5 Encumbrances and Liens

ENCUMBRANCES

An encumbrance is an interest in and right to real property that limits the legal owner's freehold interest. In effect, an encumbrance is another's right to use or take possession of a legal owner's property, or to prevent the legal owner from enjoying the full bundle of rights in the estate.

An encumbrance does not include the right of possession and is therefore a lesser interest than the owner's freehold interest. For that reason, encumbrances are not considered estates. However, an encumbrance can lead to the owner's loss of ownership of the property.

Easements and liens are the most common types of encumbrance. An easement, such as a utility easement, enables others to use the property, regardless of the owner's desires. A lien, such as a tax lien, can be placed on the property's title, thereby restricting the owner's ability to transfer clear title to another party.

The two general types of encumbrance are those that affect the property's use and those that affect legal ownership, value and transfer.

Exhibit 5.1 General Types of Encumbrance

Restrictions on Owner's Use by Others' Rights to Use	Restrictions on Ownership, Value and Transfer
easements encroachments licenses deed restrictions	liens deed conditions

EASEMENTS

Easement appurtenant
Easement in gross
Easement creation
Easement termination

An **easement** is an interest in real property that gives the holder the right to use portions of the legal owner's real property in a defined way. Easement rights may apply to a property's surface, subsurface, or airspace, but the affected area must be defined.

The receiver of the easement right is the **benefited party**; the giver of the easement right is the **burdened party**.

Essential characteristics of easements include the following:

- An easement must involve the owner of the land over which the easement runs, and another, non-owning party. *One cannot own an easement over one's own property.*
- an easement pertains to a specified physical area within the property boundaries
- an easement may be **affirmative**, allowing a use, such as a right-of-way, or **negative**, *prohibiting a use*, such as an airspace easement that prohibits one property owner from obstructing another's ocean view

The two basic types of easement are appurtenant and gross.

Easement appurtenant

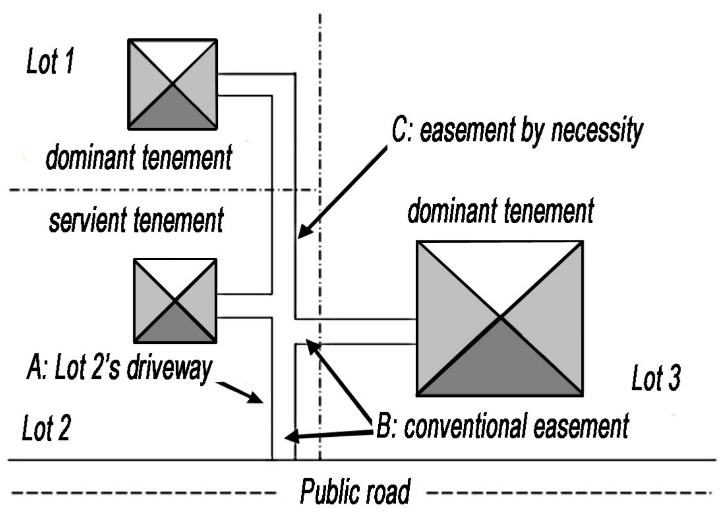
An easement appurtenant gives a property owner a right of usage to portions of an *adjoining property* owned by another party. The property enjoying the usage right is called the **dominant tenement**, or **dominant estate**. The property containing the physical easement itself is the **servient tenement**, since it must serve the easement use.

The term appurtenant means "attaching to." An easement appurtenant attaches to the estate and transfers with it unless specifically stated otherwise in the transaction documents. More specifically, the easement attaches as a beneficial interest to the dominant estate, and as an encumbrance to the servient estate. The easement appurtenant then becomes part of the dominant estate's bundle of rights and the servient estate's obligation, or encumbrance.

Transfer. Easement appurtenant rights and obligations automatically transfer with the property upon transfer of either the dominant or servient estate, whether mentioned in the deed or not. For example, John grants Mary the right to share his driveway at any time over a five-year period, and the grant is duly recorded. If Mary sells her property in two years, the easement right transfers to the buyer as part of the estate.

