

### Types of Estates in Real Property

Usually when we hear the word **estate**, we picture a big house surrounded by iron gates and guard dogs. That's an estate, but there is another definition of **estate** we need to know about for our studies.



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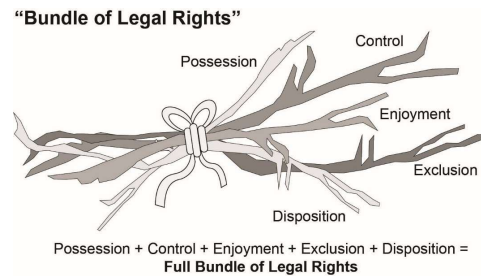
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### Types of Estates in Real Property

An **estate** is the degree, quantity, nature, and extent of legal ownership interest that an individual has in real property, not to the physical quantity of land.

Whether you own or lease, you still have an estate. Property owners simply possess the **full bundle of rights**, while tenants that are leasing have a **limited bundle of rights**.

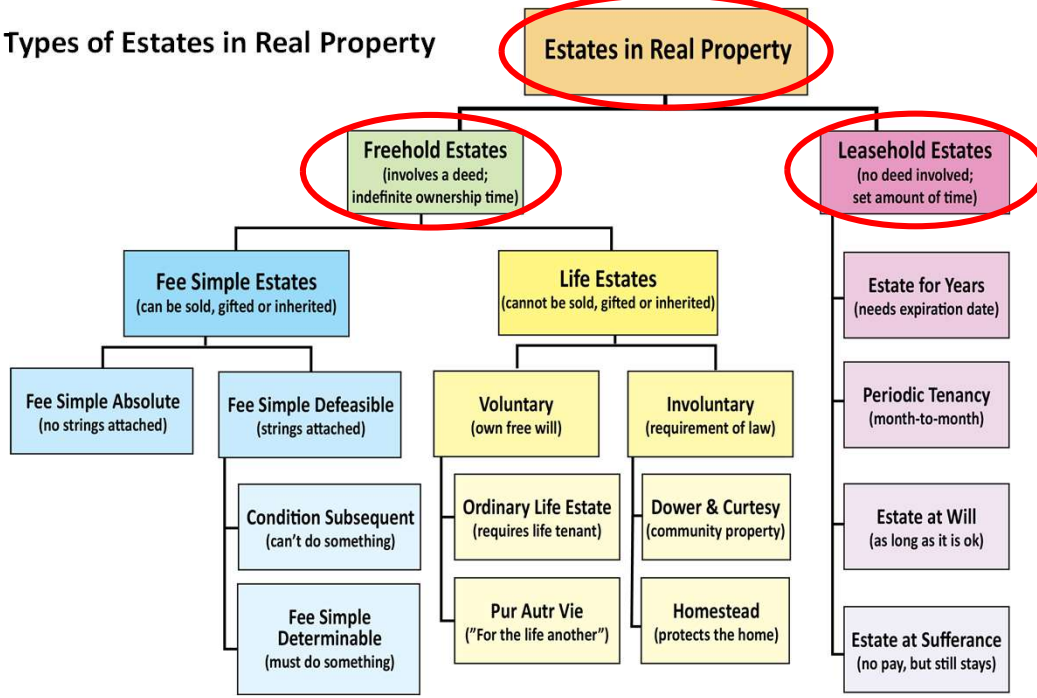


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Types of Estates in Real Property



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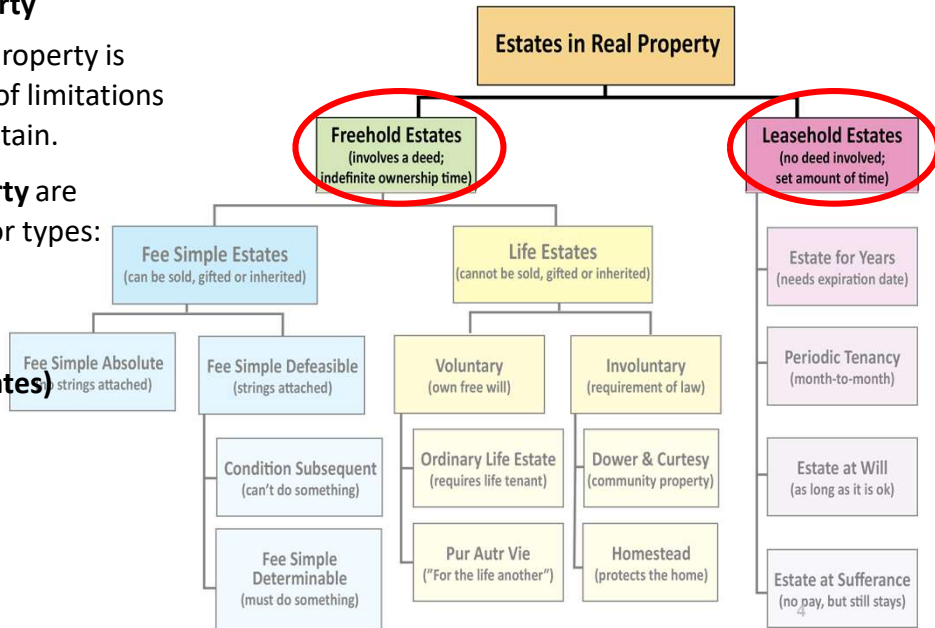
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Estates in Real Property

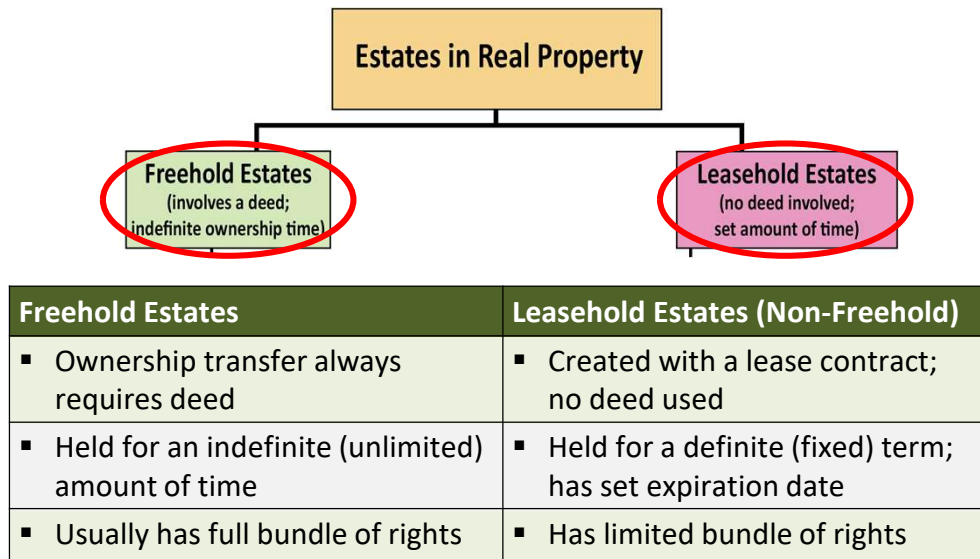
The type of estate a property is indicates what types of limitations the property may contain.

