



“To those who are engaged in commercial dealings, justice is indispensable for the conduct of business.”

– Cicero

Buying property is considered a vital part of living the “American Dream.” While most people buy property for personal enjoyment, some individuals make a business of buying, selling, leasing, or renting real property. So, whether someone is a homeowner, business owner, real estate magnate, or merely interested in purchasing land as an investment, it is important to understand the large and complex world of property law, and, in particular, real property law.

Kinds of Property

The word “property” has many meanings. In a strict legal sense, it signifies ownership. As a practical matter, it refers to objects that can be owned. The two main classifications of property are *real property* and *personal property*. Real property law deals with land, fixtures on land, and rights and other intangible interests relating to land that are capable of ownership. It may include land, a single-family house, a condominium, or a vacation home. Personal property is anything that is not related or attached to real estate; it may be tangible or intangible. Personal property might include cars, clothes, furniture, refrigerators, tools and cash as well as various rights or interests such as stocks or bonds.

(Different aspects of personal property law are dealt with in this section, Part VI, “Contracts,” and Part VII, “Business Transactions and Organizations.”)

Real Property

The terms *real property*, *real estate* and *realty* refer to land, buildings and other fixtures on land. They also refer to different kinds of interests in land and to various rights that go along with land or some interest in it.

The term *land* includes the actual surface area and everything under and above a parcel of ground. In the past, ownership of a parcel of land began at the center of the earth and extended through the boundaries of the parcel out into space. Today, the airspace above the parcel is not exclusive; it is considered to be part of the public domain and subject to rights of navigation, which means that members of the general public can travel through or use that airspace.

Generally, a *fixture* is something not naturally a part of the land, but affixed to the land in such a way that it cannot readily be removed without causing damage. Because buildings are usually affixed to land, they are thought of as real property. A furnace is personal property until it is installed, when it becomes a fixture. If something on the land is portable, such as a mobile home, it may or may not be considered part of the land, depending on how it is installed. For example, crops and trees are part of the land while growing, but become personal property when they are harvested. The same is true of minerals, which are part of the land in their natural state, but become personal property when mined, quarried, pumped, or otherwise removed. Fixtures such as crops and minerals are sometimes referred to as mixed property, because they have some characteristics of both real and personal property.

There are many degrees of land ownership, ranging from full ownership—that is, including all rights relating to it, such as the right to sell it or give it away—to rental (permission from the owner to use a portion of the land for specific purposes). (Of course, all interests in property are subject to the rights of the community. Thus, even the full owner of real estate must comply with zoning and building codes, for example.) Someone who has less than full ownership of land is said to have a *partial interest* in the land. Certain types of ownership carry particular rights, such as the right of a landowner to receive any rent the land might yield.

Personal Property

Personal property is anything that is not real estate or affixed to real estate. Personal property can be tangible or intangible.

Tangible personal property can be transported, seen and touched. Examples of tangible personal property include cars, clothes, furniture, refrigerators, tools and cash.

Intangible personal property includes various rights or interests that cannot be seen or touched. Examples include ownership of stocks and bonds, ownership of a debt and the right to bring a legal action. Stocks and bonds merely represent the value of the underlying interest; it is not the underlying interest. For example, a stock certificate represents an amount and kind of ownership interest in a particular corporation.

Personal property includes money in a bank account, interest in a joint bank account, or a payable-on-death account. A joint-and-survivorship bank account is an account in the names of two or more individuals who have an equal right to the assets in the account with ownership passing to the survivor(s) on the death of one of them. The *payable-on-death account* (POD) is an account owned by one person during his or her lifetime, which passes, on the owner's death, to one or more named persons.

Personal property is subject to a set of rules that is different from those governing real property. Because there is such a wide variation in types of personal property, a variety of rules govern its ownership and use.

Types of Real Property Ownership

When an individual is said to own real estate, it usually means that he or she is the full owner of a particular piece of property. Full ownership is only one of the ways to own real property. Or, someone with a lesser degree of ownership might have an interest in a property for a lifetime (*life estate*), or for a period of years, months or

even weeks. Ownership also may be shared in various ways.

Property may act as security for debt, and the *security interest* is a kind of ownership. An individual may own an interest in real property merely by having the owner's permission to use it in a certain way, such as where the owner of a large yard allows the neighborhood children to play ball there. Many different kinds of interests can be separated from the full ownership and can be owned or disposed of separately. For example, the mineral rights of a piece of property can be sold while the property owner continues to own the land and live on it.

Fee Simple

Full ownership of real property is called *fee simple ownership*, *fee simple title*, or, sometimes, *ownership in fee*. The distinguishing characteristic of a fee simple title from lesser grades of ownership is the right to pass full ownership to someone else, whether during the original owner's lifetime or upon his or her death.

Fee simple ownership

also gives the right to...

- use the real property as the owner sees fit;
- collect rents or profits the property yields;
- mortgage the property;
- limit the use of the property by other people;
- allow others to use the property; and
- sell, rent or lease the property.

Fee simple ownership of real property is sometimes described as *absolute ownership*. This description is misleading because there are substantial limits on how a fee simple owner may use the land (real property). For example, the fee

simple owner must pay taxes on the land, abide by zoning and other restrictions on the use of the land, and honor the rights of others who own an interest in the land (tenants, lessees, mortgagees, holders of easements, etc.). Further, the fee simple owner's use of the land must not interfere with the rights of other landowners or the public.

Life Estate and Remainder Interest

A fee simple property owner can grant ownership of the property to another person for the duration of the other person's life. This type of ownership is called a *life estate*. The person who holds the life estate is called a *life tenant*. (The term *tenant* may be confusing. In this context, *tenant* does not refer to a participant in a rental arrangement, but to a kind of ownership in real property.) With certain important exceptions, a life tenant can treat the property in much the same way that a fee simple owner can treat the property.

For example, a life tenant has access to the property and is entitled to use the property, to lease it, and to retain any rents or profits the property may yield. However, by definition, the life tenant's interest in the property ends at his or her death. The life tenant cannot sell a fee simple interest in the property. Further, the life tenant cannot destroy or waste the property because such action affects the rights of those who will own the property after the life tenant dies.

When a life estate is created, a *remainder interest* is also created. The person who holds the remainder interest (called the *remainderman*) automatically acquires the fee simple title to the property when the life tenant dies. The terms of the original grant determine whether the fee simple title stays with the remainderman. If no remainderman is named, fee simple ownership reverts to the original owner or to the owner's heirs upon the death of the life tenant.

Types of Joint or Common Ownership

In Ohio, there are two different forms of ownership of real property where two or more own the property: *tenancy in common* and *survivorship tenancy*.

In a tenancy in common, each owner has an undivided, fractional share of the property. Depending on how the tenancy in common is created and the transactions that subsequently take place, the shares may be equal or unequal. Regardless of the size of an individual's share, each tenant in common enjoys full ownership of his or her share, and can sell, mortgage, use, or dispose of it as a full owner. On his or her death, the tenancy passes to heirs or to those named in the tenant-in-common's will.

For example, if one tenant wishes to take a share in the sense of taking control of his or her rights in the property, or to obtain the monetary value for that part, the tenant may file a lawsuit to divide or partition the property. If partition is ordered, the property may be physically divided and a fee simple portion given to each tenant in common, or the property may be sold as a unit and the proceeds divided among the tenants in proportion to their respective shares.

