Land Title
GUARANTEE COMPANY

T E C H N I C A L   B U L L E T I N

Estate Definitions

September 2005

Practically all forms of property ownership in the United States have developed through the English system of common law estates. The laws governing transfers and conveyances of real property grew out of the feudal systems. The land was owned by the monarch, who could grant possession to whomever he chose while still retaining ownership.

Over time, methods were developed by the people to obtain conveyances from the monarch and eventually provide for property to be inherited rather than revert back to the monarchy.

The United States originally fell under several different sovereign rules (England, France, Spain, and Mexico). The American Revolution established the United States of America as a sovereign and owner of all lands not already granted to someone else. Most of these lands have since been granted to individuals under government patents and subsequent conveyances by deeds.

When real property is transferred, it is not the actual land that is transferred but the title to an estate or interest in the land.

An estate, in real estate, is an interest in land measured by some period of time. It refers to the degree, quantity, nature, and extent of interest a person has in real property.

There are different types of estates, each differing from another with respect to the rights and duties of the owner. These include fee simple, easement, contract, leasehold, and life.

Fee Simple

Fee simple title is the most complete ownership that a person can have in land. It is also referred to as fee simple absolute or fee. Because the estate is without end, it can be held by the owner until death and is then inheritable by the heirs at law.

The owner may dispose of the estate by sale, conveyance, trade, gift, or will.

The estate carries with it the right of possession, ownership, and absolute dominion or control. The owner can also convey other interests such as a mineral or easement interest.

Easement Estate

An easement interest is an interest in land owned by another that entitles the holder of the right to some use, privilege, or benefit over the land. The easement is a burden on the land that it passes over.

An appurtenant easement serves the land to which it attaches, passes with the fee, and must be insured with the property it serves. Easements for ingress and egress are examples of appurtenant easements. This is sometimes referred to as a non-exclusive easement. The fee interest in the property served and the easement are set out as separate parcels in the legal description on both the title commitment and policy.

An easement in gross is a personal right to use the land of another. This type of easement is created for the benefit of an individual and does not attach to any other piece of land. A utility easement is an example of an easement in gross. This

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type of easement is sometimes referred to as an exclusive easement.

Leasehold Estate

A leasehold estate is an interest in real property for a specific term created by a lease. The lease is an agreement between the owner of the property (lessor or landlord) and the lessee or tenant whereby the owner relinquishes immediate possession while retaining ownership.

Usually the lease is recorded, but sometimes the parties do not want to record the entire lease and will record a Memorandum of Lease, which acts in the same capacity as if the lease were recorded.

The interest can be assigned and may be mortgaged. The lessor can sell the property, thereby transferring all his rights under the lease, or the lease can be terminated upon sale.

Contract Estate

An Installment Land Contract or Agreement for Sale and Purchase is an agreement to purchase real property on an installment basis. The owner retains title while the vendee under the contract takes possession. The purchaser (vendee) receives a deed to the property upon completion of the payments toward the purchase price.

Life Estate

A life estate is an interest reserved or granted to an individual for his or her natural life.

A life estate is created to protect a person's right to live on a piece of property and receive income generated by the property. At the person's death, the property held in the life estate passes to another person. For example, an owner may want to give his property to a friend or to his children, but
he may want to live on the property until his death; by creating a life estate, he would deed the property to the intended recipient, reserving a life estate until the time of death.

A life estate should be created by a reservation in a deed but it can also be created through a will; however, for the life estate to become effective in the instance of a will, it must be placed of public record.

The life estate terminates upon the death of the person holding the life estate. The death certificate of the person holding the life estate must be recorded in order to insure the title to the property free and clear of the life estate.

The life estate can also be extinguished through a conveyance of the interest back to the fee owner.

For related information, see our September 2004 technical bulletin *Ownership and Tenancy* on our website at www.LTGC.com.

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