Non-exclusive use. The servient tenement, as well as the dominant tenement, may use the easement area, provided the use does not unreasonably obstruct the dominant use.

Exhibit 5.2 Easements appurtenant



The exhibit shows a conventional easement appurtenant. The driveway marked A belongs to parcel #2. An easement appurtenant, marked B, allows parcel #3 to use #2's driveway. Parcel #3 is the dominant tenement, and #2 is the servient tenement.

Easement by necessity. An easement by necessity is an easement appurtenant granted by a court of law to a property owner because of a circumstance of necessity, most commonly the need for access to a property. Since property cannot be legally **landlocked**, or *without legal access to a public thoroughfare*, a court will grant an owner of a landlocked property an easement by necessity over an adjoining property that has access to a thoroughfare. The landlocked party becomes the dominant tenement, and the property containing the easement is the servient tenement.

In the exhibit, parcel #1, which is landlocked, owns an easement by necessity, marked C, across parcel #2.

Party wall easement. A party wall is a common wall shared by two separate structures along a property boundary.

Party wall agreements generally provide for severalty ownership of half of the wall by each owner, or at least some fraction of the width of the wall. In addition, the agreement grants a *negative* easement appurtenant to each owner in the other's wall. This is to prevent unlimited use of the wall, in particular a destructive use that would jeopardize the adjacent property owner's building. The agreement also establishes responsibilities and obligations for maintenance and repair of the wall.

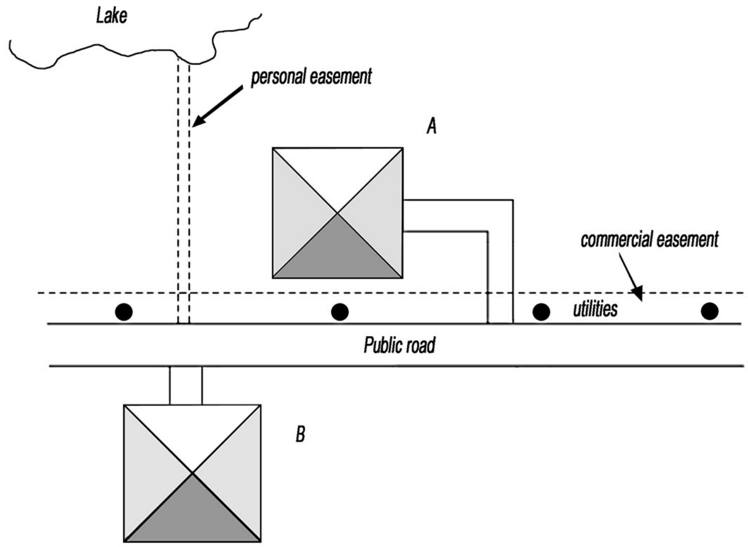
For example, Helen and Troy are adjacent neighbors in an urban housing complex having party walls on property lines. They both agree that they separately own the portion of the party wall on their property. They also grant each other an easement appurtenant in their owned portion of the wall. The easement restricts any use of the wall that would impair its condition. They also agree to split any repairs or maintenance evenly.

Other structures that are subject to party agreements are common fences, driveways, and walkways.

Easement in gross

An easement in gross is a *personal right* that one party grants to another to use the grantor's real property. The right *does not attach* to the grantor's estate. It involves only one property, and, consequently, does not benefit any property owned by the easement owner. *There are no dominant or servient estates in an easement in gross*. An easement in gross may be personal or commercial.

Exhibit 5.3 Easements in Gross



Personal. A personal easement in gross is granted for the grantee's lifetime. The right is irrevocable during this period, but terminates on the grantee's death. It may not be sold, assigned, transferred, or willed. A personal gross easement differs from a license in that the grantor of a license may revoke the usage right.

The exhibit shows that a beachfront property owner (A) has granted a neighbor (B) across the street the right to cross A's property to reach the beach.

