

# AREA 1A:

## Property Ownership and Land Use Controls and Regulations

### Ownership of Real Property

#### Property – Bundle of Rights

Property is defined as an owner's rights and/or interests in something capable of being owned.

According to English Common Law, which is derived from court cases, the word *property* referred to an owner's rights and interests in the thing owned. The right to use, possess, enjoy, transfer, and dispose of a thing is called the *bundle of rights* a person has in a thing (real or personal).

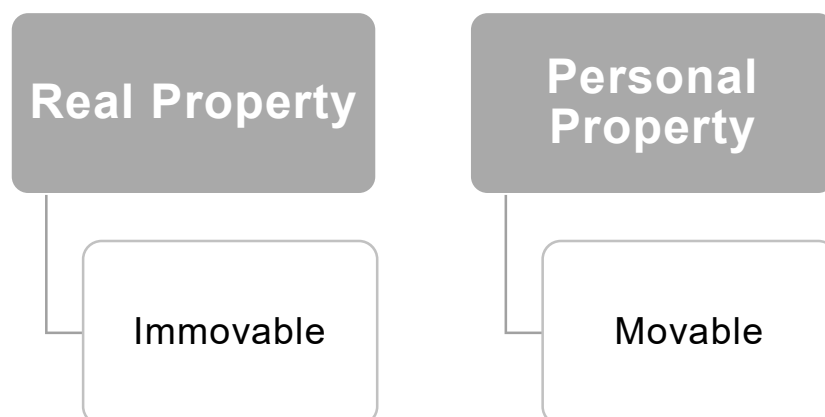
#### Types of Property

There are two types of property: Real Property and Personal Property.

#### Real Property Defined

Real property can be defined as **land, anything affixed to the land, and anything appurtenant to the land**.

Real property is usually defined as immovable and not a leasehold estate. A good example of real property is a bearing wall. Real property differs from personal property in that real property is any item that is immovable by law.



Ownership of real property is/is not legally and technically defined as rights and interests in the thing owned.

Legally and technically, property is defined as:

- (A) the rights or interests which a person has in the thing owned.
- (B) freehold estates.
- (C) only personal property.
- (D) things that buyers and sellers own.

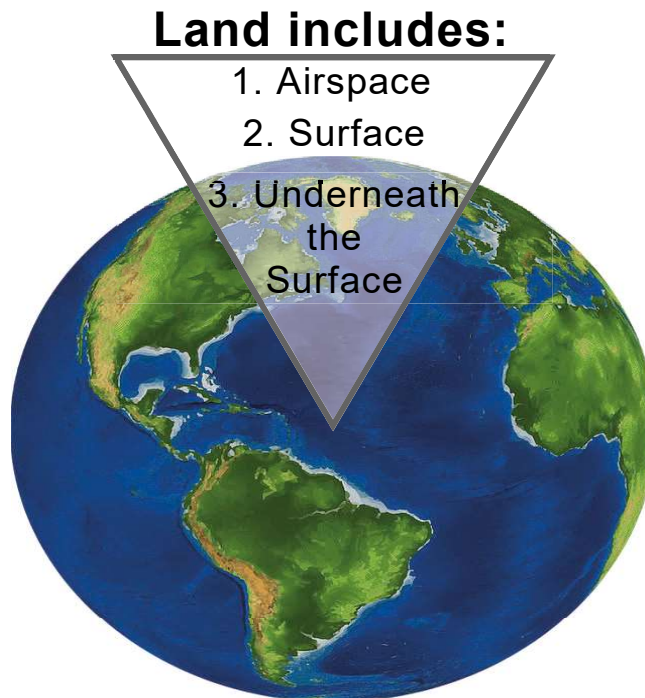
## I. Land

Land includes the soil, rocks, and other substances that compose the earth. It includes the space below the surface of the earth, all the way to the earth's center, as well as the airspace up to the heavens (at least as much as a property owner can *reasonably use*).

Courts have recognized a public right to use the airspace above real property as a highway if it does not unreasonably interfere with the landowner's enjoyment of the property.

