Lesson 11: How Homeownership is Held

Lesson Topics
This lesson focuses on the following topics:

• Forms of Ownership
• Co-Ownership
• Trusts
• Ownership of Real Estate by Business
• Estates in Land and Methods of Holding Title – A More Detailed Examination

Lesson Learning Objectives
At the conclusion of this lesson you will be able to:

• Explain the differences in tenants in common and joint tenancy.
• Identify what is community property vs. separate property.
• Explain the four unities of joint tenancy.

Introduction
Real estate buyers must determine the type of ownership that best fits their needs. The choice of ownership will affect the ability to transfer the real estate and has tax implications as well. While real estate professionals should be able to identify the basic forms of ownership available, it is up to the prospective buyer to explore the options and make the final decision, most likely with the advice of an attorney and/or accountant.

Although the forms of ownership available are controlled by state law, real estate can be held in one three basic ways.
Forms of Ownership

There are three basic forms of ownership. Property can be:

- Owned individually (Severalty)
- Co-owned
- Held in trust

Individual Ownership or Ownership in Severalty

Individual ownership occurs when one person is the owner of a property. He or she has absolute control over the distribution and use of the land as well as final say over any other decisions affecting the property (within the confines of the law). Individual ownership is also called “sole ownership;” property that is owned by a single individual is sometimes referred to as being “held in severalty.” The term “severalty” derives from the term “sever,” which means to make separate or individual. When a property is held in severalty, it usually belongs to single or married individuals. It might also be held by a corporation, a form of business that has legal standing as an individual.

Co-Ownership

Co-ownership occurs when two or more persons have ownership rights to a property. Under this type of ownership, these individuals become co-owners or concurrent owners. Co-owners may all have possession of a property at the same time, or one owner may take possession while the others do not use the property but maintain their ownership interest(s). Similarly, co-owners may have equal ownership rights in a property, or the ownership interests may be divided in some other way. Responsibilities to and liabilities regarding the property may be divided in a similar way. Some states have specific laws regulating the division of rights and responsibilities regarding a co-owned property.

There are four basic types of co-ownership:

1. Tenancy in common
2. Joint tenancy
3. Community property
4. Property held in partnership

**Tenancy in Common (TIC)**
When two or more parties own a property as a tenancy in common, each owner has a partial ownership interest and partial rights in a property. The ownership interests may be divided in various ways, but there is no actual physical division of the property. If the various ownership interests are not equal—that is, if each owner is not assigned the same percentage of ownership rights in the property—then the co-owners’ fractions of ownership interest are stated in the deed that created the tenancy in common. In the absence of any deed stating an unequal division, it is often assumed that all rights and obligations regarding the property are divided evenly.

In a tenancy in common, each co-owner of the property holds his or her individual portion of the ownership interest in severalty. This means that each individual co-owner can sell, transfer, mortgage, or lease his or her interest in the property without the authorization of the other owners of the property, as long as that owner’s actions do not endanger or abridge the rights of the other owners. Each of the tenants-in-common has an equal right to enjoy the use of each part and the whole of property, but none of them has a right to possess any part of the property exclusively.

The co-owners, as a group, have sole rights to use and distribute the property as they wish, as long as their choices conform to state and federal laws. If one owner dies, distribution of his or her interest in a co-owned property is done according to the will or by the laws of descent and distribution if there is no will. It is important to note that there is no right of survivorship here; that is, it is *not* the case that when one co-owner dies, his or her ownership interest reverts to the surviving co-owners.

In practice, the problem of owning the right to use an entire property, but having only a fractional ownership interest, usually is resolved by agreement of the co-tenants to specify the part of the property that each will use individually and the part of the property that will
be shared. In a residential property with three units, for instance, if there are three TIC interests, each co-tenant may, by agreement of all three, occupy a specified unit, with all three having the right to use all other areas, such as a basement storage space. The agreement should also specify how responsibility for property maintenance, expenses, and taxes are to be shared. Unless all three units are very comparable, this is where any differences may be equalized, with the co-tenant who enjoys the use of the largest or most desirable unit paying a larger portion of the expenses.

**Joint Tenancy**

In a joint tenancy, two or more individuals share ownership of a property. Under this form of co-ownership, there is a right of survivorship; when a joint tenant dies, the surviving joint tenants inherit the deceased co-owner’s ownership interest in the property.

The only way for a joint tenant to acquire an ownership interest that can be conveyed in a will is for that person to be the only surviving joint tenant. Otherwise, when any of the joint tenants dies his or her ownership interest reverts to the surviving joint tenants.

Because joint tenancy involves the right of survivorship, many states require co-owners who wish to own property in this way to create a written contract that specifies their intent to create a joint tenancy and identifies the co-owners as joint tenants. Without a contract or conveyance that clearly identifies their relationship as a joint tenancy, it may be presumed to be a tenancy in common.

Joint tenancy is more explicitly an arrangement for sharing a property equally than is a tenancy in common. Four unities distinguish a joint tenancy from other kinds of co-ownership, all of which must be present for the method of ownership to qualify as a joint tenancy:

1. **Unity of interest:** All of the joint tenants’ ownership interests and rights must be equal in their extent, nature, and duration.
2. **Unity of time:** Joint tenants are required to acquire their property ownership or ownership interests at the same time. Thus no additional joint tenants can be added to an established joint tenancy unless a contract is created defining a new joint tenancy arrangement.

3. **Unity of title:** Joint tenants are required to acquire their property from the same transaction, and they must hold title under the same document, such as a deed or a will.

4. **Unity of possession:** Each joint tenant has an equal right to enjoy the use of each part of the property as well as the whole of the property. No joint tenant has a right to possess any part of the property exclusively.

