

1 **Real Estate Principles of Georgia**

2 **Estates in Land**

Interests in real property

Interest: A right concerning real property or a claim against it.

Interests may be:

- possessory interests (estates)
- nonpossessory

3 **Hierarchy of Estates**

4 **Types of Estates**

Freehold estates

5 **Freehold Estates**

Fee simple estates

Fee simple:

- ▶ most common type of estate
- ▶ highest and most complete form of ownership
- ▶ can potentially last forever

A fee simple estate is perpetual, transferable, and inheritable.

6 **Fee Simple Estates**

7 **Fee Simple Estates**

Fee simple absolute

- ▶ Fee simple absolute owner is not subject to any special limitations.
- ▶ Fee simple absolute estate is default estate unless it is completely clear that grantor intended otherwise.
- ▶ Fee simple absolute estate is freely transferable with no set termination period.

8 **Fee Simple Estates**

Fee simple defeasible

Fee simple defeasible: Fee title with a condition or qualification attached.

- Interest will end if a specified act or event occurs at some later date.

Two types:

- fee simple determinable and
- fee simple subject to condition subsequent

9 **Fee Simple Estates**

Fee simple defeasible

Fee simple determinable: Ends automatically if condition is violated; property reverts to grantor.

Fee simple subject to condition subsequent: Doesn't end automatically when condition is breached; grantor must take legal action to terminate the estate.

10 **Freehold Estates**

Life estates

Life estate:

- ▶ limited in time
- ▶ lasts only as long as particular person is alive

Person holding life estate is **life tenant**.

11 **Life Estates**

Duration

Measuring life: The life on which a life estate depends.

The measuring life can be the life of the life tenant or someone else (pur autre vie).

12 **Life Estates**

Future interests

Future interest: Ownership interest that will begin when life estate ends.

When a life estate is created, a future interest in property is created at same time.

13 **Life Estates**

Future interests

14 **Future Interests**

Estate in reversion

Maria grants life estate to John, stipulating that property will revert to her (or to her heirs) at end of measuring life.

Maria and her heirs have estate in reversion.

15 **Future Interests**

Estate in remainder

But if Maria stipulates that property will go to Sam (not to her or her heirs) when John dies, then Sam has estate in remainder.

Sam would be called a **remainderman who receives a fee estate**.

16 **Estates**

Duties of a life tenant

- ▶ Life tenant must pay any taxes, assessments, and other liens on property.

- ▶ Life tenant must allow holders of future interests to inspect the property periodically.

- ▶ Life tenant must not commit **waste**.

17 **Legal Life Estate**
Created by State Law

- ▶ Dower
- ▶ Curtesy
- ▶ Homestead Protection

18 **Summary**

Freehold Estates

- ▶ Freehold estate
- ▶ Fee simple absolute
- ▶ Fee simple defeasible
- ▶ Life estate

19 **Hierarchy of Estates**

Leasehold estates

Leasehold estate: Limited, temporary estate created by a lease contract.

- Parties: landlord (lessor) and tenant (lessee).
- Tenant gets right to exclusive possession and use of property.
- Landlord retains title.

20 **Leasehold Estates**

Types of leasehold estates

- ▶ Estate for years
- ▶ Periodic tenancy
- ▶ Tenancy at will
- ▶ Tenancy at sufferance

21 **Types of Leasehold Estates**

Estate for years

Estate for years: Leasehold estate that lasts for any fixed term.

- Created by express agreement only.
- Ends automatically when term expires.

22 **Types of Leasehold Estates**

Periodic tenancy

Periodic tenancy: Leasehold that is not limited to specific term. Also called a periodic estate.

- Automatic renewal: continues from rental period to rental period until terminated

by either party.

- Requires notice to terminate.

23 **Types of Leasehold Estates**

Tenancy at will

Tenancy at will: Tenancy that is neither an estate for years nor a periodic tenancy. Also called an estate at will.

- No specified termination date or regular rental period.
- Rent may be paid on an irregular basis or not at all.
- Can be terminated at any time by either party with notice.

24 **Types of Leasehold Estates**

Tenancy at will

Differences from other leasehold estates:

- cannot be assigned to another person
- ends automatically upon death of either party
- ends with sale of property

25 **Types of Leasehold Estates**

Tenancy at sufferance

Tenancy at sufferance: Not a true estate because the tenant does not have a leasehold interest.

- Tenant holds over after lease expires, contrary to landlord's wishes.
- Sometimes called an estate at sufferance or holdover tenancy.

26 **Summary**

Leasehold Estates

- ▶ **Leasehold estate**
- ▶ **Estate for years**
- ▶ **Periodic tenancy**
- ▶ **Tenancy at will**
- ▶ **Tenancy at sufferance**

27 **Ways of Holding Title**

All property has at least one owner:

- individual,
- organization, or
- group of individuals.

