife must have given birth to children capable of inheriting her estate. Curtesy, then, is a husband’s life estate interest in a wife’s property.

The basic purpose of dower and curtesy is to require both husband and wife to sign any document affecting title to their land and to insure legal protection for the property rights of a surviving spouse.

The rights in dower and curtesy while the spouses are alive are **Inchoate** (that is, incomplete, imperfect, begun but not complete) and cannot be defeated by sale. A release must be signed to convey property free of dower and curtesy. In most states, including Colorado, dower and curtesy have been abolished. By statute, in Colorado the interest of the surviving spouse is a fee simple, rather than a life estate.
Homestead Protection

Colorado Real Estate Manual 2014 p. 7-6 to 7-8

Nearly all states have homestead protection laws. These laws are designed to provide some legal protection from debts and judgments that might result in the loss of the home and to provide a home for a surviving spouse for life. Homestead laws also prevent one spouse from acting single handedly when conveying or encumbering the homestead.

By Colorado statute (CRS 38-41-201) (1) Every homestead in the state of Colorado shall be exempt from execution and attachment arising from any debt, contract, or civil obligation not exceeding in actual cash value in excess of any liens or encumbrances on the homesteaded property in existence at the time of any levy of execution thereon:

(a) The sum of sixty thousand dollars if the homestead is occupied as a home by the owner thereof or an owner’s family; or

(b) The sum of ninety thousand dollars if the homestead is occupied as a home by an elderly or disabled owner, an elderly or disabled spouse of an owner, or an elderly or disabled dependent of an owner.

The terms “householder” and “owner of the property” also include a person holding equity under a land contract or other agreement where such person possesses the property, but the sellers’ or vendors’ rights are always superior to any homestead.

If the debt, contract, or civil obligation that is the basis for the execution and attachment was entered into or incurred after July 1, 1975, the homestead exemption will be created automatically as long as the requirements outlined in §§ 38-41-203 and 205, C.R.S. are met. Section 38-41-203, C.R.S., states that homesteaded property is only exempt while occupied as a home by the owner or owner’s family. Section 38-41-205, C.R.S. states that “[t]he homestead...may consist of a house and lot or lots or of a farm consisting of any number of acres.”

If however, “the debt, contract or civil obligation... was entered into or incurred prior to July 1, 1975,” the owner or spouse must record in the office of the clerk and recorder of the county where the property is situated an instrument in writing (which should be acknowledged) describing the property, setting forth the nature and source of the owner’s interest therein, and stating that the owner is homesteading the property.
A surviving joint tenant spouse will have the same homestead exemption as the deceased joint tenant. If there is no surviving spouse, the surviving minor children will hold the exemption. This survival occurs without the need for occupancy. Homestead exemptions do not pass to an unrelated joint tenant (i.e. they pass only to spouse, parent, or minor child).

If the homestead was created automatically, the owner may convey or encumber the property without the signature of the owner’s spouse. If the owner or owner’s spouse recorded the homestead exemption as described above, then both spouses must execute any conveyance or encumbrance.

If a homestead property is sold, the person entitled to the homestead may keep the sale proceeds separate, and, if identified, the proceeds will be exempt from execution or attachment for one year. If the proceeds are used to buy a new home, there will be homestead exemption on the new home. However, the homestead exemption does not defeat the rights of the holder of a purchase-money mortgage.

Before any creditor may proceed with execution and attachment of a homesteaded property, the creditor must file an affidavit with the clerk and recorder attesting that the equity in the property exceeds the amount of the exemption. This must be supported by the affidavit of an independent appraiser stating the fair market value of the property. If the amount offered at the sale does not exceed 70 percent of fair market value as shown in the affidavit, all proceedings to sell the property will terminate. If the sale succeeds, the creditor must pay the expenses of the sale, prior liens, and the homestead exemption before satisfying the creditor’s own judgment. The balance, if any, would go the homesteader.

Non-Freehold Estates

Non-freehold estates, also called less-than-freehold estates and leasehold estates, like freehold estates, are estates in possession. Possession, however, is not by the owner, but by a tenant. Under a leasehold estate, the user is called the lessee or tenant, and the owner is called the lessor or landlord. The tenant possesses a leasehold estate and the owner has a reversion. The property reverts back to the owner upon the expiration of the lease. Leaseholds are estates in personal property, also called chattel real, but the rights they are more than just the use of the property. As long as the tenant has a valid lease and lives by it, the landlord cannot occupy the property. The landlord's right of reversion, however, gives him the right to retake possession when the lease expires.
Leasehold estates, then, are personal property rights to the possession and use of real property.

A less-than-freehold estate is brought about by a lease. Such an instrument is a written or unwritten agreement transferring the right of use and possession of real estate for a period of time. A lease is both a contract—an agreement to pay rent and assume other obligations—and an instrument of conveyance—an instrument transferring the right to occupy from the owner (lessor) to the tenant (lessee). A lease is an encumbrance against the property. Recall that an encumbrance is any impediment to clear title. Here the owner may not use or possess (enter) the property.

A lease may be for as short as a month, or for as long as 99 years. In Colorado a lease for one year or less may be oral, whereas a lease for longer than one year must be in writing. A written lease is always preferable, though, since it provides tangible proof of the agreed upon terms.

There are four categories of leasehold estates: (1) estates for years (2) periodic estates (3) estates at will and (4) tenancy at sufferance.

**Estate for Years**

An estate for years, also called a tenancy for years, is one for a fixed period of time, whether for a day or for 99 years. Although the name misleadingly implies so, an estate for years does not necessarily create an estate for a number of years. The lease can be for any length of time, but it must have a specific starting time and a specific ending time. It is important to realize that such leases have definite termination dates. Therefore, neither the landlord nor the tenant need do anything to terminate the lease—the lease itself specifies the termination date.