Commercial. A commercial easement in gross is granted to a business entity rather than a private party. The duration of the commercial easement is not tied to anyone's
lifetime. The right may by assigned, transferred, or willed.

Examples of commercial gross easements include:

- a marina's right-of-way to a boat ramp
- a utility company's right-of-way across a lot owners' property to install and maintain telephone lines (as illustrated in the exhibit).

Easement creation

An easement may be created by *voluntary action, by necessary or prescriptive operation of law,* and *by government power of eminent domain*.

Voluntary. A property owner may create a voluntary easement by express grant in a sale contract, or as a reserved right expressed in a deed.

Necessity. A court decree creates an easement by necessity to provide access to a landlocked property. **Easement by prescription.** If someone uses another's property as an easement without permission for a statutory period of time and under certain conditions, a court order may give the user the easement right by **prescription**, *regardless of the owner's desires.*

For a prescriptive easement order to be granted, the following circumstances must be true:

- **Adverse and hostile use**

  the use has been occurring without permission or license

- **Open and notorious use**

  the owner knows or is presumed to have known of the use

- **Continuous use**

  the use has been generally uninterrupted over the statutory prescriptive period

For example, a subdivision owns an access road, which is also used by other neighborhoods to access a grocery store. One day, the subdivision blocks off the road, claiming it has never granted the neighbors permission to use the road. If the neighbors have been using the road for the prescribed period, they may sue for an easement by prescription, since the subdivision owners can be assumed to have known of the usage.

Eminent domain. Government entities can create easements through the exercise of eminent domain, wherein they condemn a portion of a property and cause it to be sold "for the greater good." A typical example is a town's condemnation of private land to create a new municipal sewer system.

Easement termination

Easements terminate by:

- *express release of the right* by the easement holder
- *merger*, as when a dominant tenement acquires the servient property, or vice versa
- *purposeful abandonment* by the dominant tenement
- *condemnation* through eminent domain
- *change or cessation of the purpose* for the easement
- *destruction* of an easement structure, such as a party fence
- *non-use* of an easement by prescription

ENCROACHMENTS

An encroachment is the unauthorized, physical intrusion of one owner's real property into that of another.

Examples of encroachments are:

- a tree limb extending into the neighbor's property, violating his or her airspace
- a driveway extending beyond the lot line onto the neighbor's land
- a fence built beyond the property line

Encroachments cause infringements on the rights of the trespassed owner, and may diminish the property's value, particularly when the property is to be sold.

Encroachments often do not appear on a property's title records. A survey may be required to detect or demonstrate the existence of an encroachment.

An owner may sue for removal of an encroachment or for compensation for damages. If an encroached owner takes no remedial action over a prescribed number of years, the encroachment may become an easement by prescription.

LICENSES

A license, much like a personal easement in gross, is a personal right that a property owner grants to another to use the property for a specific purpose. Licenses are not transferrable and do not attach to the land. They cease on the death of either party, or on the sale of the property.

Unlike a personal easement in gross, a license is revocable at any time. Licenses are often granted informally, as a verbal statement of permission.

A farmer granting a neighbor permission to cross his land to reach and fish in his pond is an example of a license.

DEED RESTRICTIONS

A deed restriction is a limitation imposed on a buyer's use of a property by stipulation in the deed of conveyance or recorded subdivision plat.

A deed restriction may apply to a single property or to an entire subdivision. A developer may place restrictions on all properties within a recorded **subdivision plat**. Subsequent re-sales of properties within the subdivision are thereby subject to the plat's covenants and conditions.

A private party who wants to control the quality and standards of a property can establish a deed restriction. Deed restrictions take precedence over zoning ordinances if they are more restrictive.

Deed restrictions typically apply to:

- the land use
- the size and type of structures that may be placed on the property
- minimum costs of structures
- engineering, architectural, and aesthetic standards, such as setbacks or specific standards of construction

Deed restrictions in a subdivision, for example, might include a minimum size for the residential structure, setback requirements for the home, and prohibitions against secondary structures such as sheds or cottages.

