



## ***Introduction to Real Property***

### **The Value of Real Property**

Historically, Real Property has meant:

- **Wealth;**
- **Power; and**
- **Life.**

Real Property has always been viewed as valuable throughout history because:

- **It can be used to produce crops and maintain livestock upon which we depend for food; and**
- **It can be used as a platform upon which buildings can be constructed.**

To understand Real Property, and its legal concepts, one must think in terms of:

#### **Possession and Time.**

Complex legal rules and holdings of Real Property have developed because of:

#### **The inherent value and uniqueness of real property.**

Because real property has always been held as special, distinct, unique and valuable in the law, the law has recognized:

- **That rights in it can be limited in its transference and possession by the original owner;**
- **That rights in land can be limited in time; and**
- **That rights in land can be possessory or non possessory.**

### **Real Property Taxes**

There are two types of taxes that tax you on what you own or have, not on what you earn or acquire. They are:

#### **Real Property Taxes and Estate (or Death) Taxes.**

In New York State, Real Property Taxes are used to finance:

#### **Local Governments and Schools.**

The STAR Program in New York shifts school tax revenue:

#### **From real property taxes to income taxes.**

Governments use the real property tax to generate revenue because:

**It is a more dependable, less fluctuating, source of revenue.**

# ***Real Property – Estates in Land***

## **Specific Performance**

The Doctrine of Specific Performance requires that both parties (buyer and seller) sign the contract to purchase real estate, because then:

**Either party can enforce the sale and not just collect damages.**

## **Interests in Land**

- ***Possessory Interests in Land***  
(Either presently or in the future)

- 1. Fee Simple Absolute**

- 2. Defeasible Estates**

- Fee Simple Determinable with Possibility of Reverter
- Fee Simple Subject to a Condition Precedent
- Fee Simple Subject to an Executory Interest

- 3. Fee Tail** (No longer exists – now fee simple absolute)

- 4. Life Estate**

- ***Non Possessory Interests in Land:***

(An Interest with a right that can be executed but is not presently possessed)

- 1. Easements**

- 2. Profits,**

- 3. Covenants, and**

- 4. Servitudes**

The law prefers, and presumes, that land will be held in what form of ownership:

### **Fee Simple Absolute**

An Estate held in Fee Simple Absolute:

- Invests the owner with all possible rights (E-PUT) now and in the future;
- Is of perpetual and infinite duration; and
- Is the form of land ownership from which all others are derived.

The law prefers that title to land be held in fee simple absolute because:

- It promotes the marketability of title; and
- It helps to assure the productivity of the land.

The Castle Doctrine holds:

- That a person need not retreat from a home invader, and killing such burglar is justifiable homicide.

# Real Property – Estates in Land

## Interests in Land Continued

### Livery of Seisin

*This was the ceremonial practice before deeds (since many people could not read) where land transfers occurred in front of neighbors, watching as the seller cut out a piece of sod of the real property and physically handed it to the buyer in exchange for gold (or other consideration).*

*Upon the conclusion of the transaction, a small male child would be beaten to have him remember the events (their version of recording).*

### Today's Deeds

Today, written deeds take the place of the ceremonial livery of seisin.

Accordingly, to determine what rights exist in an Interest in Land, there are two factors which tell the story and they appear in the deed as follows:

- **Words of purchase; and**  
(Describe *who* takes the real property by grant, gift, inheritance or bequest)
- **Words of limitation:**  
(Describe the *type* and *duration* of the estate taken by the transferee)

Together, the words of purchase and words of limitation are “the magic words”.

### Magic Words

The following are the words of purchase and words of limitation for the conveyance of many of the major types of estates in land:

#### 1. Fee Simple Absolute:

*To Grantee(s) and their heirs*

#### 2. Fee Simple Determinable:

*To Grantee(s) and their heirs “for so long as” or “while” or “during” or “until” (the occurrence of an event).*

#### 3. Fee Simple Subject to a Condition Subsequent:

*To Grantee(s) and their heirs “upon the condition that” or “provided that” or “but if” or “if it happens that” (the occurrence of an event).*

#### 4. Fee Tail: (No longer recognized under modern law)

*To Grantee(s) and the heirs of their body (Now deemed fee simple absolute).*

#### 5. Life Estate:

*To Grantee(s) for life (or if pur autre vie) for the life of (name of other person).*

# *Real Property – Estates in Land*

## **Interests in Land Continued**

### **Defeasible Estates**

#### **1. Fee Simple Determinable:**

*Upon the occurrence of an event, automatically reverts back to the original owner.*

#### **2. Fee Simple Subject to a Condition Subsequent:**

*Upon the occurrence of an event, reverts back to the original owner, after he acts.*

#### **3. Fee Simple Subject to an Executory Interest:**

*Upon the occurrence of an event, property is automatically vested in a new 3<sup>rd</sup> party.*

- A Right of Re-entry (under a Fee Simple Subject to a Condition Subsequent) can be waived by affirmative action.

### **Joint Interests/Concurrent Estates**

#### **Tenancy in the Entirety**

- By Marital Right – only between husband and wife
- Right of Survivorship – by operation of law
- Severance Limited  
(Death, divorce, agreement, joint creditor execution)

#### **Joint Tenancy**

- Created by unity of time, title, interest and possession
- Right of Survivorship – by operation of law
- Severance Less Limited  
(Inter vivos conveyance or contract to convey, death, agreement, foreclosure on lien)

#### **Tenants in Common**

- No Right of Survivorship.
- Freely alienable.
- Joint ownership based upon percentage.
- Share & responsible proportionally in all gains / liabilities.

### **Creditors and Tenants in the Entirety**

- If a couple owns property in the Tenancy in the Entirety a creditor of one party (husband or wife) cannot force a sale of the property, and can only put a lien on the debtor's one half share of the home, so as to collect on half of the proceeds of the sale of the property if the debtor and their spouse ever decide to sell it.
- If both husband and wife are joint debtors, however (such as in the home mortgage), then the creditor can seek a foreclosure on the property, force its sale, and collect on any deficiency (the amount owed after the collection on the foreclosure sale).