

8

PROPERTY RIGHTS:  
ESTATES AND TENANCIES,  
CONDOMINIUMS,  
COOPERATIVES, AND  
TIME-SHARING

1 **LEARNING OBJECTIVES**

2 *When you have completed this unit, you will be able to accomplish the following.*

- 3 ■ Define real property based on the definition in Chapter 475, F.S., and explain the physical components of
- 4 real property.
- 5 ■ Distinguish between real and personal property, and explain the four tests courts use to determine if an
- 6 item is a fixture.
- 7 ■ Describe the bundle of legal rights associated with real property ownership.
- 8 ■ List the principal types of estates (tenancies), describe their characteristics, and describe the benefits
- 9 and protections associated with the Florida homestead law.
- 10 ■ Distinguish among cooperatives, condominiums, and time-shares, and describe the main documents
- 11 associated with condominiums.

12 **KEY TERMS**

bundle of legal rights  
common elements  
concurrent ownership  
condominium  
condominium documents  
cooperative  
declaration of  
condominium  
estate for years  
estate in severalty  
fee simple estate  
fixture

freehold estate  
homestead  
joint tenancy  
land  
leasehold estate  
life estate  
littoral rights  
nonfreehold estate  
personal property  
proprietary lease  
prospectus  
real estate

real property  
remainderman  
right of survivorship  
riparian rights  
separate property  
tenancy at sufferance  
tenancy at will  
tenancy by the entirety  
tenancy in common  
time-share  
trade fixture  
undivided interest

## 1 INTRODUCTION

2 This unit begins with a description of the physical components of real property. It goes  
3 on to discuss various types of estates and the rights that are included in each type of estate.  
4 It describes multiple ownership interests, as well as special ownership interests, including  
5 the constitutional homestead. The unit concludes with a thorough presentation of coop-  
6 eratives, condominiums, and time-shares.

## 7 8.1 LAND, REAL ESTATE, AND REAL PROPERTY

8 **Land** refers to the *surface* of the earth and to everything attached to it by nature, such  
9 as trees and lakes. Land also includes products of nature beneath the surface, such as oil  
10 and limestone. Technically, land extends downward to the center of the earth and upward  
11 into the air to infinity.

12 **Real estate** refers to the land and all *human-made improvements* permanently attached  
13 to the land. Improvements are artificial (man-made) things attached to land, such as  
14 homes, factories, fences, streets, sewers, and other additions.

15 **Real property** includes all real estate plus the *bundle of legal rights* inherent in the  
16 ownership of real estate (the bundle of rights is explained in detail under “Basic Property  
17 Rights” later in this unit). The terms *real property* and *real estate* are often used inter-  
18 changeably (see the definition of real property that follows). However, some references  
19 reserve the term *real property* to include the concept of a bundle of legal rights associated  
20 with ownership. Real property, therefore, includes not only the real estate (land plus  
21 improvements) but also the legal interests, rights, and privileges associated with the own-  
22 ership of real estate.



### DEFINITION OF REAL PROPERTY

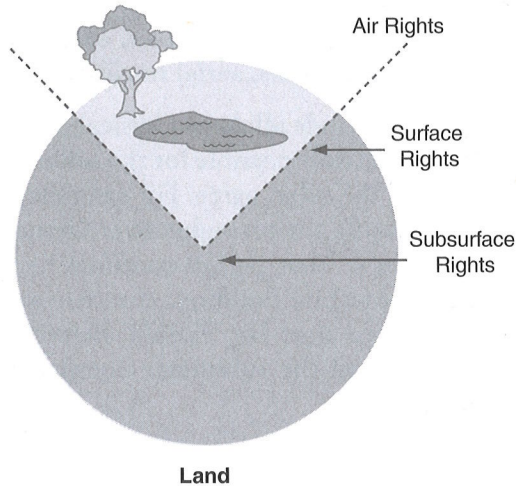
*Real property* or real estate means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right; however, the term does not include any cemetery lot or right of burial in any cemetery, nor does the term include the renting of a mobile home lot or recreational vehicle lot in a mobile home park or travel park.

Reference: Section 475.01(1)(i), F.S.

### 23 Physical Components of Land

24 An owner's rights to use the physical components of surface, subsurface, and air are  
25 called *surface rights*, *subsurface rights*, and *air rights* (see Figure 8.1).

**FIGURE 8.1 ■ Physical Components of Land**



**Land**  
 Earth's surface—including trees and water, land and minerals—to the center of the earth and the airspace above.

1 **Surface Rights.** Surface rights include land and water rights. Two types of water rights  
 2 are as follows:

- 3 ■ **Riparian rights** are associated with land abutting a flowing waterway, such as the  
 4 banks of a river or stream. The property owner does not own the river or stream  
 5 but has a right to use the water, such as for fishing and boating. The right is held in  
 6 common with other riparian owners to make reasonable use of the waters that flow  
 7 past, provided the use does not alter the flow of water or contaminate the water.
- 8 ■ **Littoral rights** are associated with land that abuts water that is nonflowing,  
 9 including ponds and lakes. Littoral rights include ocean-front property and gulf-  
 10 front property. The littoral owner's rights are the use and enjoyment of the shore  
 11 and include ownership of the land adjacent to the water up to the average high-  
 12 water mark.

| TO REMEMBER: LITTORAL VS. RIPARIAN RIGHTS |                                |
|---|--------------------------------|
| Littoral                                  | Lake, pond, ocean (nonflowing) |
| Riparian                                  | River, stream (flowing)        |



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**DEFINITIONS ASSOCIATED WITH WATER RIGHTS**

|                  |  |
|------------------|--|
| <i>Accretion</i> | The process of land buildup from water-borne rock, sand, and soil  |
| <i>Alluvion</i>  | New deposits of land as a result of accretion; alluvion deposits commonly occurring at the mouth of large rivers (The landowner is entitled to all new soil deposits.) |
| <b>Erosion</b>   | Gradual loss of land due to natural forces (A landowner may lose land through the natural process of erosion.)   |
| <i>Reliction</i> | Gradual receding of water, uncovering additional land (The new land usually belongs to the landowner of the area that was previously covered by water.)                |

1 **Subsurface Rights.** These consist of an owner's rights to underground minerals, petro-  
2 leum, natural gas, and so forth, often called *mineral rights*.

3 **Air Rights.** Air rights involve that space above a tract, extending up to a height estab-  
4 lished by law (e.g., building rights, easements, aerial navigation).

5 Most real property transactions include all three physical components in the exchange  
6 of ownership rights. However, it is entirely possible for the seller to retain one or even two  
7 of the components if the buyer and the seller agree. For example, the MetLife Building in  
8 New York City was built by purchasing the air rights over Grand Central Terminal. The  
9 surface and subsurface components of that parcel continue to perform the same func-  
10 tion as before construction of the MetLife Building. Another example of the separation  
11 of components of real estate occurred near Jay, Florida. Before the oil supply there was  
12 exhausted, owners often sold or leased the subsurface component, including oil rights,  
13 while retaining the surface and air rights.

### Practice Questions

1. List three physical components of land.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

2. Reasonable use of waters that flow past an owner's property is called \_\_\_\_\_ rights.

3. Littoral rights are associated with land that abuts \_\_\_\_\_ water.

4. Land refers to the \_\_\_\_\_ of the earth and to everything attached to it by \_\_\_\_\_.

5. Real estate is defined as land plus all \_\_\_\_\_ or \_\_\_\_\_ improve-  
ments permanently attached to the land.

## 8.2 REAL PROPERTY VS. PERSONAL PROPERTY

14  
15 The two basic types of property are real property and personal property (see Figure 8.2).  
16 Real property is basically land and improvements to the land. Property that is not real  
17 property is **personal property** (movable items or *chattel*). Personal property usually consists  
18 of items having a limited life that are easily movable from one place to another. Just as the  
19 term *realty* is used to denote real property, the term *personalty* is used to indicate personal  
20 property. It is important to distinguish between real property and personal property in a real  
21 estate transaction. All personal property included in the sale should be identified in the  
22 contract for sale, or the seller is entitled to remove the property.