The courts have recognized the fluid nature of subsurface gas and oil located under the earth's surface and a property owner has the right to drill vertically to capture these substances. However, an adjoining landowner does not have the right to drill slantwise to capture a neighbor's subsurface gas or oil.

Unmined minerals, soil, vegetation, and a stream are all considered real property.



## II. Anything Affixed to the Land

Anything affixed to the land is considered real property, which includes buildings, trees, and anything permanently affixed to the land. Real property does NOT usually move. Examples include houses and things permanently attached to a house, which may include built-in microwave ovens and built-in hot tubs. Because these items are **immovable**, they are considered real property. If a microwave oven is sitting on the top of a kitchen counter (instead of being built into the cabinets), it will probably be personal property because it is movable and mobile.

## Fixtures

Fixtures are personal property that is incorporated into the land and thus become real property. Kitchen cabinets are generally considered fixtures and are real property.

Tests for a fixture include **MARIA**:

- **Method of attachment.** This is the method by which property is incorporated into the land. The degree of permanence of the *annexation* is also important. If the fixture is attached by cement or concrete it is probably classified as a fixture, and therefore considered real property.
- **Adaptability or Annexation.** Personal property that is attached to the land and is being used as an ordinary use in connection with the land is good evidence of being a fixture. A house key is a good example.
- **Relationship.** The relationship between the person who placed the item (possible fixture) on the property and the person who disputes its classification is another important test in determining if it is a fixture. Examples may include buyer vs seller and landlord vs tenant relationships.
- **Intent.** Intent is the most important test for a fixture. An example is window coverings. What was the property owner's intent when he or she attached the item to the property?
- **Agreement.** Items that are considered fixtures (and therefore real property) should be clearly stated in the agreement. Common agreements may include real estate listing contracts and real estate purchase contracts.

TIME, COST, and SIZE are NOT tests for a fixture.

When cabinets are permanently attached to a home, the cabinets become real property because they are \_\_\_\_\_ and become a fixture.

The following is real property:

- (A) a harvested crop of wheat
- (B) a bearing wall in a single-family dwelling
- (C) a built-in refrigerator in a mobile home which is not attached to a foundation
- (D) a trade fixture attached in such a way that can be removed without damage

## Emblements

Emblements include *planted trees, vegetation, and trees in nature*.

Planted Trees



Vegetation



Trees in Nature



When emblements are **severed, sold, or mortgaged**, they become personal property.

## Property Ownership and Land Use Controls and Regulations

Which of the following would normally be considered real property?

- (A) trade fixtures
- (B) chattel reals
- (C) vegetation
- (D) deeds of trust

What is real property?

- (A) soil, harvested crops, and vegetation
- (B) subterranean water, mineral rights, and encumbrances
- (C) soil, vegetation, and a stream
- (D) soil, lumber, and vegetation

Real property includes:

- (A) chattel mortgages
- (B) trust deeds
- (C) vegetation
- (D) furniture

Able owned a farm where he was growing corn. Before he harvested the corn, he sold the property to Baker. He intended to harvest the corn after the sale, however, he did not state this intention in the purchase agreement. Therefore, the corn would/would not transfer to Baker as real property.

A growing corn crop is considered real property because it is attached to the land. However, once it is severed (harvested) it becomes personal property. Therefore, the unharvested corn crop is REAL PROPERTY unless specified in the purchase contract. If the seller of the real property would like to harvest the corn crop after the sale, and does not state this intention in the contract, the corn crop will transfer with the property and is now owned by the buyer.

If, however, the entire unharvested corn crop is sold while it is still growing on the corn stalks, the actual corn (while still attached to the corn stalks) is considered personal property. However, the corn stalks that are attached to the ground through a root system will continue to be considered real property and are called emblements.

An unpicked fruit crop is/is not considered real property.

An unpicked fruit crop that has been sold is considered personal property.  
An unpicked fruit crop that has NOT been sold, nor mentioned in the exam question, is considered real property because it is attached to the corn stalk that is attached through a root system to the land.