If allowed by the lease, a tenant could lease the property to another person. By doing this the lessee becomes a sublessor, and the person to whom he leases become the sublessee. The sublessee, of course, can obtain no more rights from the lessee than the lessee himself has. Therefore, if a lessee has a one-year lease with six months left, he can sublease for only those six months.

**Periodic Estate**

Also called a periodic tenancy or an estate from year-to-year, a periodic estate is generally created by implication and not by an
expressed provision. This type of tenancy exists when the rental period is for a specific period of time, such as a week or a month, but there is no definite termination date. For example, the lease may be for a month (a specified time), but when the month is up, unless the landlord or tenant acts to terminate the lease, renewal is automatic for another month (there is no definite termination date). Thus if the tenant tenders rent at the end of the tenancy period and the landlord accepts the payment, the leasehold is taken to be renewed for another period. Colorado law, and that of most states, requires that proper notice of termination be given. (Such notice is discussed below under termination of leases).

**Estate at Will**

Also called a tenancy at will, this is a landlord-tenant relationship with the usual rights and duties of the parties except that the estate may be terminated by either party at any time. For example, the agreement might allow the tenant to occupy the property until sold. Proper notification for termination is required.

**d. Estate at Sufferance**

A tenancy at sufferance arises when a tenant stays beyond his legal tenancy without the landlord's consent. That is, the tenant wrongfully holds the property against the landlord's wishes. Such a tenant is a holdover tenant. The owner may treat the tenant as an unlawful detainee and evict, or may bind the tenant to a new lease under the conditions of the previous lease. (An unlawful detainee is one who had the right to possession, but whose right to such possession no longer exists). The choice is the landlord’s, not the tenants. Should the tenant be forced to holdover for reasons beyond his control, such as sickness, the tenant shall be liable only for a reasonable rent during the holdover period. A tenant at sufferance differs from a trespasser in that the original entry for the tenant was lawful. During the holdover period, should the tenant pay rent and the landlord accept it, the tenancy at sufferance would change to a periodic tenancy.

**Common Law and Statutory Law**

It is helpful in understanding real estate law to know the difference between common law and statutory law.

Common law comes from usage and custom over long periods of time. It is law derived from court judgments—case law. The concept of fee
simple estates, qualified fee estates, life estates, leasehold estates, and so on grew from usage over a long time.

Statutory or codified law, on the other hand, is created by legislation. Laws establishing the requirements of becoming a real estate agent, zoning laws, building laws and tax laws are examples. Common law concepts are sometimes enacted into statutory law, and statutory laws are sometimes passed when common law is not clear or reasonable.

TYPES OF OWNERSHIP

The type of ownership (also called tenancies), or how one takes title to property, can have far reaching consequences upon the owners. Recall that an estate is the character of ownership. It determines the duration of the individual rights of possession and use. Here we are talking about the type of ownership. These consequences may involve the future rights of the owners in the property, income taxes, transferability rights, and a whole host of other things. An agent should understand the methods of owning property and their effects. Agents should be very careful, however, not to recommend a specific type of ownership, as such a recommendation would go beyond the agents expertise. Instead, the agent should recommend that the customer or client obtain expert tax, legal, or other advice.

There are essentially two categories of ownership: sole ownership, ownership by one person and concurrent ownership, ownership by two or more people.

Sole Ownership (An Estate in Severalty)

An estate or tenancy in severalty, or sole ownership, is when title to property is held by one person, whether a legal or natural person. (Think of severalty not as several people, but as severed ownership). Ownership in severalty is available in all states and can be held by single or married people. In general, property acquired before marriage remains the sole property of the owner during marriage. Property acquired during marriage may be held in severalty if it were bought with separate monies or if there is a written waiver of rights by one spouse.

Partnerships

The Uniform Partnerships Act defines a partnership as "an association of two or more persons who carry on a business for profit as co-owners." The partners may take title in the partnerships name, in which case ownership would be in severalty, (in the sole name of the
A major advantage of partnerships is that they do not pay taxes. The partners are taxed individually, but the partnership itself, unlike a corporation, is not taxed. A partnership can maintain a real estate broker license, as will be discussed in greater detail later.

Similarities among partnerships exist in most states because of the adoption of the Uniform Partnership Act. Forty-nine states, including Colorado and the District of Columbia, have adopted the act either with or without changes. Only Louisiana has not.

There are two kinds of partnership—general and limited. General partnerships consist of only general partners. Limited partnerships consist of both general and limited partners.

**General Partnerships**

In general partnerships, each partner is personally responsible for the obligations of the partnership. Thus a general partner can lose much more than his investment in the partnership. For example, if one partner makes a commitment for the partnership, all partners are responsible for that commitment. Moreover, if the partnership is sued, each partner is fully responsible.

**Limited Partnerships**

Limited partnerships are made up of at least one general partner and one or more limited partners. It developed because of the unlimited financial responsibilities of partners in the general partnership form. Forty-nine states and the District of Columbia have adopted the Uniform Limited Partnership Act, the exception, again, is Louisiana.

The general partners operate the partnership and accept full financial liability for it. Although limited partners usually provide most of the investment capital, they have little to say about the day-to-day management of the entity, are not bound by the obligations of the partnership, and cannot bind nor speak for the partnership. The financial liability of limited partners is usually confined to the amount invested.
Joint Ventures

A joint venture is a joining together of two or more people or entities to carry out a single business endeavor. This association is similar to a partnership. If more than one project is undertaken, the association probably would be considered a partnership. For tax purposes, a joint venture is treated as a partnership. A major difference between a joint venture and a partnership (other than one vs. more than one project) is that a general partner can bind the partnership to a contract, whereas a joint venturer cannot so bind other joint venturers. An example of a joint venture would be the purchase of land by a group of people to re-zone and sell as lots to a builder. When the project ends, so does the association between the people.

