



Real Property: Duties, Responsibilities, and Interests

by Sophia



WHAT'S COVERED

In this lesson, you will learn about additional legal concepts related to the ownership of real property. Specifically, this lesson will cover:

1. Duties and Responsibilities

Owning real property carries many responsibilities, as well as the potential for great profit and great liability. It is important to recognize the duties associated with property ownership, and learn how to protect yourself against potential liability associated with it.

IN CONTEXT

If a toxic waste site is discovered on your real property, you may very well be liable for its cleanup, even if you did not realize that such a site was there when you purchased the land. Each buyer of real property has a duty to exercise due diligence when purchasing land. The idea is that you should have known about the site, if it was discoverable on inspection. Knowing this, along with familiarity with the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), helps us recognize that we should never agree to buy land “sight unseen,” or at least without a professional inspector that we trust.

But what if an old toxic waste site is located on property that you wish to sell? You would have a duty to disclose such a defect in the land to prospective buyers before conveying ownership.

Additionally, we must consider duties that landowners have to other people who enter the land.

1a. Duties of Landowners

Landowners owe different duties to different types of people who enter their land. These responsibilities vary, depending on whether the person is a trespasser, a licensee, or an invitee.

A **trespasser** is a person who voluntarily and intentionally enters the land of another without permission or privilege. A landowner has a duty not to intentionally injure a trespasser.

➞ **EXAMPLE** Booby traps, pitfalls, or anything of the sort are simply not permitted. Trespassers injured from such a trap have valid claims against the landowner for injuries.

A **licensee** is someone who has permission to be on the land. Landowners have a higher duty of care to such a person. Not only must a landowner not intentionally injure a licensee, but the landowner must also warn the licensee of known defects.

➞ **EXAMPLE** If a landowner knows that the steps to his or her porch are icy, he or she has a duty to warn a licensee - such as a visiting friend - that those steps are icy. Failure to do so may result in liability for the landowner.

An **invitee** is someone who has entered real property by invitation. Businesses and public places issue invitations to the public, and people who arrive based on those invitations are invitees. Landowners must inspect their property for defects, correct those defects when found, and warn invitees about such defects.

➞ **EXAMPLE** This is why you will see a “caution” sign on the floor of a grocery store, after it has been mopped or after a liquid spill.



TERMS TO KNOW

Trespasser

In property law, one who intentionally and without consent of the owner enters another's property.

Licensee

One who has permission to enter another's property.

Invitee

One who has permission by invitation to enter another's property in connection with a business or activity and whose presence thereon is of benefit to the owner.

2. Ownership Interests

Different types of interests may be owned in real property.

➞ **EXAMPLE** Real property may be owned without restriction, subject only to local, state, and federal laws. Or ownership interests may be narrower, subject to conditions, the violation of which can lead to loss of those ownership interests.

2a. Fee Simple Absolute

The most complete ownership interest is represented by **fee simple absolute**. The owner of property in fee simple absolute has the greatest ownership interest recognized by law.

Generally, if someone wants to buy real property, he or she is looking to buy property in fee simple absolute.



TERM TO KNOW

Fee Simple Absolute

A type of ownership (title) to real property limited absolutely to a person and his heirs and assigns forever. There are no conditions or limitations on this type of ownership.

2b. Fee Simple Defeasible

Compare that with a defeasible fee. A **fee simple defeasible** is subject to a condition of ownership or to some future event.

➞ **EXAMPLE** If you donated land to “the City of Nashville, so long as it is used as a public greenway,” then the land would be owned in defeasible fee by the City of Nashville, unless it decided to do something else with the land besides maintain it as a public greenway.

Once the condition is violated, the land would revert back to either the original owner or whoever owned the **reversionary interest**, which is a future interest in real property.



TERMS TO KNOW

Fee Simple Defeasible

A type of ownership that is conditional and may end upon the happening of some event.

Reversionary Interest

An interest in real estate in the future regarding property that is now in the possession of another.

Property that reverts to a grantor after the expiration of, for example, a life estate.

2c. Life Estate

Another ownership interest is a **life estate**. This interest is measured by the life of the owner in the life estate.

➞ **EXAMPLE** If you wished to grant ownership rights in real property to your mother for the length of her life, but then expected the property to be returned to you upon her death, you might grant a life estate to her.