### III. Anything Appurtenant to the Land / Incidental to the Land

An *appurtenance* is anything that is used with the land for its benefit. Hence the name, “runs with the land.” Examples of appurtenances include easements, water company stock, CC&R’s, minerals, and right-of-ways.

An appurtenance runs with the land and is considered real property.

- \_\_\_\_\_ An **easement** is the right to use someone else’s land. For example, an easement over “B’s land benefits A. The easement is appurtenant to A’s parcel and must stay with that parcel. If owner Smith owns Parcel A and decides to sell it, the easement across Parcel B (which is in the deed) must STAY with Parcel A. Smith cannot take the easement with him when he leaves the property. Any future owners of Parcel A will enjoy the rights to drive across Parcel B.
  
- \_\_\_\_\_ A **mutual water company** is a corporation or nonprofit organization owned by the stockholders who acquire water for their own use. The major benefits are reduced costs and a steady supply of water to the stockholders in the mutual water company. Each stockholder’s ownership in the mutual water company is appurtenant to the land (runs with the land) and is considered real property. If a stockholder does not pay for water usage for a property within the mutual water company, the mutual water company may place a lien against the person’s property for the amount of water usage due. No cash dividends are given to the mutual water company stockholder; however, credits are given if there is a water surplus. If operating revenues are not covered, then a special assessment may be levied to make up the loss. Mutual water companies are commonly used to procure water for agricultural and domestic use.

Stock in a mutual water company:

- (A) must be held as tenants in common
- (B) must be mentioned in the deed in order to transfer it to the buyer
- (C) is appurtenant to the land and thus automatically transfers to the buyer
- (D) requires a separate written agreement in order to convey it to the buyer

## Property Ownership and Land Use Controls and Regulations

Which of the following is considered real property?

- (A) rights of a mutual water company/stock in a mutual water company
- (B) unpicked fruit crop
- (C) unmined minerals
- (D) All of the above

- Covenants, Conditions, and Restrictions (CC&Rs) are written restrictions for a parcel of real property. CC&R's are explained in detail later, however, they usually run with the land and are thus appurtenant to the land and automatically transfer to the new owner.

## Personal Property

The principle difference between real property and personal property is **mobility**. If it moves, it is probably personal property. If it is immovable, it is most likely real property.

Chattel Real = Personal Property.

## Bill of Sale

The ownership of personal property is transferred by using a \_\_\_\_\_.

The ownership of personal property is transferred by using a:

- (A) grant deed.
- (B) financing statement.
- (C) trust deed.
- (D) bill of sale

## Loans Secured by Personal Property

The instrument used to secure a loan on personal property is called a \_\_\_\_\_.

Regarding a mortgage on personal property, what can one do with it?

- (A) alienate.
- (B) hypothecate.
- (C) assess.
- (D) all of the above

Alienate = sell/convey.

Hypothecate = place as collateral for a loan.

Assess = tax.

Under the Uniform Commercial Code, the document used to mortgage personal property is:

- (A) trust deed.
- (B) bill of sale.
- (C) grant deed.
- (D) security agreement.

## Personal Property Interest

Which of the following would be considered a personal property interest?

- (A) stock in a mutual water company
- (B) mineral rights
- (C) leasehold
- (D) trees planted in nature

## Mobile Homes

A person licensed as a real estate agent may sell a mobile home that has been registered with the Department of Housing and Community Development.

What kind of mobile home can a salesperson/broker sell?

- (A) Certified mobile home
- (B) Registered mobile home
- (C) Licensed mobile home
- (D) All of the above

In order to sell a mobile home, an agent:

- (A) must have a mobile home dealer's license
- (B) must have a real estate license
- (C) Both A and B are correct
- (D) Neither A nor B are correct

Persons who hold a mobile home dealer's license can sell new or used mobile homes. Persons with a real estate broker's license can only sell mobile homes that are registered with the California Department of Housing and Community Development.

An agent or licensee is able to sell which of the following?

- (A) any new mobile home
- (B) any unregistered mobile home
- (C) any new mobile home greater than 32 feet
- (D) any new mobile home sold with a deed

A real estate broker can sell a new mobile home that is sold with a deed. The reason is because the mobile home is being sold with a parcel of real property which is indicated by the existence of a deed transferring title to real property.

