

LEGAL CONSIDERATIONS IN APPRAISAL

(from: www.DonRDenton.com/appraisal/)

Chapter 1: PROPERTY AND LEGAL DESCRIPTIONS

The first thing an appraiser must determine is what property rights are being appraised.

At the beginning of any discussion about property, it is important to recognize the differences between real estate and real property. These concepts are normally thought to be different, even though the statutes in some states treat the two as synonymous.

A clear understanding of both concepts (real property and real estate) is important in the discipline of appraisal.

“Real estate is the physical land and appurtenances including structures affixed thereto...”

“Real property includes the interests, benefits, and rights inherent in the ownership of physical real estate.” Real property involves the bundle of rights, which is fundamental to the ownership of real estate.

Question: The terms real estate and real property:

- (a) Mean exactly the same thing in all cases
- (b) Are defined by the Appraisal Institute to refer to the physical land and the bundle of rights respectively
- (c) Are both important concepts in appraisal
- (d) Both (b) and (c) are correct

Answer: D

Real property is generally considered not movable and consists of land, fixture, and appurtenances.

Question: Which term is not like the others?

- (a) Chattels
- (b) Personalty
- (c) Realty
- (d) Movable property

Answer: C

In the valuation of a property for a lessor or lessee, the appraiser must determine the status of the fixtures where possible and account for them in the appraisal report.

Tests of a fixture: (MARIA) (least important to most important)

Method of attachment

Adaptability to the property

Relationship of the parties (landlord and tenant or buyer and seller)

Intention of party when item was affixed

Agreement between the parties (most important)

Question: An article, that was once personal property but that has been installed in or attached to land or a building so that such article is regarded in law as part of the real estate, is called a:

Answer: Fixture.

When crops are grown on leased land, they are known as Emblements.

Appurtenances are intangible property that run with the land such as easements and stock in a mutual water company.

Question: Special rules apply to ownership involving:

- (a) Water
- (b) Fixtures
- (c) Easements
- (d) All of the above

Answer: D

Riparian rights: A riparian owner owns the land bordering on a river or stream and, as a result, has riparian rights.

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Navigable waterway is one that flows year round.

If a property is contiguous to – touches or adjoins – a navigable river, the owner owns to the riverbank. The riverbed of a navigable waterway is owned by the state.

If a property adjoins a non-navigable waterway, the title extends to the middle of the waterway bed.

Littoral rights: In the case of ownership of property adjoining the ocean or tidal waters, the title extends to the high water mark. The beaches between the high tide line and the low tide line belong to the state.

Legally speaking, that which is not real property is personal property – also called personalty.

All personal property is movable.

Personal property that is not real property is sometimes referred to as chattels or choses.

Chattels real is a leasehold interest.

A legal description is even more important in an appraisal report because the appraiser must accurately identify all of the land that is included in the parcel.

There are 43,560 square feet in one acre

Baselines run east and west

Meridian lines run north and south

Townships run north and south

Ranges run east and west

Numbering of sections within a township begin in the north-east corner, run west to the limit, south one row, and east, etc. (following an S pattern).

All townships are not the same size due to the curvature of the earth

The lot, block, and tract description method is based on recorded maps.

Contiguous means touching.

Chapter 2: ESTATES

Question: Which estates and interest can be appraised?

Answer: Any estate that can be transferred from one person to another

A fee simple estate is the greatest interest that a person can have in property.

Fee simple interest is:

- (a) Freely transferable
- (b) Freely inheritable
- (c) Of indefinite duration

Freehold means, “I own it.”

When a person says, “I bought a house.” He usually means he acquired a: Fee simple estate

A life estate is also an estate of uncertain duration. It is measured by the life of the person holding the life estate or some other person.

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If a life estate holder can be sell, grant easements, and/or lease the life estate. In each case, the only rights conveyed are those of the life tenant and the sale, easement, or lease terminate automatically when the person on whose life the estate is dependent dies.

A lease of a life estate terminates automatically when the person on whose life the estate is dependent dies.

The owner of a life estate has no right to make any changes or alterations in the property that might result in waste or depreciation in its value.

Less than freehold estates are leases.

There are four types of less than freehold estates also known as leasehold estates or chattels real.