Deed restrictions are either covenants or conditions. A **condition** can only be created within a transfer of ownership. If a condition is later violated, a suit can force the owner to forfeit ownership to the previous owner. A **covenant** can be created by mutual agreement. If a covenant is breached, an injunction can force compliance or payment of compensatory damages.

LIENS

Lien types
Lien priority
Superior liens
Junior liens

A lien is a creditor's **claim** against personal or real property as security for a debt of the property owner. If the owner defaults, the lien gives the creditor the right to force the sale of the property to satisfy the debt.

For example, a homeowner borrows $5,000 to pay for a new roof. The lender funds the loan in exchange for the borrower's promissory note to repay the loan. At the same time, the lender places a lien on the property for $5,000 as security for the debt. If the borrower defaults, the lien allows the lender to force the sale of the house to satisfy the debt.

The example illustrates that a lien is an encumbrance that restricts free and clear ownership by securing the liened property as **collateral** for a debt. If the owner sells the property, the lienholder is entitled to that portion of the sales proceeds needed to pay off the debt. In addition, a defaulting owner may lose ownership altogether if the creditor forecloses.

In addition to restricting the owner's bundle of rights, a recorded lien effectively reduces the owner's equity in the property to the extent of the lien amount.

The creditor who places a lien on a property is called the **lienor**, and the debtor who owns the property is the **lienee**.

Liens have the following legal features:

- **a lien does not convey ownership, with one exception**

  A lienor generally has an equitable interest in the property, but not legal ownership. The exception is a **mortgage lien** on a property in a title-theory state. In these states, the mortgage transaction conveys legal title to the lender, who holds it until the mortgage obligations are satisfied. During the mortgage loan period, the borrower has equitable title to the property.

- **a lien attaches to the property**

  If the property is transferred, the *new owner acquires the lien securing the payment of the debt.* In addition, the creditor may take foreclosure action against the new owner for satisfaction of the debt.

- **a property may be subject to multiple liens**

  There may be numerous liens against a particular property. The more liens there are recorded against property, the less secure the collateral is for a creditor, since the total value of all liens may approach or exceed the total value of the property.

- **a lien terminates on payment of the debt and recording of documents**

  Payment of the debt and recording of the appropriate satisfaction documents ordinarily terminate a lien. If a default occurs, a suit for judgment or foreclosure enforces the lien. These actions force the sale of the property.

Lien types

Liens may be voluntary or involuntary, general or specific, and superior or inferior.

Voluntary and involuntary. A property owner may create a **voluntary** lien to borrow money or some other asset secured by a mortgage. An **involuntary** lien is one that a legal process places against a property regardless of the owner's desires.

If statutory law imposes an involuntary lien, the lien is a **statutory lien**. A real estate tax lien is a common example. If court action imposes an involuntary lien, the lien is an **equitable lien**. An example is a judgment lien placed on a property as security for a money judgment.

General and specific. A general lien is one *placed against any and all real and personal property* owned by a particular debtor. An example is an inheritance tax lien placed against all property owned by the heir. **A specific** lien *attaches to a single item* of real or personal property, and does not affect other property owned by the debtor. A conventional mortgage lien is an example, where the property is the only asset attached by the lien.

Superior and inferior lien. The category of superior, or **senior**, liens ranks above the category of inferior, or **junior**, liens, meaning that superior liens receive first payment from the proceeds of a foreclosure. The superior category includes liens for real estate tax, special assessments, and inheritance tax. Other liens, including income tax liens, are inferior.

Lien priority

Within the superior and inferior categories, a ranking of lien priority determines the order of the liens' claims on the security underlying the debt. The highest ranking lien is first to receive proceeds from the foreclosed and liquidated security. The lien with lowest priority is last in line. The owner receives any sale proceeds that remain after all lienors receive their due.

Lien priority is of paramount concern to the creditor, since it establishes the level of risk in recovering loaned assets in the event of default.