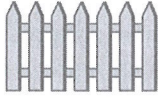
FIGURE 8.2 ■ Real vs. Personal Property



**Real Estate or Real Property**  
Land and anything permanently attached to it



**Personal Property**  
Movable items not attached to real property; items removable without damaging real property



**Fixture**  
Item of personal property converted to real property by attaching it to the real property with the intention that it become permanently a part thereof



**Trade Fixture**  
Item of personal property attached to real property that is owned by a tenant and is used in a business; legally removable by tenant

- 1 Real property can become personal property by the *act of severance* (sever is to cut).
- 2 For example, timber is real property, but when cut into logs, it becomes personal prop-
- 3 erty by the act of severance. Vice versa, personal property can become real property by
- 4 *attachment*.

### 5 **Fixtures**

- 6 A **fixture** is an item that was originally personal property that has been permanently
- 7 attached to real estate in such a way that it is now legally part of the real property. A bathtub,
- 8 for example, was personal property in its container in a warehouse, but once permanently
- 9 attached in a home, it became real property. Some items, such as custom window treatments,
- 10 ceiling fans, and chandeliers, are more difficult to classify. In those cases where contracting
- 11 parties have not had the foresight to include such items in a real estate sale contract, the
- 12 courts generally use the following set of legal tests to decide whether an item is a fixture.

- 13 **Intent of the Parties.** As in most points of law, intent of the party placing an article on or
- 14 in real property is of primary importance. Statements made by an owner to witnesses may
- 15 indicate the intent to make an item a fixture. For example, including a washer and dryer
- 16 in a sale contract as part of the real property would remove any doubt about the owner's
- 17 intention. If a dispute arises between a buyer and a seller or an owner and a tenant, the
- 18 courts may be required to determine the original intent of the parties.

#### TO REMEMBER: LEGAL TESTS FOR FIXTURES

53

I  
R  
M  
A

Intent of the parties  
Relationship or agreement of the parties  
Method or degree of attachment  
Adaptation of the item

- 19 **Relationship or Agreement of the Parties.** In this test, the courts seek to determine the
- 20 exact nature of the relationship of the parties. Is it buyer and seller or landlord and ten-
- 21 ant? Ordinarily, residential tenants are required to leave any item they have attached to
- 22 the landlord's real property. However, if a building is leased as a retail store and the tenant
- 23 has attached display racks to the walls, the courts would generally rule that the display
- 24 racks are trade fixtures that may be removed by the tenant. A **trade fixture** is an item
- 25 installed by a commercial tenant and used in the tenant's trade or business. Trade fixtures
- 26 are legally considered personal property that are removable by the tenant, and the tenant

1 would typically be responsible for necessary repairs associated with removal. For example,  
2 hydraulic car lifts installed by an auto repair shop are trade fixtures (see Figure 8.3).

3 **Method or Degree of Attachment.** The manner in which an article is attached to real  
4 property generally indicates whether it is a fixture or personal property. Normally, if  
5 removing the item would result in damage to real property, the article is classified as a  
6 fixture. A set of built-in storage cabinets in the utility room would usually be considered a  
7 fixture if removing it would damage the wall.

8 **Adaptation of the Item.** This test seeks to determine whether an item was designed for,  
9 or necessary to, the normal use of a specific property. If the item is adapted or custom  
10 built to fit the property, it will likely be considered a fixture even though it is movable.  
11 For example, hurricane shutters are considered fixtures because they are custom made to  
12 fit specific windows in a structure even though they are not on the windows at all times.  
13 The shutters are placed on the windows when a storm is approaching and removed when  
14 the danger has passed. Another example of a fixture is draperies that have been custom  
15 made using the same decorative pattern as the wallpaper.

16 Legal tests should not be necessary if all personal property to be sold with the real  
17 estate is listed in the sale contract. To avoid conflicts and misunderstandings between  
18 buyers and sellers, listing and sale contracts should clearly specify which items are consid-  
19 ered part of the real property in a transaction and list any personal property that is to be  
20 included in the sale.

**FIGURE 8.3 ■ Comparison of Fixtures and Trade Fixtures**

|                           | <b>Fixture</b>   | <b>Trade Fixture</b> |
|---------------------------|------------------|----------------------|
| <b>Type of property</b>   | Real property    | Personal property    |
| <b>Nature of property</b> | Permanent        | Removable            |
| <b>Use of property</b>    | Residential sale | Commercial lease     |
| <b>Sale contract</b>      | Included in sale | Not included in sale |

### Practice Questions

6. List the two basic types of property.
  1. \_\_\_\_\_
  2. \_\_\_\_\_
7. List the four legal tests that courts use to determine whether an item is a fixture.
  1. \_\_\_\_\_
  2. \_\_\_\_\_
  3. \_\_\_\_\_
  4. \_\_\_\_\_
8. An item that was personal property but has been permanently attached to real estate is called a \_\_\_\_\_.
9. Movable items that are not attached to real property are called \_\_\_\_\_.

10. Personal property, also called \_\_\_\_\_ or \_\_\_\_\_, consists of items having a \_\_\_\_\_ life.
11. \_\_\_\_\_ are articles of \_\_\_\_\_ property that are attached by a tenant and are a necessary part of the tenant's \_\_\_\_\_ or \_\_\_\_\_.

### 8.3 BASIC PROPERTY RIGHTS

Real property ownership rights are called a **bundle of legal rights**. The bundle of rights includes the following rights:

- *Disposition*. The right to sell, mortgage, dedicate, give away, or otherwise dispose of all or a portion of the property.
- *Enjoyment*. The right to enjoy and use the property without interference (the legal term is *quiet enjoyment*).
- *Exclusion*. The right to keep others from trespassing by entering or using the property without permission.
- *Possession*. The right to occupy the property in privacy. An owner acquires the right of possession of a property on the day the owner has legal title even though the owner may not have set foot on the land itself.
- *Control*. The right to uninterrupted use and control of the property consistent with local laws (for example, zoning).

#### TO REMEMBER: BUNDLE OF LEGAL RIGHTS

|   |             |
|---|-------------|
| D | Disposition |
| E | Enjoyment   |
| E | Exclusion   |
| P | Possession  |
| C | Control     |

#### Practice Questions

12. List the five real property ownership rights that are called a bundle of legal rights.
1. \_\_\_\_\_
  2. \_\_\_\_\_
  3. \_\_\_\_\_
  4. \_\_\_\_\_
  5. \_\_\_\_\_

### 8.4 ESTATES AND TENANCIES

An estate refers to the degree, quantity, nature, and extent of interest (ownership rights) a person can have in real property. The terms *estate* and *tenancy* are to be used interchangeably. Estates are divided into the following two general groups:

- 1 1. Freehold estates, which are for an indefinite length (of unknown duration) (see
- 2 Figure 8.4)
- 3 2. Leasehold estates (also called *nonfreehold estates*), which are for a fixed term
- 4 (known duration) (see Figure 8.5)

#### FIGURE 8.4 ■ Freehold Estates

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*Freehold estates* are estates of ownership.

- *Fee simple* (absolute) is the most comprehensive estate and it is inheritable.
  - *Life estate* is measured by a natural life span ("for the life of").
    - *Estate in reversion* occurs when property returns to the grantor.
    - *Remainder estate* occurs when property goes to a third party.
- 

#### 5 Freehold Estates

6 A **freehold estate** is an ownership interest for an indefinite period. That interest can  
 7 be inherited (fee simple estate) or can be measured by the lifetime of an individual (life  
 8 estate).

