Chapter 2
Legal Foundations to Value

What Are Rights?
- Claims that the government is obligated to enforce
- Non-revocable
- Enduring

Rights in Our Society

Personal Rights vs. Property Rights
- Personal rights
  - Freedoms guaranteed by Constitution
  - Supreme Court interpretations of Constitution
- Property rights
  - Exclusive possession
  - Enjoyment of the use or benefit: Use, collect rents, harvest.
  - Freedom to dispose as one pleases (within the limits of safety): sell, convert, rebuild, etc.

Real vs. Personal Property
- Real property: Rights in land and its permanent structures
  - Surface of the earth and improvements
  - Air, up to reserved air space or tallest structure
  - Beneath the earth as far as technology allows: Minerals, oil and gas, water
- Personal property: All other property
  - Personal and household goods
  - Intellectual property
  - Music
Real Property: Rights in Three Dimensions

Fixtures
- Fixture: Real property that formerly was personal property
- Rules for determining when something becomes a fixture:
  - Attachment
  - Intention of the parties
  - Customization

Real Property Interests
- Interest: Any set of rights in real property
- Estate: A real property interest that includes the right of exclusive possession
- Nonpossessory interests:
  - Easements
  - Restrictive covenants
  - Liens

Estates

Modern Leasehold Interests
- Tenancy for years
- Periodic tenancy

Model Residential Landlord - Tenant Act
Establishes a more equitable relationship between landlords and tenants
**Limitations on Ownership**

- Complete Removal
- Restrictions On Use
- Division Of Use Or Possession
- Share In Value
- Eminent Domain
- Police Regulatory Power
- Taxation
- Liens
- Deed Restrictions
- Easements
- Leases

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**Easements**

- Easement: The right to use land for a specific and limited purpose

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**An Easement Appurtenant Involves a DominantParcel and a Servient Parcel**

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**How Many Easements in This Scene?**

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**Rights Included in Various Real Property Interests**

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**Restrictive Covenants (Deed Restrictions)**

- Covenants that impose restrictions on land use
- Created at conveyance of land to a new owner
- Examples:
Restrictive Covenants - continued

Two methods of creation:
- Restriction in a deed conveying a single parcel of land to a new owner
- Restrictions imposed on an entire subdivision at its creation
- Often a subdivision has CCR’s that go with it. (see website for example)

Restrictive Covenants: Enforcement

- Enforcement by court injunction
- Enforcement only by “parties at interest”
- Courts reluctant to enforce in case of:
  - Mandatory retirement in some states

Liens

- Lien: An interest in property as security for an obligation
  - Usually a debt
- General Liens: Arise from events unrelated to the property
- Specific liens: Arise from ownership and use of the property

Three Levels of Liens on a Personal Residence

1st
- Property Tax Lien and Assessment Liens
  (Always first priority)

2nd
- Mortgages and Mechanics’ Liens
  (Priority is by chronology)

3rd
- Judgment Liens
  (May be nullified by homestead, or by a tenant by the entirety. A suit is against only one spouse)

Forms of Co-Ownership

Indirect Co-ownership

- Entity holds title
- Ownership passes through the entity
- Undivided interest
Forms of Direct Co-ownership

- Example: A house with multiple owners
  - All share the right of exclusive possession
  - Cannot obstruct each other’s use
  - May hold different sizes of shares
  - Tenancy in common
  - Joint Tenancy
  - Tenancy by the entirety
  - Condominium

Tenancy in common:
- Joint tenancy
- Tenancy by the entirety
- Condominium

Direct Co-ownership

- Joint Tenancy (Survivorship)
- Tenancy by the Entireties
- Tenancy in Common

Direct Co-ownership: Condominiums

- Undivided Ownership of Common Elements Through Tenancy in Common
- Fee Simple

Automatic Ownership from Marriage: Modern Forms

- Community property
  - One-half interest in all property acquired “out of the fruits of the marriage”
  - Not property owned before the marriage
  - Not gifts or inheritances to one spouse

Exhibit 2-10 Two Main Forms of Marital Property Rights

<table>
<thead>
<tr>
<th>Elective Share</th>
<th>Community Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mainly used in:</td>
<td>English heritage states</td>
</tr>
<tr>
<td>Spousal share:</td>
<td>One-third</td>
</tr>
<tr>
<td>How triggered:</td>
<td>Explicit declaration</td>
</tr>
<tr>
<td>Wealth coverage</td>
<td>Varies up to all wealth</td>
</tr>
<tr>
<td>Number of States</td>
<td>About 25</td>
</tr>
</tbody>
</table>
Rights to Oil, Gas, and Minerals

- Rights carry implied easement for removal
- In some states, mineral rights imply ownership of the space minerals occupy
- Oil rights have two forms
  - Ownership states: Oil is simply another mineral
  - Law of capture states: Oil flows, and is not owned until removed.
- Traditional “rule of capture” (If you could remove it, it was yours) is being limited due to extensive secondary recovery methods.