Syndications

Syndications are not a form of ownership, although they are often spoken of as if they were. Instead, they refer to two or more people investing together in a project too big for any one of them to do alone. Syndications also allow small investors a chance to invest in a project managed by an experienced expert. The form of ownership might be a partnership, joint venture, corporation, tenancy in common, or joint tenancy. Real estate syndications are usually limited partnerships—the syndicators are general partners, the investors, limited partners.

Corporations

All states have laws permitting one or more individuals to incorporate. A corporation is formed by filing articles of incorporation with the Secretary of State. Unless legally dissolved, corporations last indefinitely. Because the law takes corporations to be legal entities, corporations must pay taxes on profits. What remains can be paid to stockholders in dividends. Stockholders then pay personal income taxes on the dividends. This double taxation is the primary disadvantage to the corporate form of ownership. On the other hand, because corporations are legal entities, the investor is protected from unlimited liability. Even if the corporation ends up owing more than it owns, the worse that can happen to an investor is that the value of stock will drop to zero. That is, the investor does not have to participate in paying the corporation’s debts. Because corporations are legal entities, they take title to real estate in severalty.
Corporations are made up of officers, directors, and shareholders. Shareholders, in theory, control the corporation by electing the board of directors, who then elect the officers. In truth, unless one is a major shareholder, one has no control over management.

Some states prohibit corporations from acquiring real property when their primary purpose for being is ownership of real estate. In Colorado corporations may purchase or otherwise acquire real property.

Most real estate investors have typically stayed away from corporations because of double taxation. In 1958, however, the Internal Revenue Service first allowed Subchapter S corporations. Such corporations maintain the liability protection of corporations, while allowing the profit-loss pass-through of partnerships. Since S corporations have come into being, regular corporations have become known as C corporations.

**Concurrent Ownership**

Just as an estate can be owned by one person, so too can one be owned by two or more people concurrently or simultaneously. There are three kinds of co-ownership: tenancy in common, joint tenancy, and tenancy by the entirety.

**Tenants in Common**

A tenancy in common is the co-ownership of an estate in land wherein each person owns an undivided interest in the whole property, subject to the possession rights of the other owners. The concept of undivided, or indivisible, means that each owner’s interest is a part of the estate, not a physical portion of the property. Each owner, then, has a right to the possession of the entire property, and no owner can exclude any other owner from possession of any part of the property. The possession interests may be of different proportionate shares (of different sizes). An owner can sell, mortgage, or give away his interest independently of, without the consent of, the other owners. No owner may sell or encumber more that his share of the property, however. Thus we can see that each owner has a separate legal title to his undivided interest.

Suppose, for instance, that two people buy five acres of land for $50,000 as tenants in common. The first person invests $20,000; the second, $30,000. If the ownership interests are in proportion to the investments, the first person will own forty percent interest in the
land; the second, sixty percent interest. These ownership interests notwithstanding, the first person may not choose two acres as his own to the exclusion of the other investor, because the interests are undivided. Either investor, however, may sell, encumber or lease his interest (or a portion of it) as long as the rights of the other co-owners are not adversely affected. If one person should sell, the new owner becomes a tenant in common with the remaining co-owner(s). If nothing in the conveying instrument is said about the size of each co-owner's interest, they are legally considered equal. Moreover, if there is no specific indication of how two or more people will take title, it is presumed to be as tenants in common. Again, if an owner sells or gives away or wills at death all or a part of his interest in the estate, the new owner becomes a tenant in common with the other co-owners.

The owners divide the income from and pay the expenses on the property in proportion to the size of their interests. If a co-owner does not pay his proportion of the expenses, the other owner(s) may pay for him then sue for that amount. If owners cannot agree on how the property is to be run or on a plan for dividing and selling it, a court can order a partition. Such an action divides the property so each person can hold his proportionate interest in severalty. If a partition is impossible, such as with a house, the court will order the property sold and the money from the sale divided among the owners.

**Joint Tenancy**

Joint tenancy is another kind of concurrent ownership. With joint tenancy all the owners are equally entitled to the benefits of owning the property. It is ownership of real estate by two or more persons as if they were one person. Rights and interests are undivided and equal. Unlike tenancy in common, joint tenancy carries the right of survivorship. Upon the death of one joint tenant, that tenant’s rights simply pass to the surviving tenant(s). This characteristic is sometimes called a poor man's will. Death of a joint tenant has no effect on title because title is vested in the group, not the individual. The right of survivorship is what makes joint tenancy popular among married couples, since married couples usually want the surviving spouse to have complete ownership of the property. Property in joint tenancy passes to the surviving joint tenant without delay or the need for court action. A joint tenant can sell or give away, but cannot will his share of the property. Joint tenancy can also be used to defeat dower or curtesy rights. If a married man forms a joint tenancy with someone other than his wife, then dies, his wife has no dower rights in the joint tenancy. Only a
REAL ESTATE LAW
LESSON 1
OWNERSHIP RIGHTS (IN PROPERTY)

human being can hold joint tenancy. This is so because a corporation
(legal being) can exist in perpetuity—that is, it never die.

Common law stipulates that joint tenancy cannot exist without four
unities:

**Time**—each interest must be acquired at the same time (once a joint
tenancy is formed, new joint tenants cannot be added—a new joint
tenancy must be formed);

**Title**—all interests must be created on the same instrument of
conveyance—that is all owners must acquire the property in the same
 deed;

**Interest**—each interest in the property must be undivided and the
same; and

**Possession**—each person in ownership must have the right to an
undivided possession and use (all joint tenants can use the entire
property, and no one owns any one part of it).

With regards to these unities, tenants in common always have the
unity of possession, and may have others. Tenants in common hold
separate title to their individual interests; joint tenants hold
single title together. If a joint tenant sells or gives away his
property, the new owner becomes a tenant in common with the other
joint tenants. Tenants in common do not have the right of
survivorship.