In Ohio, a *survivorship tenancy* is a form of ownership created by statute. A survivorship tenancy is similar to tenancy in common, except that joint tenants have a right of survivorship. That is, when one joint tenant dies still owning his or her share, the share passes automatically to the surviving tenant(s). Thus, a survivorship tenancy cannot be transferred by will, as the nature of this form of ownership is that it automatically passes to the survivor(s).

The right of survivorship also may be ended where, for example, all joint tenants transfer or convey their interest.

In most states, the right of survivorship is automatically created when a joint tenancy is created. In Ohio, however, the right of survivorship must be specifically described in the document that creates it. The statute allowing joint tenancy with right of survivorship states that this

law should be liberally interpreted to comply with the intent of the owners. However, the legal document that creates the joint tenancy must use clear survivorship language. If the document does not have such a provision, the result will probably be tenancy in common.

It should be noted that joint and survivor ownership is commonly used for both personal property and real property—a bank account with more than one name on it, for example, normally is joint and survivor property, because the signature card that opens the account usually contains survivorship language.

Tenancy by the entirety is essentially a survivorship tenancy created by a husband and wife. Ohio allowed tenancy by the entirety by statute from 1972 to 1984. Under it, each spouse owned the entire property. As with joint tenancy, survivorship is a predominant feature of tenancy by the entirety. Tenancy by the entirety can no longer be created in Ohio, although those interests that were created while the statute was in effect are still valid.

Condominium ownership is a hybrid of individual and group ownership. An individual condominium owner normally owns a portion of the property (such as one apartment) outright, and a portion (the common areas) as a tenant in common. For example, each resident might be a fee simple owner of the apartment (unit) and be a tenant in common with other apartment owners as to halls, stairways, recreational facilities, walkways and other common areas, including the ground on which the building stands. Of course, because each owner has an interest in these common areas, he or she also must contribute toward their maintenance and repair.

Leasehold Estate

A property owner may give temporary possession and use of a particular property to another individual in return for the payment of rent or something else of value. If the owner does this by means of a written agreement called a *lease*, the party taking possession of the property acquires a *leasehold interest* or *leasehold estate*.

In such a case, the landowner is called the *lessor* or landlord and the person to whom the property is rented is called the *lessee* or tenant. The term of the lease may be weeks, months, or years. Many residential property leases are for one year, whereas business property leases are often for five, 10, or 20 years or longer. A lease may provide one or more renewal options. An example of a renewal option is a provision that states the tenant may extend the lease for another year at a rate that will be adjusted by a certain formula. This gives the tenant the security of knowing that the lessor will not lease the property to someone else at the end of the term without first giving the tenant the right to stay.

Commonly, leases state that a tenant or lessee cannot sell a leasehold interest (that is, sublet the property or assign the lease to someone else without the lessor's [owner's] permission).

If the lessor sells fee simple title to the property during the term of a lease, the new owner must honor the lease.

Sometimes a lease provides for automatic renewal; that is, if the lessee does not tell the owner he or she is going to leave the property at the end of the term, the lease is automatically renewed. Sometimes the lease will specify a tenant's *holdover* (failure to leave the property) is not an automatic renewal of the lease term, but converts the tenancy to one running from month-to-month, week-to-week, or at will.

Obviously, it is very important to read and fully understand the specific terms of a particular lease or rental agreement, as the terms can vary widely.

Tenancy from Month-to-Month, Week-to-Week, or at Will

Rental arrangements not bound by a lease may be either by the month or at the pleasure of the parties. (See "*Landlord and Tenant*" on page 104 for more information.) Usually, when residential property is rented without a lease, it is on a month-to-month basis. The tenant is entitled to possession for one month at a time, and if he or she stays on the premises for even one day into

the following month, occupancy is renewed for that entire month. One month's notice by either the landlord or tenant is necessary to terminate a month-to-month rental agreement, and one week's notice is necessary to terminate a week-to-week agreement.

Transient accommodations, such as furnished rooms, are often rented by the day, and rental arrangements of this sort can usually be terminated by either party without advance notice, that is, terminated *at will*.

Liens and Mortgages

A *lien* is a claim against property to secure the payment of a debt or the performance of some act. The most common form of lien is created when an individual mortgages his or her property to another person to ensure repayment of a loan.

That is really what a mortgage is about: a bank loans a large amount of money to a real estate buyer, but nobody is likely to loan a buyer \$100,000 without some protection. That protection is the signed mortgage that gives the bank a special kind of lien on the property. Because of the mortgage, the real estate owner cannot *convey* (sell) a fee-simple interest in the property to someone else without first paying off the bank loan. And if the real estate owner fails to pay this loan, the bank can foreclose its mortgage lien, sell the property, and pay off the loan from the proceeds of the sale.

There are many other types of liens:

- A *tax lien* attaches to property at the beginning of each tax year, even though the actual amount of the property taxes has not been determined and the taxes are not yet due. A tax lien is just like a mortgage lien, but it exists automatically, because all property owners have a duty to pay real estate taxes to the community. To ensure that those taxes are paid, the community automatically has the protection of this lien on the property. If taxes are not paid for a long enough period, the community—that is, county authorities—can have the property sold in order to pay off the tax debt.

- A *judgment lien* may be used when someone has won a money judgment in a lawsuit and wants to make sure to collect the money that is owed. Let us say Mr. Smith was awarded \$25,000 from a lawsuit against Mr. Jones over injuries sustained in a traffic accident. If the \$25,000 is not paid, Mr. Smith can file a judgment lien on Mr. Jones's property, and ultimately can ask the court to have Mr. Jones's property sold to generate cash to pay off the \$25,000 judgment.
- One way of making sure an arrested person will appear for a criminal trial is for the state to place a lien on the defendant's property by the terms of the *bail bond* he signs.
- A *mechanic's lien* protects those people who build or repair homes or other buildings. If the owner does not pay the bill within a certain period of time, the party supplying labor or materials can file documents to secure a lien against that property. Again, the property cannot be sold to a third person without paying the amount owed, and the lienholder (for example, the contractor) ultimately can ask the court to have the property sold and the proceeds of the sale applied to pay the outstanding bills.

Property is frequently subject to many liens. In such cases, it is desirable to avoid a series of foreclosures and forced sales. Accordingly, when one lienholder sues to foreclose, all lienholders are notified and their claims dealt within the same suit. This process is called *marshaling of liens*.

When there are many liens, the property may not be worth enough to cover all liens, so it is necessary to determine the priority of liens. The general rule is that the first lien in time is the *first lien in priority* ("first come, first served"). Thus, when the property is sold, the first lienholder will be paid. If enough money is left, the second lienholder will be paid, and so on in order of priority. The priority of some liens is outlined by statute. Thus, for example, tax liens almost always take priority over other kinds of liens.

Easements and Licenses

Sometimes a landowner will give someone permission to use part of his or her property for a specific purpose. Such permission may be either an *easement* or a *license*.

An *easement* is formal permission, granted in writing by deed or similar document, to use another's property. An easement runs with the land, meaning it remains valid even though the property involved is rented, mortgaged, sold, or transferred through a succession of owners. Normally, an easement is automatically canceled when it is no longer used for the specific purpose for which it was granted. Easements are commonly granted to utility companies to install and maintain water, sewer, gas, electric, and telephone and cable lines across private property. Sometimes an owner whose property has no entryway (*ingress*) or exit (*egress*) will acquire an access easement across adjoining property.