9 **Fee Simple Estate.** A **fee simple estate** is the largest bundle of legal rights. Fee, fee  
 10 simple, and fee simple absolute are all used to describe the estate. All three terms identify  
 11 an ownership interest with complete power to use, to dispose of, and to allow the property  
 12 to descend to heirs. It is the highest type of real property interest recognized by law. Most  
 13 title to property is held in fee simple.

14 **Life Estate.** Life estates are another type of freehold estate that can be created by the  
 15 person who holds the fee simple title to real property. An estate in real property that is  
 16 limited in duration to the life of its owner or the life of some other designated person is  
 17 a **life estate**. During the time an owner enjoys a life estate, the owner must maintain the  
 18 property and not permit *waste* (anything that reduces the value of property) to occur. The  
 19 life estate owner also must pay the taxes and property insurance and keep current any  
 20 mortgage(s) or lien(s) to preserve the property.

21 Because these life estates are created by agreement of the parties, they are *conventional*  
 22 *life estates*. A conventional life estate can be created by a grantor who conveys a life estate  
 23 to another individual.

24 **EXAMPLE 1:** Lucille has a fee simple estate in a home. She wants to provide for  
 25 her brother, Andrew. Lucille executes a deed that transfers title to the home to Andrew  
 26 for his lifetime. Lucille is the grantor who transfers a life estate to Andrew. The duration  
 27 of the life estate is measured by Andrew's lifetime. The deed provides that upon Andrew's  
 28 death, title will revert to Lucille (the original grantor).

29 A conventional life estate can also be formed by a grantor who reserves a life estate for  
 30 the grantor's own use and transfers the remainder interest to another person (the grantee).

31 **EXAMPLE 2:** Lucille has a fee simple estate in a home. She wants to ensure that  
 32 her brother Andrew will be able to continue to live in the home after her death. Lucille  
 33 executes a deed that transfers title to the home upon her death to Andrew. Lucille is the  
 34 grantor who reserves a life estate in the home for her lifetime and transfers the remain-  
 35 der interest to Andrew. The duration of the life estate is measured by Lucille's lifetime.



1 When a life estate is formed, two distinct ownership interests emerge from the origi-  
2 nal fee simple estate: the life estate and a remainder interest. Because these two parts are  
3 ownership interests, owners of either part can sell, mortgage, or gift their interest. The  
4 duration of a life estate is determined by the lifetime of a designated individual, so the  
5 deed creating the life estate must provide for transfer of title upon the designated person's  
6 death. At the end of the life estate, title reverts to the original grantor (estate in rever-  
7 sion) or conveys to a third party (remainder estate).

8 **Estate in reversion.** If the title will return to the original grantor (previous owner), an  
9 estate in reversion (reversion estate) is created. In Example 1, Lucille conveyed a life  
10 estate to Andrew. Because title to the property reverts to Lucille (the original grantor)  
11 upon Andrew's death, Lucille's interest in the home is an estate in reversion.

12 **Remainder estate.** If the title will be conveyed to a third party, called a **remainderman**,  
13 the remainderman owns a *remainder estate* while the life estate exists. The deed that estab-  
14 lished the life estate also designates the remainderman. When the life estate ends, the  
15 remainderman receives a fee simple estate. If there is only one remainderman, the grantee  
16 receives a fee simple estate in severalty.

17 In Example 2, Andrew is the remainderman. Andrew holds a remainder estate in the  
18 home while the life estate exists. When Lucille dies, Andrew receives fee simple estate in  
19 severalty. If there is more than one remainderman, the remaindermen receive a concur-  
20 rent ownership. (Concurrent ownership is explained later in this unit.)

21 Life estates can also be created by law. These life estates are called legal life estates.  
22 For example, in Florida, if a homesteaded property is titled in one spouse's name only, by  
23 operation of law, the surviving spouse receives a life estate to the homesteaded property  
24 and the children receive a remainder estate.

25 **Homestead.** Homeowners (including single persons) in Florida may **homestead** their  
26 permanent (principal) residence. The Florida Constitution grants certain protections and  
27 benefits to the homestead:

196, F.S.

222, F.S.

Article X,  
Sec. 4, FL  
Constitution

- 28 ■ **Protection of the family.** If a married person dies and the family homestead was  
29 titled in that deceased person's name only (in severalty), by operation of law  
30 (even if a will states otherwise), the surviving spouse receives a legal life estate  
31 and the children (lineal descendants) receive a remainder estate. If there are  
32 no children, the surviving spouse receives a fee simple estate in the homestead.  
33 Signatures of both spouses are required on all contracts, mortgages, and deeds on  
34 homestead property, even if the homestead is titled in one spouse's name only.  
35 The purpose of the homestead law, therefore, is to protect the family and prevent  
36 the family from being displaced from the homestead.
- 37 ■ **Protection of the homestead.** Homestead property is protected from forced sale to  
38 satisfy judgment liens for debts owing to personal loans, credit card debt, and  
39 so forth. Homestead protection does not prevent foreclosure for nonpayment of  
40 property taxes, special assessments, mortgages, homeowners association fees, con-  
41 dominium association fees, vendors' liens, or construction liens secured with the  
42 homesteaded property.
- 43 ■ **Tax exemption.** Florida statute allows a tax exemption from assessed property  
44 value. The current homestead tax exemption is up to \$50,000 for qualifying  
45 homesteads and is deducted from the assessed value when calculating taxable  
46 value (see "Homestead Tax Exemption," Unit 18).

- 1 ■ *Size of homestead.* The size of homestead property is restricted to 160 acres of  
 2 contiguous land and improvements outside a municipality (city) or up to ½ acre  
 3 of contiguous land and improvements if the property is located within the city.  
 4 ■ *Personal property.* Homestead protections include \$1,000 of value of personal  
 5 property.

### FIGURE 8.5 ■ Nonfreehold or Leasehold Estates

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*Nonfreehold estates (leasehold)* are estates of possession.

- *Estate for years* is a written lease agreement with a specific starting and ending date.
  - *Tenancy at will* is either an oral agreement or one that has no specific ending date.
  - *Tenancy at sufferance* occurs when the lease period has ended and the tenant is a holdover.
- 

#### 6 Nonfreehold or Leasehold Estates

7 **Nonfreehold estates** have a known duration and do not involve an ownership interest.  
 8 *Nonfreehold* or *less-than-freehold* estates grant the right of quiet enjoyment (the right to use  
 9 and possess but not own) real property. Nonfreehold estates are also called leasehold estates.

10 A **leasehold estate** (tenancy) is an interest in real property that a tenant possesses.  
 11 Leasehold estates are measured in calendar time. Under a lease, the tenant possesses a  
 12 leasehold estate and the landlord (property owner) possesses a reversion interest. At the  
 13 end of the leasehold estate, the right of quiet enjoyment (use and possession) of the prop-  
 14 erty reverts to the property owner. There are different types of leasehold estates: estate for  
 15 years, tenancy at will, and tenancy at sufferance (see Figure 8.5).

16 **Estate for Years.** An **estate for years** (or tenancy for years) is a tenancy with a specific  
 17 starting and ending date. It exists for a designated period, which may be any length of time  
 18 from less than a year to a period of many years (such as a 99-year lease). An estate for years  
 19 is a leasehold estate created by a written lease agreement. An estate for years establishes  
 20 an interest in real property for the tenant (right of quiet enjoyment and exclusion) but  
 21 does not convey actual title (or ownership) or the right of disposition (see “Basic Property  
 22 Rights,” in this unit).

23 **Tenancy at Will.** A **tenancy at will** is a lease agreement that has no provision for the  
 24 duration of tenancy. The payment of rent is determined by a period of time outlined in the  
 25 lease agreement, such as a week-to-week or a month-to-month agreement. For example,  
 26 assume Harry does not intend to use his lake cabin for a while, so Harry allows his friend  
 27 Bill to live in the cabin for \$100 per week. A tenancy at will has been created because Bill  
 28 has been given permission to use the cabin and a rental rate has been agreed upon, but no  
 29 ending date was established.