Note: Agents may explain joint tenancy and tenancy in common to
buyers, but should **never** advise buyers of the type of conveyance that
may be best for them.

**Tenancy by the Entirety**

Tenancy by the entirety is a kind of joint tenancy reserved for
married couples. It contains the right of survivorship, and neither
spouse may individually sell, encumber or sever his/her interest in
the property except by death, divorce or annulment. Thus while both
spouses are alive and married to each other, each must sign to
encumber or convey title to the property. In case of divorce or
annulment, the ownership interest changes to tenancy in common.
Whereas a joint tenant can sell his interest in the property without
the approval of the other joint tenant(s), a tenant by the entirety
cannot. As long as both are alive and married to each other, both
must sign to convey title to the property. The division of property
would also be by partition.
Colorado does not recognize tenancy by the entirety.

**Community Property**

The community property system of ownership, which came to us from Spain and France, relates to married people. This system is employed only in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington. Note that Colorado is not a community property state.

The primary idea of the community property system is that both spouses contribute jointly and equally to their marriage and so should share equally in any property acquired during marriage. English law, on the other hand, from which our system in Colorado comes, views husband and wife as merging into one entity upon marriage, rather than treating them, as community property law does, as equal partners, each owning a one-half interest in the property acquired during marriage. Even if one spouse is a full-time homemaker and the other spouse brings in all the money, they are co-owners of any property purchased during marriage.

Property owned before marriage or acquired after marriage by gift, by inheritance or by purchase with separate funds is called separate property and may be exempted from a couple's community property. Separate property, then, can be conveyed with the signature of the owner only (the spouse need not sign) and can be conveyed in a will by only the owner naming the person to receive the property. Any other property acquired during marriage is considered community property and requires both signatures to be encumbered or conveyed. Upon the death of a spouse, one-half of the property remains with the surviving spouse and the other one-half, according to a will or probate, goes to the surviving spouse or the heirs of the deceased. Each spouse, then, can name in a will the person to receive his/her one-half share upon death; it need not go to the surviving spouse. Dower and curtesy do not exist in community property states. (In Colorado, which is not a community property state, a surviving spouse is entitled to one-half of the estate of the deceased spouse, notwithstanding a will stating differently.)

**Trusts**

An arrangement in which one person (grantee, also called the trustor) uses the money of other people (grantors or beneficiaries) for the benefit of the other people. For example, person A may obtain a sum of money from persons B, C and D to build and manage a shopping center and generate a profit. Persons B, C and D would put up the
money; person A would invest and manage it, perhaps without putting up any money himself.

Real Estate Investment Trusts

Real estate investment trusts (REITS) pool money of several investors to buy real estate. The concept is similar to mutual fund with stocks and bonds. Trust officers (trustees) provide investment services for investors also called beneficiaries (trustors) when the investor is unable or unwilling to handle such investments. Investors receive beneficial interests. These trusts can avoid double taxation as long as their activities are confined to real estate and distribute at least 95% of their income every year. The attempt here, then, is to combine the protection of the corporate form of ownership with the advantage of single taxation. Beneficial interests are freely bought and sold, like stock, and usually sell for small amounts of money, such as $100, for example, giving investors with little money a chance to invest in large real estate projects.

Intervivos and Testamentary Trusts

These forms of trusts are used to provide for another. Title to property is transferred by an owner (trustor) to a manager trustee for the benefit of another (beneficiary). An intervivos or "living" trust happens while the trustor is still alive. With this form of trust one can transfer property to a trustee to be managed, with the income to be paid to a child, spouse or relative, for example. It is used when the trustor is unwilling or unable to care for assets or when the trustor wants probate proceedings to be avoided upon his death.

A testamentary trust, on the other hand, takes effect after the death of the trustor. A will would stipulate that the property is to be placed in trust, name the trustee and beneficiary, and provide instructions about the management of the trust.

Land Trust

With this form of trust, the owner (trustor) is also the beneficiary. The owner places the property in the hands of a trustee who then manages the property according to the owner's specifications. The interest in real property held in a land trust is personal property; therefore, land trust converts real property to personal property. With land trusts, ownership can be hidden because it is kept private, a real advantage for investors buying up several parcels of land.
1. Property is the legal right to
   a. control, use, occupy, enjoy and dispose of something.
   b. control, use, possess, enjoy and dispose of something.
   c. control, use, possess, occupy and dispose of something.
   d. control, possess, occupy, enjoy and dispose of something.

2. A chattel is
   a. real property
   b. personal property
   c. either real or personal property
   d. incorporeal

3. Real property is
   a. the land
   b. the land and man-made improvements to the land
   c. the land, man-made improvements to the land, and rights of ownership
   d. anything that is corporeal or tangible

4. With fixtures, which is not a test of intention
   a. mode of severance
   b. manner of attachment
   c. adaptation of the object
   d. relationship of the parties

5. If a trade fixture is not properly removed it becomes the property of the property owner by
   a. lateral severance
   b. bill of sale
   c. adaptation
   d. accession
6. Plants which are considered personal property even though attached to the soil
   a. cultivated perennial
   b. uncultivated vegetation
   c. annually cultivated crops
   d. bushes planted while renting

7. Our system of land ownership is based on which system
   a. riparian
   b. prior appropriation
   c. littoral
   d. allodial

8. All of the following are distinguishing features of freehold estates except
   a. they are governed by personal property laws
   b. there must be actual ownership of the land
   c. the estate must be of unpredictable duration
   d. they are governed by real property rights

9. Which is the most absolute ownership
   a. fee simple
   b. defeasible fee
   c. fee complete
   d. fee determinable

10. Items affixed to real property which remain personal property
    a. fixtures
    b. corporeal rights
    c. accessories
    d. trade fixtures
TEST ONE (NOT ANNOTATED)

