

Types of estates: a short and simple summary, believe it or not
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(Present / possessory) basic freehold estates

Fee simple absolute: estate that is infinite in duration. Ex.: “to A and her heirs.”

Life estate: estate that lasts for the transferee’s lifetime. Ex.: “to A for life, remainder to B and her heirs.”

Fee tail: series of life estates held within a family. Ex.: “to A and the heirs of her body.”

(Present / possessory) defeasible fees

Fee simple determinable: estate that terminates automatically if specified event happens.

Ex.: “to A and her heirs for so long as it is used as a park.”

Possibility of reverter is held by original grantor (transferor).

Fee simple subject to condition subsequent: estate that terminates if specified event happens and the original grantor exercises an option to retakes possession.

Ex.: “to A and her heirs, but if the land is not used as a park, O may enter and retake possession.”

Right of entry is held by original grantor (transferor).

Fee simple subject to executory limitation: estate that terminates automatically if specified event happens

Ex.: “to A and her heirs, but if the land is not used as a park, to B and her heirs.”

Executory interest is held by third party (transferee).

(Present / possessory) nonfreehold / leasehold estates: term of years, periodic tenancy, tenancy at will, tenancy at sufferance.

Future interests held by the transferor

Reversion: created when grantor conveys less than her full estate.

Ex.: O has fee simple absolute and conveys “to A for life.” O has a reversion in fee simple absolute.

Note: Can be conditional. Ex.: O has fee simple absolute and conveys “to A for life, and then to B and her heirs if B graduates from college.”

Note: Can be express or implied. Ex.: “to A for life, reversion to O”; “to A for life.”

Possibility of reverter: created when grantor conveys a fee simple determinable.

Ex.: “to A and her heirs for so long as it is used as a park.” O has a possibility of reverter in fee simple absolute.

Right of entry: created when grantor conveys a fee simple subject to condition subsequent.

Ex.: “to A and her heirs, but if the land is not used as a park, O may enter and retake possession.” O has a right of entry in fee simple absolute.

Future interests held by a transferee

Remainder: a future interest created in a transferee that is *capable of becoming possessory* upon the *natural end of a prior estate* created in the *same instrument*. There are two kinds: vested and contingent remainders.

Vested remainders: remainders that are (1) created in a living, ascertainable person and (2) not subject to any condition precedent except the natural end of the prior estate. There are three kinds:

Indefeasibly vested remainder (or just vested remainder): remainder whose holder is certain and that is (usually) certain to become possessory.

Ex.: “to A for life, then to B and her heirs.” B has an indefeasibly vested remainder in fee simple absolute.

Ex.: “to A for life, then to B for life, then to C and her heirs.” B has an indefeasibly vested remainder for life (even though it may never become possessory). C has an indefeasibly vested remainder in fee simple absolute.

Vested remainder subject to divestment: remainder that is vested but can divest if a *condition subsequent* occurs.

Ex.: “to A for life, then to B and her heirs, but if B drops out of college, then to C and her heirs.” B has a vested remainder subject to divestment in fee simple absolute.

Vested remainder subject to open: remainder vested in one or more ascertainable people, but with the possibility that more people will be added.

Ex.: “to A for life, then to the children of A and their heirs.” Each child of A has a vested remainder subject to open in fee simple absolute, since A might have more children.

Contingent remainder: a remainder that is either (1) subject to a condition precedent (other than the natural end of the prior estate) or (2) created in an unascertainable person (including one not yet born).

Ex.: “to A for life, then to B and her heirs if B reaches the age of 21.” B has a contingent remainder in fee simple absolute until she turns 21.

Ex.: “to A for life, then to the grandchildren of A then alive and their heirs.” The grandchildren of A have a contingent remainder in fee simple absolute that will remain uncertain (they have to stay alive) until A dies.

Executory interest: a future interest created in a transferee that is not a remainder, i.e., that becomes possessory when it divests (cuts short) the prior estate. Two kinds:

Shifting executory interest: an executory interest that divests a different transferee.

Ex.: “to A and her heirs, but if B graduates from college, to B and her heirs.” B holds a shifting executory interest in fee simple absolute because it would cut off A’s interest, a fee simple subject to executory limitation.

Springing executory interest: an executory interest that divests the grantor.

Ex.: “to A and her heirs if A graduates from college.” A holds a springing executory interest in fee simple absolute that would cut off the grantor’s estate.