**EXAMPLE:**
John and Mary and Doug and Susan decided to by an office building as joint tenants. They all purchase it together at the same time and they all acquire their ownership on the same deed. They each own 25% of the property.

John died very suddenly. His interest in the property passes to the other three joint tenants. Now Mary, Doug and Susan each own 33 1/3% of the property.

When Susan dies a few years later Mary and Doug each own 50% of the property.

When Doug died later, Mary became the 100% owner. When Mary dies, the property will be distributed according to her will or if there is no will, Mary’s heirs will inherit the property.

**NOTE:** The big difference between tenancy in common and joint tenancy is the “right of survivorship” in a joint tenancy. Sometime you will hear joint tenancy described as a “poor man’s will”. Joint tenancy has to be described clearly in the deed. In most states tenancy in common is the default position if nothing is specified.
A joint tenant annihilates a joint tenancy when any one of the four essential unities of joint tenancy is terminated. Bankruptcy, foreclosure, and suits to partition the land can also cancel a joint tenancy. Having co-owned land legally partitioned by a court is a legitimate way to dissolve a co-ownership when the parties cannot or will not voluntarily agree to its termination. If a court cannot divide the land in a way that satisfies the co-owners, it will often force them to sell the land and divide the proceeds between the joint tenants.

In practice, the form under which title to property will be taken should be discussed with an attorney. Remember that real estate professionals may not give legal advice or engage in the practice of law.

**Community Property**

Community property is property that is held in common between a wife and a husband, in which each party holds half of the ownership interests in the property. This arrangement is generally created by community property laws, under which the ownership interests in any property that is acquired *during* the course of a marriage are automatically divided equally between the two spouses. Only the following states recognize community property laws: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. They are often referred to as “community property states.”

Community property laws recognize ownership based on the spouses’ marriage agreement, rather than the actual holding of title. This means that all property acquired during a marriage belongs equally to *both* individuals, and will be equally divided if their marriage is dissolved. If one spouse dies, his or her portion of their community property will transfer to the surviving spouse.

These laws do not govern property that is received as an inheritance or a gift, and they do not apply to property acquired prior to the marriage; all such property is considered to be “separate property.” Prior to marriage, both parties can agree to convert their separate property into community property; they can also agree that none of their property will be
considered community property, though this arrangement generally must be specified in writing.

**NOTE:** There is good reason for every homeowner to have a professionally prepared will. One of the laws that make it extremely important for homeowners to have a will, is a Texas law of descent and distribution. It comes into play when one of the spouses has children outside of their marriage. For example, George was married before and had a child with his first wife, that he is divorced from, and then re-married Betsy. George and Betsy were married for 25 years and have 3 children of their own. If George dies without a will, Betsy will keep her 50% of the community property and George’s four children will inherit George’s 50%. If that is the way George wants the property to be split that is ok. If George wants Betsy to inherit the property they need a will.

**Trusts**

When a property is held in trust, an individual transfers ownership of that property to another individual who in turn manages that property for a *third* party. The transferor or creator of the trust is called the *trustor*; the individual who receives the trust is called the *beneficiary*; and the manager of the trust is called the *trustee*. The trustee carries out the trustor’s wishes by holding title to the trust and performing according to the trustor’s wishes concerning the property.

**EXAMPLE:**

Person X owns a condominium, and she wishes to place this property into a trust so that it will become her grandson’s property in the future. Person X asks Person Y to act as a trustee for this trust. If Person Y accepts this responsibility, this means that Person Y will need to manage the property according to the terms set out in the trust agreement, and that Person Y is responsible for delivering the property to the grandson in approximately the condition specified in the agreement. In this case, Person X is the trustor, Person Y is the trustee, and the grandson is the beneficiary.
Ownership of Real Estate by Business

Partnerships
A partnership is created when two or more parties agree to combine their property and talents to create a for-profit business. Parties can create a variety of partnerships; we will discuss two common types of partnership here:

1. General partnerships
2. Limited partnerships

General Partnerships
A general partnership combines two or more parties’ resources, assets, and expertise into a business unit. The creation of this partnership also creates financial and legal responsibilities for all of the partners. Consequently, all partners can be held legally responsible for the other partners’ actions and commitments. Most states’ laws follow the Uniform Partnership Act (UPA), which is designed to bring various states’ partnership laws into accord. The UPA outlines the basic requirements of a partnership agreement, apart from any specific details that might be written into a particular partnership contract. Although the UPA provides a helpful general outline to follow while drafting a partnership agreement, partners should create and define the key clauses that shape and regulate their unique partnerships.

Limited Partnerships
A limited partnership is an alternative to a general partnership. A limited partnership is made up of both limited and general partners. The general partners do the work of managing and overseeing the business; they usually accept unlimited personal liability. Limited partners function more as investors, supplying capital but playing no role in the day-to-day operation and management of the business. Limited partners’ liability is generally limited to the amount of their investments in a business.

The relationship between limited and general partners must be set out in a written agreement if the partnership contract is to conform to the requirements of the Uniform Limited Partnership Act (ULPA), later amended to become the Revised Uniform Limited
Partnership Act (RULPA). The majority of states follow the directives of the ULPA or the RULPA, which acknowledge the legality of a limited partnership.

**What are Ownership Rights?**
There are four ownership rights associated with real property:
- Subsurface rights
- Surface rights
- Air rights and
- Water rights

We defined “real property” earlier as covering real estate plus the owner’s set of rights. It is important to understand that these four different rights may be sold separately, sometimes to different persons, thus creating situations in which multiple people can have an ownership interest in the same piece of property.

**Subsurface Rights**
Subsurface rights relate to everything beneath the surface of a tract. The importance of this right lies largely in the fact that it may secure ownership of mineral deposits located under the surface of a property.

