Chapter 3 Summary
Ownership and Encumbrances
Illinois Broker Prelicense

An **undivided interest** is an owner's interest in a property in which two or more parties share ownership.

If the interest-holder enjoys the right of possession, the party is considered to have an **estate in land**. If a private interest-holder does not have the right to possess, the interest is an **encumbrance**.

**Freehold Estates**
A freehold estate of potentially unlimited duration is a **fee simple estate**: an estate limited to the life of the owner is a **life estate**.

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, the estate passes to the original owner or another named party. **Reversionary** or **remainder** interest.
- Conventional Life Estate - **ordinary** and **pur autre vie**.
- Legal Life Estate - **homestead, dower and curtesy**, and **elective share**.

A life tenant has the **responsibility** to protect the property for the remainderman or the revisionary interest. The life tenant damages or misuses the property, it is known as an **act of waste**.

**Leasehold Estates**

**Estate For Years**
- Has a definite beginning and ending date.
- Does not require notice to terminate at the end of the term.
- Renewal is not automatic.

**Estate From Period-To-Period**
- No definite ending date.
- Either party may terminate tenancy by giving **proper notice** to the other party.

**Estate at Will**
- Landlord lets you stay without a lease.
- Notice can be given by either party without warning.
- Death of either party immediately terminates tenancy.

**Estate at Sufferance**
- Holdover tenant is in unlawful possession of the property.
- The landlord must evict tenant through the courts; cannot lock the tenant out, turn off utilities, or forcibly remove the tenant.

**Sole Ownership** - If a single party owns the fee or life estate, the ownership is a **tenancy in severalty**.
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Co-ownership:
*Tenancy In Common*
- Two or more owners
- Identical rights
- Interests individually owned
- Electable ownership shares
- No survivorship
- No unity of time
- Partition suit

*Joint Tenancy*
- Unity of ownership
- Equal ownership
- Transfer of interest
- Survivorship

To create a joint tenancy, all owners must acquire the property at the same time, use the same deed, acquire equal interests, and share in equal rights of possession.

**Termination**: Sale of an interest, Bankruptcy, Foreclosure or Partition suit

*Tenancy By The Entireties*
- Survivorship
- Equal, undivided interest
- No foreclosure for individual debts
- Termination: Death of either spouse, Divorce, Mutual agreement or Foreclosure.

There is **no right of partition**: one spouse cannot sell the property without the agreement of the other spouse.

**Estates in Trust**

A fee owner (grantor or trustor) transfers legal title to a fiduciary (trustee) who manages the estate for the benefit of the beneficiary. The trust may be created by a deed, will, or trust agreement.

The trustee has fiduciary duties to the trustor and the beneficiary to maintain the condition and value of the property.

A living trust allows the trustor, during his or her lifetime, to convey title to a trustee for the benefit of a third party. Established by a written agreement appointing a trustee to manage the trustor’s property.

A testamentary trust is structurally and mechanically the same as a living trust, except that it takes effect only when the trustor dies.
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A **land trust** allows the trustor to convey the fee estate to the trustee and to name himself or herself the **beneficiary**. Applies only to real property.

- Beneficiary controls property
- Beneficiary controls trustee
- Beneficiary identity not on record
- Limited term

The **beneficiary's interest** in a land trust is **personal property**. This offers advantages in transferring, encumbering, and probating the beneficiary's interest.

**Condominiums**
Combines ownership of a fee simple interest in the **airspace** within a unit with ownership of an undivided share, and as a tenant in common, of the entire property's **common elements**.

Unit owners exclusively possess their apartment space, but must share common areas with other owners. Units can be individually encumbered without interference from other unit owners.

**Created** by executing and recording a condominium declaration and a master deed. The party creating the declaration is referred to as the **developer**.

An **owners’ association** to enforce the bylaws and manage the overall property.

**Owner responsibilities** include maintaining internal systems/property condition and insuring contents of the unit.

Unit owners bear the costs of all other property expenses. An annual operating budget totals the expenses and passes them through as **assessments** to unit owners.

**Cooperatives**
One owns shares in a cooperative association, and acquires 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 corporate entity of the cooperative association is the only party with a real property **interest**.

In owning stock and a lease, a co-op unit owner's interest is **personal property** that is subject to control by the corporation.

The co-op lease is called a **proprietary lease** because the tenant is an owner (proprietor) of the corporation that owns the property. The lease has no stated or fixed rent.

Debts and financial obligations apply to the property as a whole, not to individual units. Should the corporation fail to meet its obligations, creditors and mortgagees may foreclose on the entire property.

The co-op interest is transferred by assigning both the stock certificates and lease to the buyer.

A developer creates a cooperative by forming the **cooperative association**, which subsequently buys the cooperative property.
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Time-Shares
A fee or leasehold interest in a property whose owners or tenants agree to use the property on a periodic, non-overlapping basis.
- Deeded Time-share Ownership
- Vacation Interval Option

Time-Share Lease
- The tenant agrees to rent the property on a scheduled basis according to the terms of the lease.
- Allows the leaseholder to use the property year after year without incurring the obligations of paying property taxes or closing costs.