Similarly, a common investment, known as a **reverse mortgage**, employs the concept of life estate. A reverse mortgage is an arrangement where the purchaser of real property agrees to allow the seller to retain possession of the property for a specified period of time (such as the remainder of his or her life) in exchange for the ability to purchase the property at today's price.

This can be an attractive investment, if the investor believes that the value of the property will increase in the future, and if the investor does not need immediate possession of the property. These arrangements essentially gamble on the life expectancies of the sellers by granting life estates to them in the property. However, sometimes this backfires.



TERMS TO KNOW

Life Estate

An interest in real property granted to the grantee only for his or her life.

Reverse Mortgage

An arrangement where the purchaser of real property agrees to allow the seller of the property to retain possession of the property for a specified period of time (such as the remainder of his or her life) in exchange for the ability to purchase the property at today's price.

2d. Co-Ownership

Sometimes, more than one owner owns the interest in the property. Several types of co-ownership interests are recognized in law. These ownership interests are important for matters of possession, right to transfer, right to profits from the land, and liability.

Tenancy in common describes an ownership interest in which all owners have an undivided interest in the property, equal rights of possession, and a **devisable interest**. Compare this to a **joint tenancy**, which

describes an ownership interest in which the surviving owner has the right of survivorship.

IN CONTEXT

Imagine that you own a gold mine with your partner, Frank. Would you rather have a tenancy in common or a joint tenancy? You would rather have a joint tenancy because if Frank dies, then his interest in the gold mine would vest in you, rather than in his heirs. After all, you may not want to be a partner with Frank's grandson (or whoever), but that is exactly what might happen with tenancy in common.

Similarly, a **tenancy by the entirety** includes the **right of survivorship**, but it can only occur between married persons. This concept is recognized in some states, but not all states. These different interests are created by specific wording in the instrument of conveyance or deed.

➞ **EXAMPLE** To create a tenancy in common, the language would be "To John and Frank," if John and Frank were to be the co-owners. However, if a joint tenancy were intended, the conveyance would have to be more specific, like this: "To John and Frank, with rights of survivorship." Note that John and Frank could not benefit from a tenancy by the entirety unless they were married.

Note that a tenant in a tenancy in common may sell or transfer his or her rights without seeking permission from his or her co-tenant.

IN CONTEXT

Imagine that you owned a farm with your best friend. At first, you agree to engage only in organic farming practices. Later, your friend wants to move to conventional farming practices. Since you do not want any part in the spraying of pesticides or herbicides on the land, you decide to sell your interests to someone else. Even if your friend opposes the sale, he or she cannot block it. This is because co-tenants in a tenancy in common have the unilateral right to transfer their interests in property.

Imagine, later, that someone working on that land becomes very sick from a pesticide sprayed there after you sold your interest. You would not be liable for any damages resulting from such an event, because your liability would be severed with the sale.

Compare this to a joint tenancy, including tenancy by the entirety. To transfer one's interests, the consent and approval of the co-tenant is required. In the case that joint tenants disagree about the use of the property or its disposal, the courts can step in to grant a **partition** of the land, which essentially results in separate parcels being granted to the individual tenants. This recasts the formerly joint tenants into adjacent landowners, and it allows them to dispose of or use their property as each sees fit, with no rights to the other's property.



TERMS TO KNOW

Tenancy in Common

Ownership of real property by two or more persons together, each owning a distinct share.

Devisable Interest

An interest in real estate that can be transferred.

Joint Tenancy

Two or more tenants holding real property by the same deed or will, having undivided interests in the property and right of survivorship.

Tenancy by the Entirety

A type of ownership in real property that is between married persons and includes the right of survivorship.

Right of Survivorship

The right of the surviving owner of real property to the property of the deceased co-owner, typically in a joint tenancy or a tenancy by the entirety.

Partition

The dividing (typically by a court) of real property held by joint tenants or tenants in common.

3. Landlord-Tenant Relationships

A **leasehold interest** may also be created in real property.

➞ **EXAMPLE** If you rent an apartment, house, or dormitory room from campus, you are a tenant with a leasehold interest. In such a relationship, you are the tenant and the property owner is the landlord.

A leasehold is simply a **possessory interest** with certain rights and duties, which are typically specified in the lease agreement.

➞ **EXAMPLE** A tenant has the right to exclusive possession of the real property and the duty to follow the rules of occupancy set out by the landlord, and a landlord in a residential lease agreement has the right to be paid rent and the duty to ensure that the premises are habitable.