Estates in real property are divided into two major types:

- Freehold estates
- Leasehold estates (non-freehold estates)



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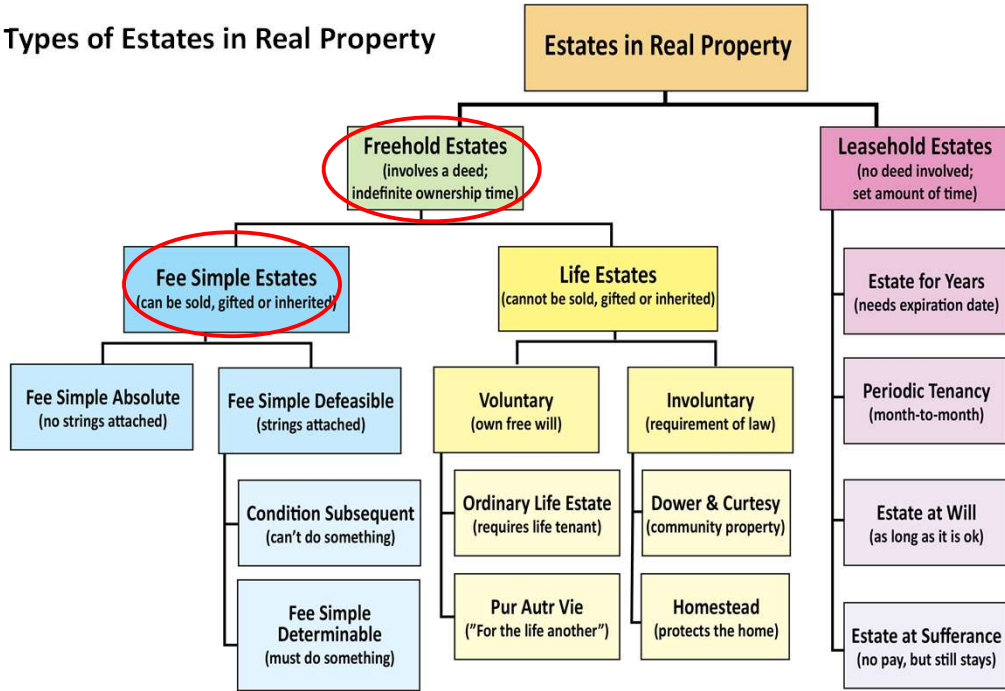
### Estates in Real Property

- Freehold estates:** Estates that represents actual ownership of real property.
  - This ownership can be the result of a purchase, a gift or an inheritance.
  - A **deed** is always involved in the transfer of a freehold estate of any type.
  - The ownership lasts for an indefinite amount of time, meaning the owner owns it until they decide to dispose of it or until they die.
- Leasehold estates (non-freehold estate):** Estate that is not actual ownership of real property, meaning that the property is being leased or rented.
  - No deed involved in a leasehold estate; a lease contract is used.
  - The holder of the estate (tenant or lessee) holds the estate for a fixed term, meaning until the lease contract expires.

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Types of Estates in Real Property



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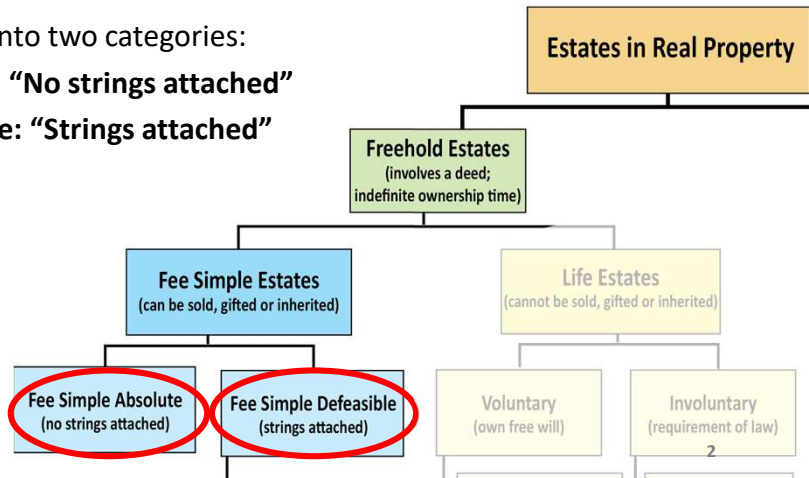
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Fee Simple Estates

**Fee simple estates** are types of ownership situations where the property can be freely conveyed to a new owner as the old owner sees fit. These types of estate can be sold, gifted or inherited.

**Fee simple estates** are divided into two categories:

- **Fee Simple Absolute Estate: "No strings attached"**
- **Fee Simple Defeasible Estate: "Strings attached"**



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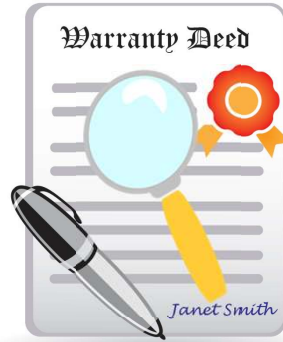
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## Chapter 6: Real Property Ownership: Fee Simple Estates

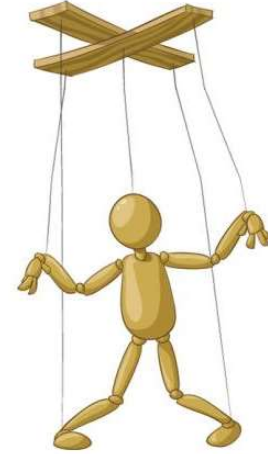
2 Questions



**Fee Simple Absolute Estate:**  
"No strings attached"



A deed condition is discovered by doing a **title search**.



**Fee Simple Defeasible Estate:**  
"Strings attached"

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## Chapter 6: Real Property Ownership: Fee Simple Estates

2 Questions

**Fee Simple Estates**

"Strings attached" means there are added stipulations or requirements to the ownership of that property.

These extra stipulations or requirements are called **deed restrictions** or **deed conditions**.

A **deed restrictions** or **deed conditions** is a provision placed in a deed *of one property by an individual* to control the use of the property that will cause serious consequences if the deed condition is disobeyed by the new owner.



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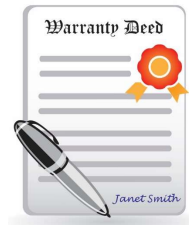
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**Fee Simple Absolute Estate:**  
**“No strings attached”**

A **fee simple absolute estate** is the highest form of ownership one can hold.

