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Interests and Estates

Interests and Estates in Land

Freehold Estates

Leasehold Estates

INTERESTS AND ESTATES IN LAND

Interests

Estates in land

Interests

An interest in real estate is *ownership of any combination of the bundle of rights* to real property, including the rights to

- ▶ possess
- ▶ use
- ▶ transfer
- ▶ encumber
- ▶ exclude

Undivided interest. An undivided interest is an owner's interest in a property in which two or more parties share ownership. The terms "undivided" and "indivisible" signify that the owner's interest is in a fractional part of the entire estate, not in a physical portion of the real property itself. If two co-owners have an undivided equal interest, one owner may not lay claim to the northern half of the property for his or her exclusive use.

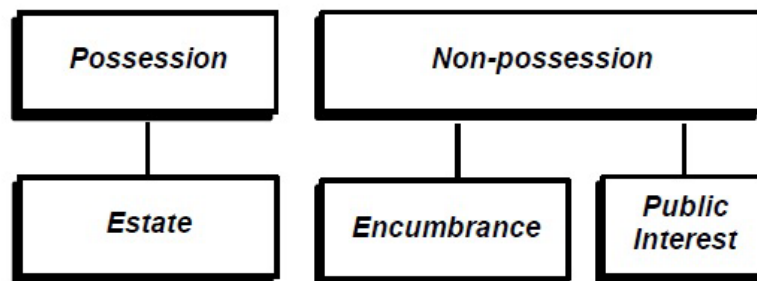
Examples of interests include:

- ▶ an owner who enjoys the complete bundle of rights
- ▶ a tenant who temporarily enjoys the right to use and exclude
- ▶ a lender who enjoys the right to encumber the property over the life of a mortgage loan
- ▶ a repairman who encumbers the property when the owner fails to pay for services
- ▶ a buyer who prevents an owner from selling the property to another party under the terms of the sale contract
- ▶ a mining company which temporarily owns the right to extract minerals from the property's subsurface
- ▶ a local municipality which has the right to control how an owner uses the property
- ▶ a utility company which claims access to the property in accordance with an easement

Interests differ according to

- ▶ how long a person may enjoy the interest
- ▶ what portion of the land, air, or subsurface the interest applies to
- ▶ whether the interest is public or private
- ▶ whether the interest includes legal ownership of the property

Exhibit 3.1 Interests in Real Estate



Interests are principally distinguished by whether they include possession. If the interest-holder enjoys the right of possession, the party is considered to have an **estate in land**, or, familiarly an estate. If a private interest-holder does not have the right to possess, the interest is an **encumbrance**. If the interest-holder is not private, such as a government entity, and does not have the right to possess, the interest is some form of *public interest*.

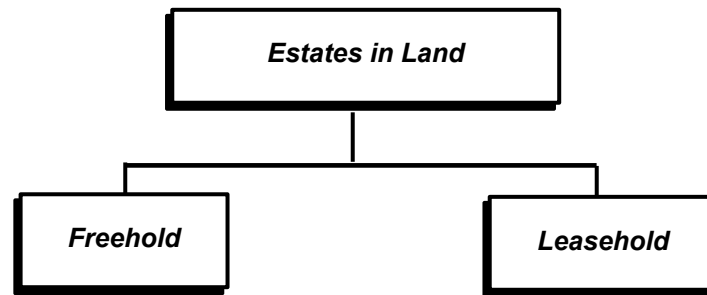
An encumbrance enables a non-owning party to restrict the owner's bundle of rights. Tax liens, mortgages, easements, and encroachments are examples.

Public entities may own or lease real estate, in which case they enjoy an estate in land. However, government entities also have non-possessory interests in real estate which act to control land use for the public good within the entity's jurisdiction. The prime example of public interest is **police power**, or the right of the local or county government to **zone**. Another example of public interest is the right to acquire ownership through the power of eminent domain.

Estates in land

An estate in land is an interest that includes the right of possession. Depending on the length of time one may enjoy the right to possess the estate, the relationships of the parties owning the estate, and specific interests held in the estate, an estate is a freehold or a leasehold estate.

Exhibit 3.2 Estates in Land



In a **freehold estate**, the duration of the owner's rights cannot be determined: the rights may endure for a lifetime, for less than a lifetime, or for generations beyond the owner's lifetime.

A **leasehold estate** is distinguished by its specific duration, as represented by the lease term.

Ownership of a freehold estate is commonly equated with ownership of the property, whereas ownership of a leasehold estate is not so considered because the leaseholder's rights are temporary.