Depending on number/type of owners involved, title to property can be held in different ways.

28 **Ways of Holding Title**

Ownership in severalty

Ownership in severalty: Ownership by one individual (often called “separate” or “sole” ownership).

Individual owner may be:

- natural person (human being)
- artificial person (legal entity such as a business)

29 **Ways of Holding Title**

Co-ownership

Four types of concurrent ownership:

- tenancy in common
- joint tenancy
- community property
- tenancy by the entirety

30 **Forms of Co-ownership**

Tenancy in common

The most basic form of co-ownership is tenancy in common.

It is the default form of co-ownership.

31 **Forms of Co-ownership**

Tenancy in common

Tenants in common have **undivided interests** in entire property.

- Each party has separate title.
- Shares need not be equal.
- Tenant in common may sell, will, or mortgage interest without consent of other tenants.

32 **Tenancy in Common**

Partition

Tenancy in common can end if:

- ▶ co-tenants agree to sell property
- ▶ co-tenants agree to partition property
- ▶ one co-tenant files a suit for partition

33 **Tenancy in Common**

Example

- ▶ **A, B, and C owned property as tenants in common. Then C died, and his heirs inherited his share of the property. Now the property is owned by A, B, and C's heirs as tenants in common.**

34 **Joint Tenancy**

Four unities

Legal requirements for creating joint tenancy:

- **P**ossession
- **I**nterest
- **T**itle
- **T**ime

35 **Joint Tenancy**

- ▶ Cannot be created by law: only by intent of parties
- ▶ Each tenant may sell mortgage, lease rights without permission of other tenant
- ▶ When a share is sold, joint tenancy ends with respect to that share; new shareholder takes ownership as tenant in common

36 **Joint Tenancy**

Right of survivorship

- ▶ Key feature of joint tenancy is **right of survivorship**.

- ▶ When joint tenant dies, her interest:
 - automatically passes to surviving joint tenants
 - is not part of her estate (can't be willed)

37 **Joint Tenancy**

Example

38 **Forms of Co-ownership**

Community property

- ▶ In community property states:
 - A married couple's property that isn't one spouse's separate property is called community property.
 - A legal presumption exists that all property acquired during marriage is community property.
 - Each spouse entitled to ½ of community property.
 - Georgia is not a community property state.

39 **Forms of Co-ownership**

Georgia law

Like most non-community property states, Georgia probate law gives the surviving spouse an elective share of the deceased spouse's property.

40 **Community Property**

Definitions

Separate property:

- all property owned before marriage
- gift or inheritance acquired during marriage

41 **Community Property**
Definitions

Community property:

Any property (including money) acquired by spouse during marriage:

42 **Forms of Co-ownership**
Tenancy by the entirety

Tenancy by the entirety: Form of co-ownership similar to joint tenancy.

- ▶ Can only be created by a married husband and wife.
- ▶ Tenant by the entirety cannot convey his/her interest without the spouse's consent.
- ▶ Not used in Georgia.

43 **Forms of Co-ownership**
Dower and curtesy

Dower rights: Give wife an interest in husband's real property.

Curtesy rights: Give husband an interest in wife's real property.

- ▶ Most states, including Georgia, have eliminated dower and curtesy rights and use community property system or probate rules instead. (Georgia uses probate rules.)

44 **Summary**
Ways of holding title

- ▶ Tenancy in common
- ▶ Joint tenancy
- ▶ Four unities
- ▶ Survivorship
- ▶ Community property
- ▶ Dower and curtesy

45 **Business Organizations**

1

May be organized in any of these ways

2

- ▶ General partnership
- ▶ Limited partnership
- ▶ Corporation
- ▶ Limited liability company
- ▶ Joint venture
- ▶ Trust

46 **Business Organizations**
Partnership

Partnership: Association of two or more persons to carry on a business as co-owners and divide the profits.

Types of partnerships:

- general partnership
- limited partnership

47 **Partnerships**

General partnership

Each partner has:

- ownership interest in partnership
- voice in management of business
- right to share in profits
- obligation to share in its losses

48 **General Partnership**

Property ownership

Partnership property:

- acquired in partnership's name
- acquired in names of one or more of the individual partners and deed makes reference to partnership

Partner has no transferable interest in partnership property; however, a partner's interest in partnership itself may be transferred, unless they are in real estate business.

49 **General Partnership**

Liability

Each partner may be held personally liable for debts and obligations of general partnership.

50 **Partnerships**

Limited partnership

Limited partnership: At least one general partner, plus one or more limited partners.

