

Modern Real Estate Practice, 19th Edition (Revised)

Chapter 4: Interests in Real Estate

Chapter Overview

This chapter explains the different types of **ownership rights** people can have in real estate. These rights are called "**interests**" in real estate. Some interests give full ownership, while others give limited rights, like the right to use land without owning it. You'll also learn about legal terms like **freehold estates**, **leasehold estates**, **encumbrances**, and **easements**, which affect what owners can do with their property.

Key Concepts and Terms

1. **Interest in Real Estate:**

The legal right to own, use, or control property.

- *Example:* Owning a house is one type of interest; renting an apartment is another.

2. **Estate in Land:**

The degree of ownership someone has in property. There are two main types:

- **Freehold Estates** (ownership)
- **Leasehold Estates** (rental rights)

3. **Freehold Estate:**

Ownership that lasts for an indefinite period (possibly forever).

- *Example:* Owning your home means you have a freehold estate.

4. **Fee Simple Absolute:**

The highest form of property ownership with full rights to sell, use, or pass the property to heirs.

- *Example:* If you buy a house and can do whatever you want with it (within the law), you have a fee simple absolute.

5. **Fee Simple Defeasible:**

Ownership that comes with conditions—if you break the rules, you could lose the property.

- *Example:* You inherit land on the condition it's used as a park. If you build a shopping mall instead, you lose ownership.

6. **Life Estate:**

Ownership that lasts for the lifetime of a specific person. When that person dies, the property goes to someone else.

- *Example:* Mary gives her house to John to live in for his lifetime. When John dies, the house goes to Mary's niece.
 - 7. **Leasehold Estate:**
The right to use or rent property for a set period of time without owning it.
 - *Example:* Renting an apartment gives you a leasehold estate.
 - 8. **Easement:**
The legal right to use someone else's land for a specific purpose.
 - *Example:* A neighbor has an easement to use your driveway to access their property.
 - 9. **Encumbrance:**
A claim or restriction on property that affects its value or use but doesn't prevent ownership.
 - *Example:* A mortgage, easement, or property lien is an encumbrance.
 - 10. **Lien:**
A legal claim on a property for unpaid debts, like a mortgage or unpaid taxes.
 - *Example:* If you don't pay property taxes, the government can put a lien on your house.
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Types of Estates in Real Estate

1. Freehold Estates (Ownership Rights):

- **Fee Simple Absolute:**
Full ownership with the right to sell, rent, or pass to heirs.
 - *Example:* Owning a house with no restrictions.
 - **Fee Simple Defeasible:**
Ownership with conditions. If conditions are broken, ownership can be taken away.
 - *Example:* A piece of land must be used for farming. If you build houses instead, the land could go back to the original owner.
 - **Life Estate:**
Ownership that lasts for someone's lifetime. After they pass away, the property goes to someone else.
 - *Key Terms:*
 - **Life Tenant:** The person who has the life estate.
 - **Remainderman:** The person who gets the property after the life tenant dies.
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2. Leasehold Estates (Rental Rights):

- **Estate for Years:**
A rental agreement for a specific period (like a 12-month lease).
 - *Example:* You sign a one-year lease for an apartment.
 - **Periodic Estate:**
A lease that automatically renews, like month-to-month rentals.
 - *Example:* Renting an apartment on a month-to-month basis.
 - **Estate at Will:**
A flexible agreement that can end at any time by either party.
 - *Example:* Living in a friend's house without a formal lease.
 - **Estate at Sufferance:**
When a tenant stays after the lease has expired without permission.
 - *Example:* A renter doesn't move out after the lease ends, and the landlord hasn't taken legal action yet.
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Encumbrances: Things That Affect Property Ownership

An **encumbrance** is something that limits how you can use your property. It doesn't mean you lose ownership, but it can affect your rights.

Types of Encumbrances:

1. **Liens:**
A financial claim on your property because of unpaid debts.
 - *Example:* A mortgage lien if you owe money to the bank.
2. **Easements:**
The right for someone else to use part of your property.
 - **Easement Appurtenant:** Connected to the land, like a shared driveway.
 - **Easement in Gross:** Given to a person or company, like a power company's right to install poles on your land.
3. **Encroachments:**
When someone's property crosses the boundary into your land.
 - *Example:* A neighbor's fence accidentally built on your side of the property line.
4. **Deed Restrictions (Restrictive Covenants):**
Rules about how you can use the property, often set by HOAs or developers.
 - *Example:* A rule that says you can't paint your house bright pink in a neighborhood.

Government Powers That Affect Property

The government has certain rights over private property, known as "**PETE**":

1. **Police Power:**

The government's right to create laws for health, safety, and zoning.

- *Example:* Zoning laws that prevent you from opening a factory in a residential neighborhood.

2. **Eminent Domain:**

The government can take private property for public use (like building a road) but must pay fair compensation.

- *Example:* The city takes part of your land to widen a highway and pays you for it.

3. **Taxation:**

The power to charge property taxes to fund public services.

- *Example:* You pay property taxes every year to support schools and roads.

4. **Escheat:**

If someone dies without a will or heirs, their property goes to the state.

- *Example:* If Mr. Brown dies with no family, his house becomes government property.

Easements: The Right to Use Someone Else's Land

Types of Easements:

1. **Easement Appurtenant:**

Benefits one property (dominant estate) while the other (servient estate) provides the access.

- *Example:* Your neighbor has the right to use your driveway to reach their house.

2. **Easement in Gross:**

Belongs to a person or company, not tied to property ownership.

- *Example:* A utility company has the right to install power lines on your land.

How Easements Are Created:

- **By Agreement:** Written in the deed.
 - **By Necessity:** When a property has no other access.
 - **By Prescription:** If someone uses your land openly without permission for a long time.
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Liens: Claims on Property for Debt

Types of Liens:

1. **Mortgage Lien:**

A claim by a lender when you borrow money to buy property.

- *Example:* If you stop paying your mortgage, the bank can take your home.

2. **Tax Lien:**

The government's claim if you don't pay property taxes.

- *Example:* Unpaid property taxes can lead to foreclosure.

3. **Mechanic's Lien:**

A claim by contractors if you don't pay for construction work.

- *Example:* A builder can put a lien on your home if you don't pay for a renovation.

Real-Life Scenario

Maria owns a house with a **fee simple absolute** title, meaning she has full ownership. Her neighbor has an **easement** to use part of her driveway to access their garage. Maria also has a **mortgage lien** because she still owes the bank money on her loan.

Later, Maria rents out part of her house to a tenant, creating a **leasehold estate** for the renter. After Maria passes away, the property goes to her daughter because of her **life estate** arrangement.

Quick Recap

- An **interest in real estate** means having legal rights to property.
 - **Freehold estates** = ownership (like fee simple absolute or life estates).
 - **Leasehold estates** = rental rights for a set time.
 - **Encumbrances** like **liens**, **easements**, and **encroachments** affect how you use property.
 - Government powers (**PETE**) include police power, eminent domain, taxation, and escheat.
 - **Liens** are legal claims for unpaid debts, and **easements** allow limited use of another's land.
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