Both leasehold and freehold estates are referred to as **tenancies**. The owner of the freehold estate is the **freehold tenant**, and the renter, or lessee, is the **leasehold tenant**.

FREEHOLD ESTATES

Fee simple estate

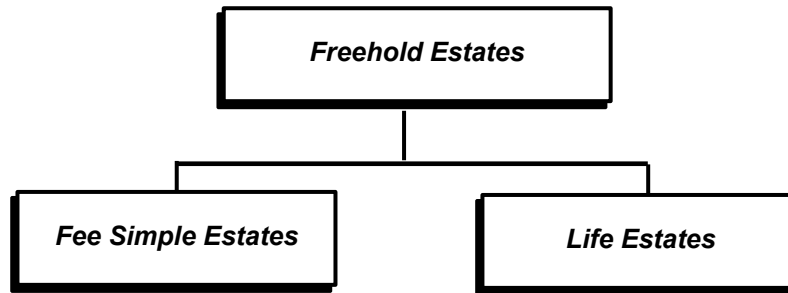
Life estate

Conventional life estate

Legal life estate

Freehold estates differ primarily according to the duration of the estate and what happens to the estate when the owner dies. A freehold estate of potentially unlimited duration is a fee simple estate; an estate limited to the life of the owner is a life estate.

Exhibit 3.3 Freehold Estates



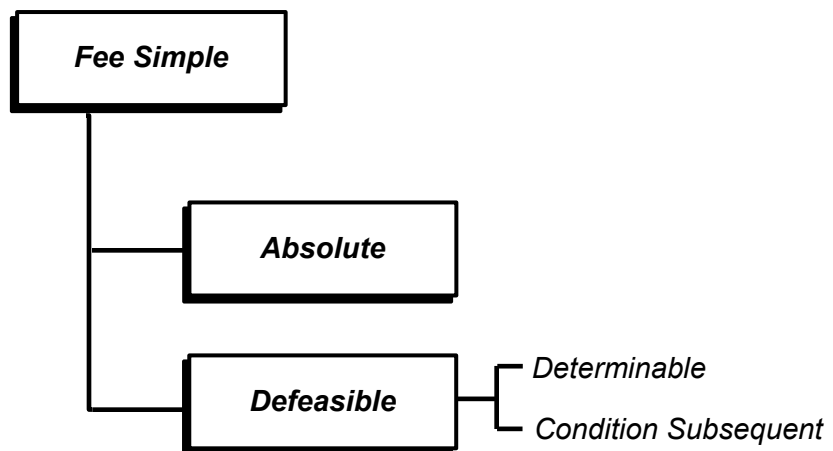
Fee simple estate

The **fee simple** freehold estate is the *highest form of ownership interest* one can acquire in real estate. It includes the complete bundle of rights, and the tenancy is unlimited, with certain exceptions indicated below. The fee simple interest is also called the "fee interest," or simply, the "fee." The owner of the fee simple interest is called the **fee tenant**.

Fee simple estates, like all estates, remain subject to government restrictions and private interests.

There are two forms of fee simple estate: **absolute** and **defeasible**.

Exhibit 3.4 Fee Simple Estates



Fee Simple Absolute. The fee simple absolute estate is a perpetual estate that is *not conditioned by stipulated or restricted uses*. It may also be freely passed on to heirs. For these reasons, the fee simple absolute estate is the most desirable estate that can be obtained in residential real estate. It is also the most common.

Fee Simple Defeasible. The defeasible fee estate is perpetual, provided the usage *conforms to stated conditions*. Essential characteristics are:

- ▶ the property must be used for a certain purpose or under certain conditions
- ▶ if the use changes or if prohibited conditions are present, the estate reverts to the previous grantor of the estate.

The two types of fee simple defeasible are **determinable** and **condition subsequent**.

Determinable. The deed to the determinable estate states usage limitations. If the restrictions are violated, the estate automatically reverts to the grantor or heirs.

Condition subsequent. If any condition is violated, the previous owner may repossess the property. However, reversion of the estate is not automatic: the grantor must re-take physical possession within a certain time frame.

Life estate

A life estate is a freehold estate that is limited in duration to the life of the owner or other named person. Upon the death of the owner or other named individual, *the estate passes to the original owner or another named party*. The holder of a life estate is called the **life tenant**.

