Easements

It is also possible to create an interest in land which allows only a particular use of the property. In such cases, someone else will hold the right to use the land for all other nonconflicting legal purposes. Examples of easements include:

- easements to drive across someone’s land, utility easements for powerlines or sewer or water lines, pipeline easements, highway rights of way and the right to flood or redirect water flow across other property.

Easements may be created by express grants or reservations in deeds. They also may arise by implication where access is difficult and there was a prior visible driveway existing at the time two parcels were divided.

Conclusions

This OSU Fact Sheet has discussed some of the different forms of real estate ownership available. The form of ownership will determine the rights of the owner(s).

- Ownership of real estate may also include fixtures or personal property permanently attached to the land and appurtenances or rights associated with the land ownership.
- Rights to drive across adjoining property and easements to flood or redirect water flow across adjacent property are examples of easements appurtenant. Transfer of ownership of the benefited property includes transfer of fixtures and easements appurtenant.
- Ownership of land may also include rights to surface water, rights to groundwater, and rights to water from adjacent streams or rivers. Special permit systems have been developed in Oklahoma and many states to regulate water rights.

Additional information concerning real estate transactions may be found in the following OSU extension publication:

Trusts, Uses and Considerations, OSU Extension Fact Sheet AGEC-771.

Surface vs. Mineral Rights

Ownership may also be divided vertically so that one person may own surface rights; another may own mineral rights; and a third person may own air rights above the land. Air rights are generally transferred as easements. Mineral rights may be transferred in a mineral deed or may be retained by the former owner when surface rights are transferred. In Oklahoma, mineral rights are incorporeal interests. They represent a right to try to capture the minerals although the minerals themselves are not owned until they are captured.

Real Estate Ownership in Oklahoma

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Note: This publication is intended to provide general information about legal issues. It should not be cited or relied upon if held by the original owner or a remainder if given to someone else. If at the end of the life estate, this future interest holder will be the fee simple owner of the entire estate.

Real Estates Ownership

Ownership of land is sometimes classified as freehold or leasehold estates. Freehold estates are ownership interests that last forever or for an indefinite length of time. Leasehold estates last for a specified period of time. A leasehold estate gives the holder a right to use the property for the purpose and length of time stated in the lease agreement. This OSU Facts will deal primarily with freehold estates which are usuallly considered as ownership interests.

Real Estates Ownership

Ownership of land may be divided so that one person is able to possess the property and use it as his own during the specified lifetime. A life tenant may sell or mortgage his interest, or give it to someone else, but the transfer does not change the lifetime that is used to measure the time period. Unless the remainderman joins in the conveyance, the life tenant may only transfer what he owns, which is the right to possess the property and use it as his own during the specified lifetime. A life tenant cannot transfer total ownership of the property unless the owner of the remainder interest joins in the transfer.

Because of the uncertainty as to how long the life tenant may live, it is sometimes difficult to find someone willing to purchase a life estate or accept it as collateral. If a buyer is found, the price may be discounted to take account of the uncertainty. Amorty tables may be used to predict the probable length of the life estate.

The future interest that coexists with a life estate is called a reversion if held by the original owner or a remainder if given to someone else. If at the end of the life estate, this future interest holder will be the fee simple owner of the entire estate.

Under English law, another type of estate called the fee tail estate was prevalent. It was similar to a series of life estates and allowed the individual who created the fee tail estate to control who would own the property for many future generations. Generally, but not always, the right of property ownership was held by the oldest son. In the United States, this form of ownership has been abolished in most states, including Oklahoma. Our legal system tends to discourage control of property ownership by a single generation and prefers to allow owners freedom and flexibility to sell or transfer their interests if they desire to do so.
Fee Simple Determinable
If full ownership is subdivided to a single person has the right to current use and possession of the property for a specified purpose but will automatically lose all rights if the specified use is discontinued, we say that the person holds a fee simple determinable estate. For example, land might be deeded to a railroad for so long as it is used for railroad purposes. If the land is no longer used as a railroad, the original owner or someone specified by the original owner might have a right to full ownership of the property. This allows the person who deeded the land to the railroad to control the use of the property and ensures that it continues to be used for the specified purpose.

Since owners of fee simple determinable estates own less than full ownership rights, the balance of the rights associated with full ownership must be held by someone else. This individual has the right to acquire full ownership of the property if the designated use ceases. We call this a future interest. Such rights might be held by the person who created the fee simple determinable estate or be given to someone else. If the original owner holds the rights, the future ownership interest is called a possibility of reverter. If someone else holds the future interest, it is called an executory estate.

Fee Simple on Condition Subsequent
This ownership interest is very similar to the fee simple determinable estate. It is generally created when land is deeded for a particular purpose. The difference between the two estates arises from the fact that the fee simple determinable transfers when the designated use ceases in a fee simple determinable estate.