Limited partners have:

- limited liability
- no control over partnership property
- passive role in management

51 **Business Organizations**

Corporation

Stockholders:

- ▶ own shares in corporation
- ▶ own only a right to share in profits

Shares in a corporation are:

- ▶ securities
- ▶ regulated by Securities and Exchange Commission

52 **Business Organizations**

Corporation

A **corporation**:

- is a legal entity (artificial person)
- can enter into contracts or own property
- has corporate liability (stockholders have limited liability)
- has perpetual existence (cannot own property in joint tenancy)

53 **Business Organizations**

Limited liability company (LLC)

- ▶ LLC is a relatively new form of business organization.
- ▶ Combines advantages of partnership and corporation:
 - ability to manage the company
 - no double taxation
 - limited liability
 - Investors are called “members”, not stockholders

54 **Business Organizations**

Joint venture

Joint venture: Two or more individuals or organizations join together for one specific project.

- Not an ongoing business endeavor.
- No formal requirements for creation.

55 **Business Organizations**

Trusts

▶ **Trustor – Trustee – Beneficiary**

▶ **Types of Trusts**

- Living trust
- Testamentary trust
- Land trust

56 **Business Organizations**

Real estate investment trust

REIT: Business association that invests primarily in real estate or real estate financing.

- Qualifies for special tax treatment
- Regulated by SEC
- Investors have limited liability
- Strict requirements:
 - at least 100 investors
 - must distribute 90% of its taxable income to investors

57 **Business Organizations**

Syndicate

Syndicate: Business association in which investors pool money to establish and carry out an enterprise.

58 **Summary:**

Business organizations

- 1
 - ▶ General partnership
 - ▶ Limited partnership
 - ▶ Partnership property
 - ▶ Limited liability company (LLC)
 - ▶ Corporation
- 2
 - ▶ SEC
 - ▶ Joint venture
 - ▶ Trusts
 - ▶ Real estate investment trust (REIT)
 - ▶ Syndicate

59 **Common Interest Developments**

Properties that combine aspects of individual ownership and concurrent ownership:

- condominiums
- townhouses
- planned unit developments
- cooperatives
- timeshares

60 **Common Interest Developments**

Condominiums

Condominiums are a form of ownership, not necessarily a specific architect style: may be residential, commercial, even special purpose such as parking lots, even cemetery plots.

Residents:

- own individual units in fee simple
- also share ownership of common elements

61 **Condominiums**

Common elements

Common elements: Parts of condominium property that may be used by all residents.

Examples:

- grounds
- lobby
- elevator
- hallways

- swimming pool

62 **Condominiums**

Common elements

Each unit in condominium is assigned an undivided interest in common elements.

Legal description of condo unit might read:

Unit 20, together with a 3.5% undivided interest in the common elements.

63 **Condominiums**

Units as separate properties

Buyer of a condo unit:

- receives deed for unit
- finances purchase with separate loan
- obtains separate title insurance policy
- pays separate taxes

If lien against one unit is foreclosed, other units are not affected.

64 **Condominiums**

Units as separate properties

Management of condo complex is usually by a unit owners association.

- Association collects assessments (**dues**) to pay for maintenance, repair, and insurance of common areas.

65 **Condominiums**

- ▶ Created by state laws
- ▶ Master deed
- ▶ Declaration
- ▶ Plat
- ▶ By-laws: C,C, & R's

66 **Common Interest Developments**

Townhouses

Townhouse development: multi-story, single-family homes built on small parcels.

- may share walls with neighboring units
- individual interest in unit as well as land underneath; shared common interest in common areas
- may have owners association

67 **Common Interest Developments**

Planned unit developments

Planned unit development (PUD): buyer owns single-family home and land it's on, plus shared interest in common areas.

Common areas: parks, open areas, playgrounds, recreational facilities, shopping center, etc.

68 **Common Interest Developments**

Cooperatives

Residential co-op:

- Title held by a corporation.
- Residents:
 - own shares in corporation, and
 - have long-term proprietary lease on unit
 - Ownership interests are personal property

69 **Common Interest Developments**

Cooperatives

Co-op is:

- financed with a single mortgage
- taxed as a single property

Rent paid by shareholder-tenant to corporation is proportionate share of co-op's operating expenses.

70 **Common Interest Developments Timeshares**

Timeshare: multiple owners buy interests in one property (usually vacation property).

Buyer typically receives time slot: right to use property for specified amount of time each year.

71 **Common Interest Developments Timeshare estate vs. timeshare use**

Timeshare estate: Fee simple ownership in property for specific time period. Also called interval ownership.

- Buyer shares maintenance and repair costs, as well as profits and appreciation.

Timeshare use: Buyer only receives right to use property, and does not share in costs or profits/appreciation.

72 **Summary**

Common Interest Developments

- ▶ **Condominium**
- ▶ **Common elements**
- ▶ **Limited common elements**
- ▶ **Townhouse**
- ▶ **Planned unit development**
- ▶ **Cooperative**
- ▶ **Timeshare**