Ch 2 Property Rights and Ownership Interests Property

- Real estate
  - land and things permanently attached to the land
- Real property
  - real estate plus PROPERTY RIGHTS
- Personal property
  - moveable property

Fixtures

- An item that was once personal property but that has become attached to the real estate so that it is now considered real property

Tests for Fixture Status

- Intent of the parties
- Attachment
- Adaptability
- Existence of an agreement
Mineral and Air Rights

- Separate ownership
- Limitation of air space to a reasonable distance
- Right to sunlight

Water Rights

- Littoral rights
- Riparian rights theory
  - Reasonable use
- Prior appropriation theory
- Underground water

Estates in Land

- Grantor
  - Party who transfers interest
- Grantee
  - Party who receives interest
Estates in Land

- Estate is a legal right in land
- Freehold estates: inheritable
  - indeterminable time period
  - actual ownership
- Leasehold estates
  - estates for a fixed time period
  - possession but no ownership

Freehold estates

- Fee simple absolute estates
  - aka Fee or Fee Simple Absolute
  - highest interest recognized by law
    - biggest bundle of rights
    - no time limit
    - subject to government rights
    - Alienable
    - Devisable
    - Descendible

Freehold estates

- Qualified estates
  - qualified fee determinable
    - possibility of reversion (automatic)
  - qualified fee conditional
    - power of termination (the right)
Freehold estates

Life Estates
- Non-inheritable freehold estate that ends upon the death of the named person
  - Life tenant
  - Reversion
  - Remainder

Leasehold Estates

Non-freehold estates
- Tenancy for a stated period
- Tenancy from period to period
- Tenancy at will
- Tenancy at sufferance

Forms of Ownership

2 General Categories
- Ownership in Severalty
- Concurrent Ownership
Concurrent Estates - Joint Ownership

**Tenancy in common**
- Undivided proportional interest (unity of possession)
- Each owner holds an undivided interest in severalty and can sell, mortgage, or transfer that interest
- No right of survivorship
- Wording "X, Y, Z as tenants in common with a fractional interest of 30%, 60%, and 10%"

Concurrent Estates - Joint Ownership

**Joint tenancy**
- Right of survivorship
  - Poor man's will
- 4 unities required
  - Unity of time
  - Unity of title
  - Unity of interest
  - Unity of possession
- Wording: "X and Y, as joint tenants with right of survivorship and not as tenants in common"

Concurrent Estates - Joint Ownership

**Tenancy by the entirety**
- Only between husband and wife
- Surviving owner becomes sole owner
- Title can be conveyed only by both parties
- Termination
  - Death of either spouse
  - Divorce
  - Mutual agreement
  - Legal action
Concurrent Estates - Joint Ownership

- Community property
  - husband and wife are partners (not one entity)
  - property acquired during the marriage should be shared
- Two types of property
  - Separate property
  - community property

Condominium Ownership

- Fee simple ownership to personal units
- Common ownership of public facilities

Cooperative Ownership

- Land and building owned by a non-profit corporation
- Residents have proprietary lease in specific units
Time Sharing

- Fee interest time-share
- Right-to-use time-share

Describing Land

- General to specific
- Writing a legal description
  - vague/wrong description may void a sales contract
  - seller's responsibility to furnish when listed
  - must have a proper legal description to make an offer
  - careful of subdivision
  - you can look up any legal description

Describing Land

- Methods:
  - Informal reference
  - assessor's parcel number
  - Metes and bounds *
  - rectangular survey system (government survey)
  - Recorded plats *
Metes and bounds

Distances = metes; Direction = bounds

Basic requirements
- start at a POB
  - permanent Vs natural monuments
  - benchmarks (USGS)
- metes and bonds to get from one point to next
  - (example N90°0'0"W 200 feet)
- Must return to POB

Example,
- N90°E 100'
- S0°W 100'
- N90°W 100'
- N0°W 100'

Example,
- N90°E 300'
- S0°W 400'
- N45°W 500'
Metes and bounds

- Example,
  - N61°57'E 350'
  - S29°19'E 250'
  - S61°57'W 350'
  - N29°19'W 250'

References to Plats

- examples

Rectangular Survey System

- Origin
- Principal meridians and base lines
  - meridians (longitude) N-S
  - base lines (latitude) W-E
Rectangular Survey System

- Townships
  - 6 miles x 6 miles = 36 square miles
- Sections
  - 1 mile x 1 mile = 1 square mile
  - 36 in a Township
  - 640 acres
  - 1 acre = 43,560 square feet
- Subdivision of a section

End of Chapter 2 Problems

Rectangular Survey System
- According to the rectangular survey, if a buyer purchases the south half of the northeast quarter of a section of land, how many acres has he or she purchased?
- How many square feet are in an acre? How many acres are in a section? How many sections are in a township?

