Chapter 8 Summary

Estates and Interests

When someone owns a parcel of real estate, he or she also has a set of legal rights, known as the bundle of rights, which are attached to the ownership of that parcel. These rights have value and can be sold. They include minerals beneath the earth's surface, water on or below the earth's surface and the air above the surface.

Real estate is not only made up of land, but also all of the man-made structures that are "permanently" attached to the land. Real property is the real estate and the bundle of rights associated with owning the real estate.

The bundle of real property rights also applies separately to the individual components of real estate: the air, the surface, and the subsurface. Because of this, it's possible for one parcel of property to be owned by a number of persons or entities:

- One person or entity could own the surface rights.
- One person or entity could own subsurface mineral rights.
- One person or entity could own subsurface gas and oil rights.
- One person or entity could own the air rights.

Ownership also includes the rights to use any water on or adjacent to a property. Littoral rights concern properties that border bodies of water that are not moving, such as lakes, bays, seas and oceans. Owners of properties bordering a navigable, non-moving body of water enjoy the littoral right of unrestricted use, but own the land only up to the high-water mark.

Riparian rights concern properties that border moving water such as streams and rivers. If the property borders a non-navigable stream, the owner enjoys unrestricted use of the water and owns the land beneath the stream to the stream's midpoint. If the property borders a navigable stream, the stream is considered to be a public easement and the owner's property extends only to the high-water mark.

Any property which is not real estate is personal property.

Personal property is sometimes referred to as chattels or personalty. A personal property item that has been permanently attached to land or a building is called a fixture and it becomes part of the real estate. Trade fixtures are items of a tenant's personal property that the tenant has temporarily attached to a landlord's real property in order to conduct business.
Chapter 8 Summary
Estates and Interests

Real property can be classified according to its use as residential, industrial, commercial, agricultural and special purpose.

An estate in land is an interest that includes the right of possession. A **freehold estate** has no definite ending date. The estate lasts at least a lifetime, because the property can be willed to a person’s heirs.

By contrast, a **leasehold estate** has a definite ending date. It involves landlords and tenants.

The **fee simple estate** is the *highest form of ownership interest* one can acquire in real estate. The **fee simple absolute** estate is a perpetual estate that is *not conditioned by stipulated or restricted uses*. It may also be freely passed on to heirs.

**Fee simple defeasible** estates have conditions attached to them. The property must be used for a certain purpose or under certain conditions and if the use changes or if prohibited conditions are present, the estate reverts to the previous grantor of the estate. There are two types of defeasible estates: *qualified fee simple* and **fee simple on condition**.

A **life estate** is a freehold estate that is limited in duration to the life of the owner or other named person. Upon the death of the owner or other named individual, *the estate passes to the original owner or another named party*. The distinguishing characteristics of the life estate are:

- The owner enjoys full ownership rights during the estate period.
- Holders of the future interest own either a **reversionary** or a **remainder** interest.
- The estate may be created by agreement between private parties or it may be created by law under prescribed circumstances.

If a *single party owns* the fee or life estate, the ownership is an estate (ownership) in **severalty**.

**Tenancy in common** is the most common form of co-ownership when the owners are not married. Co-tenants share an indivisible interest in the estate. All tenants in common have distinct and separable ownership of their respective interests.
Chapter 8 Summary

Estates and Interests

Co-tenants may sell, encumber, or transfer their interests without hindrance or consent from the other owners. Tenants in common determine among themselves what share of the estate each party will own. A deceased co-tenant's estate passes by probate to the decedent's heirs and devisees rather than to the other tenants in common.

In a **joint tenancy**, two or more persons collectively own a property as if they were a single person. Rights and interests are indivisible and equal. Each has a shared interest in the whole property which cannot be divided up.

Joint tenants may only convey their interests to outside parties as tenant-in-common interests. One cannot convey a joint tenant interest. If a joint tenant dies, all interests and rights pass to the surviving joint tenants free from any claims of creditors or heirs.

**Tenancy by the entirety** is a form of ownership reserved exclusively for *husband and wife*. It features survivorship, equal interests, and limited exposure to foreclosure.

In New York, the transfer of property to a married couple is automatically a tenancy by entirety unless the deed says otherwise. If a couple divorces, the tenancy by entirety dissolves and the individuals become tenants in common.

Businesses can purchase, hold and sell property in much the same way as a private individual can. Businesses can be organized as a:

- Sole proprietorship
- Partnership
- Joint venture
- Corporation
- Limited Liability company
- Syndicate
- Real estate investment trust
Chapter 8 Summary
Estates and Interests

A **condominium** is a hybrid form of ownership of multi-unit residential or commercial properties. It combines ownership of a **fee simple interest** in the **airspace** within a unit with ownership of an undivided share, as a **tenant in common**, of the entire property's **common elements**, such as lobbies, swimming pools, and hallways. A **condominium unit** is one airspace unit together with the associated interest in the common elements.

The condominium unit can be owned jointly, in severalty, in trust, or in any other manner allowed by state law. Unit owners hold an exclusive interest in their individual apartments and co-own common elements with other unit owners as tenants in common.

In a **cooperative**, or co-op, the person owns **shares** in a non-profit corporation or cooperative association, which in turn acquires and owns an apartment building as its principal asset. Along with this stock, the shareholder acquires a **proprietary lease** to occupy one of the apartment units.

The number of shares purchased reflects the value of the apartment unit in relation to the property's total value. The ratio of the unit's value to total value also establishes what portions of the property's expenses the owner must pay.