Think of it as a property that has **“no strings attached.”**

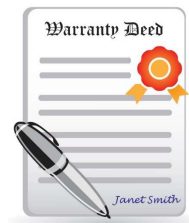
The owner has complete ownership, may convey the property as he sees fit and there are no deed conditions in the deed that limit how the property can be used.



**Fee Simple Defeasible Estate:**  
**“Strings attached”**

Though the property was property conveyed to the new owner and he may convey it as he sees fit, in a **fee simple defeasible estate** there are **deed conditions** in the deed that place limitations on how the property can be used.

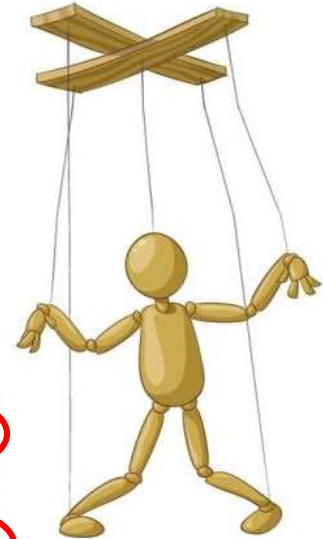
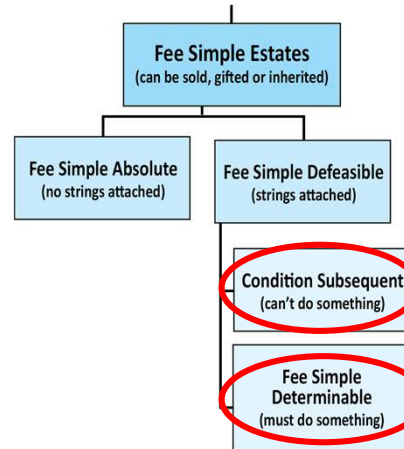
Think of it as a property that has **“strings attached.”**



**Fee Simple Defeasible Estate: “Strings attached”**

There are two types of **fee simple defeasible estates**:

- **Condition Subsequent Estate**  
**(“Can’t do!”)**
- **Fee Simple Determinable**  
**(“Must do!”)**



**DEFEATED!**  
**Fee Simple Defeasible Estate: “Strings attached”**

**CAN'T!**

- **Condition Subsequent Estate (“Can’t do!”):**  
An ownership situation where there are deed conditions that states a specific use of the property is prohibited, thus “can’t do.”

**Example: Alcohol can’t be sold on the premises.**

**DETERMINE!**

- **Fee Simple Determinable (“Must do!”):** A ownership situation where there are deed conditions that states that a property must be used for a specific purpose, thus “must do.” **Example: Property must be used for a park.**



**If the owner decides to ignore these deed conditions, then could be in jeopardy of losing ownership of the property.**

### Deed Restrictions/Deed Conditions

A **deed restriction** or **deed condition** is a provision placed in a deed *of one property by an individual* to control the use of the property that will cause serious consequences if the deed condition is disobeyed by the new owner.

#### Examples of deed conditions include:

- The land can never be sold for development
- A live tree can never be cut
- A second driveway can never be constructed
- The property can never be used as a bar



### Deed Restrictions/Deed Conditions

**Once placed in the deed, a deed condition is extremely hard to remove by the new owner.**

The removal process varies by state and can sometimes include getting the approval of EVERY HEIR of the original creator of the restriction.

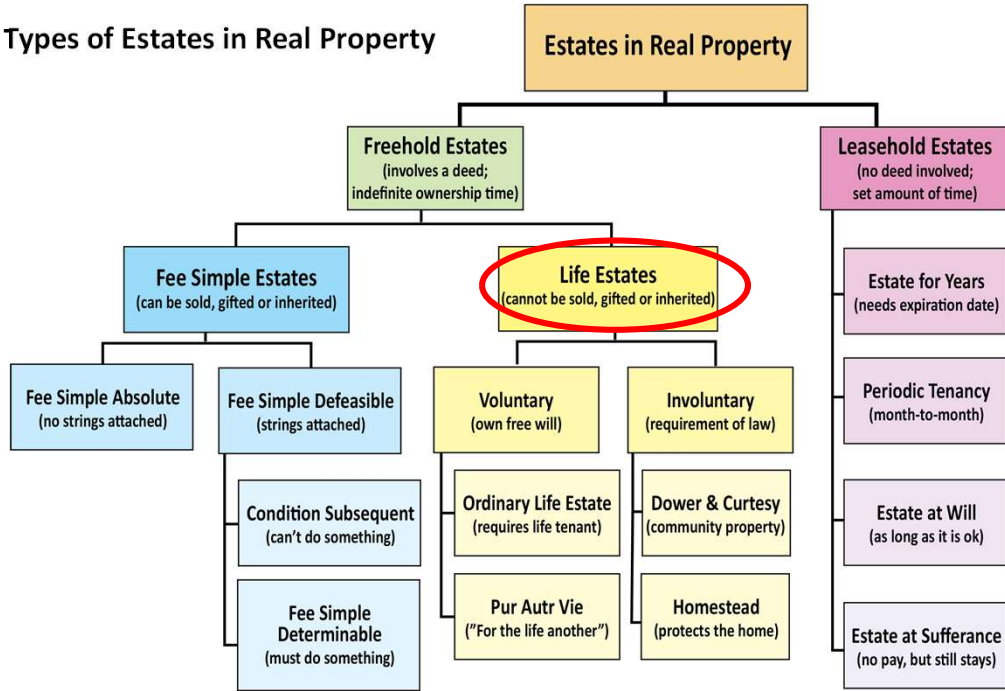
**Illegal restrictions, such as restricting minorities, are not allowed and can be removed.**

Deed restrictions that affect **ENTIRE SUBDIVISIONS** are referred to as **CC&Rs**, or **conditions, covenants and restrictions**. CC&Rs are enforced by a subdivision's **homeowners' association (HOA)**.





Types of Estates in Real Property



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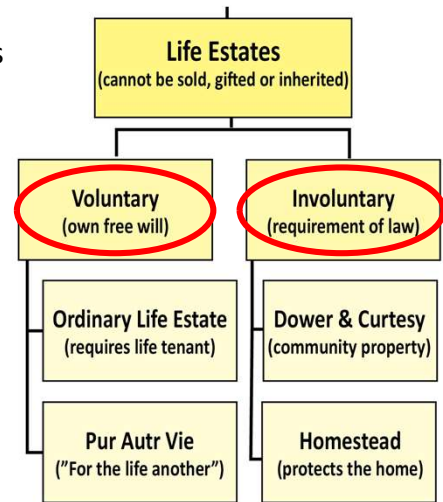
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Life Estates

**Life estates** are types of ownership situations where it has already been predetermined, either by law or by design, what is going to happen to the property after the receiver of the estate dies.