A *license* is informal permission to use another's property. It may be in writing, but is more often oral and may be implied from the conduct of the parties. Licenses do not run with the land, so that the holder of a license cannot sell or otherwise transfer it to someone else. Also, the property owner can terminate a license at any time. A typical example of a license would be oral permission to hunt on an individual's property.

Because an easement is a genuine interest in property while a license is not, a land dispute may arise about what kind of permission was given. If the court decides that an easement was granted, the permission is an enforceable property right, whereas if the court decides that only a license was granted, then no property right is involved.

Mineral Rights and Similar Interests

Rights to search for and develop minerals and harvest timber are among important real property interests that may be owned separately. Typically, these activities require a lot of money, so landowners often lease mineral or lumber rights to professionals. For example, a landowner might lease the mineral rights to his or her property to an oil-exploration company in return for a flat

payment when the lease is signed, plus a royalty of, say, one-eighth of the value of any oil or natural gas brought to the surface. Leases to mine coal, quarry stone, sand, or gravel usually involve fixed rent rather than royalties. Timber leases often are granted for a single, flat payment, but sometimes also include payment based on the amount of timber cut.

Sometimes, ownership of the property itself, and of the mineral rights, is transferred separately. Thus, there are many areas in Ohio, for example, where mineral rights were transferred more than 50 years ago; the land is now owned by grandchildren of the original landowner, and the original oil company long ago sold out to a major producer—but the land is still being farmed, and the wells are still producing oil.

How Real Property Ownership Is Transferred

Property is a commodity, or product, meaning it often changes hands from one individual to another. An individual can acquire an interest in real property through:

- a written document, such as a deed, lease, mortgage, or other conveyance;
- inheritance;
- the operation of law (such as a property transfer following abandonment by the owner or a transfer ordered by a court following a lawsuit); or
- adverse possession or prescription, that is, through “squatter’s rights.”

Deeds, Leases, Mortgages and other Conveyances

Fee-simple interest in land is generally granted through a deed. A leasehold estate is granted by means of a lease. A mortgage is an interest in land where the land is pledged to secure or guarantee payment; it is created by a document

called a *mortgage deed*, or, more simply, a mortgage. A *conveyance* is any transfer of an interest in real property, whether done by deed, lease, or mortgage. Deeds, leases and mortgages are not only conveyances (transfers) of real property interest, but they also may be contracts or contained in contracts, meaning that other rights and obligations may be spelled out, which must be honored by the parties.

The higher degrees of ownership in land are almost always granted by means of a deed or similar document that:

- names the person making the grant (the *grantor*) and the person to whom the grant is being made (the *grantee*);
- describes the property or interest being granted in formal, technical terms;
- is signed by the grantor; and
- is acknowledged by the grantor as his or her “free act and deed.”

In a *warranty deed*, the grantor guarantees that he or she has legal authority to transfer the property and will defend the title to the property against all claims of other people. If the grantee’s title is successfully challenged at a later date, the grantee has a claim against the grantor based on the grantor’s warranty. Warranty deeds are used to convey fee simple title. A *quitclaim deed* is similar to a warranty deed, except that it does not guarantee the grantor’s title to the property. The effect of a quitclaim deed is to convey the grantor’s interest in the property (if he or she has any), without guaranteeing that he or she has any interest to convey, or without guaranteeing that the property is free from liens or other claims. Quitclaim deeds are often used to adjust boundaries, correct errors in previous deeds and to obtain releases in land disputes.

A lease is used to bind a property rental agreement and is both a contract and a transfer of an interest in the property. A lease names the property owner (the landlord or lessor) and the renter (the tenant or lessee) and describes the premises involved. It states the period of the lease and the amount and method of payment of the

rent. The lessor usually promises to protect the lessee’s possession and “quiet enjoyment” of the property. The lessee promises to pay the rent as agreed, use the premises for proper purposes, protect the property from undue harm and return it in good condition when the lease expires. The terms of a lease frequently cover a variety of other matters, such as renewal, hold-over and assignment.

A mortgage is similar to a deed, except that the mortgage lender’s ownership of the property is conditional rather than absolute. A mortgage states the promissory note amount and terms for the repayment of the debt, as well as the language usually found in a deed. The borrower or mortgagor may have to take steps to protect the lender’s security, such as paying the taxes when due and keeping various insurance policies up to date.

Further, it states that if the borrower or mortgagor pays the debt in full as agreed, the mortgage will become null and void and the lien will be released; but if the debt is not paid according to the terms of the promissory note, the lender can ask a court to foreclose the mortgage and transfer full ownership of the property to the lender.

Transfer by Inheritance

When someone dies owning or holding some interest in real property, that individual’s interest must be transferred to another person or entity. That other individual may be a beneficiary named by the original owner’s will, or the person entitled by law to the property when there is no will. This other individual also may acquire the property of the deceased because he or she owns the remainder interest after a life estate, or because of a right of survivorship. Ohio also recognizes *transfer-on-death* (TOD) deeds. Such deeds transfer ownership to an individual named in the deed upon the death of the property owner. Transfer-on-death deeds differ from right of survivorship deeds in that survivorship property is owned jointly by the two people during the life of both of them, whereas ownership of TOD property goes to the

second individual in the deed only upon the death of the title owner.

A feature that distinguishes real property from personal property is that real property automatically belongs to the successor on the death of the lifetime owner. When an individual has a right of inheritance or survivorship in real property, that interest passes when the property owner dies. Title to personal property, on the other hand, is not automatically assigned to heirs. It should be noted that, although the title to real property passes immediately upon death, real property and interests in real property may have to go through an estate administration process to ensure that the deceased's debts and taxes are paid and that the transfer of title to the property is properly recorded in public records. (*See Part IX, "Probate Law," for a more complete discussion of inheritance and estates.*)

Transfer by Operation of Law

Ownership in real property may be transferred without a formal procedure. Such a transfer may occur as the result of a judgment in a lawsuit. For example, a divorce decree, or the court order in dissolution of marriage that approves a separation agreement, may award the family home to the wife (or husband), and the decree, or order, may have an effect similar to a deed. Another method for transferring ownership of land is *accretion*, where, for example, the natural flow of a stream erodes soil from one individual's land and deposits it on another's property. In this case, the amount of one owner's land is reduced, while the other's is increased.

Transfer By Adverse Possession or Prescription

Sometimes the title to real property or an interest in real property is transferred because the original owner neglects his or her rights. For example, an individual may acquire title to another person's real property by *adverse possession* (which, in lay terms, is something like "squatter's rights"). Adverse possession is simply

occupying property without permission continuously for 21 years, provided that the occupation is perfectly obvious and that the landowner does nothing significant to assert his or her rights as owner. Sometimes entire tracts of land are acquired by adverse possession, although the usual case involves a small portion of someone's property that an adjoining owner uses for 21 years. For example, one individual may build a fence three feet into his neighbor's side of the property line, without realizing it is the neighbor's property. If the neighbor fails to dispute the fence's location and this situation continues for 21 years, the individual who built the fence will acquire title to the property as his own by operation of this legal principle.

