

Forms of Ownership

I. What are the basic Forms of Ownership

A. Forms

1. Severalty – One Person (Actual or Legal)
2. Co-Ownership – More than One Person
- 3 Trust

II. Ownership in severalty title vested in one natural or legal person

(An Individual, Trust, Trustee, Partnership or Corporation)

A. Methods of Ownership

1. Possession (I got it and You don't) (9/10th of the Law)
2. Title
 - a. Deed
 - b. Ownership statement (Insurance – Pink Slip – Bank Signature Card)
 - c. Assignment of interest

III. Co-ownership concurrent ownership; co-tenants

A. Tenancy in common (One Pie – Sliced into Pieces)

1. Two or more natural or legal owners
2. Each owner with an undivided fractional interest
3. Unity of possession
4. Each owner may encumber or convey his or her interest.
5. Each interest is inheritable.

B. Joint tenancy (with rights of survivorship) (One Pie – Many Spoons)

1. Two or more natural owners only (Note natural owners)
2. Inherent right of survivorship among the owners (Last owner gets all)
3. Creation of joint tenancy requires four unities (PITT)
 - a. Possession - all joint tenants holding an undivided right to possession
 - b. Interest - all joint tenants holding equal ownership interests
 - c. Time - all joint tenants acquiring their interest at the same time
 - d. Title - all joint tenants acquiring their interests by the same document
4. Termination of joint tenancy occurs when any one unity is terminated.

C. Termination of co-ownership by suit for partition. The court may physically divide the property or order it sold and divide the proceeds among the disputing owners. (Think of the Family Farm divided)

D. Ownership by married couples

1. Tenancy by the entirety (The Two Shall Become One)

- a. Special form of ownership for married couples in certain states.
- b. Husband and wife are considered one legal entity;
- c. Each has undivided interest with inherent right of survivorship
- d. Both husband and wife must sign any documents to encumber or convey the property.
- e. Termination of tenancy by entireties:
 - (1) Death of either spouse; survivor becomes owner in severalty
 - (2) Agreement between both parties (new deed)
 - (3) Divorce (parties become tenants in common)
 - (4) Court ordered sale

2. Community property

- a. Special form of ownership for married couples only
- b. Husband and wife are considered equal partners, with both signatures required for conveying or mortgaging
- c. Property acquired during the marriage is community property.
- d. Property brought to the marriage or acquired during the marriage by gift or inheritance is separate property.
- e. Does not have a right of survivorship as joint tenancy does. When one spouse dies, one-half of the property is inherited by the decedent's heirs (which may or may not be the other spouse).

IV. Trusts

A. Minimum Requirements to a trust

- 1. Trustor (Settlor, Trustor, Creator)— the person who creates the trust
- 2. Trustee - the party who holds legal title and must carry out the trustor's instructions regarding the purpose of the trust; has a fiduciary responsibility
- 3. Beneficiary - the person who receives the benefits of the trust
Income Beneficiary

Principal Beneficiary
Remainder Beneficiary

4. Property (Real Property, Stock, Bank Account, Assignment or possession by Trustee, Insurance, etc.)
5. Written Agreement (Actually not necessary but a real good idea.)

- B. Living trust created while the trustor is alive, usually by a detailed trust agreement
- C. Testamentary trust created at the grantor's death through the grantor's will
- D. Land trust permitted in a few states; real estate is the only asset
 1. Public records do not name beneficiary
 2. Property can be pledged as security without having mortgage recorded; beneficial interest is personal property
 3. Continues for a definite term; if not extended, expires

V. Ownership of Real Estate by Business Organizations

- A. Partnerships—two or more people who carry on a business for profit as co-owners
 1. General partnership: All partners are general partners who participate in the partnership; share full liability.
 2. Limited partnership: The general partner provides the management for the limited (nonparticipating) partners; limited partners are only liable to the extent of their investment.
 3. Most states have adopted the Uniform Partnership Act (UPA).

B. Corporations

1. A legal entity (“artificial person”); chartered under state law
2. Exist in perpetuity until formally dissolved
3. Managed and operated by board of directors
4. Provide its shareholders with limited liability
5. Corporate profits are usually subject to double taxation unless a Chapter S corporation.

C. Syndicates and joint ventures

1. Syndicate—a joining together of two or more people or firms to make and operate a real estate investment; can take one of the several forms of ownership previously mentioned
2. Joint venture—form of ownership in which two or more people or firms carry out a single business project

D. Limited liability companies (LLC)

1. Combines features of limited partnerships and corporations
2. Members have the limited liability of a corporation plus the tax advantages of a partnership.

IV. Condominiums, Cooperatives, and Time-Shares

A. Condominiums (see Figure 8.4)

1. Created under horizontal property laws or uniform condominium act laws declaration of condominium
2. The purchaser is a fee simple owner who receives a deed to
 - a. individual ownership of an individual unit and
 - b. tenant-in-common interest for the common elements.
3. Can be for any type of real estate, not just residential
4. There is no right to partition condominium ownership.
5. Most states have adopted Uniform Condominium Act, which requires a Declaration of Condominium be recorded.
6. Require periodic fees for common area expenses and assessments for special expenses
7. Individual ownership unit is assessed for real property tax.
8. Title can be liened like any other real estate ownership.
9. Administered by association of unit owners

B. Cooperative ownership

1. Title is held by a corporation.
2. The purchaser is a shareholder who receives
 - a. a stock certificate and
 - b. a proprietary lease.
3. Operated and managed by board of shareholders.
4. Shareholders pay fees to support the corporation's expenses; liability for nonpayment of fees by other shareholders to support the cooperative
5. Method of transfer of ownership important issue. May require approval by board of directors and selling of stock back to corporation.

C. Time-share ownership

1. Can be either a time-share estate (fee simple interest) or a time-share use, (right to use only; developer owns the real estate)
2. The purchaser usually receives the right to occupy a certain unit for a specified time-frame each year (one week being the most common).
3. State laws that govern time-shares are extremely complex and varied, requiring specialized competent legal counsel.
4. In Practice: Time-shares are frequently regulated as subdivisions and sales may be subject to federal securities laws.