In some states, including Texas, subsurface rights can be sold separately from surface rights. In the event that two parties each hold an interest in a property—one holding the subsurface rights and the other holding the surface rights—the holder of subsurface rights may legally enter the property to extract the minerals he or she has rights to, but he or she must take care to not materially disturb the surface. TREC has an addendum to use with a sales contract that address sub-surface rights.

Review the following addendum. Pay particular attention to paragraph C and how the addendum addresses the surface rights.
PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

ADDENDUM FOR RESERVATION OF OIL, GAS, AND OTHER MINERALS

ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

(Street Address and City)

NOTICE: For use ONLY if Seller reserves all or a portion of the Mineral Estate.

A. "Mineral Estate" means all oil, gas, and other minerals in and under and that may be produced from the Property, any royalty under any existing or future mineral lease covering any part of the Property, executive rights (including the right to sign a mineral lease covering any part of the Property), implied rights of ingress and egress, exploration and development rights, production and drilling rights, mineral lease payments, and all related rights and benefits. The Mineral Estate does NOT include water, sand, gravel, limestone, building stone, caliche, surface shale, near-surface lignite, and iron, but DOES include the reasonable use of these surface materials for mining, drilling, exploring, operating, developing, or removing the oil, gas, and other minerals from the Property.

B. Subject to Section C below, the Mineral Estate owned by Seller, if any, will be conveyed unless reserved as follows (check one box only):

☐ (1) Seller reserves all of the Mineral Estate owned by Seller.

☐ (2) Seller reserves an undivided ______ interest in the Mineral Estate owned by Seller. NOTE: If Seller does not own all of the Mineral Estate, Seller reserves only this percentage or fraction of Seller’s interest.

C. Seller □ does □ does not reserve and retain implied rights of ingress and egress and of reasonable use of the Property (including surface materials) for mining, drilling, exploring, operating, developing, or removing the oil, gas, and other minerals. NOTE: Surface rights that may be held by other owners of the Mineral Estate who are not parties to this transaction (including existing mineral lessees) will NOT be affected by Seller’s election. Seller’s failure to complete Section C will be deemed an election to convey all surface rights described herein.

D. If Seller does not reserve all of Seller’s interest in the Mineral Estate, Seller shall, within 7 days after the Effective Date, provide Buyer with the contact information of any existing mineral lessee known to Seller.

IMPORTANT NOTICE: The Mineral Estate affects important rights, the full extent of which may be unknown to Seller. A full examination of the title to the Property completed by an attorney with expertise in this area is the only proper means for determining title to the Mineral Estate with certainty. In addition, attempts to convey or reserve certain interest out of the Mineral Estate separately from other rights and benefits owned by Seller may have unintended consequences. Precise contract language is essential to preventing disagreements between present and future owners of the Mineral Estate. If Seller or Buyer has any questions about their respective rights and interests in the Mineral Estate and how such rights and interests may be affected by this contract, they are strongly encouraged to consult an attorney with expertise in this area.

CONSULT AN ATTORNEY BEFORE SIGNING: TREC rules prohibit real estate licensees from giving legal advice. READ THIS FORM CAREFULLY.

Buyer ____________________________  Seller ____________________________

Buyer ____________________________  Seller ____________________________

The form of this addendum has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this contract form only. TREC forms are intended for use only by TREC licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-935-3000 (http://www.trec.state.tx.us) TREC No. 44-2. This form replaces TREC No. 44-1.

TREC NO. 44-2
Surface Rights
Surface rights are rights and interests with respect to the surface of the earth, including natural elements and structures built on or attached to it.

Air Rights
Air rights are the right to use the airspace above a property. These rights may be sold or leased independently of the tract itself.

Water Rights
When a property borders a body of water or a river, the right to enjoy the water is usually included in the bundle of rights. There are two types of rights associated with waterfront properties: riparian rights and littoral rights.

Riparian rights govern the use of flowing water, such as rivers and streams, that pass through or border a property. In accordance with riparian rights, a property owner does not own the water, but he or she may use the water and shares those same rights and uses with other property owners whose land also borders the water.

“Littoral rights” govern lakefront or seafront property and usually allow the property owner to use the water bordering his or her property. Littoral use does prohibit the property owner from artificially changing the water’s location.

It is important to note that water rights connect to surface rights in that a permanent right to enjoy a body of water surrounded by privately-owned realty usually necessitates surface ownership of waterfront property.
Estates in Land and Methods of Holding Title – A More Detailed Examination

Real property ownership can take many different forms. An owner typically has full title to the property and full possession of it, but that isn’t necessarily the case. An owner may have a more limited interest instead of full title, or may allow someone else (a tenant) to take possession of the property without taking title. In addition, a property may be owned by more than one person at the same time, which is called concurrent ownership.

Estates in Land

In real property law, the word “estate” refers to an interest in land that is or may become possessory. In other words, someone has, or may have in the future, the right to possess the property, the right to exclusively occupy and use it. An estate may also be called a tenancy.

The different types of estates are distinguished by two factors: the duration or how long the estate holder has the right of possession; and the time of possession where the estate holder either has the right of possession now or sometime in the future.

It’s important to note that while all estates are interests in the land, not every interest in land is an estate. Interests that are not estates are called nonpossessory interests. For example, a mortgage gives a lender a financial interest in the property in the form of a lien, but this interest is not an estate, because it is not a possessory interest. Nonpossessory interests will be covered later.