Similarly, rights to use real property, notably easements, may be acquired by *prescription*, or by actual use coupled with the landowner's failure to prevent the use. An example of a prescriptive right is a right-of-way acquired over another's property by using the property for driveway purposes for a substantial period of time without complaint by the owner; the non-owning person acquires an easement by prescription.

Encouraging Unrestricted Transfer

Feudal land laws in medieval times allowed the concentration and retention of land (and thus wealth and power) in the hands of a few families, thus stifling economic growth. In response, society developed a policy that land should be freely transferable. The law gradually developed legal rules implementing this policy. The proper development, use and transfer of land is essential to the health of our national economy.

Adverse possession is an outgrowth of this policy to encourage free transferability of land by allowing owners who neglect their property rights to lose them. The law generally does not permit grantors (those who transfer their property) to keep future owners from selling, leasing, mortgaging, or otherwise disposing of the property as the future owners see fit.

The *rule against perpetuities* is another rule that encourages free transfer of property by

limiting the period of time a property owner can delay a change of ownership. This rule states that any grant of interest in real property in the future must take effect, if at all, within the period of the life or lives of beneficiaries living at the time of the grant, plus 21 years. (*The rule against perpetuities is discussed in Part IX, "Probate Law," at "Limitations On Wills; Special Provisions."*)

Land Records

Ownership of real property is recorded in a government office for the owner's protection. Under the law, if an individual's ownership interest is not made a matter of public record, he or she may not be able to assert title—especially against those who innocently purchased the property from a former owner. Every state maintains public records of land and transactions and events affecting land ownership. In Ohio, the county recorder of each of the state's 88 counties maintains ownership records for the land within its geographical borders. A careful search of these records will reveal the status of the record title or ownership of any given parcel of land.

Necessity for Land Records

Just because someone lives in a house on a certain property does not mean that person is the property owner. The actual owner may or may not live on the land. Further, the actual owner of the land may be an international corporation with headquarters outside of the country. Consequently, some system of land records is necessary to keep track of land titles and interests. The primary value of land records is to give notice to anyone examining these records of the existence and nature of interests in, and claims on, real property.

An individual with an interest in real property is responsible for filing documents to prove he or she has a right to that property. Failure to file does not, in itself, destroy the individual's interest in the property, but it may prevent the individual

from taking action against anyone who might challenge that interest.

If a property seller should try to challenge the buyer's interest in the property, it would be difficult, since the seller cannot argue he or she did not know about the transaction. However, if the new holder of the interest has not recorded that fact, he or she may not be able to make a valid claim against a third person who acquired the property without knowing about the holder's claim. The reasoning behind this is clear. Since the holder's claim, while valid, was not recorded in public records, others who might have a potential interest in the property cannot be expected to know about the claim. In fact, a third person may acquire the real property innocently, relying on public records.

Or, let's suppose a landowner mortgages the property as security for a loan, but the lender neglects to file the mortgage deed in the county records. Later, the owner sells the property to a third person who does not know about the unrecorded mortgage. The mortgagee (lender) is now powerless to foreclose its mortgage on the real estate, because its claimed lien on the property was not made a matter of public record. The property that secured the mortgage has been transferred to a third party who had no knowledge of the mortgage. If the mortgage had been filed, it could have been foreclosed. The buyer legally would have been presumed to know about the existence of the mortgage, even if the buyer neglected to examine the public record.

Types of Land Records

In Ohio, the county recorder's office has records of mechanic's liens, property bonds posted for bail, deeds, mortgages and indexes for these records. The most numerous are the records of deeds and mortgages. Mortgages and deeds to be filed with the recorder's office are copied in detail and bound. This information is also maintained on computer databases. When a deed or mortgage is recorded and placed in its proper book, the volume and page where it appears is noted in a general index. The simplest form of

index is arranged alphabetically according to *grantors* (sellers), with a reverse index of *grantees* (buyers). In many counties, indexes and copies of records are in electronic files or on microfilm, and books are no longer used for new filings.

A land registry is another important set of land records kept in some counties, and is part of an entirely different and separate system of recording. Land registration requires a court proceeding (a *land registration suit*) to establish the status of the title. Once the status of the title is determined, a certificate of registration is filed and all mortgages, liens, subsequent transactions and other claims are noted on the certificate. The system is called the “Torrens” system, and registered land is often described as “Torrenized” land. Such certificates are used in only a few Ohio counties today. Although the original goal of land registration was to compile all records relating to a parcel on a single certificate, and thus to simplify record-keeping, in actual practice it has turned out to be more complex. Therefore, registration has become unpopular.

The county recorder’s office is the repository for plats and surveys. A *plat* is a map of subdivided land, showing the various lots, the portions of the land dedicated for roads or other public uses, and the easements for utilities and other features. *Surveys* are exact descriptions of land parcels using “compass calls” and precise measurements that come from actual observation and measurement by means of instruments such as a compass, transit, theodolite, or surveyor’s chain.

Other county officials also keep important land records. For example, the county auditor and county treasurer are responsible for keeping track of property taxes. (Taxes are mentioned here because they act as liens, or charges, on real property.) The auditor’s tax maps can be used to identify property and are often the starting point for a title search. Also, records kept by the clerk of common pleas courts must be searched because lawsuits and judgments can affect the title to property. Similarly, probate court records are extremely important in determining the status of property ownership. The county sheriff also keeps a record

of “foreign” judgments filed in the county (a foreign judgment being one rendered in a court in another county). Thus, if a judgment is issued in a lawsuit in Montana against someone who owns property in Ohio, the foreign judgment can be recorded in Ohio and thereby becomes a lien on the Ohio property.

Descriptions of Property

The usefulness of a public land record often depends on its accuracy. There are several ways to describe a parcel of real property, but the most common method includes some sort of map reference to locate the parcel in the county, plus a series of bearings and distances called *metes and bounds*, describing the exact boundaries of the parcel. If property is subdivided and platted, a parcel can be accurately described by giving the subdivision name, lot number and location of the recorded plat.

Title Examination; Marketable Title

Searching land records and determining the status of land titles is a job for professionals because of the many different kinds of interests in real property, and the complexity of land records. Any person interested in finding the title to a particular piece of property should contact an attorney.

A typical title examination is a backward search of the records, beginning with the present owner and tracing back through each preceding owner. The object of this examination is to establish the *chain of title*. The present owner’s claim is good if his or her title proves to be part of an unbroken chain of ownership.

In a complete title examination, the chain of title is taken back to the original source, which, in Ohio, will vary depending on the location of the property. The original sources of Ohio property usually date back to land grants from Congress or from various state legislatures (especially those of Virginia and Connecticut, both of which granted land in the “Ohio Country” to Revolutionary

War veterans after the war as payment for their services).

A complete title examination is tedious and can be difficult or impossible to obtain. Many early records have been destroyed, since nearly every courthouse in Ohio has been damaged or destroyed by fire at least once. Further, older records are not reliable because the men who created them were mostly illiterate and used crude instruments. Harsh and hostile environmental conditions did not help matters. Old land descriptions can be irritatingly vague. They can read, for example:

“Beginning at a clump of black locust located at the northeast corner of the Peter Schweitzer farm, then northeasterly 250 rods, more or less, to a large flat rock on the southerly bank of Moccasin Creek.”