Estate for years is any lease having a fixed-term. It will have a definite starting date and a definite ending date. No notice is required when moving out.

An estate of periodic tenancy is a tenancy for successive periods of the same length until it is terminated by proper notice of either party.

An estate at will has no formal agreement. It can be terminated at will by either party.

An estate at sufferance is created when a tenant goes into possession lawfully but continues to occupy the premises afterward with no legal right to do so. A holdover tenant continues to possess the property without the consent of the landlord.

If the landlord accepts rent, an estate at sufferance is converted to a periodic tenancy.

Freehold estate: The title is held by the lessor (landlord), leased fee, with reversionary interest.

Less-than-freehold estate: Possession goes to the lessee (tenant), leasehold, present possessory interest

A lease is both a conveyance of an interest in real property (estate) and a contract.

Privity is a legal connection or relationship between two parties.

Privity of contract: Lease

Privity of estate: Possession

A lease must include: capacity of parties, consideration, mutual consent, and lawful object

The requirements for the content of a lease are similar to those for any conveyance of real property which include: parties are identified, description of the premises, intent, definite lease term specified, must be in writing (if term longer than one year), rental amount, time, and manner of payment must be specified, signature of lessor is required, signature of lessee is NOT required, and delivery of the lease and acceptance by the lessee must occur.

A common situation when a leasehold interest might need to be appraised is the sale of a business.

Straight lease: a flat, fixed sum is generally paid periodically.

Graduated lease: varying rental rates to be applied at a future date.

Percentage lease: the rent is a percentage of the tenant's gross receipts. A minimum amount is usually specified.

Net lease: the tenant pays some or all of the operating expenses such as taxes and insurance.

Ground lease: land is leased for a fixed period of time and the land reverts back to the lessor at the end of the period. Payment can be secured by improvements placed on the land by the user.

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Chapter 3: TITLE TO REAL PROPERTY

Sole ownership: One person holds the entire interest, either as a freehold or less than freehold estate. All claims are said to be severed from all others – thus, the term in severalty (owned all alone).

Joint tenancy: Two or more natural persons (human beings). A corporation can NOT be party to a joint tenancy. When one joint tenant dies, that person's interest passes automatically to the other joint tenant(s) who assume the remainder of the interest equally. All parties have equal right of possession just like in tenancy in common.

Four unities under common law: Time (all joint tenants must acquire their interests at the same time), Title (all must acquire from the same grantor), Interests must be equal, and joint tenants have equal right to possession.

Unless specified otherwise, co-ownership is presumed to be tenancy in common.

Tenancy in Common: One party can convey their fractional interest without severing the tenancy in common. Inheritable, each party has equal right of possession, all parties own undivided interests, interests need not be equal.

Community property is a form of ownership available only to husband and wife.

In a general partnership, creditors may look to any one or all of the partners for payment of the debts of the partnership and the partner's individual assets – above and beyond the partnership assets – can be called upon to satisfy the partnership's debts.

Any and all partners in a general partnership can be held personally liable for any or all debts of the partnership and this is referred to as joint and several liability.

Syndicates

Types of syndicates: Corporations, partnerships, and REITs.

Real Estate Investment Trusts

Constructive Trust: A remedy imposed by a court to redress a wrong or to prevent unjust enrichment.

Example: A real estate licensee purchases the house himself below the listing price and immediately resells it to a third party for a substantially higher price, thus obtaining a secret profit. The court will probably enforce a constructive trust in favor of the listing client for the amount of the secret profit.

Land Contract: The interests obtained by the vendor from a trust or land contract is equitable.

Condominium project: A real property estate consisting of: undivided interest in common areas with separate interest in the unit space which may be acquired and held as a fee simple, leasehold, or life estate.

Chapter 4: EASEMENTS

An easement is a nonpossessory interest in the land of another.

An easement can be separately transferred and its value can be measured objectively.

The parcel receiving the benefit of the easement is known as the dominant tenement. The parcel burdened by the easement is known as the servient tenement.

Easements in gross does not have a dominant tenement; instead the holder of an easement in gross is called the dominant tenant. The burdened property is still called the servient tenement.

Conservation easements: for the purpose of preservation of land in its natural, scenic, agricultural, historical, forested, or open space condition.