Time-Share Freehold
- Tenants in common own undivided interests in the property.
- Interval owners must usually waive the right of partition, which would enable an owner to force the sale of the entire property.

An easement is an interest in real property that gives the holder the right to use portions of the legal owner’s real property in a defined way. It is a non-possessory interest in property owned by someone else. May be affirmative or negative.

One cannot own an easement over one’s own property.

An easement pertains to a specified physical area within the property boundaries.

Easement Appurtenant
Gives a property owner a right of usage to portions of an adjoining property owned by another party. Rights and obligations automatically transfer with the property upon transfer of the dominant or servient estate, whether mentioned in the deed or not. The servient and the dominant tenement may use the easement area, if it does not unreasonably obstruct the dominant use.

An easement by necessity is granted because of a circumstance of necessity, most commonly the need for access to a property.
- Must have been a common grantor of the dominant and servient estates.
- Must be a reasonable necessity for the easement, not just for convenience.

An easement for light and air should be in writing. Party wall agreements generally provide for severalty ownership of half of the wall by each owner, or at least some fraction of the width of the wall.

Easement in Gross
A personal right that one party grants to another to use the grantor’s real property - dominant or servient estates. May be personal or commercial.
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Easements may be created by:
- Voluntary action
- Necessity
- Prescriptive operation of law
- Grant or reservation
- Implication
- Government power of eminent domain (condemnation)

Easements terminate by:
- Express release of the right by the easement holder
- Purposeful abandonment by the dominant tenement
- Condemnation through eminent domain

An encroachment is the unauthorized, physical intrusion of one owner's real property into that of another. Cause infringements on the rights of the trespassed owner and may diminish the property's value, particularly when the property is to be sold.

A license is a personal right that a property owner grants to another to use the property for a specific purpose. Licenses are not transferrable and do not attach to the land. They cease on the death of either party, or on the sale of the property.

A deed restriction is a limitation imposed on a buyer's use of a property by stipulation in the deed of conveyance or recorded subdivision plat. They are covenants or conditions.

A developer may place restrictions on all properties within a recorded subdivision plat. Deed restrictions take precedence over zoning ordinances if they are more restrictive.

Liens
If the owner defaults, the lien gives the creditor the right to force the sale of the property to satisfy the debt. A recorded lien effectively reduces the owner's equity in the property in an amount equal to the lien amount.

Effects on Title - If a property is being sold, all liens should be paid in full before the property transfers ownership. Legal features:
- Does not convey ownership, with one exception.
- Attaches to the property.
- A property may be subject to multiple liens.
- Terminates on payment of the debt and recording of documents.

Voluntary and Involuntary - If statutory law imposes an involuntary lien, the lien is a statutory lien. If court action imposes an involuntary lien, the lien is an equitable lien.

A general lien is placed against real and personal property owned by a particular debtor. A specific lien attaches to a single item of real or personal property and does not affect other property owned by the debtor.

Superior liens receive first payment from the proceeds of a foreclosure.
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All superior liens take precedence over all junior liens regardless of recording date, but the earlier the recording date of the lien, the higher its priority.

A lienor can change the priority of a junior lien by voluntarily agreeing to subordinate, or lower, the lien's position in the hierarchy.

All tax liens other than those for ad valorem, assessment, and estate tax are junior liens. They include:
- Federal income tax lien
- State corporate income tax lien
- State intangible tax lien
- State Corporation Franchise Tax Lien

Judgment Lien
- After paying the debt from the sale proceeds, the debtor may obtain a satisfaction of judgment to clear the title records on other real property that remains unsold.
- The creditor may obtain a writ of execution. The plaintiff creditor may secure a writ of attachment.
- Homestead property and joint tenancy estates are exempt from judgment liens
- They take priority based on the date the judgment is recorded in the county clerk’s office.

Mortgage and Trust Deed Lien
- If a mortgagor defaults, the lender forecloses and the property is put up for sale to satisfy the debt on the mortgage.
- The lien is removed when the property is fully paid for.

A vendor's lien secures a purchase money mortgage, a seller's loan to a buyer to finance the sale of a property. A vendee's lien may be placed by a buyer when the seller has not delivered the title after all other terms of the contract have been satisfied.

A municipality may place a utility lien against a resident's real property for failure to pay utility bills. A surety bail bond lien is recorded if the owner can prove that he or she has a net worth of at least twice the amount of the bail. Homestead property cannot be levied against for surety bail bond lien.

If an employer owes back wages to an employee, a wage lien can be set against all real and personal property of the employer.

Mechanic's Lien
Secures the costs of labor, materials, and supplies incurred in the repair or construction of real property improvements.
The priority of a mechanic's lien dates from the time when the work was begun or completed.