30 Florida statute calls this a *tenancy without specific term*. Tenancies at will may be writ-  
 31 ten or oral agreements. All the duties and obligations of a landlord-tenant relationship  
 32 exist in a tenancy at will, and notice of termination is required by either party. Notice for  
 33 termination of tenancies at will is set in statute and is based on the time interval between  
 34 rent payments:

- 35 ■ Week to week—7 days’ notice
- 36 ■ Month to month—30 days’ notice

37 Other actions that will terminate a tenancy at will include sale of the property or the  
 38 death of the owner or the renter.

83.46(2)(3),  
F.S.,

83.56(4),  
F.S.

83.575, F.S.

48



83.04, F.S.



**Tenancy at Sufferance.** A **tenancy at sufferance** occurs when a tenant stays in possession of the property beyond the ending date of a legal tenancy without the consent of the landlord. The tenant has no estate or title but only “naked” possession and is not entitled to notice to terminate. The payment and acceptance of rent alone must not be construed to be a renewal of the lease. However, if the tenant’s *holding over* is continued with the written consent of the lessor, then the tenancy becomes a tenancy at will under Florida law.

**Sole Ownership vs. Concurrent Ownership**

61.075, F.S.

When title to property is held by one person, it creates an **estate in severalty** or sole ownership (to help you remember, think of this ownership interest as “severed” or cut away from any other ownership interest). **Separate property** is property that a spouse owns in the spouse’s name only before marriage and property acquired by one spouse during the marriage by inheritance or gift.

Property acquired during marriage, except by inheritance or gift, is referred to as **marital assets**. For example, one spouse may purchase a property with her own savings and title the property in her name only. Unless the couple signed a prenuptial agreement, the property is legally a marital asset. If the couple later divorces the courts will divide marital property “equitably.”

When working with sellers, it is important to know the existing form of ownership as it determines who must sign the various documents. Generally, if a property is owned as an estate in severalty, only the signature of the owner is required on the deed. However, if the property is homesteaded, regardless of whether both names or only one spouse’s name is on the deed, both spouses must sign the deed.

**FIGURE 8.6 ■ Concurrent Ownership**



| Tenancy in Common                           | Tenancy by Entireties                                | Joint Tenancy   |
|---|--|---|
| Two or more people                          | Married couple                                       | Two or more people                                    |
| Undivided possession                        | Undivided possession                                 | Undivided possession                                  |
| Equal or unequal percentage                 | Each spouse 100%                                     | Equal percentage                                      |
| Same or different time                      | Same time  | Same time   |
| Same or different title                     | Same title   | Same title  |
| No right of survivorship<br>(Heirs inherit) | Right of survivorship<br>(Surviving spouse inherits) | Right of survivorship<br>(Surviving owner(s) inherit) |

Ownership of property by two or more persons at the same time is called **concurrent ownership**. There are three types of estates (or tenancies) with concurrent owners: tenancy in common, tenancy by the entireties, and joint tenancy.

**Tenancy in Common.** When two or more persons wish to share the ownership of a single property, they may choose a tenancy in common. It is the most frequently used form of co-ownership, except for ownership by a married couple. A **tenancy in common** allows flexibility in how and when persons take title to property. For example, two or more owners may acquire title in any of the following combinations: same or different title (deed instruments); same or different time (date of execution), and hold an equal or unequal percentage of the ownership. Tenants in common own an undivided interest in the whole property. An **undivided interest** (also called undivided possession) is interest in the entire property rather than ownership of a particular portion of the property.



1       **EXAMPLE:** Sally and Kathy own a house as tenants in common. Sally holds two-  
 2       thirds interest in the entire property, and Kathy owns one-third interest in the entire  
 3       property. When Sally and Kathy die, their interest in the property will descend to their  
 4       heirs. On Sally's death, for example, her two-thirds interest in the property will descend to  
 5       her legal heirs (or as instructed in her will).

689.15, F.S.

6       **Tenancy by the Entireties.** A **tenancy by the entireties** is an estate that can only be  
 7       created between a married couple. A tenancy by the entireties applies to all types of  
 8       property purchased by a married couple. Residential, commercial, and industrial property  
 9       purchased by a married couple together can be held as a tenancy by the entireties. The  
 10      deed or other instrument of conveyance does not have to state expressly that a tenancy  
 11      by the entireties exists. If the parties are truly married to each other, the estate is implied.  
 12      While not mandatory, the deed should reflect a tenancy by the entireties to serve notice  
 13      to others that such an estate exists. The deed, for example, typically would indicate John  
 14      P. Smith and Sally R. Smith are a married couple.

15      With a tenancy by the entireties, each spouse has undivided possession of a 100%  
 16      interest in the property. When one spouse dies, that individual's ownership interest auto-  
 17      matically transfers to the surviving spouse by **right of survivorship**. This means that at the  
 18      time of death of either spouse, the ownership interest automatically transfers to the sur-  
 19      viving spouse. The surviving spouse immediately owns the property without it becoming  
 20      a part of the decedent's estate. The surviving spouse will own the property in fee simple,  
 21      and because the title conveys to the only surviving spouse, an estate in severalty (or sole  
 22      ownership) exists. A tenancy by the entireties can only exist between a married couple;  
 23      therefore, should the couple divorce, all property owned as a tenancy by the entireties will  
 24      automatically become a tenancy in common, with each former spouse having undivided  
 25      possession of an equal 50% share in the property.

26      When property is purchased by a married couple, unless provided otherwise, a tenancy  
 27      by the entireties is created. If desired, a married couple could buy property together as  
 28      a tenancy in common. In such a case, each would have 50% interest, they could own it  
 29      60%/40%, or something else, provided the deed specifically indicates each owner's per-  
 30      centage. One should not assume that simply because a couple is married, they want to  
 31      purchase property as a tenancy by the entireties. The couple may choose instead to take  
 32      title to the property as a tenancy in common. For example, a tenancy in common may  
 33      be preferred if the married couple have children from a previous marriage. If the property  
 34      is held as tenants in common, recall that each person's interest will descend to the ten-  
 35      ant's heirs. Therefore, in this situation, a tenancy in common may be preferred so that a  
 36      spouse can provide for their children from a previous marriage. The exception to a married  
 37      couple choosing a tenancy in common is if the property is the couple's homestead (see  
 38      "Homestead," earlier in this unit and Figure 8.7).



FIGURE 8.7 ■ Homestead Protection vs. Estate by the Entireties

| Homestead  | Tenancy by the Entireties  |
|--|--|
| Protects the non-owning surviving spouse   | Protects the owning surviving spouse   |
| Protection applies to the principal residence  | Protection applies to all types of property purchased by the married couple  |
| If the owning spouse dies, the surviving spouse receives a life estate if there are children; if there are no children, the surviving spouse receives a fee simple estate in the homestead | At death of either spouse, ownership interest automatically transfers to the surviving spouse by right of survivorship                 |
| In the event of divorce, the non-owning spouse loses all protection in the homesteaded property  | In event of divorce, by operation of law, the tenancy by entireties becomes a tenancy in common with each spouse having an equal share |

1 **Joint Tenancy.** A joint tenancy features the right of survivorship, as does tenancy by  
 2 the entireties. Recall that in a tenancy by the entireties, the right of survivorship meant  
 3 that when one spouse (co-owner) died, the decedent's interest in the property automati-  
 4 cally conveyed to the surviving spouse. In a joint tenancy, *right of survivorship* means that  
 5 the share of a co-owner who has died goes to the surviving co-owner(s) and not to the  
 6 deceased owner's heirs. Because a joint tenancy features the right of survivorship, for clar-  
 7 ity, a true joint tenancy cannot be created unless specific wording in the deed provides for  
 8 survivorship. Under present law, a deed conveying an estate in joint tenancy, to ensure  
 9 the right of survivorship, must include wording similar to "as joint tenants with right of  
 10 survivorship and not as tenants in common." The right of survivorship prevents disposi-  
 11 tion of the property by will or descent to heirs.