In contrast, the owner of a fee simple on condition subsequent interest will not lose his ownership rights even though the condition is violated unless the future interest holder takes legal action to enforce the condition. If the future interest in this case is called a right of re-entry if held by the grantor or a power of termination if it is given to someone else. The wording of the deed is critical in determining which type of estate is created. For this reason, it is important to consult an attorney to assist you in creating these types of estates.

Fee Simple on Condition Precedent or Contingent Remainder
If the original owner of land continues to own it unless a particular condition occurs the potential future owner has a fee simple on condition precedent or a contingent remainder interest. For example, Harry might reserve 1/2 of the land for railroad purposes. If Jason, the railroad owner, dies without a railroad on the land, the 1/2 share will go to Ruth if Jason did not outlive Harry. Without the contingency provision, the property would normally have gone to Jason’s heirs if Jason held a remainder interest but did not outlive the life tenant.

Co-Ownership
It is also possible for several owners to own present interests in a parcel of real estate. There are several forms of co-ownership and each form has its own requirements and ownership rights.

Tenancy in Common
The most common form of co-ownership is tenancy in common. This type of co-ownership is created when property is sold jointly to several people, and no other terms in the deed give any one person a willed interest. Tenants in common own an undivided interest in the property respectively. They may own equal or unequal shares. A tenant in common is given a 1/3 interest and the other owner may own a 2/3 interest in the property. The owners have an equal right to possess the property but may not exclude the other co-owners. Rents are normally shared according to the ownership share.

The owners do not necessarily have to acquire their interests at the same time. For example, a mother may deed a 1/2 share to one son during her lifetime and leave a 1/2 share to another in her will. Any co-owner may sell, mortgage, give or otherwise transfer his ownership interest to someone else. Such a transfer affects only his share and has no effect on the other co-owners except that they now have a new co-owner. When one of the co-owners dies, his share is transferred to the heirs designated in his will. If no will is left, the share will be transferred to the heirs at law under the laws of inheritance. If any co-owners own more than half of the property, the other co-owners in common do not have to have the property divided. If possible, the court will physically divide the property. However, in some cases, such as where the property is a house, it may not be practical to divide such property physically fairly. In such cases, the court will order the sale of the property and division of the proceeds.

Joint Tenancy With Right of Survivorship
Another popular form of co-ownership is joint tenancy with right of survivorship. This form is common among spouses but may be held by any co-owners. The key feature of this form of ownership is the right of survivorship. The last co-owner to die will hold title to the property in fee simple individual ownership regardless of what the deceased co-owner’s will provides and regardless of whether the survivorship joint tenancy is related to the deceased co-owner. Because this right of survivorship is such a significant right, the courts require that a recorded joint tenancy ownership be very specific and generally require that the right of survivorship be specifically mentioned in the deed.

Courts sometimes refer to the four unities of time, title, interest, and possession required for creation of a valid joint tenancy. These units require that the joint tenants acquire their ownership rights in the same deed and at the same time, possess equal ownership shares, and have an equal right to possession of the property. If any of these requirements is not met, a valid joint tenancy will not exist and the transferred share and any shares not transferred is this true, even if the share is transferred to one of the other joint tenants. Consequently, the rights associated with full ownership must be held by someone else. Joint tenancy also includes the right to a court to partition the property. This is the same right described in the tenancy in common section.

Although joint tenancy may be used by anyone, it is frequently used by married couples as a form of ownership. The advantage of this type of ownership is that transfer of the property at death of one of the co-owners is a fairly simple process. If a tract of land is owned by a married couple as joint tenants with right of survivorship, the land will pass to the surviving spouse without going through the standard probate process to transfer title at death. All that is required to transfer ownership at death in Oklahoma is for the survivor to file with the county clerk a copy of the death certificate and an affidavit that the decedent is a joint tenant of property with the surviving spouse as indicated in a valid joint tenancy deed. A copy of the deed showing that the decedent was married to the surviving joint tenant.

If the decedent was not married to the surviving joint tenant, a co-owner may transfer his interest to another in her will. Any co-owner may sell, mortgage, give or otherwise transfer his ownership share, but the transfer of the share will be inheritable by the new owner. Joint tenancy also includes the right to a court to partition the property. This is the same right described in the tenancy in common section.

Ownership by Corporations, Partnerships, and Joint Ventures
It is also possible for business entities, such as corporations, partnerships and joint ventures to own real joint venture interests. The key issues in such cases involve who has the authority to transfer ownership real estate owned by the business, and the rules for the earnings and losses generated by the business rather than by individuals involved in the business.

In the case of corporations, constitutional provisions and statutes in Oklahoma and elsewhere restrict corporate owner-