



# Real Estate Ownership in Oklahoma

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Titles to real estate identify the types of rights held by the owner. It is possible to subdivide full ownership of property into many different subgroupings based upon joint current ownership by two or more people or based upon division of present and future ownership. This OSU Facts will discuss some of the common forms of real estate ownership and the rights associated with those ownership forms.

## Real Estates Ownership

Ownership of land is sometimes classified as freehold or leasehold estates. Freehold estates are ownership interests that last forever or for an indefinite length of time. Leasehold estates last for a specified period of time. A leasehold estate gives the holder a right to use the property for the purpose and length of time stated in the lease agreement. This OSU Facts will deal primarily with freehold estates which are usually considered as ownership interests.

### Fee Simple Absolute (Full Ownership)

Full ownership of real estate is generally referred to as fee simple absolute ownership, or just fee simple. This type of ownership means the owner has all of the legal rights associated with ownership. The holder can use the property for any legal purpose, can sell it to someone else, can give it away or can leave it to his/her heirs.

A fee simple owner of property may also divide his ownership rights among several people. Ownership may be divided into present and future interests, including life estates with remainders or reversions, fee simple determinable interests with possibility of reverter or executory interests, and fee simple

on condition subsequent with a right of re-entry or power of termination.

### Life Estate

Full ownership may be subdivided so that one person is given a life estate. This entitles the life estate holder to use the land as if he owned it during the designated period of time. We call the person who holds a life estate a **life tenant**.

Generally, the lifetime used to measure the length of ownership is the life of the life tenant. However, this is not required and any person may be specified as the measuring life. If the length of the life estate is measured by the life of someone other than the life tenant, the life estate is sometimes called a life estate "**pur autre vie**" which means "for the life of another".

A life tenant may sell or mortgage his interest, or give it to someone else, but the transfer does not change the lifetime that is used to measure the time period. Unless the remainderman joins in the conveyance, the life tenant may only transfer what he owns, which is the right to possess the property and use it as his own during the specified lifetime. A life tenant cannot transfer total ownership of the property unless the owner of the remainder interest joins in the transfer.

Because of the uncertainty as to how long the life tenant may live, it is sometimes difficult to find someone willing to purchase a life estate or accept it as collateral. If a buyer is found, the price may be discounted to take account of the uncertainty. Annuity tables may be used to predict the probable length of the life estate.

The future interest that coexists with a life estate is called a **reversion** if held by the original owner or a **remainder** if given to someone else. At the end of the life estate, this future interest holder will be the fee simple owner of the entire estate.

Under English law, another type of estate called the **fee tail** estate was prevalent. It was similar to a series of life estates and allowed the individual who created the fee tail estate to control who would own the property for many future generations. Generally, but not always, the right of property ownership was held by the oldest son. In the United States, this form of ownership has been abolished in most states, including Oklahoma. Our legal system tends to discourage control of ownership from the grave for future generations and prefers to allow owners freedom and flexibility to sell or transfer their interests if they desire to do so.

## Fee Simple Determinable

If full ownership is subdivided so that one person has the right to current use and possession of the property for a specified purpose but will automatically lose all rights if the specified use is discontinued, we say that the person holds a **fee simple determinable** estate.

For example, land might be deeded to a railroad for so long as it is used for railroad purposes. If the land is no longer used as a railroad, the original owner or someone specified by the original owner might have a right to full ownership of the property. This allows the person who deeded the land to the railroad to control their use of the property and ensure that it continues to be used for the specified purpose.

Since owners of fee simple determinable estates own less than full ownership rights, the balance of the rights associated with full ownership must be held by someone else. This individual has the right to acquire full ownership of the property if the designated use ceases. We call this a future interest. Such rights might be held by the person who created the fee simple determinable estate or be given to someone else. If the original owner holds the rights, the ownership interest is called a **possibility of reverter**. If someone else holds the future interest, it is called an **executory interest**.

## Fee Simple on Condition Subsequent

This ownership interest is very similar to the fee simple determinable estate. It is generally created when land is deeded for a particular purpose. The difference between the two estates arises from the fact that ownership automatically transfers when the designated use ceases in a fee simple determinable estate.

In contrast, the owner of a fee simple on condition subsequent interest will not lose his ownership rights even though the condition is violated unless the future interest holder takes legal action to enforce his rights. The future interest in this case is called a **right of re-entry** if held by the grantor or a **power of termination** if it is given to someone else. The wording of the deed is sometimes critical in determining which type of estate is created. For this reason, it is important to consult an attorney to assist you in creating these types of estates.

## Fee Simple on Condition Precedent or Contingent Remainder

If the original owner of land continues to own it unless a particular condition occurs, we say the potential future owner has a fee simple interest on condition precedent or a contingent remainder interest. For example, Harry might reserve a life estate for himself and deed a remainder interest to Jason if Jason survives Harry with the provision that the property would go to Ruth if Jason did not outlive Harry. Without the contingency provision, the property would normally have gone to Jason's heirs if Jason held a remainder interest but did not outlive the life tenant.