12 Joint tenants have undivided possession and an equal ownership interest in the real  
 13 property. As joint tenants die, their shares are divided among the surviving tenants until  
 14 only one owner is left. The sole survivor then has a fee simple estate in severalty.

15 **EXAMPLE:** Bob, Bill, and Betty own 10 acres as joint tenants with right of survi-  
 16 vorship, each owning a third share in the entire property. If Bob dies, Bill and Betty will  
 17 remain as joint tenants, with each having a 50% share of ownership. If Bill dies later,  
 18 Betty is the sole surviving joint tenant. At the time of Bill's death, Betty owns the property  
 19 in severalty.

20 A joint tenant who wants to sell her share of a property may do so. However, the per-  
 21 son who buys that share cannot be a joint tenant with the other original owners. This is  
 22 because all of the joint tenants must acquire title together—that is, be named as grantee  
 23 on the same deed instrument. Instead, the new owner will be a tenant in common without  
 24 the right to receive any property on the death of one of the original joint tenants. The  
 25 tenant in common's share can be disposed of by will, descent, or other arrangement.

26 **EXAMPLE:** John, Jim, Jill, and Jane own an office building as joint tenants with  
 27 right of survivorship. Each joint tenant has undivided possession with equal ownership  
 28 interest. Jim sells his ownership interest (25%) to Sally. Sally is a tenant in common,  
 29 while John, Jill, and Jane remain joint tenants. If John should die, his 25% interest will  
 30 be divided between Jill and Jane. If Sally should die, her interest will go to her heirs or  
 31 according to her will.

**TO REMEMBER: FOUR UNITIES OF A JOINT TENANCY**

|                     |  |
|---------------------|--|
| <b>P</b> Possession | Joint tenants have the same rights of undivided possession             |
| <b>I</b> Interest   | Joint tenants have equal ownership interest                            |
| <b>T</b> Title      | Joint tenants acquire title on the same instrument (deed)              |
| <b>T</b> Time       | Joint tenants acquire their interests in the property at the same time |

### Practice Questions

Andrew holds title to the property for his lifetime. The deed that Lucille executed states that upon Andrew's death, title to the property will transfer to her two children, Kathryn and Lynn.

13. Kathryn and Lynn hold a \_\_\_\_\_ estate during Andrew's lifetime.
14. Andrew has a \_\_\_\_\_ estate in the property.
15. List the four unities of a joint tenancy.
  1. \_\_\_\_\_
  2. \_\_\_\_\_
  3. \_\_\_\_\_
  4. \_\_\_\_\_
16. List the two types of estates that provide for right of survivorship.
  1. \_\_\_\_\_
  2. \_\_\_\_\_
17. A rental agreement with no provision for the duration of the tenancy is a representation of \_\_\_\_\_ at \_\_\_\_\_.
18. A freehold estate is an estate of \_\_\_\_\_ for an \_\_\_\_\_ period of time.
19. The most comprehensive estate with the largest bundle of legal rights is the \_\_\_\_\_ estate.
20. Leasehold estates are estates of \_\_\_\_\_ and are also called \_\_\_\_\_ estates.
21. Spouses who take ownership of property together create a tenancy \_\_\_\_\_.
22. A tenancy for years must have a definite \_\_\_\_\_ and \_\_\_\_\_ date.

23. If title passes upon the death of a life tenant to someone other than the original grantor, the person receiving title is called a \_\_\_\_\_.
24. A life estate created by the grantor is called a \_\_\_\_\_ life estate; whereas a life estate created by law is called a \_\_\_\_\_ life estate.

## 8.5 COOPERATIVES, CONDOMINIUMS, AND TIME-SHARING

### Background

In Florida, the Cooperative Act (719, F.S.), the Condominium Act (718, F.S.), and the Florida Vacation Plan and Timesharing Act (721, F.S.) establish rights and obligations of the developer, the association, and unit owners and buyers. These statutes all require that, before the sale of developer residential shared housing, purchasers be provided with certain disclosure statements. These statements include, for example, property description, form of title-interest, description of common areas and amenities, existence of judgments or liens, management arrangements, escrow provisions for deposits, restrictions on the sale or transfer of units, apportionment of common expenses, construction completion date, estimated operating budget, estimated closing costs, and copies of key documents.

The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation is the state agency charged with ensuring compliance with the laws regulating all three of these multiple-ownership forms. Because Florida is perhaps the most active of the states in producing and promoting multiple-ownership dwelling units, a complete description of cooperatives, condominiums, and time-sharing is appropriate here.

### Cooperatives

A **cooperative**, cooperative association, or co-op is a multiunit building that is owned by a corporation. The corporation holds title to the land and improvements. The unit owners purchase shares of stock in the corporation. Ownership of the stock entitles the purchaser to a **proprietary lease** and the right to occupy the unit.

The Cooperative Act stipulates that property taxes and special assessments be assessed against each cooperative unit (not against the corporation). The taxes and special assessments levied constitute a lien only on the individual unit. Shareholders pay a *pro rata* share of the property taxes, and the corporation pays the property tax bill. Owners-shareholders may deduct their real estate taxes and mortgage interest from taxable income. Shareholders also pay the corporation a monthly assessment based on a proportional share of the amount necessary for the payment of common expenses such as operating and maintenance expenses. Transfer of ownership of a cooperative unit is accomplished by sale of the stock.

**Disclosures and Cancellation Period.** The developer is required to include a disclosure in the sale contract stating that the buyer of a residential cooperative unit may cancel the contract within 15 calendar days of signing the contract and receipt by the buyer of all items required by F.S. 719.

The contract for resale of a residential cooperative unit must include a clause stating that the buyer is entitled, at the seller's expense, to a current copy of all the following documents: articles of incorporation of the association, the bylaws and rules of the association, and the FAQ sheet.

719, F.S.

86

553.899,  
F.S.,  
719.301(4)  
(p)(q), F.S.,  
719.503,  
F.S.,  
719.504,  
F.S.



1 As of July 1, 2023, the law requires cooperatives with buildings at least three stories  
 2 or higher to supply the following documents or a statement in conspicuous type, as shown  
 3 in law, that either states it still needs to be completed or is not required by law: milestone  
 4 inspection report, association’s most recent structural integrity reserve study (SIRS), and a  
 5 turnover inspection report. If the buyer has not received these required documents before  
 6 signing the contract, the contract for resale must include a clause stating that the buyer  
 7 may cancel the contract within three business days of receipt of these required documents  
 8 (see Figure 8.8).

9 The buyer’s right to cancel the contract terminates at closing. A contract for sale of a  
 10 residential cooperative unit that does not include either disclosure is voidable by the buyer.

**FIGURE 8.8 ■ Cooperative, Condominium, and Time-Share Rescission Periods**

|                  |  |
|------------------|--|
| 3 business days  | Resale residential cooperative apartments and condominium units            |
| 10 calendar days | Time-shares sold by developer or resale                                    |
| 15 calendar days | Residential cooperative apartments and condominium units sold by developer |

11 **Condominiums**

718, F.S.

12 A **condominium** consists of condominium units and common elements. Condomini-  
 13 ums may look like apartment buildings, attached town houses, or freestanding houses;  
 14 what makes the structures condominiums is how the developer organized the association.  
 15 The Condominium Act governs the development, operation, management, and regula-  
 16 tion of all condominium associations in Florida. The condominium association is run by  
 17 a board of directors, initially appointed by the developer, and subsequently turned over to  
 18 elected directors.

19 A condo purchaser owns an individual unit in fee simple. The deed to the unit may  
 20 be held by one or more persons in any type of estate or tenancy recognized by state law.  
 21 The unit owner also owns an undivided fractional (proportionate) share of the common  
 22 elements. **Common elements** are those portions of the condominium property that are  
 23 not included in the units but are legally attached to each unit and are transferred with the  
 24 unit when it is sold. A deed to a unit conveys the unit to the purchaser together with its  
 25 proportionate ownership interest in the common elements. Property taxes are levied on  
 26 individual units.