If one party does not perform under the lease as required, the other party may seek legal remedy.

➞ **EXAMPLE** If a tenant does not pay rent, then a landlord may lawfully evict the tenant from the premises, even if the term of the lease has not run.

Like other interests in real property, leases generally must be in writing to be enforceable.



TERMS TO KNOW

Leasehold Interest

An interest in real property held under an agreement (a lease) giving the lessee the right to use the property.

Possessory Interest

The right to exert control over or possess real property without necessarily holding any title or ownership of the property, as in a tenant's rights by virtue of a lease.

3a. Types of Tenancies

Different types of tenancies may be created. The most common tenancies are probably tenancies for years and periodic tenancies. **Tenancy for years** is simply a tenancy that lasts for a particular, specified period of time.

➞ **EXAMPLE** When you rent an apartment, you might sign a lease for nine months to reflect the school year. That would be a tenancy for years, even though the term of the lease is less than one

year.

A **periodic tenancy**, on the other hand, is a tenancy that simply runs for a particular period of time and then automatically renews if it is not terminated by the landlord or the tenant.

➞ **EXAMPLE** Imagine that you had a one-year lease but you did not move out at the end of the year, and the landlord continued to accept rent payments and took no action to terminate the lease. A new lease - for a one-year period of time - would be created.

Less common types of tenancies are **tenancy at will**, which is a tenancy for no particular fixed period of time and subject to termination at will by either the landlord or the tenant, and **tenancy at sufferance**, which is a tenancy that occurs when a tenant remains on the property after the right of possession has ended and without the landlord's consent.



TERMS TO KNOW

Tenancy for Years

The use of real property under a lease for a fixed, determined amount of time for a year or more.

Periodic Tenancy

A lease of real property that is subject to termination at various periods, such as week to week, month to month, or year to year.

Tenancy at Will

The use of real property by one who has permission of the owner but no fixed term.

Tenancy at Sufferance

The use of real property by one who, after having rightful possession, continues after his right has ended.

3b. Types of Leases

Tenancies may be created for residential purposes or commercial purposes. **Commercial leases** typically last for longer periods of time than **residential leases**. It is not uncommon to hear about commercial leases that last five, ten, twenty-five, or even ninety-nine years.

Many of the same responsibilities and duties exist with commercial leases, but there are some important differences. For one, a commercial tenant may demand that the landlord refuse to rent to a competitor of the tenant within the same building.

➞ **EXAMPLE** If a golf shop locates in a strip mall, it may require as a term in the lease that the landlord refrain from renting other retail space to a competing golf shop within the same strip mall.

Lease interests are **assignable** unless those rights are expressly restricted by the lease agreement. This means that the rights conveyed by the lease, which is a contract, may be transferred to another party by assignment, unless an express restriction on assignment exists within the lease.

➞ **EXAMPLE** You may have seen restrictions on assignment in your own residential lease in the form of a no-subletting clause. Commercial leases routinely contain a restriction on assignment without permission from the landlord.

Just as the owner of real property may sell any or all of his or her interests, any ownership interest in real property may also be leased.

➞ **EXAMPLE** Someone who owns the subsurface rights of land may lease the right to drill for oil or gas to another.



TERMS TO KNOW

Commercial Lease

A lease of real property that is intended for business or commercial purposes and not as a residence.

Residential Lease

A lease of real property that is intended for residential use, meaning the lessee lives at the property.

Assignable Lease

A lease that permits the lessee to transfer his or her rights in the lease to someone else.



SUMMARY

In this lesson, you learned that property owners must know the breadth and limits of their ownership interests to understand their rights to profits derived from the land and their liability resulting from use of their land. Landowners have **duties and responsibilities** to people who enter their land, but the **duties of landowners** differ for trespassers, licensees, and invitees. **Ownership interests** in land may be unconditional (**fee simple absolute**), conditional (**fee simple defeasible**), or for a period of time (**life estate**). Additionally, **co-owners** may have different rights, depending on their kind of ownership.

You also learned that **landlord-tenant relationships** create another kind of interest known as a leasehold interest. Leasehold interests are possessory, non-ownership interests with rights and duties usually specified in the lease agreement. Different **types of tenancies** and different **types of leases** all come with unique responsibilities and interests.

Best of luck in your learning!

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