Estates fall into two categories:

1. Freehold Estates
2. Leasehold (less-than-freehold) Estates
A freehold estate is an interest in real property that has an indeterminable (not fixed or certain) duration. The holder of such an estate is usually referred to as an owner. All other possessory interests are leasehold (less-than-freehold) estates. A leasehold estate has a limited duration (a one-year lease is an example). The holder of a leasehold estate is referred to as a tenant; a tenant has possession of the property but not title.

Both types of estates can exist in the same piece of property at the same time. For instance, the owner of a freehold estate may lease the property to a tenant, who then has a leasehold estate in the same property. When two or more parties have interests in the same property, their mutual relationship is referred to as "privity."

**Freehold Estates**

The freehold estate got its name back in the Middle Ages; it originally referred to the holdings of a freeman under the English feudal system. Freehold estates can be subdivided into fee simple estates and life estates. There are two types of fee simple estates: fee simple absolute and fee simple defeasible.

**Fee Simple Absolute**

The fee simple absolute is often just called the fee simple, or the fee. The term “absolute” is used only to distinguish it from a fee simple defeasible. The fee simple absolute is the greatest estate that can exist in land, the highest and most complex form of ownership. It is of potentially infinite duration and represents the entire “bundle of rights.”

A fee simple estate is freely transferable from one owner to another. It is also inheritable by the owner’s heirs when he or she dies, so it is sometimes referred to as the estate of inheritance. A fee simple estate has no set termination point and theoretically can be owned forever by the titleholder and his or her heirs. When a fee simple owner transfers title by deed, it is presumed that the grantee (the new owner) receives a fee simple absolute estate, unless the deed includes language that indicates an intent to confer a lesser estate such as a life estate, which will be discussed later in this session.
Fee Simple Defeasible
A fee simple estate may be qualified when it is transferred from one owner to another. For example, in a deed, the grantor may specify that the grantee’s estate will continue only as long as a certain condition is met (“on the condition that the property is used as low-cost housing”), or until a certain event occurs, the new owner could forfeit title to the property. This type of qualified estate is referred to as a fee simple defeasible. The owner of a fee simple defeasible holds the same interest as the owner of a fee simple absolute, except that the defeasible interest is subject to termination.

Until the 1980’s, certain types of fee simple defeasible estates terminated automatically if the condition stated in the deed was not met.

Life Estate
An estate for life is a freehold estate with a duration limited to the lifetime of a specified person or persons.

Example: Noel gives a parcel of property to Beatrice for her lifetime, calling for a reversion of title to Noel upon Beatrice’s death. Beatrice is the life tenant (holder of the life estate), and the duration of the life estate is measured by her lifetime.

The measuring may be that of the life tenant as in the previous example or it may be the life of another person. Suppose, for example, that Consuelo gives a parcel of property to Howard for the life Charles. Howard has a life estate, which will end when Charles dies. Howard is the life tenant; Charles’s life is the measuring life.

When the fee simple estate is a perpetual estate, the life estate is a lesser estate because it is limited in duration. In granting a life estate, a fee simple transfers only part of what she owns, so there must be something left over after the life estate terminates. What remains is either an estate in reversion or an estate in remainder. These are known as future interests.
**Estate in Reversion**

If the grantor stipulates that the property will revert back to her at the end of the measuring life, the grantor holds an estate in reversion. She has a future possessory interest in the property. Upon the death of the person whose life the estate is measured by, the property will revert to the reversioner; that is to the grantor or her heirs.

**Estate in Remainder**

If the grantor stipulates that the property should go to a person other than the grantor at the end of the measuring life, that other person has an estate in remainder and is called the remainderman. The only difference between reversion and remainder estates is that the former is held by the grantor and the latter by a third party. If the grantor doesn’t name a remainderman, an estate in reversion is created. The interest that will pass to the designated party when the life estate ends is a fee simple estate.

**Example:** Deeann deeds her property “to Bonnie for life, and then to Carl.” Carl is the remainderman, and he will own the property in fee simple when Bonnie dies and the life estate ends.

If Deeann had simply deeded the property “to Bonnie for life,” without naming a remainderman, then fee simple ownership of the property would revert to Deeann, or if Deeann died in the meantime, to Deeann’s heirs upon Bonnie’s death.

**Rights and Duties of Life Tenants**

A life tenant has the same right as a fee simple owner, including the right to profits or rents, and the right to lease or mortgage the property. And a life tenant also has the same duties as a fee simple owner that is to pay taxes, assessments, and liens.

Because someone else has a future interest in the property, a life tenant must not commit waste, which means that the life tenant must not engage in acts that will permanently damage the property and harm the interests of the reversionary or remainder estate.
Mismanaging or using up the property’s resources (cutting down all of the trees on the timberland, for example) would be form of waste.

A life tenant may transfer or lease his or her interest in the property. But keep in mind that a life tenant can give, sell, or lease only what he or she has. In other words, a lease given by a life tenant will terminate upon the death of the person designated as the measuring life. The lease does not have to be honored by the remainderman. Similarly, a mortgage on a life estate loses its status as a valid lien when the person designated as the measuring life dies, ending the life estate. However, if a life tenant leases or mortgages the property and later dies, but the life estate continues because the person designated as the measuring life is still alive, the lease or mortgage remains in force.

**Leasehold Estates**

Less-than-freehold estates are more commonly called leasehold estates. In certain legal contexts, they’re sometimes called “chattels real.” The holder of a leasehold estate is the tenant, who does not own the property, but rather has a right to exclusive possession of the property for a specified period.

The leasehold is created with a lease. The parties to a lease are the landlord (lessor), who is the owner of the property, and the tenant (lessee), the party with the right of possession. The lease creates the relationship of the landlord and tenant. It grants the tenant the right of exclusive possession, with the reversion of the possessory rights to the landlord at the end of the rental period.

