

# Property

Quimbee Outlines

Outline



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## I. Introduction to Estates in Land

The term **estate**, as used in property law, refers to the type or extent of a person's interest in land. The various estates are roughly equivalent to the everyday concept of ownership, though with added legal dimensions. For example, the set of possible interests in a parcel of land can be divided among any number of people at a given time. In addition, legal arrangements can be made in the present to determine who will hold those interests in the future.

The legal system of estates is full of very old terms, which at first might seem confusing. It is helpful to remember, however, that these terms are simply different ways of describing who holds what interests now, and who might hold other interests in the future. Behind the seeming technicalities, there is an underlying order and logic to the system.

There are two major categories of estates: **present possessory estates** (or **present estates**, for short) and **future interests**. As the terms imply, present estates involve some current interest in land, while future interests are those that will arise, or might arise, in the future.

### A. A Note on the Examples

This outline includes numerous examples to illustrate the law. Many of these examples involve conveyances or other transactions initiated by a grantor; for example, "O conveys Blackacre to X for life, then to Y," or, "L leases Greenacre to T for a term of one year." Unless otherwise specified, you should assume that the grantor in every example owns the property in *fee simple absolute*, which is the most comprehensive form of ownership in the law.

## B. Present Possessory Estates

A **present possessory estate** gives the holder the present right to possess the property. A present estate is either a **freehold** estate or a **non-freehold** estate.

### 1. Freehold Estates

The **freehold estates** confer the present right of possession for an **indefinite** period of time. The three freehold estates are:

- 1) the **fee simple** estate,
- 2) the **life estate**, and
- 3) the **fee tail**.

The life estate ends with the life of the holder, but it is nonetheless a freehold estate, because it otherwise has no ending date.

### 2. Non-Freehold Estates

The **non-freehold estates** are various leasehold interests. These estates confer a right of possession for a **limited** period of time, or, in the case of a tenancy at sufferance, for as long as the owner allows. The four non-freehold estates are:

- 1) the **estate for years** (or the estate for a **fixed term**),
- 2) the **tenancy at will**,
- 3) the **periodic tenancy**, and
- 4) the **tenancy at sufferance**.

These estates will be addressed in detail under **Landlord and Tenant**, *infra*.

### 3. Rights Afforded by Present Possession

Present possession gives the possessor certain rights. These rights are limited only by (1) restrictions imposed by law, and (2) any encumbrances or other interests in the property held by others. The rights are:

- 1) the right to **use the property** as the holder sees fit;
- 2) the right to **transfer possession** to someone else; that is, to gift, sell, or otherwise **alienate** the property; and
- 3) the right to **exclude others** from entering or otherwise enjoying the property.

*Example:* X holds Greenacre in fee simple absolute, which is a present possessory estate. X therefore has the right to possess Greenacre for an indefinite time. X may (1) use Greenacre as X sees fit, (2) sell Greenacre to someone else, and (3) prevent anyone from entering Greenacre. These rights are limited only by applicable laws or other valid interests in the property. For instance, if the law prohibits nuisances, then X may not create a nuisance on Greenacre. Likewise, if Greenacre is subject to an easement, or right-of-way, in favor of Y, then X may not prevent Y from using the easement.

### C. Future Interests

A **future interest** is an estate that exists in the present, but only confers the right of possession at some time in the future. In other words, a future interest is a present **expectation** or **possibility** of future possession. A future interest will ripen into possession when some future event (1) terminates the prior estate **and** (2) changes the future interest into a **new** possessory estate.

Every future interest follows a **prior estate**, which is simply whatever estate someone holds before the future interest becomes possessory. The prior estate could be either a present possessory estate or some other future interest.

The main future interests are:

- 1) the **possibility of reverter**;
- 2) the **right of entry**, also called the **power of termination**;
- 3) the **reversion**;

4) the **remainder**; and

5) the **executory interest**.

The first three of these future interests are **retained** by grantors in favor of themselves when they transfer property to grantees. The last two are **created** by grantors in favor of grantees.

*Example:* O conveys Whiteacre “to Z for life, remainder to Y.” Z now holds a life estate in Whiteacre, which means that Z has the right to possess Whiteacre until Z dies. At the same time, Y holds a remainder, which is the future interest that usually follows a life estate. While Z is alive, Y’s remainder is a legally recognized interest in Whiteacre, but one that does not yet give Y a right of possession. The remainder does, however, give Y the right to possess Whiteacre upon Z’s death. Thus, when Z dies, Y will take possession of Whiteacre, and Y’s remainder will turn into a fee simple.

#### D. Analyzing Conveyances: An Exercise

Much of your study of property law will involve analyzing conveyances of land. Often, a conveyance will give rise to multiple estates in the same piece of property. Your task will be to explain these estates in terms of both present and future interests.

In these kinds of problems, it is crucial to analyze each interest created by the conveyance in **sequence** (which is usually left to right on the page), interpreting the interests in the context of one another, and **never in isolation**.