There are two basic types of **life estates**:

- **Voluntary life estates (conventional life estates)**
- **Involuntary life estates (legal life estates)**



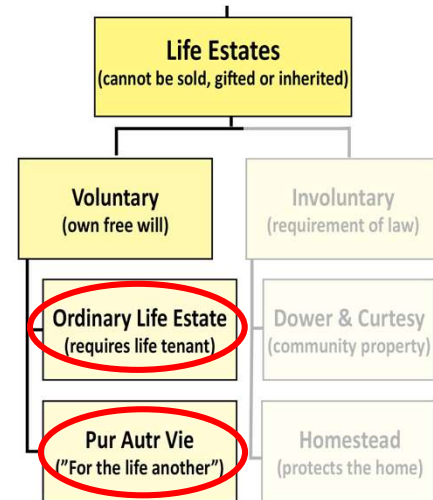
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**Voluntary Life Estates**

A **voluntary life estate** or **conventional life estate** is an ownership situation that was created voluntarily by the grantor (original owner).

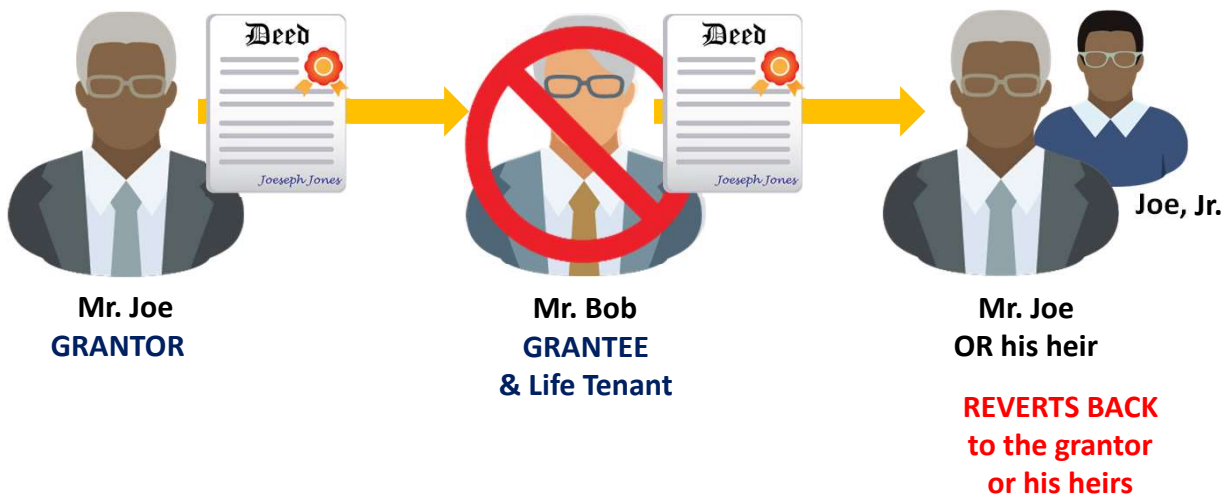
There are two types of voluntary life estates:

- **Ordinary life estate**
  - Life estate in reversion
  - Life estate in remainder
- *Pur autre vie* life estate



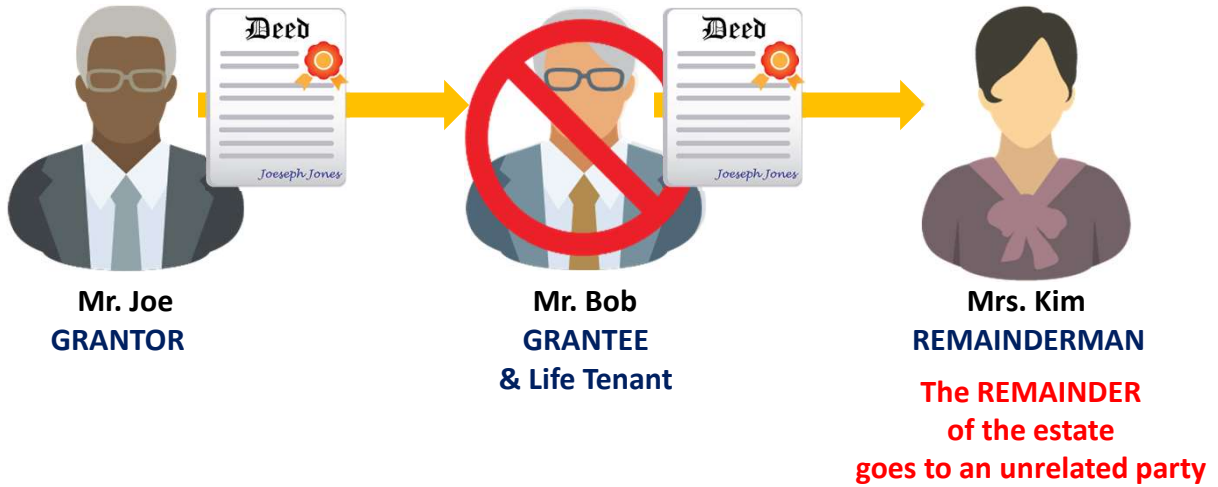
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**Life Estate in Reversion: How a Life Estate works**



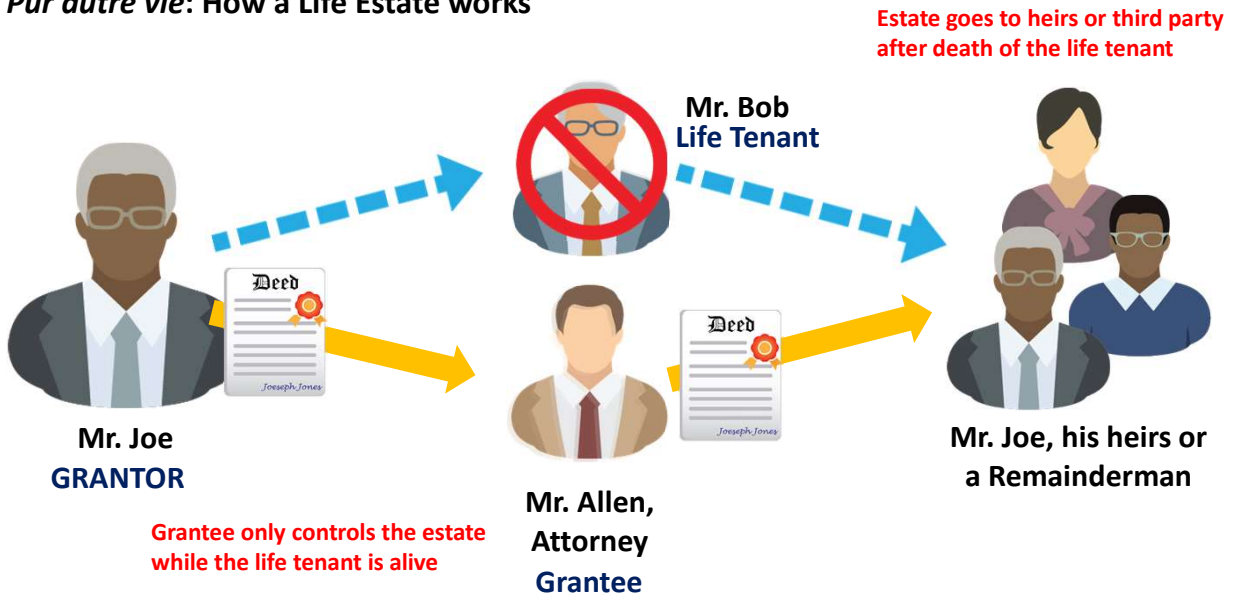
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**Life Estate in Remainder: How a Life Estate works**