There are numerous potential difficulties with this description. For example, the surveyor’s compass was inaccurate; the locust trees died of natural causes or were cut for fence posts; the record of Peter Schweitzer’s farm was possibly destroyed in the courthouse fire of 1831; and the large flat rock could have been washed away in the 1913 flood when Moccasin Creek cut a new bed, etc.

In Ohio, complete title examinations are usually unnecessary. Statutory or written laws set the rules about what constitutes a *marketable title* (one that can be relied upon when buying and selling property). Standards for searching titles have been established by the courts, title insurance companies, lenders and the Ohio State Bar Association. Under Ohio law, if a title search shows that there is an unbroken chain of recorded title that goes back 40 years, it is considered proof of fee title. Further, it can be assumed that the current owner has *fee title*, that is, the right to pass title. This right to pass title is established by the first title recorded 40 years before the search, called the *root of title*.

It must be noted that a title search often must go beyond the root of title. For example, a 99-year

lease, or easement, which was effective in 1950 would be beyond 40 years of a search conducted in 2001, but still could affect the title to the property. In such a situation, fee title could be passed, but the title might be subject to the lease or easement made in 1950, which would not be found if the search were limited to 40 years. Many title examiners follow a 65-year standard.

Purchase and Sale of Real Estate

The most common real estate transaction is the purchase or sale of a home. This section outlines some of the matters to be considered in purchasing or selling a home, including a contract of sale, financing, title examination and closing.

Contract of Sale

Real estate brokers use one of several standard form contracts (developed by their legal departments) for the purchase and sale of residential property. The contract contains an offer by the prospective buyer, with a space for acceptance by the seller. Frequently, offers are limited in time; that is, the offer is automatically withdrawn if it is not accepted by a specified time.

As used in the chart on page 101, explaining what the offer does, *premises* means land plus any buildings upon the land. It can also mean a particular part of a building.

Both parties are bound by the contract when the seller accepts it. If the buyer defaults, the seller may hold the buyer liable for the difference between the contract price and the price at which the seller is eventually able to sell the property (assuming it is lower than the original contract price). If the seller defaults, the buyer may compel the seller to specifically perform the contract, or may sue for damages. In either case, liability can have serious consequences. A buyer should not sign an offer until he or she has read all of it and understands all of the terms. Similarly, a seller should not accept a contract (the offer to

purchase) until he or she has read all of it and understands all of the terms. If either party has any questions, an attorney should be consulted before any paperwork is signed.

What the offer does...

- identifies the premises, usually by street address;
- states the proposed terms of the purchase, such as amount of down payment, type of financing and maximum interest rate;
- specifies the type of evidence or proof of title (certificate of title, abstract of title, or title insurance) to be furnished by the seller;
- provides for payment of unpaid taxes and assessments (usually these will be pro-rated between buyer and seller, based on the amount of taxes accrued but not yet payable when the sale is completed);
- lists the various kinds of personal property to be included in the transaction, such as rugs, drapes, dishwasher and other items; and
- states other terms and conditions.

In Ohio, certain transferors of real estate, including home-sellers, must provide a disclosure form around the time the contract is signed. On this form, sellers must summarize what they know about any problems with the water supply, the sewage system, the walls and the foundation, the presence of hazardous substances, such as lead-based paint, asbestos, and radon gas and any other material defects. In certain situations, when undisclosed defects are discovered before the closing, the buyer may rescind the contract without any liability.

This law does not apply to a number of common transfers or sales. For example, it does not apply to sales of new homes that have never been inhabited, sales to persons who have already inhabited the property for one year or more, or in general, to transfers made as part of a court order. Federal law also requires sellers to advise buyers

if a home was built before 1978, and to allow the buyers to inspect the home for lead-based paints.

Finally, buyers should understand their relationship with a real estate agent, whether the agent is hired by the buyer or the seller. An agent may work for the seller, the buyer, and, in some cases, may represent both the buyer and seller. This representation of both the buyer and seller is referred to as *dual agency*. The agent must give the client(s) (the buyer or seller or both) a Consumer Guide to Agency Relationships, which explains the various relationships between brokers and their clients. The agent also must provide an Agency Disclosure Statement, which describes the particular relationship between the agent and the client(s).

Financing the Purchase

Most people borrow money to buy a house. The usual ways for financing are a conventional mortgage, an FHA or VA mortgage, a mortgage assumption, or a land contract.

All buyers should ask themselves, “Can I afford to buy this house?” No matter how carefully a family may budget its income and expenditures there are limits on how much housing debt a family can afford. Other expenses, such as food, medical and automobile insurance, etc., also must be paid. One rule of thumb (though not the only one) is to limit monthly housing expense to one week’s take-home pay. “Housing expense” includes the mortgage payments (principal and interest), plus fire or home-owner’s insurance premiums and property taxes and assessments.

For example, suppose the monthly payment on a proposed mortgage is \$600, the homeowner’s insurance costs are \$192 per year or \$16 per month, and the property taxes are \$720 per year or \$60 per month. Adding these costs together, the total monthly housing expense would be \$676 (\$600+\$16+\$60). To handle this expense comfortably, the buyer should earn at least \$676 per week.

Money may be borrowed from various types of financial institutions, including savings and loan companies, banks, mortgage bankers and mortgage brokers. Many of the larger insurance companies, which must keep their funds invested in a high percentage of first mortgages, have mortgage departments and many acquire their mortgages through mortgage bankers and brokers. The federal government insures some kinds of mortgages through agencies such as the Federal Housing Administration (FHA) or the Veterans Administration (VA).

Other mortgages are called *conventional mortgages*. Usually, a purchase on an FHA or VA mortgage will require a smaller down payment than purchase on a conventional mortgage, although the total purchase price in an FHA or VA transaction may be higher because of the increased risk involved in a *high-ratio loan* (a loan where the amount of the loan is high in relation to the value of the property).

Sometimes, when mortgage money is especially hard to find or interest rates are very high, a seller may sell a home on the condition that the buyer assumes and agrees to pay the seller's existing mortgage. This arrangement is called a *mortgage assumption*. The buyer who assumes a mortgage takes over the seller's mortgage and the interest rate of that mortgage. If the mortgage's interest rate is lower than the current market rate, it would be an advantage to the buyer, although the loan assumption may require a higher down payment than a conventional loan.

It is important to note that, for a mortgage assumption to be legal, the seller's mortgage must allow assumption. Many mortgages do not allow assumption. Also, the seller generally remains liable on an assumed mortgage, so the seller must choose a buyer who can and will keep the payments current. A seller also can accept a mortgage from the buyer. This means that the seller, rather than a bank or other financial institution, becomes the lender. This usually occurs only where the buyer cannot qualify for a loan from a bank or other commercial lender. However, it is more

common for a seller to sell the property on an installment land contract because, under this kind of a contract, the seller does not have to give the buyer title to the property until the full purchase price is paid.

Title Examination and Evidence of Title

If a home purchase is to be financed through a bank or other financial institution, the lender will require a title examination. If the lender does not require it, or if there is no institutional lender, the buyer should contact an attorney to have the title examined. The seller's promise to furnish a good title is not a guarantee that the seller actually can, or will, furnish such a title.