## Co-Ownership

It is also possible for several owners to own present interests in a parcel of real estate. There are several forms

of co-ownership and each form has its own requirements and ownership rights.

## Tenancy in Common

The most common form of co-ownership is tenancy in common. This type of co-ownership is created when property is left jointly to several people in a will or may be created by deed. Tenancy in common is presumed in most states if property is transferred jointly to several people and no other form of co-ownership is designated.

Tenants in common own an undivided interest in the property respectively. They may own equal or unequal shares. For example, one owner may own a 1/3 interest and the other owner may own a 2/3 interest in the property. The owners have an equal right to possess the property but may not exclude the other co-owners. Rents are normally shared according to the ownership share.

The owners do not necessarily have to acquire their interests at the same time. For example, a mother may deed a 1/2 share to one son during her lifetime and leave a 1/2 share to another in her will. Any co-owner may sell, mortgage, give or otherwise transfer his ownership share to someone else. Such a transfer affects only his share and has no effect on the other co-owners except that they now have a new co-owner. When one of the co-owners dies, his share is transferred to the heirs designated in his will. If no will is left, the share will be transferred to the heirs at law under the laws of inheritance.

If tenants in common cannot agree about management of the property, any cotenant may ask a court to partition or divide the property. This is an absolute right even if the other tenants in common do not wish to have the property divided. If possible, the court will physically divide the property. However, in some cases, such as where the property is a house, it may not be practical to divide the property physically fairly. In such cases, the court will order the sale of the property and division of the proceeds.

## Joint Tenancy With Right of Survivorship

Another popular form of co-ownership is joint tenancy with right of survivorship. This form is common among spouses but may be held by any co-owners. The key feature of this form of ownership is the **right of survivorship**. The last co-owner to die will hold title to the property in fee simple absolute individual ownership regardless of what the deceased co-owner's will provides and regardless of whether the surviving joint tenant is related to the deceased cotenant. Because this right of survivorship is such a significant right, the courts require that the language of deeds creating joint tenancies be very specific and generally require that the right of survivorship be specifically mentioned in the deed.

Courts sometimes refer to the **four unities of time, title, interest, and possession** required for creation of a valid joint tenancy. These unities require that the joint tenants acquire their ownership rights in the same deed and at the same time, possess equal ownership shares, and have an equal right to possession of the property. If any of these requirements is not met, a valid joint tenancy will not be created. The result of such a failed attempt would probably be creation of a tenancy in common with no right of survivorship.

The requirement of equal ownership shares does not necessarily require that all joint tenants pay exactly the same portion of the purchase price. Any excess paid by one party is frequently presumed to be a gift to the other unless a contrary intent is shown. The key factor concerning equal ownership is whether the deed says they each own equal shares.

Under joint tenancy, each co-owner retains the right to sell, give away, or transfer his or her share, but the transfer of a share without transferring all of the shares destroys the joint tenancy concerning the share transferred. There would no longer be a right of survivorship between the transferred share and any shares not transferred. This is true, even if the share is transferred to one of the other joint tenants. Consequently, the transferred share will be inheritable by the heirs of the new owner. Joint tenancy also includes the right to ask a court to partition the property. This is the same right described in the tenancy in common section.

Although joint tenancy may be used by anyone, it is frequently used by married couples as a form of ownership. The advantage of this type of ownership is that transfer of the property at death of one of the co-owners is a fairly simple process. If a tract of land is owned by a married couple as joint tenants with right of survivorship, it is not necessary to go through the standard probate process to transfer title at death. All that is required to transfer ownership at death in Oklahoma is for the survivor to file with the county clerk a copy of the death certificate and an affidavit that the decedent is a joint tenant of property with the surviving owner as indicated in a specified deed and that the decedent was married to the surviving joint tenant.

If the decedent was not married to the surviving joint tenant, a court must make a determination of death and a tax clearance certificate must be filed to clear title to the property. This is still a much less complicated procedure than probate.

A major disadvantage of joint tenancy ownership is that once created, it is relatively inflexible. The automatic right of survivorship does not allow flexibility to change your mind about who should own the property at your death.

## Tenancy by the Entirety

Another form of co-ownership is tenancy by the entirety. This form of ownership is quite similar to joint tenancy but may only be used by married couples. If there are any co-owners other than a husband and his wife, tenancy by the entirety may not be used. This form of co-ownership also differs from joint tenancy in that there is no right of involuntary partition. Both husband and wife must consent to any transfer of the property. Upon divorce, tenancies by the entirety are generally converted to tenancies in common.

## Ownership by Corporations, Partnerships, and Joint Ventures

It is also possible for business entities, such as corporations, partnerships, and joint ventures to own real estate. The key issues in such cases involve who has the authority to transfer ownership of real estate owned by the business, and to what extent is real estate owned by the business rather than by individuals involved in the business.