Establishment of priority. Two factors primarily determine lien priority:

- the lien's categorization as superior or junior
- the date of recordation of the lien

Exhibit 5.4 Priority of Real Estate Liens

Superior liens in rank order
1. Real estate tax liens
2. Special assessment liens
3. Federal estate tax liens
4. State inheritance tax liens

Junior liens: priority by date of recording
Federal income tax liens
State corporate income tax liens
State intangible tax liens
Judgment liens
Mortgage liens
Vendor's liens
Mechanic's liens (by date work was performed)
Broker's liens

All superior liens take precedence over all junior liens regardless of recording date, since they are considered to be matters of public record not requiring further constructive notice. Thus, a real estate tax lien (senior) recorded on June 15 has priority over an income tax lien (junior) recorded on June 1.

A junior lien is automatically inferior, or **subordinate**, to a superior lien. Among junior liens, date of recording determines priority. The rule is: *the earlier the recording date of the lien, the higher its priority*. For example, if a judgment lien is recorded against a property on Friday, and a mortgage lien is recorded on the following Tuesday, the judgment lien has priority and must be satisfied in a foreclosure ahead of the mortgage lien.

The mechanic's lien is an exception to the recording rule. Its priority dates from the point in time when the work commenced or ended, as state law determines, rather than from when it was recorded.

The following example illustrates how lien priority works in paying off secured debts. A homeowner is foreclosed on a second mortgage taken out in 2018 for $25,000. The first mortgage, taken in 2016, has a balance of $150,000. Unpaid real estate taxes for the current year are $1,000. There is a $3,000 mechanic's lien on the property for work performed in 2017. The home sells for $183,000.

The proceeds are distributed in the following order:

1. $1,000 real estate taxes
2. $150,000 first mortgage
3. $3,000 mechanic's lien
4. $25,000 second mortgage
5. $4,000 balance to the homeowner

Note the risky position of the second mortgage holder: the property had to sell for at least $179,000 for the lender to recover the $25,000.

Subordination. A lienor can change the priority of a junior lien by voluntarily agreeing to subordinate, or lower, the lien's position in the hierarchy. This change is often necessary when working with a mortgage lender who will not originate a mortgage loan unless it is senior to all other junior liens on the property. The lender may require the borrower to obtain agreements from other lien holders to subordinate their liens to the new mortgage.

For example, interest rates fall from 8% to 6.5% on first mortgages for principal residences. A homeowner wants to refinance her mortgage, but she also has a separate home-equity loan on the house. Since the first-mortgage lender will not accept a lien priority inferior to a home equity loan, the homeowner must persuade the home equity lender to subordinate the home equity lien to the new first-mortgage lien.

Superior liens

Real estate tax lien. The local legal taxing authority annually places a real estate tax lien, also called an **ad valorem tax lien**, against properties as security for payment of the annual property tax. The amount of a particular lien is based on the taxed property's assessed value and the local tax rate.

Special assessment lien. Local government entities place assessment liens against certain properties to ensure payment for local improvement projects such as new roads, schools, sewers, or libraries. An assessment lien applies only to properties that are expected to benefit from the municipal improvement.

Federal and state inheritance tax liens. Inheritance tax liens arise from taxes owed by a decedent's estate. The lien amount is determined through probate and attaches to both real and personal property.

Junior liens

Tax liens. All tax liens other than those for ad valorem, assessment, and estate tax are junior liens. They include:

- **federal income tax lien**

  placed on a taxpayer's real and personal property for failure to pay income taxes

- **state corporate income tax lien**

  filed against corporate property for failure to pay taxes

- **state intangible tax lien**

  filed for non-payment of taxes on intangible property

- **state corporation franchise tax lien**

  filed to ensure collection of fees to do business within a state

Judgment lien. A judgment lien attaches to real and personal property as a result of a money judgment issued by a court in favor of a creditor. The creditor may obtain a **writ of execution** to force the sale of attached property and collect the debt. After paying the debt from the sale proceeds, the debtor may obtain a **satisfaction of judgment** to clear the title records on other real property that remains unsold.