## Property Ownership and Land Use Controls and Regulations

A real estate agent handles the sale of a personal property mobile home. The licensee must notify the local Department of Housing and Community Development in writing of the transfer within:

- (A) 5 business days
- (B) 10 calendar days
- (C) 15 business days
- (D) 30 calendar days

## Trade Fixtures

When a business tenant solidly attaches personal property (such as shelves and counters) to a business location, these items are called *trade fixtures* and are considered *personal property*. Even though trade fixtures are attached to the space, they are considered personal property because the business tenant can remove and take them when the space is vacated in the future. This mobility feature is why trade fixtures are considered personal property.

A \_\_\_\_\_ transfers trade fixtures because they are personal property.

## Business Opportunities

A business opportunity is personal property and defined as the sale or lease of a business, the sale of a business and its goodwill, and the lease of a business and its goodwill.

A fictitious business name or DBA (“Doing Business As”), corporation, etc. is permissible. However, a deed to a fictitious person is void. This is because a fictitious person is someone who does not exist. Do not confuse fictitious NAME with fictitious PERSON.

If a real estate brokerage obtains a fictitious business name, it must/must not file the name with the county recorder in the county where the property is located, publish the fictitious business name in a newspaper of general circulation, and obtain approval of the name by the Real Estate Commissioner and issue a new real estate license in the new fictitious business name.

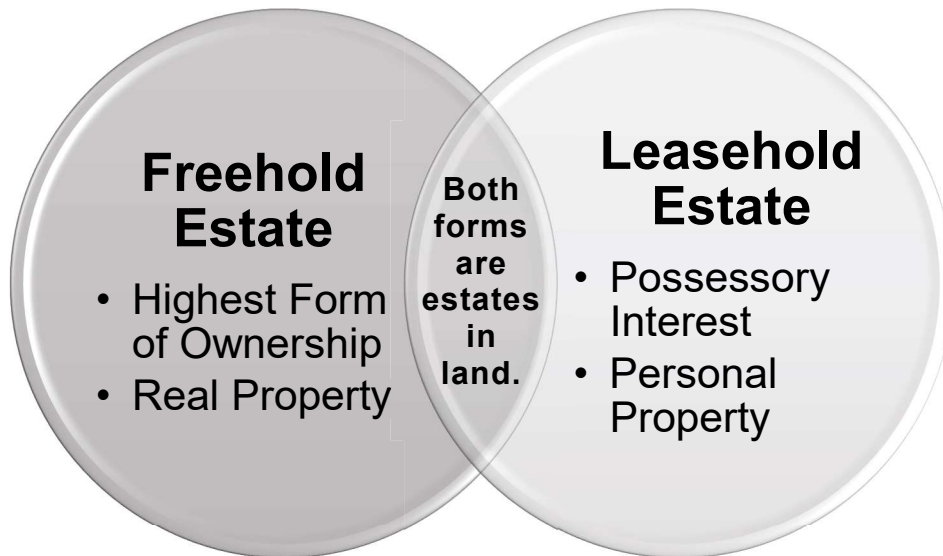
## Business Opportunity Conveyed

A business opportunity is conveyed by a bill of sale signed by the seller.



# ESTATES IN LAND

An estate is an ownership interest in land. There are two types of estates in land: Freehold and Less-than-Freehold (also called Leasehold).



## I. Freehold Estates

Freehold estates come from medieval England when there were kings who had absolute power. The king’s “noblemen” were given ownership of lands in return for loyalty and service to the king. These noblemen were the only true “free men.” Hence, their ownership was the highest form of ownership a person can have in land and thus came the name “Freehold” Estate. A freehold estate is the highest form of ownership in California.

With freehold ownership (fee simple) there are several rights that come into existence:

- **Of indefinite duration.** The ownership interest continues for an indefinite period of time. The period of ownership is not a set amount of time but continues indefinitely.
- **Estate of Inheritance (can be willed).** The ownership interest can be willed to the owners’ heirs and to their heirs, on down through the generations. The fee simple estate can be willed to heirs, or to any devisee (person who receives real property by will) the freehold owner would like to receive it.
- **Greatest interest a person can own in land.** There is no higher form of ownership a person can have in land.