In some parts of the state, the buyer is responsible for protecting himself or herself by securing the title examination. In other areas of Ohio, purchase contracts require that evidence of title be furnished by the seller in one of three ways. One way is to have an attorney give a certificate stating the title is good. The certificate often may list a series of exceptions—issues or areas the lawyer has not researched or cannot research. Another way is to obtain an abstract of title, which is a chronological summary of all transactions concerning the property found in the public records.

The third and most common method is to purchase *title insurance*. Title insurance provides protection against claims arising from title problems that may not be uncovered by a title search. If the buyer only pays for a title insurance policy on the loan, then the title company would only pay the mortgagee (lender) if the title to the property is successfully challenged in court. By paying an additional premium, the buyer can get an owner's title insurance policy that will pay the buyer if there is a title defect that the title insurance company did not discover.

Environmental Concerns

Identifying certain potential environmental risks or concerns before purchasing property can

alleviate future stress and expense. Home-buyers may be concerned about lead-based paints, asbestos, radon gas and gases emanating from fuel storage tanks, or the home's water supply and septic system, for example. A property inspection can reveal environmental concerns. Some of these matters may be regulated by either the federal Environmental Protection Agency (EPA) or the Ohio Environmental Protection Agency (OEPA) or both.

The EPA is the federal agency charged with implementing the environmental laws passed by Congress. The OEPA was created in 1972 to implement Ohio laws and regulations regarding air and water quality standards; solid, hazardous and infectious waste disposal standards; water quality planning, supervision of sewage treatment and public drinking water supplies; and cleanup of unregulated hazardous waste sites.

Closing

A contract of sale is closed when:

- a title has been examined and all necessary documents are signed;
- closing costs and the purchase price are paid (either entirely by the buyer, or partially via the mortgage lender);
- the property is transferred to the buyer by the seller's delivery of the deed; and
- the seller's mortgage and any other liens are paid from the purchase price, to clear the buyer's title.

This process is called a *closing*. There are two kinds of closings: *round table* and *escrow*. A round table closing is an actual meeting where the buyer, seller, lender and their representatives meet, make payments and adjustments and actually sign and exchange the various documents. The deed is recorded shortly after a round table closing. An escrow closing is not an actual meeting. All the necessary documents, payments and adjustments are delivered to a neutral third party, and on the scheduled day, the escrow agent delivers the deed and money, with neither buyer nor seller present. The purpose of both types of closings is similar, although which one is used

depends on local custom and the needs of the individual transaction.

During a closing, the balance of the purchase price is paid and the deed signed and given to the buyer. Various deductions and adjustments are made in the amount paid to the seller. The buyer and seller each receive a closing statement, which is prepared before closing so that the transaction can be completed. The statement lists the purchase price of the property and all adjustments to that price.

The statement includes specific entries for the:

- buyer's down payment (or "earnest money" deposits);
- amount of cash, if any, that is to be paid to the seller;
- pay-off price of the seller's existing mortgage;
- transfer tax the seller is required to pay to the county;
- cost of the title examination and the cost of the title insurance policy;
- proration of real estate taxes between the buyer and seller;
- cost of document preparation and recording (the seller is usually required to pay for the release of the existing mortgage and for the preparation and recording of the documents necessary to cure defects in title);
- cost of the insurance and tax escrows that lender may require of the buyer; and
- real estate commission (the seller is usually responsible for the commission).

As stated above, the buyer also *executes* (signs) the promissory note and mortgage to the lender. The buyer should make certain that all of the contract's terms are completed before signing the mortgage. The contract of sale becomes merged in the deed when the deed is accepted and the parties may lose the right to enforce any unperformed contract obligations. Also, the buyer is theoretically entitled to possession of the property immediately upon closing, but it is not uncommon for the contract to provide for delayed possession (from one to five days after closing), which is usually one of the contract provisions.

Landlord and Tenant

The first time many people encounter aspects of real property law is when they rent their first apartment or house. Laws addressing real property transactions as well as certain aspects of the rights, obligations and remedies of landlords and tenants can be found in Chapter 5321 of the *Ohio Revised Code*.

What is a Rental Agreement?

A *rental agreement* or *lease* is a written or oral contract between a *lessee* (tenant) and *lessor* (landlord). A properly written agreement will eliminate most of the misunderstandings and problems that commonly arise between a landlord and a tenant.

A rental agreement benefits and protects both parties and is an efficient way of handling a business transaction. A written agreement may create a tenancy from week to week, month to month, or year to year. To protect the landlord and the tenant, it is wise to specify the exact manner in which the rental agreement may be terminated. If there is no written lease or rental agreement, the landlord or the tenant may end a week-to-week tenancy by giving the other party at least seven days notice prior to termination. Either party may end a month-to-month oral tenancy by giving the other party at least 30 days' notice before the end of the current monthly term.

A landlord may not use a contract clause to limit or escape certain types of responsibility that are mandated by law. If such a clause is included in a signed rental agreement, it cannot legally be used against the tenant.

Ordinarily, the landlord prepares a rental agreement. For this reason, any doubtful or ambiguous terms are decided against the landlord and in favor of the tenant, if a dispute arises and ends up in court.

Under Ohio law, both tenants and landlords may recover damages and reasonable attorneys' fees, in some situations, for certain unlawful acts of the other party.

Obligations of the Landlord

A landlord must keep the rented or leased property (premises) decently habitable and may not unreasonably interfere with the tenant's privacy.

The landlord must ensure that common areas (parking lots, stairs, halls, sidewalks, etc.) are clean and safe, and that the structure complies with building and housing codes. Specifically, electrical, plumbing, heating and ventilating equipment must be maintained. The landlord also must provide water and heat, unless these utilities are under the tenant's control. If the building contains four or more dwelling units, the landlord must provide trash containers and trash removal. The landlord cannot insist on having unreasonable access to the rental premises and must give reasonable advance notice of the intention to enter the tenant's suite, apartment or area. Finally, the landlord may not attempt to evict a tenant by changing the lock, terminating utility service or removing the tenant's belongings without a court order.

Obligations of the Tenant

Tenants have a variety of obligations beyond paying rent or lease payments on time. Specifically, a tenant must:

- keep the premises clean and safe;
- properly dispose of trash;
- keep plumbing fixtures as clean as their condition permits;
- properly use electrical and plumbing equipment;
- maintain appliances furnished as part of the lease;
- cause no disturbance and forbid family, friends and guests to disturb other tenants;
- see that controlled substances (such as certain drugs) are not illegally used on the property;
- comply with housing, health and safety codes; and
- allow the landlord reasonable access to the premises (upon 24 hours' notice) to inspect, make repairs, deliver large parcels, or show the property to prospective buyers or tenants.

The tenant cannot change any of these legal duties. However, the landlord may agree to assume responsibility for fulfilling any of these tenant duties.

Security Deposits

A landlord often will require a new tenant to post a *security deposit* (commonly equal to one month's rent). The purpose of the deposit is to cover any damage to the rental property caused by the tenant, and, in some instances, unpaid rent. If the deposit is more than \$50, or one month's rent (whichever is greater), and the tenant is in possession of the property for six months or more, the landlord must credit the deposit with five percent interest. Within 30 days after a tenancy ends, the landlord must itemize every deduction from the security deposit and give the tenant a copy. If the tenant has furnished the landlord with a forwarding address, the landlord must refund the deposit plus interest and minus any valid deductions. If the landlord fails to provide a refund and/or explanation of any deductions, it could cost the landlord double the amount due, plus reasonable attorney fees should the tenant pursue legal action.