The lease is a contract and its provisions under contract law. The four types of leasehold estates are:

1. Term tenancy (estate for years)
2. Periodic tenancy
3. Tenancy at will
4. Tenancy at sufferance
Term Tenancy
The term “tenancy,” or “estate for years,” is a tenancy for a fixed term. The name “estate for years” is misleading in the sense that the duration need not be for a year or a period of years; it just has be for some fixed term. For example, if Randy rents a cabin in the mountains from Shawna for a period of June 1 through September 15, Randy has a term tenancy because the rental term is fixed.

A term tenancy can be created only by express agreement. It terminates automatically when the agreed term expires; neither party has to give notice of termination. If either the landlord or the tenant wants to terminate a term tenancy before the end of the lease period, he or she may only do so if the other party consents. Termination of a lease by mutual consent is called surrender.

Unless the lease includes a no-assignment clause, a term tenancy is assignable – that is, the tenant can assign her interest to another person.

Periodic Tenancy
A periodic tenancy, sometimes called a periodic estate, has no fixed termination date. It lasts for a specific period (i.e. one year, one month or one week) and continues for successive similar periods (another year, month or week) until either party gives the other proper notice of termination. A month-to-month tenancy is the most common example.

Unlike a term tenancy, which terminates automatically at the end of the term, a periodic tenancy automatically renews itself at the end of each period, unless one of the parties gives notice. Failure to give proper notice of termination results in the automatic extension of the lease for an additional period.

Like a term tenancy, a periodic tenancy is assignable unless assignment is prohibited by the terms of the lease agreement.
Tenancy at Will

In a tenancy at will, the tenant has possession of the property with the landlord's consent for an indefinite period. A tenancy at will is created by mutual agreement between the parties and can be terminated at will by either one.

A tenancy at will often arises when a lease has expired and the parties are in the process of negotiating the terms of a new lease. Since the term of tenancy at will is indefinite, it will continue until either party gives proper notice of termination.

Unlike a term tenancy or periodic tenancy, which are not affected by the death of one of the parties, a tenancy at will expires if either the landlord or the tenant dies. Also, a tenancy at will is not assignable.

Tenancy at Sufferance

The tenancy at sufferance is the lowest type of estate, in fact, though it’s sometimes called an “estate at sufferance,” technically it isn’t an estate at all. A tenancy at sufferance arises when a tenant who came into possession of the property lawfully, under a valid lease, stays on after the lease has expired without the consent of the landlord. A tenant at sufferance is also called a holdover tenant. For example, Tenant Joe has a one-year lease with Landlord Tina. At the end of the term, Joe refuses to move out. Joe initially obtained possession of the property legally under a valid lease, but he is remaining on the property without Tina’s consent. Joe is a tenant at sufferance or a holdover tenant.

Tenancy at sufferance is essentially a way of distinguishing between someone who entered into possession of the property legally, but no longer has a right to possession, and a trespasser, who never had permission to enter the land in the first place. Because a tenant at sufferance does not hold an estate (a possessory interest in the property), the landlord is not required to give the tenant notice of termination. Even so, the tenant at sufferance cannot simply be forced off the property, the landlord is required to follow the proper legal procedure for eviction.
Methods of Holding Title
Title to real property may be held by one person, which is called ownership in severalty, or it may be held by two or more persons at the same time, which is called concurrent ownership.

Ownership in Severalty
When one person holds title to property individually, the property is owned in severalty. The term is derived from the word “sever,” which means to keep separate or apart. A sole owner is free to dispose of the property at will. Real property may be owned in severalty by a natural person (human being) or an artificial person (such as a corporation, a city or a state)

Concurrent Ownership
Concurrent ownership (also called co-ownership) exists when two or more people share title to a piece of property simultaneously. There are several forms of concurrent ownership, each with distinctive legal characteristics. Remember that under Texas law, three forms of concurrent ownership are recognized:

1. Tenancy in common
2. Joint tenancy
3. Community property

Tenancy in common
Tenancy in common is the most common type of concurrent ownership. In a tenancy in common, two or more individuals each have an undivided interest in a single piece of property. This means that each tenant in common has a right to share possession of the whole property, not just a specified part of it. This is referred to as unity of possession.

Tenants in common may have equal or unequal interests. For example, if three people own property as tenants in common, they might each have a one-third interest in the property, or one of them might have a one-half interest and each of the other two a one-
quarter interest. But no matter how small a tenant in common’s ownership interest is, he is still entitled to share possession of the whole property.

A tenant in common may deed his or her interest to someone else, without obtaining the consent of the other co-tenants. A tenant in common may also mortgage his or her interest without the others’ consent. At death, a tenant in common’s interest is transferred according to the terms of his or her will, or to his or her legal heirs.

**Creating a Tenancy in Common**

A tenancy in common is created when a deed specifies that the grantees are taking title to the property as tenants in common. Also, if a deed transferring property to two or more unmarried individuals doesn’t indicate how they are taking title, they take title as tenants in common. In that situation tenancy in common is the default. If the grantees are a married couple, the default is community property. Unless a deed that creates a tenancy in common states each co-tenant’s fractional interest, the law presumes that the interests are equal.

**Termination of a Tenancy in Common**

A tenancy in common may be terminated by a partition suit, a legal action that divides the interests in the property and destroys the unity of possession. If possible, a court will actually divide the property into separate parcels. If a fair physical division isn’t possible, the court will order the property to be sold and the proceeds divided among the former co-tenants in accordance with their fractional interests.