During the course of a lawsuit, the plaintiff creditor may secure a **writ of attachment** to prevent the debtor from selling or concealing property. In such a case, there must be a clear likelihood that the debt is valid and that the defendant has made attempts to sell or hide property.

Certain properties are exempt from judgment liens, such as homestead property and joint tenancy estates.

Mortgage and trust deed lien. In lien-theory states, mortgages and trust deeds secure loans made on real property. In these states, the lender records a lien as soon as possible after disbursing the funds in order to establish lien priority.

Vendor's lien. A vendor's lien, also called a **seller's lien**, secures a purchase money mortgage, a seller's loan to a buyer to finance the sale of a property.

Municipal utility lien. A municipality may place a utility lien against a resident's real property for failure to pay utility bills.

Mechanic's lien. A mechanic's lien secures the costs of labor, materials, and supplies incurred in the repair or construction of real property improvements. If a property owner fails to pay for work performed or materials supplied, a worker or supplier can file a lien to force the sale of the property and collect the debt.

Any individual who performs approved work may place a mechanic's lien on the property to the extent of the direct costs incurred. Note that unpaid subcontractors may record mechanic's liens *whether the general contractor has been paid or not*. Thus it is possible for an owner to have to double-pay a bill in order to eliminate the mechanic's lien if the general contractor neglects to pay the subcontractors. The mechanic's lienor must enforce the lien within a certain time period, or the lien expires.

In contrast to other junior liens, the priority of a mechanic's lien *dates from the time when the work was begun or completed*. For example, a carpenter finishes a job on May 15. The owner refuses to pay the carpenter in spite of the carpenter's two-month collection effort. Finally, on August 1, the carpenter places a mechanic's lien on the property. The effective date of the lien for purposes of lien priority is May 15, not August 1.

Broker’s lien. Many states allow a broker in specified circumstances to file a broker’s lien against a property in a transaction in case the party obligated to pay the broker a commission refuses to pay. The lien attaches to the real estate interest owned by the obligated party.

FORECLOSURE

Mortgage lien foreclosure
Judicial foreclosure
Non-judicial foreclosure
Strict foreclosure
Deed in lieu of foreclosure
Short sale

All liens can be enforced by the sale or other transfer of title of the secured property, whether by court action, operation of law, or through powers granted in the original loan agreement. The enforcement proceedings are referred to as foreclosure.

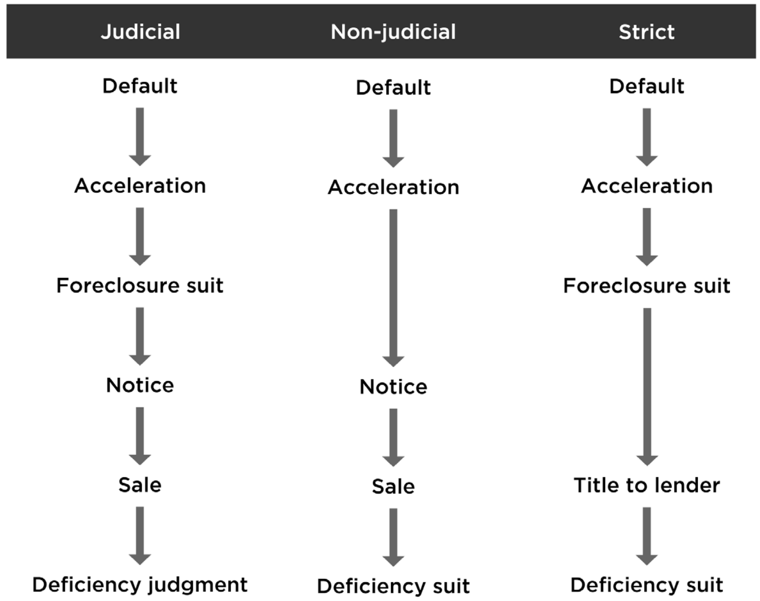
State law governs the foreclosure process. Broadly, a statutory or court-ordered sale enforces a general lien, including a judgment lien. A lawsuit or loan provision authorizing the sale or direct transfer of the attached property enforces a specific lien, such as a mortgage. Real estate tax liens are enforced through **tax foreclosure sales**, or **tax sales**.