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Solar easements: receive sunlight across the real property of another to power a solar energy system.

The setback line is NOT a type of easement.

Transfer of dominant tenement is conveyed by deed or will. The benefit runs with the land. This is true even if the deed or will does not expressly mention the easement.

The most straightforward way of terminating an easement is by express written release by the easement holder when other property interests are being transferred. This is usually done by quitclaim.

A prescriptive easement is voided by law if it is not used for five years.

Chapter 5: LIMITATIONS ON REAL ESTATE OWNERSHIP

Limitations on real estate ownership and use of the property may be public or private and are often spelled out in the CC&Rs. They must be considered in the valuation.

Private limitations include CC&Rs which stands for Conditions, Covenants, and Restrictions.

A condition is stronger than a covenant.

Question: In California, a duly recorded deed restriction is valid even if it:

- (a) Requires an illegal action
- (b) Prohibits sale to particular ethnic groups
- (c) Makes the property unusable
- (d) None of the above

Answer: D

A racially restrictive covenant in a property's deed or CC&Rs would probably not affect value since it is void by law.

Property owners are held increasingly responsible to all classes of visitors, regardless of how or why they enter the property.

Public limitations

Air pollution from a particular factory would most likely be regulated as a public nuisance.

Zoning (a police power) primarily regulates how a property may be used. The zoning classification of a subject property is one of the basic concerns of an appraiser.

Special conditions and exceptions

Question: The appraisal of a property with a non-conforming use should take into account any limitation on:

- (a) How long the non-conforming use may continue
- (b) Whether the use may be resumed if the use is stopped
- (c) Whether the use may be expanded
- (d) All of the above

Answer: D

The following are all restrictions on ownership: Police power (zoning), taxation, and eminent domain

The California Constitution now limits basic tax rates to a maximum of 1% of assessed value, plus additional amounts to pay for voter-approved bonded indebtedness. A typical tax rate now is likely to be about 1.3%.

The realty transfer tax is an unreliable source of sales price information because it represents 55 cents per \$500 of equity transferred if a loan is assumed.

Subject to limitations, the documentary transfer tax can indicate the approximate sale price of a property.

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Escheat is the reversion of title to the state when a person dies in testate, leaving no will and no heirs to inherit. The state will hold the property for five years before it is allowed to perfect title, that is before the title becomes good, forever, against any other claimant.

Chapter 6: ACQUISITION AND TRANSFER OF REAL PROPERTY INTERESTS

A grant deed is the most commonly used in California. It is used in ordinary real property sale transactions.

A grant deed contains two warranties, or covenants, implied by law, and the grantee may sue for breach of either warranty. It warrants that: Grantor has not previously conveyed title to another and Title is free from encumbrances made by the grantor except those disclosed or visible.

A quitclaim deed is often used in California to clear any “clouds on title.”

An interspousal grant deed (a modified grant deed) transfers any after-acquired title, but is so worded that the transfer is excluded from reappraisal and reassessment under the California Constitutional provisions established by Proposition 13 in 1978.

A warranty deed contains express warranties or covenants of title. They are generally not used in California because of the widespread use of title insurance, which is much better protection for the grantee.

A tax or controller’s deed is a special deed used to convey title held by the state when property is sold by the state to pay delinquent taxes.

A Sheriff’s or Marshal’s deed is a special deed used to convey title pursuant to a judicially directed sale, such as judicial foreclosure or execution of judgment.

A Trustee’s deed conveys title following a non-judicial foreclosure (trustee’s) sale. It is issued to the highest bidder at a trustee’s auction.

Essentials

A deed is required by law to contain an adequate description.

Non-essentials

The following are NOT required for a deed to be valid: Consideration, date, and recording.

Requirements for conveying title or deed

A deed must be delivered to the grantee. Delivery may be Actual, Implied (sent by mail, with proof of mailing, but lost), or Constructive (to a third party).

An unrecorded deed is valid as between grantor and grantee and as against those with actual or constructive notice. An unrecorded deed is void as against bona fide purchaser of the same property for value without notice. An unrecorded deed is valid unless it is superceded.

C asks you to appraise Blackacre which she is considering buying from A. She wants to be sure A has not already sold the property. To protect herself, C should check whether: a deed to B has been recorded and whether B has taken possession of the property.