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**Pur autre vie: How a Life Estate works**



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## Voluntary Life Estates

### Guidelines for life estates:

- The life tenant is free enjoy the estate for the duration on his lifetime.
- However, the life tenant may not convey (sell, gift or will) the property to another during his lifetime.
- The life tenant may lease the property because that does not involve the transfer of title to another person.
- Who gets the estate after the life tenant dies has already been determined when the life estate was originally created by the grantor.

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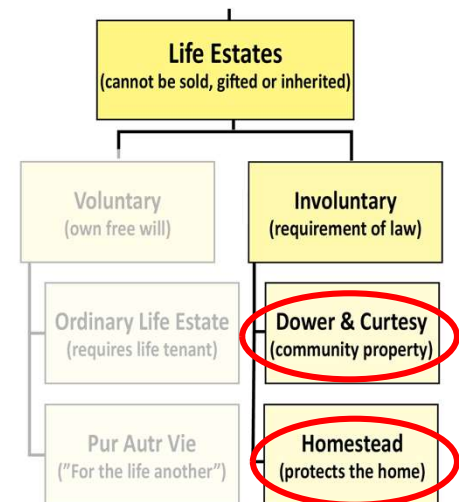
## Involuntary Life Estates

While voluntary life estates are created on purpose by the original property owner, the creation of involuntary life estates are triggered by certain events, most often death of a spouse.

Involuntary life estates were originally created as a requirement of law for married couples and are also referred to as **legal life estates** or **statutory life estates** (“statutory” means required by law).

There are two types of involuntary life estates:

- **Dower & Curtesy**
- **Homestead**



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### Dower & Curtesy

Used in separate property states, **dower & curtesy** is a type of legal life estate that is a way to provide for the surviving spouse when one spouse dies intestate.

In separate property states, each individual spouse can own real or personal property separate from his or her spouse while married.



### Dower & Curtesy

After the death of the spouse that owned everything in his or her name, the non-owning spouse has a lifetime right to a one-half or one-third interest in the real estate, even if the owning spouse wills the estates to others.

- **Dower** is the life estate of the wife after her husband dies.
- **Curtesy** is the life estate of the husband after his wife dies.
- Most states use these term interchangeably which is acceptable.



## Homestead

**Homestead** is a way to protect a family's primary residence from seizure and forced sale to pay off unsecured debts so long as the property is used as a home. Examples of unsecured debts include credit cards and personal loans.

The homestead protection, however, does not extend to debts in which the property serves as collateral (mortgages, homes equity loans, etc.) and to real estate property taxes (*ad valorem* tax liens and special assessment tax liens).

A family may only establish one homestead exemption at a time.



## Homestead

How an individual establishes a homestead varies by state. Some states automatically apply the homestead status while other require the head of household to record a notice of homestead rights.

The level of protection afforded by the homestead also varies by state. In some states, the entire homestead is protected against creditors; other states merely reserve a portion of the proceeds from a court sale of the home for the family.

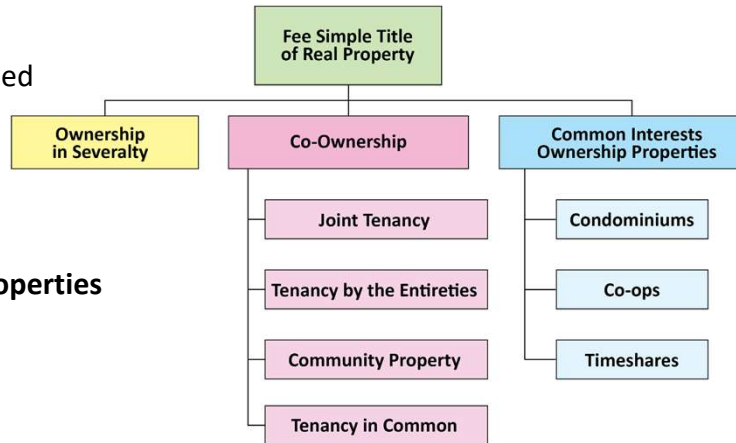


### Forms of Real Property Ownership

Holding title to **fee simple estates** of real property is also referred to as **fee simple title**.

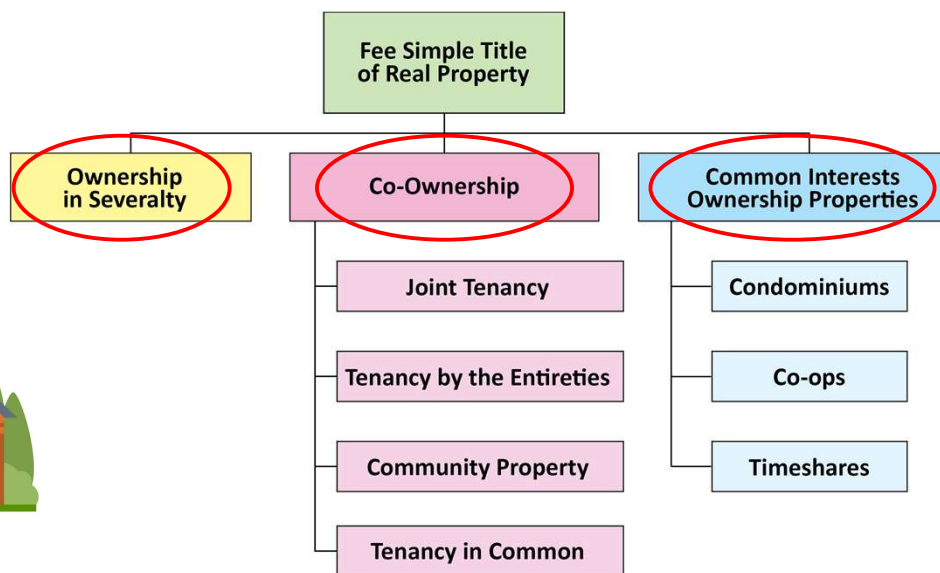
Ownership of fee simple estates or “holding fee simple title” can be divided into three main categories:

- **Ownership in severalty**
- **Co-ownership**
- **Common Interests Ownership Properties**



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### Forms of Real Property Ownership



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### Ownership in Severalty

**Ownership in severalty** means there is one owner only. Any interest held by another party has been “severed” when the property was purchased or inherited.