The distinguishing characteristics of the life estate are:

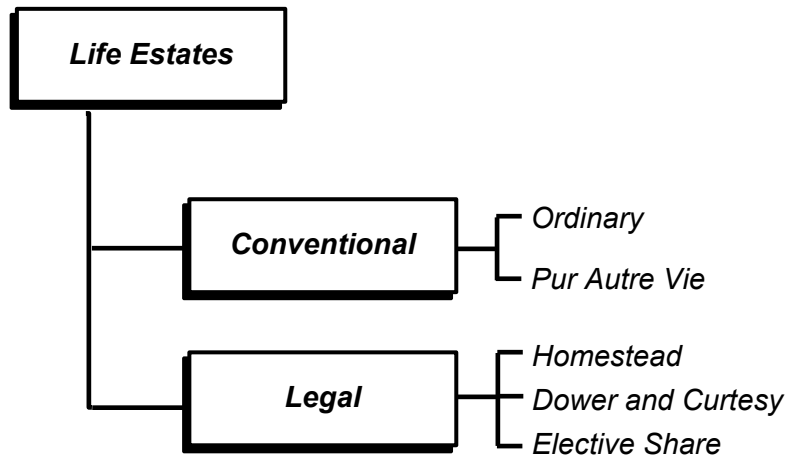
- ▶ the owner enjoys full ownership rights during the estate period
- ▶ holders of the future interest own either a reversionary or a remainder interest
- ▶ the estate may be created by agreement between private parties, or it may be created by law under prescribed circumstances.

Remainder. If a life estate names a third party to receive title to the property upon termination of the life estate, the party enjoys a future interest called a remainder interest or a remainder estate. The holder of a remainder interest is called a **remainderman**.

Reversion. If no remainder estate is established, the estate reverts to the original owner or the owner's heirs. In this situation, the original owner retains a reversionary interest or estate.

The two types of life estates are the **conventional** and the **legal** life estate.

Exhibit 3.5 Life Estates



Conventional life estate

A conventional life estate is created by grant from a fee simple property owner to the grantee, the life tenant. Following the termination of the estate, rights pass to a remainderman or revert to the previous owner.

During the life estate period, the owner enjoys all ownership rights, provided he or she does not infringe on the rights of the remainder or reversion interest holders, such as by damaging the property or jeopardizing its value. Should such actions occur, holders of the future interest may take legal action against the property owners.

The two types of conventional life estate are the **ordinary** and the **pur autre vie** life estate.

Exhibit 3.6 Conventional Life Estates

	Ordinary Life Estate	Pur Autre Vie
With reversion	duration: owner's life reverts to grantor	duration: another's life reverts to grantor
With remainder	duration: owner's life reverts to another	duration: another's life reverts to another

Ordinary life estate. An ordinary life estate *ends with the death of the life estate owner* and may pass back to the original owners or their heirs (reversion) or to a named third party (remainder).

For example, John King grants a life estate in a property to Mary Brown, to endure over Mary's lifetime. John establishes that when Mary dies, the property will revert to himself.

Pur autre vie. A pur autre vie life estate endures over the lifetime of a third person, after which the property passes from the tenant holder to the original grantor (reversion) or a third party (remainderman).

For example, Yvonne grants a life estate to Ryan, to endure over the lifetime of Yvonne's husband Steve. Upon Steve's death, Yvonne establishes that her mother, Rose, will receive the property.

Legal life estate

A legal life estate is *created by state law* as opposed to being created by a property owner's agreement. Provisions vary from state to state. The focus of a legal life estate is defining and protecting the property rights of surviving family members upon the death of the husband or wife.

The major forms of legal life estate are the **homestead**, and **dower and curtesy**.

Homestead. A homestead is one's principal residence. Homestead laws protect family members against losing their homes to general creditors attempting to collect on debts.

Homestead laws generally provide that:

- ▶ all or portions of one's homestead *are exempt* from a forced sale executed for the collection of general debts (judgment liens). The various states place different limits on this exemption.
- ▶ tax debts, seller financing debt, debts for home improvement, and mortgage debt are *not exempt*
- ▶ the family *must occupy* the homestead
- ▶ the homestead interest *cannot be conveyed by one spouse*; both spouses must sign the deed conveying homestead property
- ▶ the homestead exemption and restrictions *endure over the life* of the head of the household, and pass on to children under legal age. State laws define specifically how the interest transfers upon the death of the household head
- ▶ homestead interests in a property *are extinguished* if the property is sold or abandoned
- ▶ in some states the exemption is automatic; in others, homeowners must file for the exemption.

The homestead exemption from certain debts should not be confused with the *homestead tax* exemption, which exempts a portion of the property's value from taxation.

Dower and curtesy. Dower is a wife's life estate interest in the husband's property. When the husband dies, the wife can make a claim to portions of the decedent's property. Curtesy is the identical right enjoyed by the husband in a deceased wife's property. Property acquired under dower laws is owned by the surviving spouse for the duration of his or her lifetime.