There are three essential steps in this process: (1) identify the sequence of interests, (2) understand how and when each interest might become possessory, and (3) name the present estates or future interests accordingly.

*Example:* O conveys Blackacre “to X for life, and then to Y, but if Y marries during X’s lifetime, to Z.” To determine the parties’ interests in Blackacre, we must analyze each interest in sequence, from left to right, interpreting each interest in light of the others.

This conveyance actually consists of three separate conveyances: (1) “to X for life,” (2) “and then to Y,” and (3) “but if Y marries during X’s lifetime, to Z.” From left to right, X is first, Y is second, and Z is third. That is the order in which we should assess the interests.

As explained below, the conveyance “to X for life” creates a *life estate* in favor of X. A life estate is a present estate, which gives X the exclusive right to possess Blackacre until X dies. Upon X’s death, the life estate will terminate.

The next conveyance in sequence, “and then to Y,” means that Y has a *remainder*, which is the future interest that normally follows a life estate. When X’s life estate terminates, then Y’s remainder will change into fee simple absolute ownership of Blackacre.

However, there is a catch, which is found in the third conveyance: “but if Y marries during X’s lifetime, to Z.” Y’s remainder depends on whether Y marries during X’s lifetime. If Y does marry, then Blackacre goes to Z instead. In terms that we will study below, Y’s remainder is therefore a *vested remainder subject to divestment*. This simply means that Y’s remainder could disappear if Y marries before X dies.

Notice that Y’s interest can only be fully understood in the context of X’s prior interest and Z’s later interest. This is a good example of why you must view each interest in the context of the others, and not in isolation.

The final conveyance is to Z: “but if Y marries during X’s lifetime, to Z.” This language means that Z *also* has a future interest, because Z might get Blackacre, if Y marries while X is alive. As we will learn, Z’s interest is an *executory interest*, which is a future interest that cuts off a prior estate. Here, if Y marries while X is alive, then Z’s executory interest cuts off, or displaces, Y’s remainder.

### E. Conveyances, Devisability, and Descendibility: “To X”

A conveyance “to X” generally means, “to X and anyone who might inherit the property from X by will or intestate succession.” In other words, most possessory estates and future interests are **devisable** (the holder can will them to someone else) and **descendible** (they can pass to the holder’s heirs by intestate succession). There is no need to spell out these possibilities in the conveyance. There are, however, exceptions. For example, a typical life estate is not devisable or descendible, because it terminates on the holder’s death. In addition, certain future interests were not devisable at common law, though they often are today. These exceptions will be addressed below as they arise.

### F. Owner Can Only Convey What She Has

Although it may seem obvious, it is important to remember that a grantor can **never** convey a greater estate than she actually holds. One simply cannot convey what one does not have. At times, your task will be to determine what the grantor has **actually** conveyed, as opposed to what the grantor has **attempted** to convey.

*Example:* O holds a life estate in Blackacre. O executes a deed purporting to convey Blackacre “to X in fee simple.” The fee simple is a greater estate than the life estate, because it can potentially last forever. However, O’s deed is ineffective to convey a fee simple, because O did not actually hold a fee simple at

the time of the conveyance. Accordingly, the deed conveys, at most, a life estate in Blackacre, measured by O's life.

## II. The Fee Simple: Absolute and Defeasible Estates

A **fee simple** is a type of present possessory estate. Anyone who holds a fee simple will have the exclusive right of possession for as long as the estate lasts. There are four kinds of fee simple estates:

- 1) the **fee simple absolute**, which has no corresponding future interest;
- 2) the **fee simple determinable**, and its corresponding future interest, the **possibility of reverter**;
- 3) the **fee simple subject to a condition subsequent**, and its corresponding future interest, the **right of entry** or **power of termination**; and
- 4) the **fee simple subject to an executory limitation**, and its corresponding future interest, the **executory interest**. [This last type will be discussed separately below. See [Executory Interests](#), *infra*.]

All of these except the fee simple absolute are classified as **defeasible estates**, because although they have no definite ending time, they can be terminated, or defeated, under certain conditions.

### A. Fee Simple Absolute

The **fee simple absolute** is the most comprehensive of all estates in land. It is the closest thing to absolute ownership that the law will recognize. A fee simple absolute (1) has **indefinite**, and potentially **infinite duration**, and (2) is **indefeasible** by any other estate.

#### 1. Duration: Potentially Infinite

A fee simple absolute has no specified end date; *i.e.*, it is potentially infinite. It can be passed from one holder to another forever.

#### 2. No Corresponding Future Interest

The fee simple absolute is **indefeasible**, which means that it is not subject to being cut off or taken away by some other estate. Accordingly, a fee simple absolute does not give rise to a corresponding future interest.

#### 3. How Created

To convey a fee simple absolute at common law, the conveying instrument had to use language of inheritance; for example, "O conveys Blackacre to X *and his heirs*." If the instrument omitted the words "and his heirs," it would have conveyed a mere life estate, instead.

This language of inheritance is no longer necessary. The law now presumes that any