The word severalty is a term derived from the verb “to sever” and it refers to keeping the bundle of rights of this solely-owned property entirely separate from the rights of others.

**Ownership in severalty is the most complete type of ownership.**



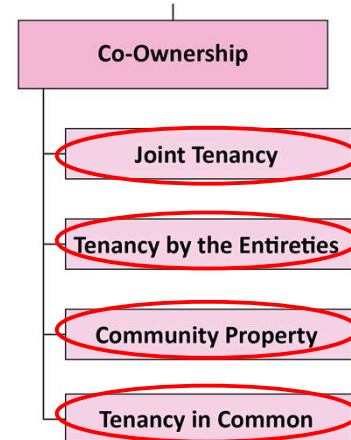
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### Co-ownership of Real Property

**Co-ownership** (or **concurrent ownership**) means that two or more people own the property at the same time.

There are four types of **co-ownership**:

- **Joint tenancy**
- **Tenancy by the entirety**
- **Community property**
- **Tenancy in common**



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**What does the word “tenant” really mean?**

Before we discuss the types of concurrent ownership, let’s learn what the word **tenant** actually means.

**Tenant** is commonly used to mean “**renter**,” but it can mean anyone who has the right to live in a particular place, either because he owns the land or building or signed a lease.

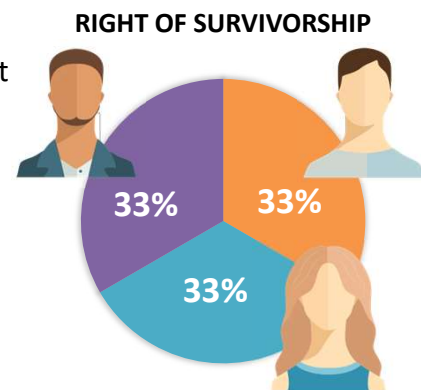
Therefore, **tenancy** is the act of living somewhere, especially in a house, building, or apartment.

**Right of Survivorship**

**Right of survivorship** is the most important features that distinguishes different forms of co-ownership from one another.

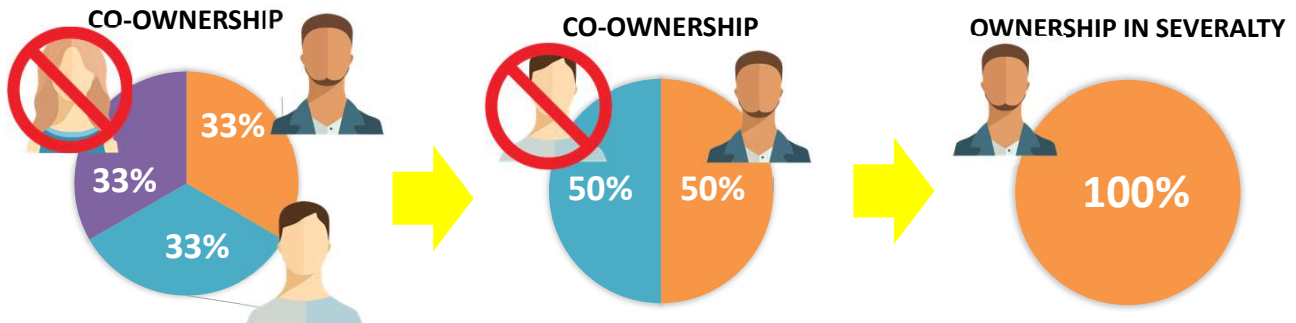
**Right of survivorship** means that when one of the owners dies, the surviving owners will receive an equal shares the decedent’s (dead person’s) interest in the property free from probate, meaning free from an existing will.

***Not all forms of co-ownership use right of survivorship.***



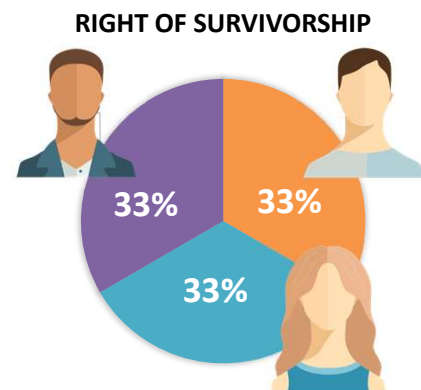
### Right of Survivorship

**Right of survivorship** means that when one of the owners dies, the surviving owners will receive an equal shares the **decedent's** (dead person's) interest in the property free from probate, meaning free from an existing will.



### Under Right of Survivorship:

- An owner **cannot** leave his or her shares of the property to an heir through a will.
- As long as there is one surviving owner, the **right of survivorship** will remain in effect.
- When there is only one owner remaining, that last owner now owns the property **in severalty** because all other individuals that had any ownership interests in the property have died, severing their interest in the property.

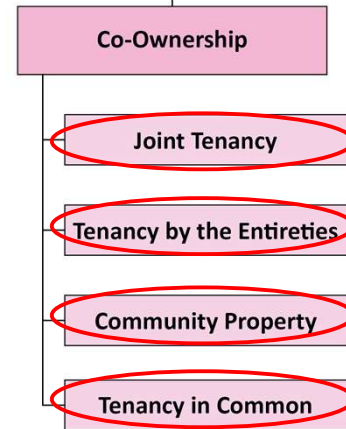


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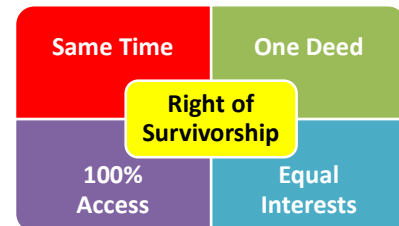
- **Joint tenancy**
- **Tenancy by the entirety**
- **Community property**
- **Tenancy in common**



## Joint Tenancy

**Joint tenancy** is ownership of property by two or more individuals in **equal shares** with **right of survivorship**.

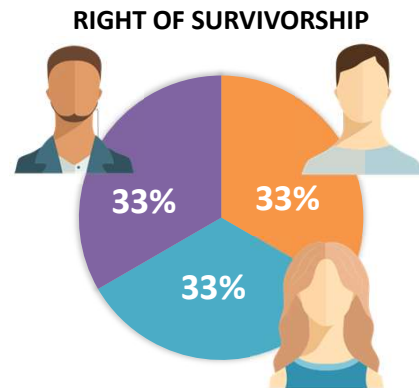
To establish a joint tenancy, it is necessary to state in the deed that the grantees will hold title as “joint tenants.”



### Joint Tenancy with Right of Survivorship

One of the most important features of joint tenancy is that it includes right of survivorship.