**Joint Tenancy**

The second form of concurrent ownership is joint tenancy. In a joint tenancy, two or more individuals are joint and equal owners of the property. The key feature that distinguishes joint tenancy form tenancy in common is the right of survivorship: if one of the joint tenant dies, his or her interest passes automatically, by operation of law, to the other joint tenants.
Creating a Joint Tenancy
To create a joint tenancy, the “four unities of title” must exist. These unities are:

1. Unity of interest
2. Unity of title
3. Unity of time
4. Unity of possession

These four unities signify that each joint tenant has an equal interest in the property (unity of interest), that each received title through the same deed or will (unity of title), which was executed and delivered at a single time (unity of time), and that each is entitled to undivided possession of the property (unity of possession). If any one of these unities does not exist when the tenancy is created, a joint tenancy is not established.

Since title passes directly to the other joint tenants upon the death of one joint tenant because of the right of survivorship, property held in joint tenancy can’t be willed. The heirs of a deceased joint tenant have no interest in the joint tenancy property. For example, Jim, Sue, and Bill own property as joint tenants. Jim dies. Sue and Bill now own the entire property 50-50. Jim’s heirs cannot make any legal claim to the property. On his death, it ceased to be a part of his estate. Accordingly, the property is not subject to probate and could not have been willed by Jim.

Avoiding the delay and cost of probate proceedings is one of the primary advantages of joint tenancy. Also, the survivors hold the property free from the claims of the deceased tenant’s creditors and from any liens against the interest. The main disadvantage is that a joint tenant gives up the right to dispose of his or her property by will.

Termination of a Joint Tenancy
Like a tenancy in common, a joint tenancy can be terminated through a partition suit. But a joint tenancy also terminates automatically if any one of the four unities is destroyed. A joint tenant is free to convey her or his interest in the property to someone else. However,
a conveyance destroys the unities of time and title. This terminates the joint tenancy with respect to the ownership of the conveying joint tenant. For example, Aaron, Bob, and Carrie own a piece of property as joint tenants. If Aaron conveys his interest to Alice, that terminates the joint tenancy with respect to the one-third interest. Since Alice didn’t receive title through the same deed or at the same time as Bob and Carrie, Alice can’t be a joint tenant. Bob and Carrie are still joint tenants in relation to one another, but Alice holds title as a tenant in common.

However, if a joint tenant executes a mortgage against her interest, that doesn’t break the unity of title. The joint tenancy remains intact and valid.

**Community Property**
The community property system of ownership is of Spanish origin; for historical reasons, it is used in several western states, including Texas. In those states, all the property owned by the married couple is classified either as the separate property of one spouse or as the community property of husband and wife.

A spouse’s separate property is the property he or she owned before the marriage, and any property he or she acquires during the marriage by inheritance, will, or gift. All other property the husband and wife acquires during the marriage is community property. For example, the wages earned by either spouse during the marriage are community property, and so is any property purchased with those wages. Each spouse has an undivided one-half interest in all of the community property.

The separate property of either spouse is free from the interests and claims of the other spouse; it may be transferred or encumbered without the approval or interference of the other spouse. A conveyance or encumbrance of community real property, however, requires the approval of both spouses. Under Texas law, spousal approval isn’t required for the transfer of community personal property, unless it’s clothing, household furnishings, or a personal property residence, such as a mobile home or a live-aboard boat.
When a married person dies, his or her separate property and one-half interest in the community property are distributed according to the terms of his or her will. The other one-half interest in the community property belongs to the surviving spouse. If no will exists, the property is distributed according the rules of intestate succession.

In some states, the law has allowed married couples to hold property as community property with the right of survivorship. As in a joint tenancy, the right of survivorship means that title passes directly to the surviving spouse, rather than according to the terms of the will. This prevents a married person from willing his or her half interest in the community property to someone other than the spouse. Community property with the right of survivorship offers certain tax benefits over a joint tenancy.

In some states, but not Texas, community property laws were extended to apply to registered domestic partners as well as married couples. Domestic partners may now hold title to property as community property, or as community property with the right of survivorship.

In some states that do not have a community property system, married couples may hold title to property as tenants by the entirety. A tenancy by the entirety resembles a joint tenancy, but is limited to married couples. Tenancy by the entirety is not recognized in community property states such as Texas, and it has been abolished in a number of other states as well.

**Deeds**

**Introduction**

The extent of ownership interest and condition of title to be conveyed by a deed determine what type of deed should be used. Types of deeds differ in the extent of protection given to the grantee by covenants and warranties, which cover title defects and ownership rights. The four most common types of deeds used are general warranty deeds, special
warranty deeds, bargain and sale deeds, and quitclaim deeds. This lesson will explain
the concept of “title warranty,” and distinguish the various deeds that carry warranties
from those that do not.

There are other types of deeds that are not commonly used in most real estate practices.
A familiarity with the purpose and function of these deeds contributes to a student’s
complete understanding of deeds. The last section of this course explains how
commercial groups and businesses execute deeds for title conveyance, and how
business executions differ from residential property transactions.

**General Warranty Deeds**

A general warranty deed offers the grantee the most possible protection against past and
future claims on the title by carrying all available warranties and covenants. In a general
warranty deed, the grantor essentially guarantees that there are no limitations or
encumbrances on the title that are not otherwise expressly listed in the deed. The grantor
also attests to the absence of any title defects that arose prior to and during the grantor’s
period of ownership.

**General Warranty Deed Covenants**

A general warranty deed binds the grantor to the following five covenants.

1. Covenant of seisin
2. Covenant of quiet enjoyment
3. Covenant for further assurance
4. Covenant against encumbrances
5. Covenant of warranty forever

Covenant of seisin: The grantor guarantees that he or she owns and is in full possession
of the subject property, and has the right to transfer the title to that property at the time of
conveyance. If this covenant is broken, such as when the grantor does not actually
possess the extent of estate that is intended to be conveyed, the grantee may receive damages up to the full purchase price of property.