There are two major types of freehold estates. The first type is called a \_\_\_\_\_ *estate* and the second type is called a \_\_\_\_\_ *estate*.

### A. Fee Simple Estate / Estates in Fee / Estates of Inheritance / Fee Estate

There are two types of estates in fee: Fee Simple Absolute and Fee Simple Defeasible or Qualified. Estate in Fee = Freehold.

Another name for a freehold estate is:

- (A) probate estate.
- (B) fee simple defeasible.
- (C) estate in fee.
- (D) estate in sufferance.

### **(1) Fee Simple Absolute**

A *Fee Simple Absolute* estate is the highest form of ownership recognized by law. The owner has the entire bundle of rights without any restrictions.

### **(2) Fee Simple Defeasible / Fee Simple Qualified / Condition Subsequent**

If a fee simple absolute owner disposes of a property (sale, will, or gift) and places a restriction on the use of the property, then the new owner has *Fee Simple Defeasible or Qualified* title to the property. For example, Great Aunt Alice owns a piece of real property which she holds as Fee Simple Absolute title. She has the entire bundle of rights at her disposal and can use, will, sell, or convey the property however she so desires. Her nephew William is aware of her activism in prohibiting the consumption of alcoholic beverages in all of society and is not surprised when she states in her will, "I leave the Alpine Restaurant to my nephew William; however, *if he ever sells alcoholic beverages* on the property he will forfeit the estate, and my Nephew Charles (or someone else Great Aunt Alice designates) will take over the fee simple defeasible title to the property.

The name Fee Simple Defeasible came about because the title to the property can be "defeated." Fee Simple Qualified can be used interchangeably with Fee Simple Defeasible.

Duke sold his property to Jane with the condition that Jane must never use it for any purpose other than as a private residence. However, after owning the property for several years, Jane decided to start a board and care facility for handicapped adults. What is the status of the estate?

- (A) It may revert to Duke because it is a fee simple defeasible estate
- (B) It may revert to Duke because it is a fee simple absolute estate
- (C) Duke has no claim because his condition is unlawful
- (D) Duke has no claim because the statute of limitations ran out on the condition

A buyer agrees not to sell alcoholic beverages on a property. This condition is included in the deed. The buyer has:

- (A) taken fee simple defeasible title to the property
- (B) taken fee simple absolute title to the property
- (C) taken a life estate in the property
- (D) none of the above

## **B. Life Estate**

A second type of freehold estate is called a Life Estate. This type of freehold estate allows a person to enjoy all the benefits of fee simple ownership, however, only for their life or the life another person.

A person may wonder why someone would give a person a life estate instead of fee simple title to the property. The answer is simple, the life tenant cannot will the property to his or her heirs. For example, Roger likes Pongo, but not Pongo's greedy relatives. This allows the deviser (a person who wills property), Roger, to take care of the life tenant, Pongo, who Roger likes, without allowing Pongo's relatives to obtain the property after Pongo's death. At the death of the life tenant, the property will revert back to the original property owner if the person is still alive (Estate in Reversion), or to a person he or she designates (Estate in Remainder). REMEMBER: LIFE ESTATE = FREEHOLD.

To devise real property is to leave it by will. A person who leaves real property by will is called the deviser. A person who receives real property by will (devised real property) is called the devisee. A holder of a life estate cannot devise (will) real property. The holder of a life estate can rent it, sell it, or encumber it, but cannot will it.

Able gives a life estate to Baker for his lifetime. When Baker dies:

- (A) the life estate will revert back to Able
- (B) his heirs will now own the property
- (C) his heirs will now own the property after probate
- (D) None of the above

John owns a life estate based upon his own life. He leases the property to a tenant on a five year lease. John, the life tenant, dies two years later. What happens to the lease?

- (A) The lease continues in effect for the full five years.
- (B) The lease is terminated.
- (C) The lease continues in effect, but the tenant must renegotiate the monthly rent with the holder of the estate in reversion.
- (D) The lease was always null and void, because a life tenant may not lease the life estate.