27 **Condominium documents** are a set of written instruments describing the condomi-  
 28 nium and the association. The seven condominium documents in the following list are  
 29 required to be given to buyers of residential units sold by the developer and to buyers of  
 30 resale condominium units (see Figure 8.9).

- 31 1. *Declaration.* The **declaration of condominium** is an important condominium  
 32 document because it is the document that creates the condominium. Creation of  
 33 the condominium occurs when the declaration is recorded in the official records  
 34 of the county where the property is located.
- 35 2. *Articles of incorporation.* The operation of a condominium is carried out through  
 36 its association. The articles of incorporation create the corporate entity respon-  
 37 sible for operating the condominium.
- 38 3. *Bylaws.* The bylaws describe the rules and regulations of the association. It pro-  
 39 vides for the administration of the association, including procedures for calling  
 40 meetings, determining voting requirements, and so forth. Each purchaser, by  
 41 accepting title to a unit, automatically becomes an association member and is  
 42 bound by the association rules and regulations.



- 1 4. *Frequently asked questions and answers sheet (FAQ)*. The FAQ informs prospective  
2 purchasers about restrictions on the leasing of a unit, information concerning  
3 assessments, and whether and in what amount the unit owners or the association  
4 are obligated to pay rent or land use fees for recreational facilities.

5 As of July 1, 2023, the law requires condominiums with buildings at least three stories  
6 or higher to supply the following documents or a statement in conspicuous type as shown  
7 in law, that the inspection or study still needs to be completed or are not required by law:

- 8 5. *Milestone inspection report*. An inspection of the building, including load-bearing  
9 elements and structural integrity elements, to determine the life safety and  
10 adequacy of the structural components of the building as they affect life safety.
- 11 6. *Structural integrity reserve study (SIRS)*. The study ensures condo associations  
12 allocate funds for long-term maintenance and replacement of critical structural  
13 elements in their buildings.
- 14 7. *Turnover inspection report*. A report recorded in the public records under seal  
15 and certified by a state-licensed architect or engineer attesting to the required  
16 maintenance, condition, useful life, and replacement costs of the condominium  
17 property: roof, structure, fireproofing and protection systems, plumbing, electrical  
18 systems, waterproofing and exterior painting, windows, doors, elevators, HVAC  
19 systems, pools and spas, seawalls, pavement and parking areas, and drainage and  
20 irrigation systems.

21 **Condominium Units Sold by a Developer.** In addition to the seven condominium docu-  
22 ments listed previously, there are two additional disclosures required to be given to pro-  
23 spective buyers when purchasing residential units from a developer (see Figure 8.9).

- 24 1. *Prospectus*. The developer is required to provide a **prospectus** (offering circular)  
25 to purchasers if the condominium consists of more than 20 residential units. The  
26 prospectus summarizes some of the major points detailed in the condominium  
27 documents.
- 28 2. *Estimated operating budget*. The estimated operating budget provides detailed esti-  
29 mates of various common expenses that are to be shared by the unit owners.

30 718.503,  
31 F.S.

32 Buyers who are purchasing condominium units from the developer have a 15-day can-  
33 cellation period. The developer must include a disclosure statement in the sale contract  
34 stating that the buyer has the right to cancel the agreement within 15 calendar days after  
35 the date of signing the contract and receipt of the condominium documents (9 documents  
36 in total listed previously). The developer will require buyers to sign a receipt for condo-  
minium documents. Buyers should verify that they have received all the documents listed  
on the receipt before signing.

37 718.504,  
38 F.S.,  
39 718.301(4)  
40 (p), F.S.

41 **Resale Condominium Units Sold by Unit Owner.** In addition to the seven condominium  
42 documents previously discussed, unit owners of resale condominium units must give buy-  
43 ers three additional disclosures (see Figure 8.9).

- 44 1. *Most recent year-end financial report*.
- 45 2. *Rules of the association*.
- 46 3. *Governance form*. The governance form was developed by the Division of Florida  
Condominiums, Timeshares, and Mobile Homes to educate prospective purchas-  
ers on the rights and responsibilities of the condominium board and unit owners.  
The form was developed for use by condominium unit owners to give prospective  
buyers.

FIGURE 8.9 ■ Condominium Disclosures

|   | Developer > 20 New Residential Units) | Resale |
|---|---------------------------------------|--------|
| Prospectus                                | ✓                                     |        |
| Estimated operating budget                | ✓                                     |        |
| Most recent year-end financial report     |                                       | ✓      |
| Rules of the association                  |                                       | ✓      |
| Governance form                           |                                       | ✓      |
| Declaration                               | ✓                                     | ✓      |
| Articles of incorporation                 | ✓                                     | ✓      |
| Bylaws                                    | ✓                                     | ✓      |
| FAQs                                      | ✓                                     | ✓      |
| Milestone inspection report               | ✓                                     | ✓      |
| Structural integrity reserve study (SIRS) | ✓                                     | ✓      |
| Turnover inspection report                | ✓                                     | ✓      |

Source: Florida Statutes updated 2023

23

1 The contract for resale of a residential condominium unit must include a rider stating  
 2 that the buyer acknowledges receipt of the condominium documents and that the prospec-  
 3 tive buyer may cancel the contract within three business days after the date of execution  
 4 of the contract and receipt by the buyer of the condominium documents. The cancellation  
 5 period does not begin until the condominium documents have been delivered. A buyer  
 6 should verify that all documents have been received before signing the receipt for delivery  
 7 of the documents.

8 If a prospective buyer chooses to timely cancel the contract, a real estate broker may  
 9 return the escrowed binder deposit to the prospective purchaser without first securing the  
 10 seller's permission, provided the broker is notified in writing that the buyer is canceling  
 11 the contract during the statutory cancellation period. Even if the seller objects, the real  
 12 estate license law states that the broker may return the deposit to the purchaser without  
 13 having to notify the Commission of conflicting demands.

14 The DBPR's Division of Florida Condominiums, Timeshares, and Mobile Homes  
 15 "Condominium Governance Form," is available at <https://www2.myfloridalicense.com/lsc/documents/CondominiumGovernanceForm.pdf>.

**WEBLINK**

17 The Division of Florida Condominiums, Timeshares, and Mobile Homes publishes  
 18 "A Guide to Purchasing a Condominium." It is available at [https://www2.myfloridalicense.com/lsc/documents/purchasing\\_guide.pdf](https://www2.myfloridalicense.com/lsc/documents/purchasing_guide.pdf).

**20 Time-Sharing**

21 Time-sharing evolved out of the vacation condominium concept. The property is first  
 22 organized as a condominium. Each unit is divided into time intervals of ownership, usually  
 23 52 weeks. A deed or some evidence of share ownership or right of occupancy is prepared  
 24 for each time interval. **Time-share** ownership involves an undivided interest in a living  
 25 unit according to the number of weeks purchased. For example, if one week is purchased,  
 26 the buyer owns a  $\frac{1}{52}$  interest in the unit. Size, location, amenities, and time of year all  
 27 affect the purchase price of the time-share unit.

721, F.S.

1 **Time-Share Act.** Buyers of time-share units in Florida are protected by the Condominium  
2 Act and by the Florida Vacation Plan and Timesharing Act. Florida Statute Chapter 721  
3 applies to time-share plans in Florida consisting of more than seven time-share periods  
4 over a span of at least three years.

475.011,  
F.S.  
721.20, F.S.

5 **Licensure Requirements and Exemptions.** A real estate license is required to sell time-  
6 share plans unless specifically exempted. Owner-developers who develop and sell time-share  
7 units may hire unlicensed sales personnel, provided the salespeople are salaried employees  
8 who are not paid a commission and who do not receive compensation on a transaction basis,  
9 such as bonuses based on sales quotas. Owners of time-share periods who own the time-share  
10 for their own use and occupancy are exempt from licensure.