**Right of survivorship** means that when one of the owners dies, the surviving owners will receive an equal share of the decedent's (dead person's) interest in the property free from probate.

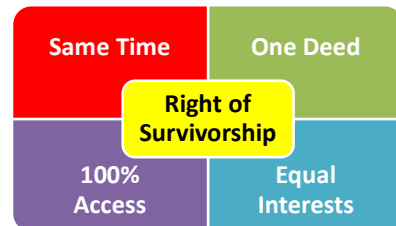


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### Joint Tenancy

For joint tenancy to exist, the following four unities must be present:

- **Unity of possession:** Each of the joint tenants must have an equal, undivided right to possession of the entire property.
- **Unity of time:** Each of the joint tenants must acquire his interest in the property at the same time.
- **Unity of interest:** The joint tenants must have equal interests in the property.
- **Unity of title:** The joint tenants must receive their ownership in the property from **one deed**.



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## Joint Tenancy

What do the four unities mean in plain English?

Unity	In Plain English
Unity of possession	Each owner has 100% access to the property
Unity of time	All owners bought their share at the same time in the same real estate transaction
Unity of interest	Each owner owns an equal share regardless of what percentage he paid
Unity of title	Regardless of the number of owners, there is only one deed

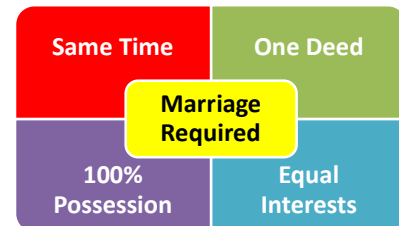
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## Tenancy by the Entireties

**Tenancy by the entireties** adheres to the same unities of joint tenancy, plus one: the unity of marriage.

The co-owners must be legally married to each other at the time they take title, and they must remain married to each other throughout the period of ownership.

- **Unity of marriage:** In most states, spouses must be married at the time they acquire the property. Some states recognize domestic partnerships for this purpose.

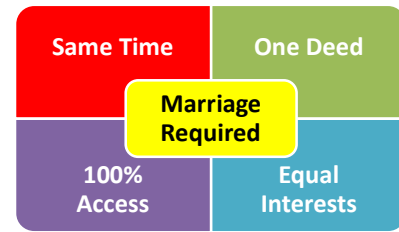


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### Tenancy by the Entireties

For **tenancy by the entireties** to exist, the following five unities must be present:

- **Unity of possession:** Each spouse must have an equal, undivided right to possession of the entire property.
- **Unity of time:** Each spouse must acquire his interest in the property at the same time.
- **Unity of interest:** Each spouse must have equal interests in the property.
- **Unity of title:** Each spouse must receive their ownership in the property from **one deed**.
- **Owners must be married... *to each other!***



### Community Property

**Community property** is a type of joint ownership of assets between married couples. It's the law in nine states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

- While the details of community property states vary by state, community property means that all assets purchased or acquired by a couple during their marriage are owned equally by both of them regardless of how the asset is titled.
- A married individual living in a community property state can usually only pass his separate property to someone other than his spouse in his will or another estate plan.



### Community Property

- Debts fall under the umbrella of community property, too. They're equally owed by both spouses regardless of which of them incurred them. If John runs up a \$10,000 credit card bill in his own name then fails to make the payments, the lender can pursue Mary for the money even to the extent of garnishing her wages.
- When a couple divorces in a community property state, each spouse is generally entitled to a half share of their marital or community property. Likewise, each spouse would be responsible for an equal share of all marital debts.
- What happens to community property when one spouse dies depend on the state law. Some states award all of the property to the surviving spouse, while others only award half of the property.

### Tenancy in Common

**Tenancy in common** is a form of co-ownership *without the right of survivorship* and is the most common type of ownership.

- Each owner enjoys an undivided interest in the property, meaning they all have **100% access** to all parts of the property.
- Owners can take ownership in **unequal interests**, meaning each member isn't required to own an equal amount. So, if three owners buy property together, each owner can own a different amount.



### Tenancy in Common

**Tenancy in common** is a form of co-ownership without the right of survivorship and is the most common type of ownership.

- Each owner can buy in at **different times** and have **different deeds**.
- Since **right of survivorship does not apply** to tenancy in common, owners may leave their shares in a will. These heirs would be tenants in common with the other co-tenants.



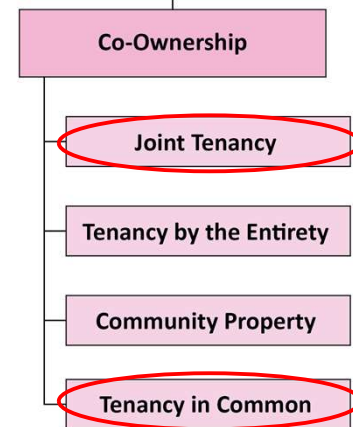


## Co-ownership of Real Property

**Co-ownership** (or **concurrent ownership**) means that two or more people own the property at the same time.

There are four types of **co-ownership**:

- **Joint tenancy**
- **Tenancy by the entireties**
- **Community property**
- **Tenancy in common**



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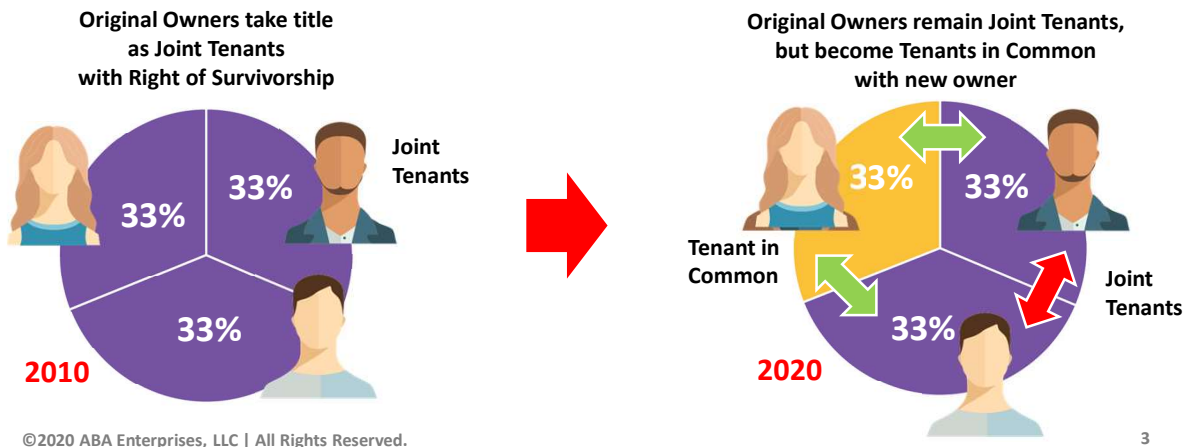
## Joint Tenancy Vs Tenants in Common

Unity	Joint Tenancy	Tenants in Common
Unity of possession	Each owner has 100% access to the property	Each owner has 100% access to the property
Unity of time	All owners bought their share at the same time	Owners can buy in at different times
Unity of interest	Each owner owns an equal share regardless of what percentage he paid	Each owner can own different percentages; does not need to be equal
Unity of title	Regardless of the number of owners, there is only one deed	Can be more than one deed to the property
Right of Survivorship?	YES! <b>Cannot</b> leave shares to heirs	NO! Can leave shares to heirs

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### What happens when a joint tenant sells his interest in the property?