11. Legal life estates are created by
   a. will
   b. deed
   c. reversion
   d. law

12. In Colorado every head of family is entitled to a homestead of
   a. $10,000
   b. $20,000
   c. $25,000
   d. $60,000

13. A less-than-freehold estate is brought about by a
   a. lease
   b. will
   c. deed
   d. tenancy

14. An estate for years is one for
   a. at least two years
   b. at least three years
   c. at least five years
   d. a fixed period of time

15. To terminate an estate for years
   a. the tenant must give 10 days notice
   b. the landlord must give 30 days notice
   c. the tenant must sublease
   d. neither the landlord nor tenant need do anything
TEST ONE (NOT ANNOTATED)

16. The type of tenancy in which the rental period is for a specific period of time, but there is no definite termination date
   a. estate for years
   b. periodic tenancy
   c. tenancy at will
   d. there is no such tenancy

17. An estate in severalty is
   a. when title is held by one person
   b. a form of concurrent ownership
   c. a partnership
   d. property acquired during marriage

18. A major advantage of partnership is that
   a. only general partners pay taxes
   b. only limited partners pay taxes
   c. partnerships pay less taxes than corporation
   d. partnerships do not pay taxes

19. Which is not true about general partners in a partnership
   a. any one can commit for the partnership
   b. each partner is fully responsible if the partnership is sued
   c. they do not have to pay income taxes
   d. any one can lose more than he invested

20. Corporations are formed by filing with the
   a. secretary of incorporations
   b. secretary of syndications
   c. state secretary of business ventures
   d. secretary of state
TEST ONE (NOT ANNOTATED)

21. The right of survivorship exists with

a. tenancy in common
b. joint tenancy
c. joint ventures
d. tenancy in severalty

22. Which is not one of the four unities of joint tenancy

a. time
b. conveyance
c. interest
d. possession

23. An intervivos trust happens

a. after the death of the beneficiary
b. while the trustor is still alive
c. after the death of the trustee
d. after the transfer of a trust

24. An estate of inheritance or for life is a

a. freehold
b. less than freehold
c. greater than freehold
d. partial estate

25. A trade fixture is

a. a fixture
b. personal property
c. an easement
d. real property
TEST ONE

1)  [a]  [b]  [c]  [d]  
2)  [a]  [b]  [c]  [d]  
3)  [a]  [b]  [c]  [d]  
4)  [a]  [b]  [c]  [d]  
5)  [a]  [b]  [c]  [d]  
6)  [a]  [b]  [c]  [d]  
7)  [a]  [b]  [c]  [d]  
8)  [a]  [b]  [c]  [d]  
9)  [a]  [b]  [c]  [d]  
10) [a]  [b]  [c]  [d]  
11) [a]  [b]  [c]  [d]  
12) [a]  [b]  [c]  [d]  
13) [a]  [b]  [c]  [d]  
14) [a]  [b]  [c]  [d]  
15) [a]  [b]  [c]  [d]  
16) [a]  [b]  [c]  [d]  
17) [a]  [b]  [c]  [d]  
18) [a]  [b]  [c]  [d]  
19) [a]  [b]  [c]  [d]  
20) [a]  [b]  [c]  [d]  
21) [a]  [b]  [c]  [d]  
22) [a]  [b]  [c]  [d]  
23) [a]  [b]  [c]  [d]  
24) [a]  [b]  [c]  [d]  
25) [a]  [b]  [c]  [d]
ANSWER SHEET TEST 1

1.  b
2.  b
3.  c
4.  a
5.  d
6.  c
7.  d
8.  a
9.  a
10. d
11. d
12. d
13. a
14. d
15. d
16. b
17. a
18. d
19. c
20. d
21. b
22. b
23. b
24. a
25. b
TEST TWO (ANNOTATED)

1. Only a husband and wife may hold title to real property as:
   a. joint tenants
   b. tenants by the entirety
   c. tenants in common
   d. tenants by the severalty

2. One of the advantages of a joint tenancy is that it:
   a. cannot be terminated without the consent of each tenant
   b. can be held in different fractional shares
   c. avoids the delays and expenses of probate
   d. can exist only between husband and wife

3. Which creates a tenancy in common?
   a. transfer of one joint tenant’s interest to a third party
   b. death of one of two joint tenants
   c. transfer of one joint tenant’s interest to the other joint tenant
   d. death of one of four joint tenants

4. A tenant in common may transfer his or her interest under which circumstance?
   a. only with the permission and approval of the other tenants in common
   b. at any time, without permission or approval, even under protest
   c. only at the expiration of the lease
   d. only for a valuable consideration

5. A woman and her brother hold property in joint tenancy. What happens if the woman deeds her part to herself and her husband?
   a. the deed to the husband is invalid
   b. the joint tenancy is severed
   c. all three now hold title in joint tenancy
   d. the joint tenancy remains the same
6. A property is purchased by a brother and sister with equal shares. This could be a:
   a. tenancy by the entirety
   b. joint tenancy
   c. tenancy in community
   d. tenancy in severalty

7. If two sisters inherit real property from their mother with no stipulation except that one-third is to go to one sister two-thirds to the other which of the following is true?
   a. they are joint tenants of the property
   b. neither may mortgage her interest in the property without the other’s consent
   c. upon one sister’s death, her part of the property reverts to the other
   d. upon the death of one sister, her share passes to her heirs or devisees

8. If title to a farm is held in tenancy by the entirety, which is true?
   a. a specifically enforceable contract to sell the farm must be signed by husband and wife
   b. a creditor of one spouse can assert a valid lien on the farm
   c. either husband or wife may partition the property
   d. the shares may be unequal

9. When purchasing real estate, the form or method of ownership (severalty, tenants in common, joint tenants) would BEST be determined by a:
   a. broker
   b. buyer and attorney
   c. seller and CPA
   d. salesperson
10. T and S take title to a farm as joint tenants. Assuming S dies, which of the following is true?