Covenant of quiet enjoyment: The grantor guarantees that the grantee will not face litigation, eviction or experience any other disturbance arising from a third party’s claim on the property’s title while in possession of the property. By this covenant, the grantor essentially guarantees the grantee that the title is valid against any other claims to the property. If a claim is made and the grantee’s title is found to be deficient in court, the grantor is liable for damages.

Covenant for further assurance: The grantor guarantees that if the title proves to have defects, he or she will take the necessary steps to perfect the title. If there is any complication with the title, then the grantor must obtain and deliver the proper instrument that will clear the title. For example, suppose a grantor is married. If the grantor’s spouse has dower or marital rights to the property, the grantor is responsible for clearing the title on behalf of the grantee. This covenant is broken when the grantor refuses to pay the expenses for correcting the deed.

Covenant against encumbrances: The grantor guarantees that there are no liens or other encumbrances associated with the property’s title that could complicate the grantee’s title, other than those explicitly listed in the deed. Common encumbrances include mortgages and rights-of-way.

Covenant of warranty forever: The grantor guarantees that he or she will pay the expenses of defending the grantee against any third party claims on the property title. If the third party proves to have a superior claim on the property’s title, the grantee may sue the grantor for damages up to the full purchase price of the property.

Covenant of seisin: The grantor guarantees that he or she owns and is in full possession of the subject property, and has the right to transfer the title to that property at the time of conveyance. If this covenant is broken, such as when the grantor does not actually
possess the extent of estate that is intended to be conveyed, the grantee may receive damages up to the full purchase price of property.

Covenant of quiet enjoyment: The grantor guarantees that the grantee will not face litigation, eviction or experience any other disturbance arising from a third party’s claim on the property’s title while in possession of the property. By this covenant, the grantor essentially guarantees the grantee that the title is valid against any other claims to the property. If a claim is made and the grantee’s title is found to be deficient in court, the grantor is liable for damages.

Covenant for further assurance: The grantor guarantees that if the title proves to have defects, he or she will take the necessary steps to perfect the title. If there is any complication with the title, then the grantor must obtain and deliver the proper instrument that will clear the title. For example, suppose a grantor is married. If the grantor’s spouse has dower or marital rights to the property, the grantor is responsible for clearing the title on behalf of the grantee. This covenant is broken when the grantor refuses to pay the expenses for correcting the deed.

Covenant against encumbrances: The grantor guarantees that there are no liens or other encumbrances associated with the property’s title that could complicate the grantee’s title, other than those explicitly listed in the deed. Common encumbrances include mortgages and rights-of-way.

Covenant of warranty forever: The grantor guarantees that he or she will pay the expenses of defending the grantee against any third party claims on the property title. If the third party proves to have a superior claim on the property’s title, the grantee may sue the grantor for damages up to the full purchase price of the property.
General Warranty Deed Granting Clause

The granting clause of any deed indicates what type of deed is being used to convey the title to real property. The granting clause for a general warranty deed usually contains such language as:

- “Grant, bargain, sell and convey”
- “Warrant generally”
- “Grant, sell and convey”
- “Convey and warrant”

The exact format of a general warranty deed is not essential to its purpose, provided that the granting clause clearly indicates the grantor’s intent to convey title under general warranty.

Special Warranty Deeds

A special warranty deed is a deed that carries a limited covenant of protection against title defects. In a special warranty deed, the grantor warrants the title against defects occurring during his or her ownership. In essence, a special warranty deed amounts to the grantor’s declaration that the property was not encumbered during his or her possession, whereas a general warranty deed protects the grantee against defects created prior to and during the grantor’s ownership. It is possible for grantees who receive a special warranty deed to seek further protection against claims on the title by purchasing title insurance. A special warranty deed may also be called a “bargain and sale deed with a covenant against the grantor’s acts.”

Typically, fiduciaries (such as executors, trustees and corporations) use special warranty deeds, because they are in no position to guarantee the title on behalf of their predecessors. Instead, they attest that nothing has been done to cloud or cause a defect in the title during their period of ownership.
The granting clause and habendum clause of a deed define the extent and condition of the ownership interest conveyed. Hence, the most observable difference between a general warranty deed and a special warranty deed can be found in their respective habendum and granting clauses. Typically, a special warranty deed will use a phrase such as “grant, convey and sell, by, through or under the grantor but not otherwise” in the granting clause. For all practical purposes, all other elements of a general warranty are also included in a special warranty deed.

**Bargain and Sale Deeds**

The deeds we have discussed thus far carry certain covenants that protect the grantee from receiving a clouded or defective title. A bargain and sale deed, also called a “deed without warranty,” is a deed that offers no warranty against defects in the title or encumbrances associated with the title. Grantors declare that they have an actual interest in the real property, and the bargain and sale deed conveys all of a grantor’s interest to a grantee. The grantor does not guarantee to warrant and defend the title against future claims that may arise from title defects. It is therefore the responsibility of the grantee to research the history to the title to ensure that the deed is conveying a clear and marketable title.

The granting clause in a bargain and sale deed usually contains the words, “grant, bargain and sell,” and transfers the grantor’s complete interest in a property. A bargain and sale deed also includes a habendum clause to define the extent of the estate.

**Quitclaim Deed**

A quitclaim deed releases a grantor’s interest, if any, in a subject property to a grantee with no warranties. The grantor does not state in the deed that he or she has any title or interest to the property, and effectively quits whatever interest he or she may have. Quitclaim deeds are most often used to clear a cloud on the title, or possible claim or defect on the title.
A bargain and sale deed generally leaves a grantee with little legal recourse if a title turns out to be defective or otherwise problematic. A quitclaim deed provides even less security for the grantee, virtually eliminating the possibility of legal recourse in such cases. This is true because the grantor of a quitclaim deed often openly admits to not knowing the quality or condition of his or her title or to knowing whether he or she holds title at all.