When a joint tenant sells his interest in the property, the new owner would take title as a tenant in common with the original owners. The original owners will remain as joint tenants and abide by right of survivorship.



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### Joint Tenancy

#### Can a joint tenant sell his shares?

Yes! A joint tenant can sell his shares to another individual before his death without the approval or consent of the others.

#### Can a joint tenant convey his shares in a will?

No! A joint tenant **cannot** leave his shares in his will, and his heirs cannot inherit it if he dies intestate.

His share automatically belongs to the co-owners after his death.



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### Termination of Joint Tenancy

In joint tenancy, ownership can be terminated either **voluntarily** or **involuntarily**.

- **Voluntary partition:** A situation in which everyone agrees how to dissolve the ownership.
- **Involuntary partition:** A situation in which all parties involved cannot agree how to dissolve the ownership and a judge must decide how the property will be handled. A judicial determination will be made after the filing of the **partition action** by one or more of the joint tenants.

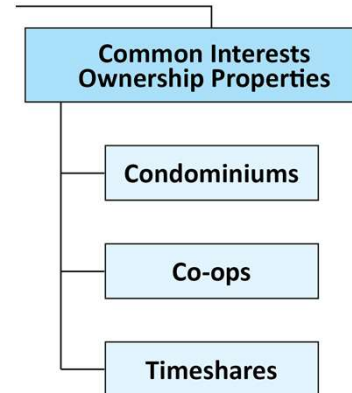
A **partition action** is a type of lawsuit pertaining to joint owners of real property when two or more owners cannot agree on the disposition of the property in question. This would happen during a divorce when a couple cannot agree on how to divide ownership of real property.

### Common Interest Ownership Properties

**Common interest ownership properties** are a form of ownership in which an individual purchases or leases an individual unit or interests AND has an undivided interest or membership in a portion of the common area of the development.

This type of ownership includes:

- **Condominiums (condos)**
- **Stock co-operatives (co-ops)**
- **Timeshares**



### Types of Buildings Used in Common Interest Ownership

Before we explore **common interest ownership properties**, let's explore the types of BUILDINGS commonly used in these arrangements.

Common types of buildings that use **common interest ownership arrangements** include townhomes, mid-rise housing buildings and high-rise buildings ("skyscrapers").



Townhomes



Mid-rise



Hi-rise

### Types of Buildings Used in Common Interest Ownership

Do not confuse the type of **BUILDING** with the type of **OWNERSHIP**.

For example, the term “hi-rise” describes the type of physical residential structure.

The term “condominium” describes the type of ownership used by individuals that hold title to the property.



Townhomes



Mid-rise



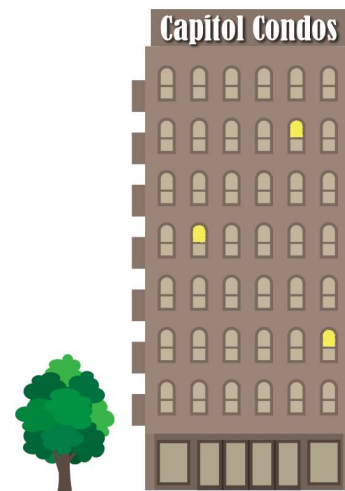
Hi-rise

### Condominiums

A **condominium** does not refer to a particular type of building, but a particular **type of ownership** that combines ownership of the individual unit in a multi-unit building and co-ownership of the common areas.

In condominium ownership the property owner holds title to the individual residential unit in **fee simple title** but shares the common areas with other owners as **tenants in common**.

Examples of common areas include halls, elevators, swimming pools, parking garage and are considered to be real property.

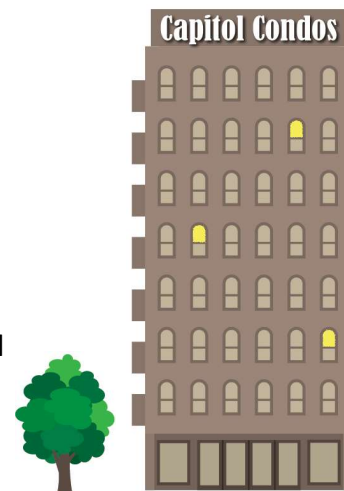


### Condominiums

- The individual unit can be owned in severalty, as **joint tenants**, as **tenants in common** or as a **life estate**, but the common areas are owned as **tenants in common** with the other condominium owners.
- Condominium communities are managed by a **condominium owners' association** and are responsible for the maintenance and upkeep of the common areas. All owners of individual units are automatically members of the condominium owners' association.
- All owners share in the cost of the upkeep in the form of **condominium fees** (or "condo fees") paid either monthly, quarterly or annually. The condominium owners' association pays for any repairs to the exterior structure such as the roof, parking lots, landscaping and balconies.

### Condominiums

- In addition to the regular condominium fees, the condominium owners' association may also from collect special payments for a specific expense when needed called **assessments**.
- Assessments are used to pay large unexpected expenses beyond ordinary upkeep expenses such as a new roof, paving a parking lot or to repair damages caused by the weather.
- A **party wall** is a shared wall that separates the individual housing units.



### Stock Cooperatives aka “Co-Ops”

A **stock cooperative (“co-op”)** is a form of concurrent ownership that is different from condominium ownership.

Co-ops contain multiple units of housing, are governed by bylaws and operated by elected officers and directors.



### Stock Cooperatives aka “Co-Ops”

In contrast to condos, co-ops are not considered real property.

When an individual acquires a residence in a housing co-op, he doesn’t actually buy real estate. He buys stock shares in a corporation that owns the residential building, which makes the him a **stockholder**.

In exchange for buying those share, the individual receives a **proprietary lease**, which grants the individual the right to occupy a particular unit in the building.

The corporation pays all of the property taxes from fees charged to the tenants and the occupants share in the cost of maintenance and utilities in the form of monthly fees.



## Timeshares

A **timeshare** is not ownership of real property, but ownership of an interval of time to occupy the property.

Timeshare ownership allows multiple buyers to buy interests in a property with each buyer receiving the right to use the facilities for a specified period of time.

In other words, it is a way for a number of people to share ownership of a property, usually a vacation property such as a condominium unit within a resort area.