- a. T holds title with S’s heirs
- b. T holds title to the whole farm subject to the marital interest of S’s surviving husband
- c. the farm may be sold to satisfy S’s creditors
- d. T is the sole owner of the property

11. In a joint tenancy among five people, all of the following are true **EXCEPT**:

- a. shares must be equal
- b. any party may convey his or her share without the consent of the others
- c. any of the five parties may will away his or her share
- d. one of the owners may sell to another person, who now owns a one-fifth tenancy in common

12. A joint tenant may accomplish all of the following **EXCEPT**:

- a. sell the interest
- b. give away the interest
- c. encumber the interest
- d. devise the interest

13. Tenancy in common is a form of:

- a. survivorship
- b. ownership
- c. probate
- d. partition

14. An action brought by a co-owner of property to compel the severance of respective interests is an action for:

- a. foreclosure
- b. quiet title
- c. forfeiture
- d. partition
15. A tenancy in common must have the unity of:

   a. time  
   b. title  
   c. interest  
   d. possession

16. When someone owns property to the exclusion of all other persons, this person is said to hold the property in:

   a. personalty  
   b. common  
   c. severalty  
   d. secret

17. In the case of three tenants in common owning a property, which of the following is true?

   a. a tenant’s estate ends upon his or her death  
   b. there is just one title to the property representing the undivided interests of all cotenants  
   c. each tenant has a separate and distinct interest or title  
   d. the last surviving tenant would hold title in severalty

18. A tenant in common can do which of the following?

   a. encumber the whole property  
   b. convey any specific part of the property by itself  
   c. sell the entire property  
   d. own two-thirds of the property

19. A husband and wife contact a broker about selling their home. The wife has a number of outstanding debts. Which is true of this property, which is held as tenancy by the entirety?

   a. the listing broker should get both husband and wife to sign the listing  
   b. the wife’s creditors have a right to take one half of the property in settlement of the debts  
   c. the property should not be sold until the debts have been paid  
   d. the debts of both spouses are of no importance to the broker listing the property
20. Which of the following statements applies equally to two joint tenants and to tenants by the entirety?

   a. there can be no right to file a partition suit
   b. the last living tenant becomes sole owner
   c. a deed signed by one party will convey a fractional interest
   d. a deed will not convey any interest unless signed by both spouses

21. Where two cousins hold title to property, one having a one-third interest and the other having a two-thirds interest, title is held in:

   a. joint tenancy
   b. tenancy by the entirety
   c. tenancy in common
   d. tenancy in severalty

22. A conveys property to B and C, who are unrelated and not joint tenants. When B dies, what most likely happens to ownership of the property?

   a. C is the sole owner
   b. B’s share goes to his heirs
   c. property reverts back to A
   d. B’s share escheats to the state

23. All of the following tenancies would permit partition if the husband and wife cannot agree on the sale of the property EXCEPT:

   a. joint tenancy
   b. tenancy by the entirety
   c. tenancy in common
   d. tenancy in partnership

24. Which is true regarding the liability of a limited partner?

   a. liability is to the extent of his or her investment
   b. liability is without limits
   c. liability is limited to short-term debts of the partnership
   d. personal liability is limited to a stated percentage of partnership debts
25. Two people have a concurrent unequal interest in the same property. Regarding this type of ownership interest, which best describes the owner’s title?

   a. both hold title as joint tenants
   b. both hold title as tenants in common
   c. both would be classified as tenants by the entirety
   d. both would be classified as tenants for years

26. The four unities of title, time, interest and possession normally are found in which of the following?

   a. tenancy in common
   b. partnership
   c. mortgage or trust deed
   d. joint tenancy

27. A corporation and an individual cannot hold title to real property as joint tenants because:

   a. it is in violation of the securities act
   b. a corporation has perpetual existence
   c. it is difficult to list all stockholders in the deed
   d. a corporation cannot convey title to real property

28. A, B and C own property as joint tenants. C dies, then B sells his interest in the property to D. The property is now owned by:

   a. A, D and C’s widow and E (his sole heir) as joint tenants
   b. A and D as joint tenants
   c. A and D as tenants in common, each with one-half interest
   d. A, D and B’s wife

29. The BEST term to describe a group of investors who pool their financial resources to acquire real property is:

   a. rental pool
   b. syndication
   c. consolidation
   d. limited liability company
30. Which is usually true under commonly accepted principles of tenancy law?

a. unless otherwise specified, a conveyance of property to a man and woman is automatically construed as a “tenancy by the entirety”

b. tenancy by the entirety is characterized by a right of survivorship, which may be severed only by divorce or by joint conveyance of the husband and wife

c. a joint tenancy may be created by operation of law rather than by intent of the parties

d. tenants by the entirety may will away their separate halves of the property

31. C, B and S are tenants in common. If B dies:

a. C’s share in the property is unaffected

b. B’s interest goes to C

c. B’s interest goes to C and S

d. B’s interest automatically goes to her surviving spouse

32. The right of survivorship is a feature of which of the following types of tenancy?

a. joint tenancy

b. tenancy in common

c. tenancy in severalty

d. tenancy for years

33. One of the distinguishing characteristics of joint tenancy is that:

a. tenants possess separate estates

b. tenants may possess unequal interests in a single estate

c. interests of a deceased tenant pass to the remaining tenants

d. interests of deceased tenant pass to heirs rather than to the other tenants

34. Which of the following methods of ownership could result in double income taxation?

a. joint tenancy

b. S corporation

c. corporation

d. partnership
35. A joint tenant in real property who wishes to dispose of the interest:

   a. may not file for partition
   b. has no recourse except to sell the interest to other joint tenants
   c. may convey to a nontenant who becomes a tenant in common
   d. has no recourse except to buy out the other joint tenants