End of Chapter 2 Problems

Rectangular Survey System
- Use a simple sketch to show the location of Section 17 in a township.
- Use a simple sketch to show the location of a parcel described as "the NW 1/4 of the NE 1/4 of the SE 1/4 of the SE 1/4" of a section. How many square feet does the parcel contain?
Chapter 3 Private
Restrictions on Ownership

Encumbrances
- Restrictions or limitations on the owner's ability to use a property
- Claim, charge, or liability attached to real estate
- Restriction on the fee simple (removal of a stick)

Liens
- Charge against property that provides security for a debt or obligation of the property owner.
- Voluntary versus involuntary
- Special liens versus general liens
Special Liens

- Mortgages (voluntary)
  - Mortgagor-borrower
  - Mortgagee-lender
  - Foreclosure
- Mechanic's liens (voluntary)
  - perfecting the lien
  - Contractor - subcontractor

General Liens

- Judgment liens (involuntary)
- Tax liens (involuntary)

Easements

- A right to use another's property in a specified manner
- Creation:
  - Express grant or reservation
  - Implication - easement by necessity
  - Prescription
  - Government condemnation
Types of Easements

- Appurtenant
  - Dominant estate
  - Servient estate
- Easement in gross
- Right-of-way
- See diagram

Terminating an Easement

- When the purpose for which the easement was created no longer exits
- Merger
- Release
- Abandonment
- Nonuse of a prescriptive easement
- Lawsuit
- Excessive use

Licenses

- Revocable personal privilege to use land for a particular purpose
Profit - profit a prendre

- Non-possessory interest that permits holder to remove specified resources from the land

Encroachment

- Unauthorized invasion of a fixture, building or another improvement on your property
- See diagram

Adverse Possession

- Requirements to obtain title by adverse possession
  - Actual and exclusive
  - Open and notorious
  - Hostile
  - Continuous
    - Statutory period
Restrictive Covenants

Restrictive Covenants/Deed Restrictions
- Creation
- Reasonableness
- Enforcement

Problem

Suppose that Cindy purchased a house and discovered that her neighbor Eleanor has several rosebushes that encroach on her lot. When Cindy asks Eleanor to move the bushes, Eleanor becomes indignant and accuses Cindy of being unfriendly and a poor neighbor. Can Cindy legally insist that the bushes be moved? Why or why not?

Problem

Suppose that Jack inherits his grandmother's house. He finds that the deed, which was granted many years ago, contains a restriction that the property can be sold only to someone of the Caucasian race. Could this restriction be enforced.
Problem

When Claudia decides to sell her house, she discovers that a restriction in her deed prohibits putting up a 'For Sale' sign in her yard. "This violates my free speech," she fumes. "I'm going to sue the community association." Will she win? Why or why not?

Problem

Tim makes the argument: "Even though restrictive covenants limit what a property owner can do with his land, they may increase property values." Is Tim right? Why or why not?

Chapter 4  Public Restrictions on Ownership
Government's Four Basic Powers

- Four basic powers of government over real property (PETE)
  - Taxation
  - Escheat
  - Eminent domain
  - Police power

Ad Valorem Property Tax

- Property Taxes - charge on real estate to raise funds to meet the public need of a government
- Why tax land?
- Who taxes the land?
- Taxes: Federal, State, and Local
- Power to Tax: Constitution->State->Enabling Acts->Local Government

Ad Valorem Property Tax

- Property value assessment
  - Fair market value
  - Assessed value (20-80% FMV)
- Development of a budget and tax rate
  - Millage rate (1/1000)
  - Tax digest
- Tax billing and collection
- Special assessments (not deductible from Income tax)
Ad Valorem Property Tax -
Problem

- A property's market value established by the assessor is $100,000 in a state that requires tax assessment to be 80% of market value. The owner qualifies for a $5,000 homestead exemption and the principal taxing jurisdiction where the property is located have established the following tax rates: County 7.5 mills, City 8.0 mills, School district 6.4 mills = total of 21.9 mills

Ad Valorem Property Tax

1. What is the property's assessed value?
2. What is the property owner's tax bill?
3. What is the value of the homestead exemption?