Rent Withholding

A tenant living in a building with four or more dwelling units may place the rent in escrow, if the tenant reasonably believes the landlord has failed to live up to his or her obligations, or if the landlord is found to be in violation of any law or regulation affecting health or safety. However, if the tenant does not do this properly, the tenant may face eviction for non-payment. To withhold rent properly, the tenant must be current in rent payments and give the landlord 30 days' notice of the health or safety problem. The 30-day period gives the landlord an opportunity to remedy the problem. If the problem is not fixed, the tenant may deposit the rent payment by the due date with the clerk of the local municipal or county court instead of paying it to the landlord. At the direction of the court, the withheld rent may be applied to correct the problem, or the court may

order the monthly rent reduced until the problem is remedied.

Retaliatory Eviction

A landlord cannot raise the rent, withhold services, or attempt to evict a tenant when a tenant rightfully withholds rent. Acts of the landlord are not considered retaliatory if:

- the tenant created the problem that is the basis for withholding rent payments;
- the tenant owes back rent;
- the tenant has failed to leave at the end of the rental term;
- correction of the problem would require demolition or remodeling of such major proportions that the tenant would lose the use of the premises; or
- the rent increase is to cover improvements or increased costs.

If a landlord takes retaliatory action, the tenant can recover possession of the premises (if evicted), terminate the rental agreement, or use the retaliatory action as a legal defense when protesting an eviction. The tenant also may recover damages and reasonable attorney fees.

Eviction

The technical name for an eviction action in Ohio is *forcible entry and detainer*. Eviction actions allow landlords to recover rented or leased premises, provided their tenants' rights are not violated.

Before bringing an eviction action, the landlord must give the tenant at least three days' written notice to leave in a specified form. The notice must include a recommendation that the tenant seek legal advice.

After the eviction suit is filed, the summons issued by the court to the tenant must state that the tenant:

- cannot be evicted unless the tenant's right to possession has terminated (a tenant's right to remain on the premises is terminated when, for example, the term of the lease or agreement is over, or the tenant has breached the agreement);

- cannot be evicted in retaliation for an assertion of rights covered by the law;
- should continue depositing rent with the court if already doing so;
- has a right to jury trial in the eviction action; and
- has a right to legal assistance.

In an eviction case, the court determines who has the right to possession of the rented or leased property. It may also determine all rights and liabilities of the landlord and the tenant. For example, the court may order an appropriate governmental agency to inspect the property and report if any condition of the property violates the law. If such a condition exists and was caused or was allowed to occur by the tenant, the court may order the tenant to pay the landlord the reasonable cost of repairing the condition. Where the tenant did not cause such a condition and the court decides the tenant should have possession, the court may order the landlord to correct the condition. If the tenant did not cause such a condition and the court decides that the tenant should not have possession, the court may forbid the landlord from renting the property until the condition is corrected.

Other Real Property Issues

Zoning

Zoning is the process by which political subdivisions (cities, villages, townships and counties) regulate land use. These political subdivisions are further divided into districts or zones. Subdivision officials enact regulations to control the types of buildings and uses within each of these districts. The primary purpose for zoning is to facilitate planning and land development on a community-wide basis. Zoning legislation may regulate uses of land. It also may regulate such things as the size of lots and buildings; minimum front, back and side yard requirements; or the minimum number of parking spaces required for certain types of buildings, depending on the use.

Planning commissions, appointed by the local legislatures of political subdivisions, review land use within the community and propose a comprehensive *land use plan*. This plan serves as a guide for dividing the political subdivision into districts or zones. The most common types of districts are residential, commercial and industrial. These districts may be further divided. For example, a residential district may be restricted for only single-family homes, or an area may allow multi-family buildings.

A comprehensive plan may be adopted only if the proposed zoning regulations are reasonable. The local legislature, whether a city or village council, board of township trustees or board of county commissioners, is responsible for enacting the plan and the zoning regulations that define each zone. Because comprehensive plans and zoning regulations provide a blueprint for future growth and development, they should be periodically updated to reflect changes in the community.

Violation of a zoning regulation (for example, establishing a commercial business in an area zoned for residential use only) is a civil rather than a criminal matter. Zoning inspectors may issue orders to stop a violation. That might be followed by a court action resulting in a penalty, which might continue as long as the violation remains uncorrected.

Because properties have different sizes, shapes and topographies, applying a zoning regulation to a specific property may be unreasonable for either the property owner or the city or both. For example, a residential lot in the inner city might not be large enough, under current zoning regulations, for a house to be built. Such a problem may be resolved by the granting of a *variance*, or a “special case” change in zoning regulations. A board of zoning appeals, appointed by the legislative body, hears and acts upon requests for variances from the zoning regulations. If a board agrees that applying a zoning regulation to a specific property is unreasonable, it will grant a variance. Generally, a board of zoning

appeals will try to grant the minimum variance necessary to resolve the conflict.

The two types of variances are an *area variance* and a *use variance*. An area variance may permit a property owner to develop a property with narrower yard setbacks, smaller lot size, larger building size, or fewer parking spaces than those otherwise permitted in the zoning district where the property is located. A use variance may allow a property to be used in a way that is not permitted in a specific district (for example, a home-operated beauty parlor operating in a residential district). Use variances tend to be more difficult to obtain because they are often perceived as property re-zoning. In order to grant either type of variance, the board of zoning appeals must apply standards that are incorporated into the zoning regulations.

Planned Unit Development

A *planned unit development* (or PUD) is a technique to provide flexibility for new construction in a community. Instead of rigidly dividing land into exclusively residential, commercial and industrial zones, PUDs mix these and other uses. Planners generally agree that a mix of residential and commercial development along with public spaces such as parks can provide a very appealing environment.

Planned unit developments are often part of a zoning code. If they are not, many communities allow them by variance or with a conditional use permit. However, courts can view PUDs as re-zonings, so local government officials must be careful about using the variance or conditional use procedure to allow PUDs to be implemented. It is better for local governments to enact zoning provisions if they want to allow for PUDs, so that standards are uniform throughout the community.

Some common characteristics of a PUD include:

- a large plot of land that is developed under unified control and planned and developed as a whole;
- a mix of compatible uses such as commercial, residential, governmental (e.g., schools) and public spaces, or mixed single-family and multiple-family units;
- comprehensive plans for developing the particular piece of land from the utilities to the aesthetics and relationship of the buildings to one another (can be as detailed as predetermined site plans, floor plans and building elevations);
- a program for the occupants of the district to maintain the common areas and facilities; and
- restrictive agreements to prevent incompatible changes to the structures and appearance of the development.

The PUD's mixed uses can provide for a more dynamic, vibrant community as well as more green space and public areas. Green space is often gained by clustering residential areas to achieve open space and preserve natural features of the land. Most PUDs require a unified exterior appearance—such as the same color scheme and roofs on all units.

The process for getting a PUD approved is usually very complicated and extensive. The approval process is likely to include a detailed review of the site plan by a local government's planning staff, planning commission, zoning board and often the local legislative body as well as input from the public. In some communities, public input may include a ballot vote to approve or disapprove the development in question. Additionally, some sites are large and must be developed in phases. Thus, the approval process can be ongoing.