36. When owners of a tenancy by the entirety are divorced, they:

   a. become tenants in common
   b. become tenants at sufferance
   c. remain tenants by entireties
   d. automatically become joint tenants with right of survivorship

37. All of the following are in harmony with joint tenancy ownership EXCEPT:

   a. probate
   b. survivorship
   c. undivided interest
   d. equal shares

38. A buyer is thinking of purchasing an interest in a resort condominium that would guarantee possession of a specific two-bedroom unit for March of every year. Which of the following forms of ownership might a broker recommend?

   a. time-sharing
   b. corporate
   c. cooperative
   d. syndication

39. If two friends were partners in a business and invested in a parcel of real estate as tenants in common, which of the following would be true about the investment?

   a. they would have equal interests
   b. they would have unity of time
   c. they would have to sell at the same time
   d. they both would have equal rights of possession
40. Which of the following BEST describes a tenancy in severalty?

a. property held by several people with right of survivorship
b. property held by a corporation and a partnership together
c. property held by several people whose interest passes to their respective heirs
d. property held by one person, whose ownership rights are severed from all others

41. A broker helped buyers prepare an offer to purchase a three-bedroom home. The buyers asked the broker whether they should hold title as joint tenants. The broker should advise them to:

a. take title as tenants by the entirety
b. consult a title company
c. take title as tenants in common
d. consult an attorney

42. In a will, a father left a farm to a daughter and a brother—the daughter to take a three-quarters interest and the brother a one-quarter interest. The father stated that there would be “a right of survivorship between them”. How will they hold title?

a. as joint tenants
b. as tenants in common
c. as tenants by the entirety
d. as tenants in severalty

43. A testator prepared a will leaving his farm to his wife and daughter, the wife to have a two-thirds interest and the daughter a one-third. Title would be held as:

a. tenants by the entirety
b. joint tenants
c. tenants in severalty
d. tenants in common

44. A mother and son could hold property in which manner?

a. tenants by the entirety
b. community property
c. joint tenants
d. tenancy in severalty
45. C and S own a farm as joint tenants. Which of the following statements if true?

   a. S’s wife has a dower interest in the property
   b. C can transfer his interest in the property by will
   c. upon S’s death his interest will pass to his widow
   d. C can sell his half interest in the farm without S’s consent

46. Your client plans to get divorced shortly before closing on a property she and her boyfriend just purchased and asks you about how to hold title to the property. You should suggest she:

   a. get divorced first
   b. conceal the pending divorce
   c. consult an attorney
   d. choose joint tenancy

47. When a person who owns real estate in severalty dies testate, the property:

   a. goes entirely to the surviving joint tenant
   b. is probated and distributed according to the will
   c. is solely vested in the remaining tenant in common
   d. reverts to the county by escheat

48. Assume a real estate broker incorporates his real estate firm. Which is true?

   a. the firm is a separate legal entity, distinct from the broker
   b. the broker is liable for the debts of the corporation
   c. the broker can advertise solely in her individual name
   d. the shareholders must have real estate licenses

49. In what way is tenancy by the entirety different from joint tenancy for a husband and wife?

   a. the right of survivorship exists
   b. there is equal undivided interest
   c. creditors of both can claim the property
   d. one spouse can sell only with the other’s consent
50. In the sale of real property owned by a limited partnership, property acquired by his wife during marriage. This is known as?

   a. dower
   b. curtesy
   c. community property
   d. tenancy by the entirety
## REAL ESTATE LAW

### LESSON I

**OWNERSHIP RIGHTS (IN PROPERTY)**

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ANSWER SHEET TEST 2 (ANNOTATED)

1. B The *marital unit* (husband and wife) actually owns the property. Husband and wife could also hold title as (A), (C) or (D) in severalty, if each holds different property separately. Tenancy by the entirety exists in a minority of states.

2. C There is no interest left in the deceased joint tenant’s surviving tenant, so there is nothing to probate. A joint tenancy can be severed by transfer of ones tenant’s interest. Shares must be equal, and anyone but a corporation can be a joint tenant. Consent from all is need to sell the property, not an interest.

3. A The third party would be a tenant in common with the remaining joint tenants. The original tenancy would be severed. In (D) the three remaining owners still would be joint tenants with one another.

4. B To avoid this result, some cotenants enter into a first refusal agreement, whereby any sale must be first offered to the other cotenants. Choice (D) is wrong because there could be a gift of a tenancy in common interest as well as a sale.

5. B The joint tenancy is severed on the transfer, with the brother owning one-half undivided interest and the *husband and wife owning the other half, which could be* held as tenancy by the entirety, joint tenancy or tenancy in common. They are tenants in common as to their respective half interests.

6. B Only husband and wife can be tenants by the entirety. It could also be a tenancy in common, but this is not one of the choices

7. D There is no right of survivorship with tenancy in common. In a joint tenancy, the shares must be equal. Just as tenants in common can transfer their interest, they can also mortgage it, although most lenders do not prefer to hold a tenancy-in-common type of security.
8. **A** If only one spouse had signed such a contract, the buyer could not obtain specific performance against the non-signing spouse. The creditor must be a creditor of the marital unit, which explains why lenders often insist on both spouses signing loan agreements or mortgages.

9. **B** Such a determination involves the practice of law, especially because there are important estate tax ramifications. A broker should be able to describe the differences among the various types of tenancies; however, the broker should not make a recommendation about the ultimate decision.

10. **D** Joint tenants hold the property free from claims of dower or curtesy of spouses, free from claims of creditors or heirs of a deceased joint tenant, and free from the laws of descent.

11. **C** As to choice (D), if No. 1 conveyed a one-fifth share to a sixth person, then Nos. 2, 3, 4, and 5 would be joint tenants with each other, with a total of four-fifths undivided interest, while No. 6 would be a tenant in common with a one-fifth undivided interest. A will is ineffective to transfer a joint tenant’s interest because the interest ceases at death of the joint tenant and passes to the surviving joint tenants.