- Assessed value: $100,000 x .80 = $80,000
- Owner's tax bill: ($80,000 - $5,000) x (21.9/1000) = $1,642.50
- Value of homestead exemption: $5,000 x (21.9/1000) = $109.50
Power of Escheat

- Government’s right to acquire ownership of land when the landowner dies without an heir or a valid will (intestate)

Power of Eminent Domain

- Right of the government to take private property for public use upon the payment of just compensation
- Process called condemnation
- Three conditions:
  - Public use
  - Just compensation
  - Due process

Police Power

- Power to regulate use of private property to protect public health, safety, morals and general welfare
Elements of the Comprehensive General Plan

- An analysis of projected economic development
- The transportation plan to provide for necessary circulation
- A public-facilities plan that identifies such needed facilities as schools, parks, civic centers, water and sewage disposal plants
- A land-use plan
- An official map

Implementing the Comprehensive Plan

- Comprehensive zoning
  - Type of use
  - Valid Zoning must:
    - be reasonable
    - clear and specific
    - free from discrimination
    - promote health, safety, welfare
    - consistent

Zoning

- Intensity of use
  - Developmental density
  - Height and bulk limitations
    - Bulk regulations
    - Floor-area ratio
    - Minimum lot size and setback regulations
  - (problems)
Zoning Changes

- Legislative relief
- Administrative relief
  - Variances
  - Special use permits
- Judicial relief

Nonconforming Uses

- Use that was legal in the past but not longer complies with current zoning

Building Codes

- Establish standards for new construction
  - building permits
  - certificate of occupancy (C.O.)
Subdivision Approval Process

- Preapplication conference
- Approval of the preliminary plat
- Approval of the final plat

Subdivision Regulations

- Establish standards for subdivision of land
  - location, grading, alignment, surfacing and width of streets
  - installation of water and sewer mains
  - minimum dimensions of lots and blocks
  - areas to be dedicated for public use (mandatory dedications)
  - easements for public utilities

Impact Fees

- Assessments on new development for public facilities
Innovative Land-use Control Methods

- Planned unit development
- Performance zoning
- Incentive zoning
- Transfer of development rights

Chapter 5 Deeds and Leases

Deeds

- Written document that transfers title to real estate
Necessary Elements of a Deed
- Designation of the parties
- Consideration given by grantee
- Legal description
- Specific interest conveyed
- Signature of the grantor and witnesses
- Delivery and acceptance

Additional Elements
- Covenant against encumbrances
- Covenant of seisin
- Covenant of quiet enjoyment
- Covenant of further assurances
- Warranty forever

Types of Deeds
- General warranty deed
- Special warranty deed
- Bargain and sale deed
- Quitclaim deed
- Deed for special uses
Requirements of a Valid Lease

- Names of the lessor and lessee
- Conveyance of the premises
- Description of the premises
- Term or duration of the lease
- Amount of rent and manner of payment
- Duties and obligations of parties
- Signatures of the parties

Classifications of Leases

- Duration of term
  - Tenancy for stated period - conveys the property to the tenant for a stated period of time
  - Tenancy from period to period - indefinite duration
  - Tenancy at will - may be terminated by either party at any time
  - Tenancy at sufferance - provides the least protection

Ground Lease

- Lease involving unimproved land
Methods of Payment

- Gross lease-landlord pays property taxes, utilities, insurance & all operating expenses
- Net lease-tenant pays the operating expenses
- Net net lease-tenant pays operating expenses, insurance & property taxes

Methods of Payment

- Fixed-rent lease-rent is fixed for the term of the lease
- Graduated-rent lease-rent is increased by percentage at graduated intervals
- Reappraisal lease-level of each rent increase is determined by reappraisal of property
- Percentage lease-rent is based on some percentage of sales made on the premises
- Index lease

Landlord-Tenant Relationship

- In a residential lease
  - Month-to-month lease
  - Fixed term lease
  - Renewal option
  - Expenses
  - Assignment and subleasing
  - Security deposits
  - Improvements
The Rights and Obligations of Landlord

- Covenant of quiet enjoyment
- Implied warranty of habitability
- Maintenance of common areas
- Protection against criminal acts
- Renewal clause
  - Negative renewal clause
  - Positive renewal clause