721.11, F.S.

11 **Time-Share Disclosures.** The Commission requires licensees who advertise, list, or sell  
12 time-share periods to provide disclosures in the listing agreement, advertisements, and  
13 sale contracts.

61J2-  
23.001,  
F.A.C.  
61J2-  
23.002,  
F.A.C.

14 **Time-Share Resale Listing Agreement Disclosures.** FREC rules require that all agree-  
15 ments engaging the services of a broker in connection with the resale of a time-share  
16 period must contain the following disclosure, be included in conspicuous type, and located  
17 immediately above the space in the listing agreement reserved for the signature of the  
18 owner of the time-share period:

19 **There is no guarantee that your time-share period can be sold at any particu-  
20 lar price or within any particular period of time.**

21 Any written advertising material used by a broker or sales associate in connection  
22 with the solicitation of a listing agreement for the resale of a time-share period must  
23 also contain the disclosure statement in conspicuous type. It is unlawful for a real estate  
24 licensee to collect an advance fee for the listing of a time-share unit.

25 The listing agreement must also disclose

- 26 ■ fees, commissions, or other costs or compensation to be paid to the broker  
27 directly or indirectly;
- 28 ■ term of the agreement, a statement regarding the ability to extend the term of  
29 the agreement, and a description of all related costs and conditions under which  
30 the agreement may be extended;
- 31 ■ broker services under the agreement, the costs and obligations of each party  
32 regarding a resale purchase, and obligations regarding notification of the manag-  
33 ing entity of the time-share plan and any exchange company;
- 34 ■ whether the agreement grants exclusive rights to the broker to locate a pur-  
35 chaser, to whom and when any proceeds from the sale of the time-share period  
36 will be disbursed, whether any party may terminate the agreement and the con-  
37 ditions for termination, and the broker compensation due from any party upon  
38 termination of the agreement before closing of the resale;
- 39 ■ whether the agreement allows the broker or other person to make use of the  
40 time-share period and a description of any such rights, including to whom any  
41 rents or profits generated from such use of the time-share period will be paid; and
- 42 ■ the existence of any judgments or pending litigation against the broker resulting  
43 from or alleging a violation of Chapter 475, 498, 718, or 721, F.S., or resulting  
44 from alleging consumer fraud.



1 **Time-Share Resale Contract Disclosures.** FREC rules require that a contract for resale  
2 of a time-share period used by a real estate licensee contain the following disclosure in at  
3 least 12-point, capitalized type located immediately above the purchaser's signature:

4 THE CURRENT YEAR'S ASSESSMENT FOR COMMON EXPENSES ALLOCABLE  
5 TO THE TIME-SHARE PERIOD YOU ARE PURCHASING IS \_\_\_\_\_. THIS ASSESS-  
6 MENT, WHICH MAY BE INCREASED FROM TIME TO TIME BY THE MANAGING  
7 ENTITY OF THE TIME-SHARE PLAN, IS PAYABLE IN FULL EACH YEAR ON OR  
8 BEFORE \_\_\_\_\_. THIS ASSESSMENT (INCLUDES/DOES NOT INCLUDE) YEARLY  
9 AD VALOREM REAL ESTATE TAXES, WHICH (ARE/ARE NOT) BILLED AND  
10 COLLECTED SEPARATELY.

11 If ad valorem real property taxes are not included in the current year's assessment for  
12 common expenses, the following statement must be included:

13 THE MOST RECENT ANNUAL ASSESSMENT FOR AD VALOREM REAL ESTATE  
14 TAXES FOR THE TIME-SHARE PERIOD YOU ARE PURCHASING IS \_\_\_\_\_. EACH  
15 OWNER IS PERSONALLY LIABLE FOR THE PAYMENT OF HIS ASSESSMENTS  
16 FOR COMMON EXPENSES, AND/OR OWNERSHIP RIGHTS.

17 The broker may rely on information provided in writing by the managing entity of the  
18 time-share plan when making the required disclosures. The contract for purchase must  
19 also include the

- 20 ■ form of time-share ownership being purchased and a legally sufficient description  
21 of the time-share period being purchased;
- 22 ■ name and address of the managing entity of the time-share plan;
- 23 ■ terms and conditions of the purchase and closing, including the obligations of  
24 the seller or the purchaser regarding closing costs and title insurance; and
- 25 ■ existence of any mandatory exchange program membership included in the time-  
26 share plan.

27 **Right to Cancel Purchase Agreement.** The Florida Vacation Plan and Timesharing Act  
28 requires that purchasers be informed that they may cancel the contract within 10 calendar  
29 days of contract signing or receipt of the public offering statement, whichever is later (see  
30 Figure 8.8). The 10-calendar-day rescission period applies to time-share periods sold by  
31 the developer as well as resales.

32 **Time-Share Ownership.** The form of time-share ownership is normally divided into two  
33 types of legal formats:

- 34 1. *Interval ownership.* Interval ownership is a "deeded interest" time-share format  
35 that provides for fee simple ownership of each unit in specific time increments  
36 and allows the buyer to purchase a fractional interest in a unit. The owner has  
37 the right to sell, rent, will, or give away the fractional interest in the unit.
- 38 2. *Right to use.* The time-share purchaser receives the right to use the unit for a  
39 specified number of years, usually 20 to 40 years. At the end of the specified  
40 years, the usage rights revert to the developer-seller. The developer can increase  
41 or add fees and assessments, and sell the time-share to a third party. At the end  
42 of the specified years, the usage rights revert back to the developer-seller. Owners  
43 may lose their right to use if the developer goes bankrupt.



### Practice Questions

25. Stock ownership in the corporation entitles the purchaser to the right of occupancy through a \_\_\_\_\_.
26. The shareholders pay a \_\_\_\_\_ share of the property taxes to the corporation and the corporation pays the tax bill.
27. Transfer of ownership of a cooperative unit is accomplished by sale of \_\_\_\_\_.
28. Condominium purchasers own an individual unit in \_\_\_\_\_ in addition to an \_\_\_\_\_ interest in the \_\_\_\_\_.
29. Condominium property taxes are levied on \_\_\_\_\_.
30. Transfer of ownership of a condominium unit is accomplished by transfer by \_\_\_\_\_.
31. Recording of the \_\_\_\_\_ creates the condominium.
32. The "deeded interest" legal format of time-share ownership is called \_\_\_\_\_.

## 8.6 SUMMARY OF IMPORTANT POINTS

- 2 ■ *Land* refers to the surface of the earth and everything attached to it by nature.
- 3 ■ *Real estate* refers to the land and improvements.
- 4 ■ *Real property* includes all real estate plus the bundle of rights.
- 5 ■ Physical components of land are surface rights, subsurface rights, and air rights.
- 6 ■ Any tangible asset that is not real property is personal property (movable items or chattel).
- 7
- 8 ■ The four tests regarding fixtures are (1) intent of the parties, (2) relationship or
- 9 agreement of the parties, (3) method or degree of attachment, and (4) adapta-
- 10 tion of the item.
- 11 ■ The bundle of legal rights consists of the following: right of disposition, right of
- 12 enjoyment, right of exclusion, right of possession, and the right of control.
- 13 ■ A *freehold estate* is an ownership interest for an indefinite period. Fee simple is
- 14 the most comprehensive freehold estate, and it is inheritable. A life estate is also
- 15 a freehold estate, but it is measured by an individual's natural life span.
- 16 ■ A *leasehold estate*, or nonfreehold estate, is a tenant interest in real property mea-
- 17 sured in calendar time. The three types of leasehold estates are estate for years,
- 18 tenancy at will, and tenancy at sufferance.
- 19 ■ An *estate for years* is a tenancy with a specific starting and ending date.
- 20 ■ A *tenancy at will* is a lease agreement with a beginning date and details on when
- 21 rent will be due, i.e., week to week, month to month, or year to year, but no
- 22 fixed termination date.
- 23 ■ A *tenancy at sufferance* occurs when a tenant retains possession of the property
- 24 beyond the ending date of a legal tenancy without the consent of the landlord
- 25 (tenant holds over).