12. **D** There is no property left to transfer by will (devise) because the remaining joint tenant(s) has survived to the decedent’s interest.

13. **B** Tenancy in common is a popular form of ownership. It is joint tenancy that deals with survivorship.

14. **D** If the cotenants cannot reach an agreement on splitting the property, then any one tenant can petition the court to partition the property. They can try to physically divide the property (partition in kind) or else sell it and split the net proceeds. Most courts first attempt a partition in kind, but this is sometimes impossible—for example, in the case of a studio condominium property.

15. **D** Although a joint tenancy traditionally requires all of these four unities, each tenant in common has only an undivided interest to possess the whole. Thus, in a
tenancy in common involving two people, each person owns a 50 percent interest in 100 percent of the property.

16. C This person’s ownership is severed from that of anyone else. Personalty (A) is another word for personal property.

17. C Each cotenant has an undivided interest in the entire property. There is no right to possess any specific portion of the property. Thus, one tenant cannot stake a claim to the portion he or she uses. (A), (B) and D refer to joint tenancy.

18. D Choices (A), (B) and (C) require the consent of all cotenants.

19. A Many courts still would enforce a listing against the sole signing spouse (meaning the one signing could be liable for a commission), but it is best to get both to sign. Both spouses must owe the creditor for the possibility of executing against the home to exist. (There may be a different result if they are joint tenants.)

20. B (A) and (D) are true in a tenancy by the entirety. (D) is false as it relates to joint tenancy. (C) is true as it relates to a joint tenancy. (A) is false because in most areas joint tenants can partition.

21. C The key to this question is the unequal shares.

22. B B and C are tenants in common. The interest of the deceased tenant in common passes to his heirs.

23. B The marital unit owns the property in tenancy by the entirety, so one spouse cannot seek partition.

24. A A general partner usually is liable for all the debts of the partnership. A limited partner loses limited liability if he or she participates in the management of the partnership.

25. B The unequal interests indicate there is a tenancy in common. Joint tenancy and tenancy by the entirety require equal interests.
26. D Many state statutes, however, have relaxed the traditional rules of these four entities.

27. B Corporations have perpetual existence unless dissolved, so the corporation always would be the surviving joint tenant.

28. C A and D are not joint tenants because they have separate titles created at different times. A and B were fifty-fifty joint tenants after C’s death, and then D bought B’s interest; this severed the joint tenancy.

29. B The word syndication refers to a group of people united for the purpose of making and operating an investment. It may take the form of a limited partnership or a general partnership. A rental pool (A) refers to an arrangement whereby participating owners of rental apartments agree to make their apartments available for rental and share in the profits and losses according to an agreed-upon formula. A limited liability company is often a professional business form of organization.

30. B In most states, a tenancy involving survivorship must be created by clear and definite words. Otherwise, it will be construed as a tenancy in common.

31. A B’s interest goes to her heirs.

32. A Tenant-in-common interests pass to the heirs or beneficiaries of the will rather than to the surviving tenant in common.

33. C This is the right of survivorship.

34. C A corporation is subject to tax on its profits, and the stockholders will be taxed again on any dividends distributed to them. On partnerships and S Corporations, income and expenses are passed through to the owners, so taxes are paid only once.

35. C Joint tenancies may be severed by transfer of one’s interest in the property. In some cases, the parties agree to give their cotenants a right of first refusal.

36. A Because the marital unit is ended, the tenancy by entirety also ends. Often there is a property settlement agreement that resolves who gets the property, or the
owners may elect to form a joint tenancy or a tenancy in common. Otherwise, by operation of law, property is held in tenancy in common.

37. **A** An attractive feature of joint tenancy ownership is that it avoids the delay and expense of probate. Contrary to popular belief, however, it does not avoid the payment of death taxes by the estate of the deceased joint tenant.

38. **A** Time-sharing is a recent development in communal living. Different people purchase the right to use a piece of real estate (typically a condominium unit) for a set period each year for a definite or indefinite period of years.

39. **D** Tenants in common can have different interests and need not acquire the property at the same time or from the same deed. The only unity required is that of possession of an undivided interest to possess the entire parcel.

40. **D** Tenancy in severalty is ownership of property severed from anyone else’s ownership. Choice (B) describes a tenancy in common. (Corporations can’t hold title as joint tenants.)

41. **D** Brokers should not determine the best tenancy for those with whom they deal. Because of the important tax and estate implications of such a selection, an attorney should be consulted. Title companies insure good title; they don’t advise how to select the method of holding title.

42. **B** The father may have wanted to create a joint tenancy, but joint tenants must have equal shares. The law favors tenancy in common, so the courts in this case will keep the shares at three-quarters and one-quarter but eliminate the right of survivorship.

43. **D** Devisees under a will frequently obtain title to the deceased’s real property as tenants in common. Because the interests are unequal, they cannot be joint tenants. Only husband and wife can be tenants by the entirety.

44. **C** Choices (A) and (B) are forms of ownership requiring the parties to be husband and wife.

45. **D** Dower does not apply to joint-tenancy property. There is
no property left in the estate to pass by will because the remaining joint tenants survive to the interest of the deceased joint tenant.

46. **C** The client can be best served by having an experienced real estate attorney discuss the best type of tenancy based on the pending divorce.

47. **B** A tenant in severalty is the sole owner of the property; if he or she dies leaving a will (testate), the property passes according to the terms of the probated will.

48. **A** The corporation is a separate legal entity under state law; thus, the broker is not responsible for its debts. Under (D), only the principal broker needs a broker license.

49. **D** One joint tenant spouse can sever the joint tenancy, whereas only the marital unit can sell tenancy by entirety property.

50. **C** The contract or deed must be signed by each general partner unless the partnership agreement designates a specific partner. Limited partners need not sign either, as they have no participation in management and are treated as investors only.