



Real Property – Estates in Land

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.

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The Castle Doctrine holds:

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

Deeds

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

Future Interests – Estates in Time

A future interest in real property stems from the fact that the law recognizes all the rights in land (E-PUT) as well as the ability of the land owner to separate those rights over time.

As a result, a **future interest** in real property can be defined as:

- A right to receive possession of property at a future time;
- An interest in land in which the privilege of possession or of enjoyment is future and not present; and
- A non possessory interest that will or may become a possessory estate in the future.

Types of Future Interests

- **Reversionary Interests**
(the future interest will vest in the original owner)
 - Reversions (Including Life Estates)
 - Possibility of Reverter
 - Right of Re-entry
- **Remainders**
(the future interest will vest in the original owner or a 3rd party)
 - Indefeasibly vested remainder
 - Vested remainder subject to open
 - Vested remainder subject to complete divestment
 - Contingent remainder
- **Executory Interests**
(the future interest will vest in a 3rd party)
 - Shifting executory interest
 - Springing executory interest

A Two Step Dance: Possession and Time

- *Present interests* (When the RIGHT to possess is NOW)
- *Future interests* (When the RIGHT to possess is in the future)

Title Limitation Rules

- **Rule in Shelley's Case**
(To A for Life with remainder in A's Heirs: Now to A in Fee Simple Absolute)
- **Doctrine of Worthier Title**
(To A for Life with remainder in O's Heirs: Now to A with reversion in O)
- **Rule Against Perpetuities**
(No property interest is good unless it must vest, if at all, not later than 21 years plus lives in being)
- **Rule Against Restraints on Alienation**
(All disabling and absolute restraints are void, some equitable, promissory, temporary restraints can be upheld)

These Rules All Seek to **Promote Marketable Title** and **Ensure that Real Property is NOT Controlled for any significant time from Beyond the Grave.**

It should be noted, that under the **Rule Against Perpetuities**, unborn children, conceived prior to the time the interest was created, ARE considered "lives in being" if they are born alive after the interest was created.