- 1 ■ Sole ownership and concurrent ownership are ways that people hold freehold  
2 estates. An estate in severalty is created when title to property is in one person's  
3 name (sole owner). Ownership by two or more persons at the same time is con-  
4 current ownership.
- 5 ■ The three types of concurrent ownership are (1) tenancy in common, (2) joint  
6 tenancy, and (3) tenancy by the entireties.
- 7 ■ Tenants in common have an undivided interest in the entire property. This  
8 interest can be left in a will or passed to heirs if there is no will.
- 9 ■ The four unities of a joint tenancy are (1) possession, (2) interest, (3) title, and  
10 (4) time. Joint tenancies are characterized by right of survivorship (when one  
11 co-owner dies, the deceased's share goes to the surviving co-owner).
- 12 ■ To create a tenancy by the entireties, the co-owners must be married to each  
13 other at the time they take title. The share of a deceased spouse automatically  
14 transfers to the surviving spouse by right of survivorship.
- 15 ■ The primary Florida residence of a homeowner qualifies for certain benefits and  
16 protections. These benefits include protection of the family, protection of the  
17 homestead, and a tax exemption from the assessed value.
- 18 ■ Purchasers of a unit in a cooperative buy shares of stock in a corporation. A pro-  
19 prietary lease entitles the purchaser to the right to occupy the unit.
- 20 ■ A *condominium* is real property consisting of condo units and common elements.  
21 A condominium is created by recording the declaration of condominium. The  
22 articles of incorporation create the corporate entity responsible for operating the  
23 condominium.
- 24 ■ Developers of more than 20 residential condo units must give purchasers a copy  
25 of the prospectus.
- 26 ■ There is a three-business-day cooling off period to cancel a condominium con-  
27 tract for sale from a property owner. There is a 15-calendar-day notice to cancel  
28 a condominium contract for sale from a developer.
- 29 ■ All listing agreements in connection with the resale of a time-share period must  
30 contain a disclosure stating that there are no guarantees regarding price or when  
31 the time-share unit may sell.

# UNIT 8 EXAM

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1. The MOST comprehensive interest in real property that an individual may possess is
  - a. an estate for years.
  - b. a life estate.
  - c. a remainder estate.
  - d. a fee simple estate.
2. Physical components of real property do NOT include
  - a. surface.
  - b. air space.
  - c. equitable rights.
  - d. subsurface.
3. Fixtures are items that
  - a. are fixed, or attached, to real property.
  - b. were once personal property but are now real property.
  - c. have been incorporated as a part of real property.
  - d. are all of these.
4. Which statement regarding cooperatives and condominiums is TRUE?
  - a. The purchaser of a cooperative unit owns in fee simple; the purchaser of a condominium signs a proprietary lease.
  - b. The buyer of a cooperative unit receives a deed, which includes the legal description of the cooperative and a fractional part of the common elements; the buyer of a condominium purchases shares of stock in the condominium corporation.
  - c. Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes; cooperative units are regulated by the Division of Real Estate.
  - d. Ad valorem taxes are assessed against each cooperative unit and each condominium unit.
5. The bundle of legal rights associated with real property does NOT include
  - a. control.
  - b. possession.
  - c. disposition.
  - d. utility.
6. A son gives his mother a conventional life estate for her lifetime. The deed states that upon her death, the property will transfer to her granddaughter. What type of estate does the granddaughter possess during the grandmother's lifetime?
  - a. Remainder estate
  - b. Life estate
  - c. Estate in reversion
  - d. Contingent estate
7. At the expiration of the lease period and before renegotiation of the lease, a tenant continued to occupy the apartment. The tenant's position is called
  - a. a tenancy at will.
  - b. a tenancy at sufferance.
  - c. a freehold estate.
  - d. an estate in reversion.
8. A family received a microwave as a housewarming gift. The microwave was installed above the range by screwing the unit to the kitchen cabinets and venting it through the attic. The microwave is considered
  - a. a fixture.
  - b. a trade fixture.
  - c. separate property.
  - d. personal property.
9. The homestead tax exemption is deducted from the
  - a. market value of a property.
  - b. assessed value of a property.
  - c. sale price of a property.
  - d. total cost, including all improvements.
10. A married couple own a homesteaded property with title in both names. They have one minor child and one adult son. One spouse dies. Which is MOST correct?
  - a. The surviving spouse owns a life estate in the home.
  - b. The property is split equally among the surviving spouse and the children.
  - c. The surviving spouse owns the entire home through right of survivorship.
  - d. The children own the home in fee simple.

11. The real estate protected by homestead rights is limited to
  - a. 640 acres outside a city or town and 1 acre in town.
  - b. 160 acres outside a city or town and 0.5 acres in town.
  - c. 40 acres outside a city or town and 0.5 acres in town.
  - d. 160 acres outside a city or town or 0.5 acres in town.
12. A constitutional homestead is owned by a man who is head of a family consisting of himself, his wife, and their three children. The man dies unexpectedly. After his death,
  - a. the widow owns the homestead in fee simple.
  - b. by operation of law, the widow owns a life estate in the homestead, and the children are vested remaindermen.
  - c. the homestead will be distributed according to Florida's probate law.
  - d. the homestead will descend to the man's heirs as specified in his will.
13. Which estate features right of survivorship?
  - a. Leasehold estate
  - b. Estate by the entirety
  - c. Tenancy at will
  - d. Tenancy in common
14. Chapter 475, F.S., defines real property as any interest or estate in
  - a. land, improvements, leaseholds, subleaseholds, mineral rights, cemetery lots, or any assignment thereof.
  - b. land, improvements, business enterprises and business opportunities, leaseholds, subleaseholds, mineral rights, mobile homes, or any assignment thereof.
  - c. land, business enterprises and business opportunities, leaseholds, subleaseholds, mineral rights, cemetery lots, mobile home lots, or any assignment thereof.
  - d. land, business enterprises and business opportunities, including any assignment, leasehold, subleasehold, or mineral rights.
15. In Florida, cooperatives and time-shares are regulated by the
  - a. Division of Real Estate.
  - b. Division of Florida Condominiums, Time-shares, and Mobile Homes.
  - c. Department of Housing and Urban Development.
  - d. Florida Real Estate Commission.
16. A condominium unit buyer has how long to cancel the purchase contract after signing an agreement with a developer?
  - a. 3 days
  - b. 10 days
  - c. 15 days
  - d. 20 days
17. Developers of condominium projects with more than 20 units must give buyers
  - a. a copy of the prospectus.
  - b. the names and business addresses of real estate sales associates assigned.
  - c. the names of all current unit owners.
  - d. the names of unit owners, unit numbers, and amounts due from unit owners delinquent in monthly assessment fees.
18. Which characteristic applies to condominium ownership?
  - a. The corporation holds title to land and improvements.
  - b. The purchaser receives shares of stock in the corporation.
  - c. A proprietary lease entitles the purchaser to occupy a unit.
  - d. The purchaser receives a deed to a particular unit.
19. All these apply to the constitutional homestead exemption EXCEPT
  - a. protection from forced sale for nonpayment of certain debts.
  - b. deduction of up to \$50,000 from the assessed value of the homesteaded property, if claimed.
  - c. claimants must hold title to the property and use the home as their principal residence.
  - d. it automatically creates a tenancy by the entirety if the person filing for homestead is married.
20. A woman paid cash for a 60-acre lemon grove in Citrus County. The estate is for an indefinite period of time. The woman does NOT own which type of estate in the property?
  - a. Fee simple estate
  - b. Freehold estate
  - c. Leasehold estate
  - d. Estate in severalty