A quitclaim deed conveys whatever interest a grantor may have in a property to a grantee, which means that whatever rights and possession a grantor has towards a property is given to the grantee. If the grantor has no real claims to the property, then the grantee receives nothing even if he or she has exchanged money or some other valuable item for the deed. In practice, then, a quitclaim deed offers the least title security to a prospective grantee.

**Other Types of Deeds**

In addition to general warranty, special warranty, bargain and sale, and quitclaim deeds, several other types of deeds may be used to transfer the title to real property for special purposes. Other types of deeds include:

- Deeds of Trust
- Gift Deeds
- Guardian’s Deeds
- Correction Deeds
- Sheriff’s Deeds
- Tax Deeds

**Deeds of Trust**

When a property owner has a debt to a lender, he or she may convey the title to his or her interest in real property by a deed of trust to a disinterested third party. The third party holds the title in trust as security for the payment of a loan until the borrower’s debt is satisfied. A deed of trust is similar to a mortgage in that the property is collateral for
payment of the loan; however, in a deed of trust, the third party holds the title until the loan is repaid in full to the lender.

**Gift Deeds**
A gift deed is used to transfer title in real property in consideration of “natural love and affection.” Consideration for a gift deed may also be for a nominal fee, such as “for $1.00 and other valuable consideration.” Most gift deeds do not contain warranties or guarantees on the title, and are considered to be a type of bargain and sale deed or quitclaim deed. Gift deeds may also be called “deeds of gift” or “gratuitous deeds.”

**Guardian’s Deeds**
A guardian’s deed may be used to convey an interest in real property held by a minor. A guardian’s deed must state in what capacity the guardian has the authority to convey the minor’s property, and carry the covenant that guarantees the grantee that neither the guardian nor the minor encumbered or otherwise clouded the title. A guardian’s deed is essentially a special warranty deed used for minors.

**Correction Deeds**
A correction deed, also called a “deed of confirmation,” is used to repair errors in previously executed deeds. For example, if the subject property was described incorrectly, or if a grantor’s name was misspelled, a correction deed may be created to correct these errors. A correction deed is a special execution deed that serves the single, limited goal of correcting an inaccurate deed; it does not convey ownership interest from a grantor to a grantee.

**Sheriff’s Deed**
When a parcel of real property is sold at a court-ordered public auction as the result of foreclosure, title may transfer to a buyer by a sheriff’s deed, also called a “deed in foreclosure.” Foreclosure most often results from a default on a judgment order or mortgage payments. The proceeds from the auction sale are used to satisfy the borrower’s debt to the lender, and title passes to the buyer. A sheriff’s deed does not have
any warranties on the title; however, some sheriff’s deeds will include a covenant, which asserts that the authority conveying the property (e.g., the sheriff’s office) did not encumber the title. A sheriff’s deed should cite the authority with which the property is dispensed and the sale price of the property.

**Tax Deeds**

When a taxpayer defaults in the payment of real property taxes, the government may sell the taxpayer’s property to pay for the delinquent taxes. Title transfers by a tax deed to the buyer when the property is sold. Like a sheriff’s deed, a tax deed does not make any warranties on the title, as the deed is intended to serve a specific, limited function.

**Lesson 11 Summary**

This lesson discussed the three different types of property ownership. Property can owned independently (i.e., it can be held in severalty), it can be held in trust or it can be co-owned. When an individual holds a property in severalty, only one individual (or one married couple) has ownership rights to the property; this is also known as “sole ownership.” When property is held in trust, an individual (the trustee) temporarily holds title to a property, which is later to be transferred to another person (the beneficiary) according to terms set out by the person who made the trust (the trustor).

In co-ownership, two or more parties have ownership rights to the property. Co-ownership of a property can take the form of a tenancy in common, a joint tenancy, community property or a property held in partnership. When co-owners own property as a tenancy in common, there is no requirement for each owner to have an equal interest in the property as there would be in a joint tenancy. There is no physical division of the property, only a division of the interest vested in the property. Tenants in common may pass their portion of ownership rights in a will; they may also sell, lease, or otherwise dispose of their ownership interest in any way that does not compromise the interests of the other co-owners.
In a joint tenancy relationship, the co-owners’ ownership rights are subject to the right of survivorship, under which the surviving joint tenants inherit a deceased co-owner's interest in the property. Joint tenants may not pass their ownership interests in a will, nor can they otherwise transfer their ownership rights to anyone else in such a way that the new owner becomes a joint tenant. To add new joint tenants, a new joint tenancy agreement must be created. A joint tenancy arrangement must satisfy certain requirements; in particular, joint tenancies are distinguished by four unities: the unity of time, the unity of title, the unity of interest, and the unity of possession.

In states that recognize community property laws, all property acquired by a couple during the course of their marriage that is not a gift or an inheritance is referred to as community property. Under these laws, each spouse has an equal ownership interest in property acquired during the marriage.

When two or more parties agree to combine their capital and talents in order to create a for-profit business, they have created a partnership. Partners can be co-owners of various kinds of property, including real estate. In this lesson, we discussed two kinds of partnerships, the general partnership and the limited partnership. A general partnership requires all partners to take responsibility for the actions of all other partners. In a limited partnership, on the other hand, the general partners who see to the management and daily operations of the business assume full liability, while the limited partners (who function primarily as investors and are not involved in the day-to-day operations of the business) assume only limited liability.

*Please return to the course player to take the lesson quiz.*