In the case of corporations, constitutional provisions and statutes in Oklahoma and elsewhere restrict corporate owner-

ship of land, particularly ownership of agricultural land. Article 22, Sec. 2 of the Oklahoma Constitution provides that no corporation shall buy, acquire, trade or deal in real estate for any purpose, except real estate that is located in cities, towns and additions to such towns and cities and except such as is necessary and proper for carrying on the business purpose of the corporation. However, the Constitution does specifically permit corporations to hold title to real estate for a maximum of seven years when title is acquired through foreclosure of mortgages or in the process of collecting debts.

Title 18 O.S. Sec. 951-4 more specifically regulates corporate ownership of farmland. No foreign corporation may be formed or licensed in Oklahoma for the purpose of engaging in farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching. A foreign corporation is one organized or formed outside of Oklahoma. Domestic corporations may engage in such activities if:

- All shareholders are individuals, estates, certain trustees, or corporations owned solely by shareholders who meet these requirements;
- At least 65% of the corporation's annual gross receipts come from farming, ranching or allowing others to extract minerals from corporate lands;
- The corporation has no more than ten unrelated shareholders (Horse breeding corporations may have up to 25 shareholders).

Corporations organized for a purpose other than farming or ranching may not own, lease, or hold agricultural lands in excess of that amount reasonably necessary to carry out their business purposes. These prohibitions on corporate ownership do not apply to:

- Research and/or feeding of livestock and poultry;
- Raising livestock or poultry for sale or use as breeding stock, including directly related operations such as breeding and feeding livestock or poultry not selected or sold as breeding stock;
- Poultry or swine operations, including related operations such as hatcheries, breeding stock facilities, feed mills, and processing facilities;
- Forestry operations;
- Corporations created for a charitable purpose;
- Fluid milk processing and related dairy operations.

If these requirements are violated, fines and civil or criminal sanctions may be applied. Also, any resident of a county where land is held in violation of the statutes may file suit to force the corporation to divest itself of such land. If a corporation organized in Oklahoma persistently violates the statute, its corporate franchise will be removed. Additional specific requirements for transfers of ownership by partnerships and corporations are discussed in OSU Extension Fact Sheet AGEC-785.

## Trusts

Trusts may also hold title to real estate. There are two parties to a trust relationship. The **trustee** is responsible for managing the property for the benefit of the **beneficiary**. Normally, the trustee will sign the deed and other documents on behalf of the trust. Title to the trust property may be held in the name of the trust or in the name of the trustee. If title

to the trust is in the name of the trustee, the trustee is said to have **legal title** but the beneficiary has **equitable title**.

Trusts which are established by words are called **express trusts**. If they concern real estate ownership, they should be established in writing, be signed by the parties, and be acknowledged by a notary public and filed with the deed at the county courthouse. Trusts may be either **revocable** or **irrevocable**. A revocable trust may be revoked or cancelled by the person who created it at any time. Trusts may be established during the grantor's lifetime or in a will (**testamentary trusts**).

## Easements

It is also possible to create an interest in land which allows only a particular use of the property. In such cases, someone else will hold the right to use the land for all other nonconflicting legal purposes. Examples of easements include: easements to drive across someone's land, utility easements for powerlines or sewer or water lines, pipeline easements, highway rights of way and the right to flood or redirect water flow across other property.

Easements may be created by express grants or reservations in deeds. They may also arise by prescription where the use has been maintained openly without permission for 15 years. Public bodies, such as governmental units, may also use eminent domain proceedings to acquire easements. Easements may also be implied based on **absolute necessity** where landlocked land requires access across other property or **reasonable necessity** where access is difficult and there was a prior visible driveway existing at the time two parcels were divided.

## Surface vs. Mineral Rights

Ownership may also be divided vertically so that one person may own surface rights; another may own mineral rights; and a third person may own air rights above the land. Air rights are generally transferred as easements. Mineral rights may be transferred in a mineral deed or may be retained by the former owner when surface rights are transferred. In Oklahoma, mineral rights are **incorporeal interests**. They represent a right to try to capture the minerals although the minerals themselves are not owned until they are captured.

## Conclusions

This OSU Fact Sheet has discussed some of the different forms of real estate ownership available. The form of ownership will determine the rights of the owner(s).

Ownership of real estate may also include **fixtures** or personal property permanently attached to the land and **appurtenances** or rights associated with the land ownership. Rights to drive across adjoining property and easements to flood or redirect water flow across adjacent property are examples of easements appurtenant. Transfer of ownership of the benefitted property includes transfer of fixtures and easements appurtenant.

Ownership of land may also include rights to surface water, rights to groundwater, and rights to water from adjacent streams or rivers. Special permit systems have been developed in Oklahoma and many states to regulate water rights.

Additional information concerning real estate transactions may be found in the following OSU extension publication:

*Trusts, Uses and Considerations*, OSU Extension Fact Sheet AGE-771.

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