Mortgage lien foreclosure

Three types of foreclosure process enforce mortgage liens:

- judicial foreclosure
- non-judicial foreclosure
- strict foreclosure

Exhibit 5.5 Foreclosure Processes



Judicial foreclosure

Judicial foreclosure occurs in states that use a two-party mortgage document (borrower and lender) that does not contain a "power of sale" provision. Lacking this provision, a lender must file a **foreclosure suit** and undertake a court proceeding to enforce the lien.

Acceleration and filing. If a borrower has failed to meet loan obligations in spite of proper notice and applicable grace periods, the lender can **accelerate** the loan, or declare that the loan balance and all other sums due on the loan are payable immediately.

If the borrower does not pay off the loan in full, the lender then files a foreclosure suit, naming the borrower as defendant. The suit asks the court to:

- terminate the defendant's interests in the property
- order the property sold publicly to the highest bidder
- order the proceeds applied to the debt

Lis Pendens. In the foreclosure suit, a **lis pendens** gives public notice that the mortgaged property may soon have a judgment issued against it. This notice enables other lienholders to join in the suit against the defendant.

Writ of execution. If the defendant fails to meet the demands of the suit during a prescribed period, the court orders the termination of interests of any and all parties in the property, and orders the property to be sold. The court's **writ of execution** authorizes an official, such as the county sheriff, to seize and sell the foreclosed property.

Public sale and sale proceeds. After public notice of the sale, the property is auctioned to the highest bidder. The new owner receives title free and clear of all previous liens, whether the lienholders have been paid or not. Proceeds of the sale are applied to payment of liens according to priority. After payment of real estate taxes, lienholders' claims and costs of the sale, any remaining funds go to the mortgagor (borrower).

Deficiency judgment. If the sale does not yield sufficient funds to cover the amounts owed, the mortgagee may ask the court for a deficiency judgment. This enables the lender to attach and foreclose a judgment lien on other real or personal property the borrower owns.

Right of redemption. The borrower's right of redemption, also called equity of redemption, is the right to *reclaim a property* that has been foreclosed by paying off amounts owed to creditors, including interest and costs. Redemption is possible within a **redemption period**. Some states allow redemption during the foreclosure proceeding at any time "until the gavel drops" at the sale. Other states have statutory periods of up to a year following the sale for the owner of a foreclosed property to redeem the estate. Also see **right to reinstate** on page 255 in Chapter 17.

Non-judicial foreclosure

When there is a "power of sale" provision in the mortgage or trust deed document, a non-judicial foreclosure can force the sale of the liened property *without a foreclosure suit*. The "power of sale" clause in effect enables the mortgagee to order a public sale without court decree.

Foreclosure process. On default, the foreclosing mortgagee records and delivers notice to the borrower and other lienholders. After the proper period, a "notice of sale" is published, the sale is conducted, and all liens are extinguished. The highest bidder then receives unencumbered title to the property.

Deficiency suit. The lender does not obtain a deficiency judgment or lien in a non-judicial foreclosure action. The lender instead must file a new deficiency suit against the borrower.

Re-instatement and redemption. During the notice of default and notice of sale periods, the borrower may pay the lender and terminate the proceedings. Exact re-instatement periods vary from state to state. There is no redemption right in non-judicial foreclosure.

Strict foreclosure

Strict foreclosure is a court proceeding that gives the lender title directly, by court order, instead of giving cash proceeds from a public sale.