Which of the following is an example of a freehold estate?

- (A) The interest created by a trust deed
- (B) An estate at will
- (C) A life estate
- (D) A leasehold estate

## II. Less-than-Freehold Estates / Leasehold Estates

A *Less-than-Freehold Estate* (hereafter called a *Leasehold Estate*) is an estate that tenants (who rent real property) own. It is merely a possessory interest in real property.

The landlord usually owns the freehold estate, which includes the land and building and is considered real property. It can be willed to a person's heirs.

Conversely, each person who occupies an individual unit of the property and has **possession** of that unit owns a leasehold estate.

The owner of the fee simple (freehold) estate is called the **lessor** (also called the landlord). The owner of the leasehold estate is called the **lessee** (also called the tenant).

Lessor = Landlord. Lessee = Tenant.

A leasehold estate is a \_\_\_\_\_.

A leasehold estate in real property is/ is not classified as real property.

A person leased a property for his business activities. This person has what type of estate in land?

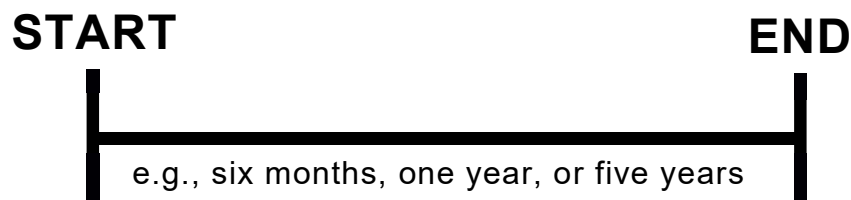
- (A) estate in remainder
- (B) less than freehold estate
- (C) freehold estate
- (D) none of the above

## Types of Leasehold Estates

There are four types of leasehold estates: *Estate for Years*, *Estate from Period-to-Period*, *Estate at Will*, and *Estate at Sufferance*.

### A. Estate for Years

An estate for years is an estate that continues for a definite and specified period of time – this could be two months, six months, one year, or five years. Do not become confused and think that an Estate for Years must be for a year or more as it can be any length, including days, weeks, or months. An estate for years can be six months in duration. An estate for years can be from July 1 through August 31 of the same year (two months). May 1st to July 1st is also considered an estate for years. For example, an office building is rented from October 1<sup>st</sup> to November 5<sup>th</sup> by an election committee, this is an *estate for years*. A chattel real, leasehold estate, and estate for years are all personal property.



If a landlord leases a property for exactly two months during the summer, this is called an:

- (A) estate for years
- (B) estate from period-to-period
- (C) estate at will
- (D) estate at sufferance

A seven year lease would be considered a(n):

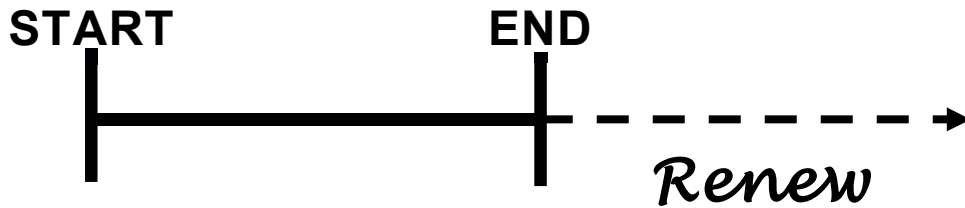
- (A) estate for years
- (B) personal property
- (C) chattel real
- (D) All of the above

A leasehold estate lasts for six months and was made in advance, what type of estate is it?