LEASEHOLD ESTATES

Estate for years

Estate from period-to-period

Estate at will

Estate at sufferance

A leasehold estate, or **leasehold**, arises from the execution of a lease by a fee owner- the **lessor**, or **landlord**-- to a **lessee**, or **tenant**. Since tenants do not own the fee interest, a leasehold estate is technically an item of personal property for the tenant.

Leasehold tenants are entitled to possess and use the leased premises during the lease term in the manner prescribed in the lease. They also have restricted rights to exclusion.

Estate for years

The estate for years is a leasehold estate for a definite period of time, with a beginning date and an ending date. The estate for years may endure for any length of term. At the end of the term, the estate automatically terminates, without any requirement of notice.

For example, a landlord grants a tenant a three-year lease. After the three years, the leasehold terminates, and the landlord may re-possess the premises, renew the lease, or lease to someone else.

If a tenant with a leasehold estate for years remains in possession of the leased premises after lease expiration, a **holdover lease** is created. In the absence of a new lease agreement stating otherwise, the **holdover tenancy** becomes a periodic tenancy.

Estate from period-to-period

In an estate from period-to-period, also called a **periodic tenancy**, the tenancy period automatically renews for an indefinite period of time, subject to timely payment of rent. At the end of a tenancy period, if the landlord accepts another regular payment of rent, the leasehold is considered to be renewed for another period.

For example, a two-year lease expires, and the landlord grants a six-month lease that is automatically renewable, provided the monthly rent is received on time. At

the end of the six months, the tenant pays, and the landlord accepts another monthly rent payment. The acceptance of the rent automatically extends the leasehold for another six months.

The most common form of periodic tenancy is the month-to-month lease, which may exist without any written agreement.

Either party may terminate a periodic tenancy by giving proper notice to the other party. Proper notice is defined by state law.

Estate at will

The estate at will, also called a **tenancy at will**, has no definite expiration date and hence no "renewal" cycle. The landlord and tenant agree that the tenancy will have no specified termination date, provided rent is paid on time and other lease conditions are met.

For example, a son leases a house to his father and mother "forever," or until they want to move.

The estate at will is terminated by proper notice, or by the death of either party.

Estate at sufferance In an estate at sufferance, a tenant occupies the premises without consent of the landlord or other legal agreement with the landlord. Usually such an estate involves a tenant who fails to vacate at the expiration of the lease, continuing occupancy without any right to do so.

For example, a tenant violates the provisions of a lease and is evicted. The tenant protests and refuses to leave despite the eviction order.

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Interests and Estates Snapshot Review

INTERESTS AND ESTATES IN LAND

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|-------------------------------------|---|
| Interests | <ul style="list-style-type: none">• any combination of bundle of rights• estates, encumbrances, police powers |
| Estates in land | <ul style="list-style-type: none">• include right of possession; also called tenancies• leaseholds: of limited duration• freeholds: duration is not necessarily limited |
| FREEHOLD ESTATES | <ul style="list-style-type: none">• implies "ownership" in contrast to leasehold |
| Fee simple estate | <ul style="list-style-type: none">• also "fee"; most common form of estate; not limited by one's lifetime• fee simple absolute: highest form of ownership interest• defeasible: can revert to previous owner for violation of conditions |
| Life estate | <ul style="list-style-type: none">• fee estate passes to another upon death of a named party• remainder: interest of a named party to receive estate after holder's death• reversion: interest of previous owner to receive estate after holder's death |
| Conventional life estate | <ul style="list-style-type: none">• full ownership interest, limited to lifetime of life tenant or another named party• created by agreements between parties• ordinary: on death of life tenant, passes to remainderman or previous owner• pur autre vie: on death of another; passes to remainderman or previous owner |
| Legal life estate | <ul style="list-style-type: none">• automatic creation of estate through operation of law• designed to protect family survivors• homestead: rights to one's principal residence• laws protect homestead from certain creditors• dower and curtesy: a life estate interest of a widow(er) in the real property |
| LEASEHOLD ESTATES | <ul style="list-style-type: none">• non-ownership possessory estates of limited duration |
| Estate for years | <ul style="list-style-type: none">• specific, stated duration, per lease |
| Estate from period-to-period | <ul style="list-style-type: none">• lease term renews automatically upon acceptance of monthly or periodic rent |
| Estate at will | <ul style="list-style-type: none">• tenancy for indefinite period subject to rent payment; cancelable with notice |
| Estate at sufferance | <ul style="list-style-type: none">• tenancy against landlord's will and without an agreement |