On default, the lender gives the borrower official notice. After a prescribed period, the lender files suit in court, whereupon the court establishes a period within which the defaulting party must repay the amounts owed. If the defaulter does not repay the funds, the court orders transfer of full, legal title to the lender.

Deed in lieu of foreclosure

A defaulting borrower who faces foreclosure may avoid court actions and costs by voluntarily deeding the property to the mortgagee. This is accomplished with a deed in lieu of foreclosure , which transfers legal title to the lienholder. The transfer, however, does not terminate any existing liens on the property.

Short sale

A **short sale** occurs when a property owner owes more than resale value and loan pay-off for a property and agrees to let the lender sell the property in exchange for release from the lien. The lender may or may not agree to accept the deficient price as satisfaction and may require the seller to pay the deficiency by way of a deficiency judgment. There may also be tax consequences for the seller. To avoid the deficiency, the seller must make sure that the agreements include a full release of the underlying debt and a statement that it was fully satisfied.

After the property is retaken by foreclosure or short sale, it becomes "bank owned." **Forbearance** or a **loan modification** allows the borrower to avoid legal action and keep the property under a new agreement with the lender.

The parties to a short sale are the buyer and seller. The lender is a third party contingency who must approve the sale. The process is generally as follows.

Short sale procedure

1. The borrower or borrower's agents contact the lender to discuss the short sale option.
2. If willing, the lender sets the required terms of the short sale.
3. The real estate agent provides the lender a Broker's Price Opinion (BPO).
4. The agent lists the property for sale at the price that will cover the mortgage.
5. The agent places a note in the Multiple Listing Service (MLS) stating that the lender will consider a short sale.
6. A buyer submits an offer.
7. The owner agrees to the contract
8. The lender approves the short sale.
9. The transaction closes.
10. The lender may take action to recover the deficiency.

5 Encumbrances and Liens
Snapshot Review

ENCUMBRANCES	• non-possessory interests limiting the legal owner's rights
EASEMENTS	• a right to use portions of another's property
Easement appurtenant	• dominant tenement's right to use or restrict adjacent servient tenement; attaches to the real estate
	• easement by necessity: granted by necessity, e.g. to landlocked owners
	• party wall: negative easement in a shared structure
Easement in gross	• a right to use property that does not attach to the real estate
	• personal: not revocable or transferrable; ends upon death of easement holder
	• commercial: granted to businesses; transferrable
Easement creation	• voluntary grant, court decree by necessity or prescription, eminent domain
	• by prescription: obtainable through continuous, open, adverse use over a period
Easement termination	• release; merger; abandonment; condemnation; change of purpose; destruction; non-use
ENCROACHMENTS	• intrusions of real estate into adjoining property; can become easements
LICENSES	• personal rights to use a property; do not attach; non-transferrable; revocable
DEED RESTRICTIONS	• conditions and covenants imposed on a property by deed or subdivision plat
LIENS	• claims attaching to real and personal property as security for debt
Lien types	• voluntary and involuntary; general and specific; superior and junior
Lien priority	• rank ordering of claims established by lien classification and date of recording; determines who gets paid first if lienee defaults
Superior liens	• rank over junior liens; not ranked by recording date; real estate tax and assessment liens and inheritance taxes
Junior liens	• rank by recording date: judgment; mortgage, vendor's, utility, mechanic's, broker's, other tax liens; mechanic's lien priority "dates back" to when work or sale transpired
FORECLOSURE	• enforcement of liens through liquidation or transfer of encumbered property
Mortgage lien foreclosure	• liquidation or transfer of collateral property by judicial, non-judicial, or strict foreclosure
Judicial foreclosure	• lawsuit and court-ordered public sale; deficiency judgments, redemption rights
Non-judicial foreclosure	• "power of sale" granted to lender; no suit; no deficiency judgment; no redemption period after sale
Strict foreclosure	• court orders legal transfer of title directly to lender without public sale
Deed in lieu of foreclosure	• defaulted borrower deeds property to lender to avoid foreclosure
Short sale	• sale at a price that does not cover a borrower's loan balance