- (A) estate for years
- (B) estate from period-to-period
- (C) estate at will
- (D) estate at sufferance

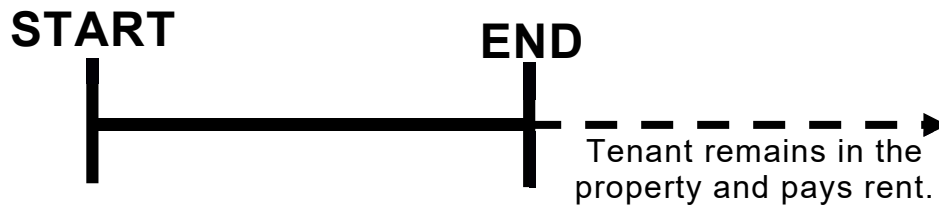
### B. Estate from Period-to-Period (Periodic Tenancy)

An estate from period-to-period continues from one period to another (usually month-to-month). Each month (or agreed upon period-of-time), the tenancy ends and is renewed with the coming of the next month (or agreed upon period-of-time).



### C. Estate at Will

When an estate for years expires and the tenant stays on and continues paying rent on a month-to-month basis, this is called an *estate at will*. An estate at will can be terminated by either the lessor or the lessee.

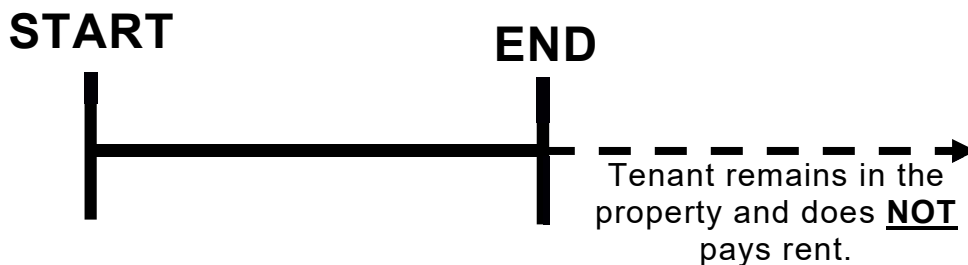


An estate at will can be ended by:

- (A) the buyer
- (B) the seller
- (C) the lessor or lessee
- (D) only the lessee

### D. Estate at Sufferance (Tenancy at Sufferance)

When a tenant stays in a property and does NOT continue to pay rent, this is called an *estate at sufferance*. Of course, the landlord is the one who is suffering when this occurs. A holdover tenant who stays in the property and does not pay rent is called a *tenancy at sufferance*.



A tenancy at sufferance would occur when:

- (A) a tenant remains in the property after the end of an estate for years and continues to pay rent.
- (B) a tenant remains in the property after expiration of a lease without the owner's consent.
- (C) a landlord who delivers a 30 day notice to vacate the premises cannot find the tenant.
- (D) a landlord cannot obtain a writ of execution from the courts.

A holdover tenant who stays and does not pay rent creates:

- (A) a tenancy at will.
- (B) a tenancy at sufferance.
- (C) a periodic tenancy.
- (D) an estate for years.

## Important Leasehold Estate Terms:

### Lease

A lease is an instrument that transfers possession of real property, but NOT title. The tenant has possession of the property and the landlord holds the legal title to the property.

It is NOT necessary for the lessee (tenant) to sign the rental agreement (lease), the act of moving into the property implies acceptance.

A valid lease must contain four items: the length or duration of the lease, the amount of rent, the names of the parties, and a description of the property. To remember, use the acronym LAND.

### Security Deposits

Security deposits for unfurnished residential units are limited to an amount that does not exceed two months rent. For furnished residential units, the security deposit cannot exceed three months rent. Landlords must return security deposits within 21 calendar days of the tenant vacating the property. Costs for damages and unpaid rent may be deducted from the security deposit.

### Covenant of Quiet Enjoyment

The tenant has a “covenant of quiet enjoyment” that most directly relates to possession of the property. This means that the landlord or his agents may not attempt to move a tenant from the premises without following the correct eviction procedures prescribed by law.

### Lessee Signs Rental Agreement

It is not necessary for the lessee (tenant) to sign the rental agreement. The signature of the lessor (landlord) is the only signature required on the lease agreement. The act of moving in by the lessee (tenant) is acceptance of the lease. For example, the lessor (landlord) signed a lease agreement that was for two years and the lessee (tenant) moved into the property without signing the lease. The lease is considered valid.

Moving in = Acceptance of terms by lessee/tenant.