Opponents may object to the cluster home concept that is an integral part of many PUDs. Developers can counter such negative reactions by creating high-quality, aesthetically pleasing plans and by communicating and cooperating with local government officials and the public. Developers often bargain with local governments, providing some benefit to the overall community, such as the creation of a public park, in exchange for approval.

Covenants, Conditions and Restrictions

In addition to government land use restrictions, private party agreements and other restrictions also may control how owners use their property. For example, certain restrictions in a private purchase contract may dictate how a home in a subdivision or a condominium may be built, designed or used. These restrictions are typically referred to as *covenants, conditions and*

restrictions (CC&Rs); they set forth conditions on lot size, architectural design, setbacks from the street, fence design or vehicle parking. If the terms of a private party agreement are violated, a suit may be brought against the violator. The violator may have to pay money damages or may be ordered to remove the violation (such as a fence that was prohibited by the terms of the private party agreement). The court injunction to remove the violation also would prohibit future violations.

Chapter Summary

- Real property law deals with land, fixtures on land, movable property that is not associated with land, and rights and other intangible interests that may be owned.
- The two main classifications of property are *real property* and *personal property*.
- Real property, real estate and realty refer to land, buildings and other fixtures on land. These terms also may refer to different kinds of interests in land and to various rights that go along with land or some interest in it.
- Personal property is anything that can be moved by its owner or possessor. Personal property can be tangible or intangible.
- Full ownership of real property is called *fee simple ownership*, *fee simple title*, or sometimes just *ownership in fee*.
- A fee simple owner can grant ownership of his or her property to another person for the duration of the other person's life. This type of ownership is called a *life estate*. The person who holds the life estate is called a *life tenant*.
- In Ohio, there are two different forms of property ownership where two or more own the property: *tenancy in common* and *survivorship tenancy*.
- Ohio also recognizes *transfer-on-death* (TOD) interests in property.
- A property owner may give temporary possession and use of a particular property to another individual in return for the payment of rent or something else of value. If the owner does this by means of a written agreement called a *lease*, the party to whom possession of the property is given acquires a *leasehold interest* or *leasehold estate*.
- A *lien* is an enforceable claim against property to secure the payment of a debt or the performance of some act. Three types of liens are tax, judgment, and mechanics' liens.
- Sometimes a landowner will grant another person permission to use a portion of his or her property for a specific purpose. Such permission may be either an easement or a license.
- Rights to explore for and develop minerals and harvest timber are among important real property interests that may be owned separately from the real estate itself.

Continued on page 109

Chapter Summary *continued*

- Property is a commodity, meaning it often changes hands from one individual to another. There are many methods individuals use to acquire interests in real property.
- Interest in land is granted through a deed. A *leasehold estate* is granted by means of a lease.
- A *mortgage* is an interest in land where the land is pledged to secure or guarantee payment; it is created by a document called a *mortgage deed*, or, simply, a mortgage. A *conveyance* is the transfer of an interest in real property.
- When someone dies owning or holding some interest in real property, that individual's interest must be transferred to another person or to an entity. That other individual may be a beneficiary named by the original owner's will, or entitled by law to the property when there is no will. The other individual also may acquire the property of the deceased because he or she owns the *remainder interest* to a life estate, or because of a *right of survivorship*.
- Sometimes the title to real property or an interest in real property is transferred because the original owner neglects his or her rights. *Adverse possession* is simply taking possession and keeping possession continuously for 21 years, provided that the possession is obvious and open, and that the landowner does nothing significant to assert his or her rights as owner.
- Ownership of real property is a matter of public record. Every state maintains public records of land and transactions and events affecting the ownership of land. In Ohio, the county recorder of each of the state's 88 counties maintains these records for the land within its geographical borders.
- The most common real estate transaction is the purchase or sale of a home. The elements involved in the purchase or sale of a home include a contract of sale, financing, title examination and closing.
- The Environmental Protection Agency (EPA) is the federal agency charged with implementing the environmental laws passed by Congress and the Ohio Environmental Protection Agency (OEPA) implements state laws and regulations regarding air and water quality standards; solid, hazardous and infectious waste disposal standards; water quality planning, supervision of sewage treatment and public drinking water supplies; and cleanup of unregulated hazardous waste sites. Any property purchase should include an environmental inspection.
- The first time many people encounter aspects of real property law is when they rent their first apartment or house. The law respecting such transactions is addressed by sections of the *Ohio Revised Code* reviewing particular aspects of the rights, obligations and remedies of landlords and tenants.
- A *rental agreement* or *lease* is a written or oral contract between a *landlord* (lessor) and *tenant* (lessee).
- A rental agreement benefits and protects both parties and is an efficient way of handling a business transaction. A written agreement may create a tenancy from week to week, month to month, or year to year.
- *Zoning* is the process by which political subdivisions (cities, villages, townships and counties) regulate land use by dividing themselves into districts or zones and enacting regulations to control the buildings and uses within each district.
- A *planned unit development* (or PUD) is a technique to provide flexibility for new construction in a community. Instead of rigidly dividing land into exclusively residential, commercial and industrial zones, PUDs mix these and other uses.

Web Links:

From OSBA's "Law You Can Use" articles:

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- "After Foreclosure: What You Should Know"
- "Agricultural Easements Help Protect Farmland"
- "Agricultural Districts Protect Farms and Farmers"
- "Ask Questions When Using Title Insurance Agencies"
- "Be Careful When Using Home Equity Loans"
- "Brownfields Development on the Rise – But There's Good Reason for Caution"
- "Circumstances Determine When Tenants Can Terminate Lease Agreements"
- "Eminent Domain: What Every Property Owner Should Know"
- "Home-Buyers Should Determine Asbestos and Lead Paint Risks"
- "Home-Buyers Should Determine Environmental Risks"
- "Home-Buyers Should Investigate Water and Septic Systems"
- "Homeowners' Insurance Covers Wide Range of Goods and Services"
- "Joint Economic Development Districts Aid Local Development"
- "Joint Ownership of Property: Common Sense Advice for Older Persons"
- "Know about Eviction Procedures in Ohio"
- "Know about Evictions of Month-to-Month Tenants in Ohio"
- "Know Basics of Condominium Law"
- "Landowner or Tenant Could Be Responsible for Harm to Trespassing Children"
- "Mold: An Old Contaminant Creates New Concerns for Homeowners"
- "New Condominium Laws: Your Questions Answered"
- "New Environmental Insurance Policies Are Worth a Look"
- "Ohio EPA Now Controls Isolated Wetlands Permits"
- "Planned Unit Developments Provide Flexibility for New Construction"
- "Property Owners Must Share Fence Costs"
- "Quitclaim Deed Transfers Property Without Ownership Guarantee"
- "Realtors May Act as Agents for Both Buyers and Sellers"
- "Sorting Out Housing Options for Seniors"
- "State Law Regulates Most Ohio Cemeteries"
- "Tenants Have Security Deposit Rights"
- "Tenants Should Look Out for Intent-To-Vacate Clauses"
- "Title Insurance Protects Owners and Lenders"
- "To Lease or Buy? Know the Differences Before You Decide"
- "Transfer-on-Death Deed Avoids Probate"
- "What You Should Know Before Using 'Free' Gas"
- "When the Rains Come... What You Should Know about Surface Water Laws"
- "Worried About Foreclosure? What You Should Know"
- "Zoning Laws Aid Community Planning"

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