Principles of Real Estate
Chapter 4-Forms of Ownership

This chapter will provide explain the different forms of ownership, distinguishing between sole and joint ventures; condominiums, cooperatives, and timeshares; and identify a Planned Unit Development and its result.

Overview
Objectives

At the end of this chapter, the student will be able to:

- Identify the difference between a syndicate and a joint venture
- Describe cooperatives and condominiums, listing the differences between them and comparing the advantages of each
- Explain timeshare ownership
- Present a description of a Planned Unit Development, as well as point out the origin, purpose, and result of PUD development

Sole Ownership

When an estate in land is held by one person or a single legal entity, it is referred to as an estate in severalty or tenancy in severalty. Although the word "severalty" may lead one to believe there are several owners, the correct meaning can be remembered by thinking of "severed" from any others.

*Sole ownership is available to all individuals, but most states require spouses to waive community property, dower, or curtesy rights if they should exist.*

Co-Ownership

Co-ownership or concurrent ownership involves two or more owners. Co-ownership may exist as:

- Tenancy in common
- Joint tenancy
- Tenancy by the entirety
Tenancy in Common

When a parcel of real estate is owned by two or more people as tenants in common, each of the owners holds an undivided interest in severalty; that is, each owner’s fractional interest is held just as though he or she were a sole owner. There are two important characteristics of tenancy in common:

- First, the ownership interest of a tenant in common is an undivided interest; there is a unity of possession between the co-owners. This means that although a tenant in common may hold a one-half or one-third interest in property, it is impossible to distinguish physically which specific half or third of the property he or she owns.

The deed creating tenancy in common may or may not state the fractional interest held by each co-owner; if no fractions are stated and two people hold title to the property as co-owners, each has an undivided one-half interest. Likewise, if five people held title, each would own an undivided one-fifth interest. Regardless of percentage, a unity of possession must exist in a tenancy in common.

- The second important characteristic of a tenancy in common is that each owner holds his or her undivided interest in severalty and can sell, convey, mortgage, or transfer that interest without the consent of the other co-owners. Upon the death of a co-owner, his or her undivided interest passes to his or her heirs or devisees according to his or her will.

*When two or more people acquire title to a parcel of real estate and the deed of conveyance does not stipulate the character of the tenancy created, then by operation of the law the grantees usually acquire title as tenants in common.*
Joint Tenancy

Most states recognize some form of joint tenancy, which is an estate, or unit of interest in land, owned by two or more people. The basis of joint tenancy is unity of ownership. Only one title exists, and it is vested in a unit made up of two or more people. The death of one of the tenants does not destroy the unit; it only reduces by one the number of people who make up the owning unit. The remaining joint tenants receive the interest of the deceased tenant by right of survivorship.

This right of survivorship is generally one of the distinguishing characteristics of joint tenancy. As each successive joint tenant dies, the surviving joint tenants acquire the interest of the deceased joint tenant. The last survivor takes title in severalty; upon this person's death, the property goes to his or her heirs.

Joint Tenancy Creation

A joint tenancy can be created only by grant or purchase (through a deed of conveyance), or by devise (giving the property by will). It cannot be implied or created by operation of law. The conveyance must specifically state the intention to create a joint tenancy, and the grantees or devisees must be explicitly identified as joint tenants.

A joint tenant may sell his or her interest without the consent of the other joint tenants unless they have a prior agreement of a right of first refusal.

Four unities are required to create a joint tenancy:

- Unity of time - all joint tenants acquire their interest at the same time.
- Unity of title - all joint tenants acquire their interest by the same instrument of conveyance.
- Unity of interest - all joint tenants hold equal ownership interests.
- Unity of possession - all joint tenants hold an undivided right to possession.

These four unities are present when title is acquired by one deed, executed and delivered at one time, and conveying equal interests to all the grantees who hold undivided possession of the property as joint tenants.
Joint Tenancy Termination

Tenants in common or joint tenants who wish to terminate their co-ownership of real estate may file in court a **suit to partition** the land.

The **right of partition** is a legal way to dissolve a co-ownership when the parties do not voluntarily agree to its termination. If the court determines the land cannot actually be divided into parts, it will order the real estate sold and divide the proceeds of the sale among the co-owners according to their fractional interests.

*Mutual agreement and the sale of one of the joint tenant's interest in the property to another can also terminate a joint tenancy.*

Co-Ownership—Tenancy by the Entirety

**Tenancy by the entirety** is a special form of tenancy in which the owners are husband and wife. Both spouses have an equal, undivided interest in the whole property, with each spouse, in essence, owning the entire estate. Upon the death of one spouse, the tenancy operates like a joint tenancy - full title automatically passes to the surviving spouse.

The distinguishing characteristics of tenancy by the entirety are:

- The owners must be husband and wife
- The owners have rights of survivorship
- During the owners' lives, title can be conveyed only by a deed signed by both parties (one party cannot convey a one-half interest). This is called the unity of person.
- There is generally **no right to partition.** Under early common law, a husband and wife were held to be one person in the eyes of the law - the wife's legal personality was merged with that of her husband's. As a result, real estate owned by a husband and wife as tenants by the entireties is considered to be held by one indivisible legal unit.

Like a joint tenancy, a tenancy by the entirety cannot be created by operation of law, but must be created by grant, purchase, or devise. Most states that recognize it now require that the intention to create a tenancy by the entirety be specifically stated. Unless the specific intention to create a tenancy by the entirety is stated in the original document, a tenancy in common usually
Changing Tenancy

As discussed, the type of tenancy can sometimes change depending on the situation. Here are a few examples:

- If a married couple owns as tenants by entireties and get divorced and they both still own interest, they would automatically become tenants in common.
- If a joint tenancy exists and one of the joint tenants sells his or her interest to an outsider, it would automatically create a tenancy in common. However, if there had been three joint tenants to begin with, the two who didn't sell would continue to be joint tenants with each other; that combined joint tenancy would be one of the tenants in common with the new third party.
- If a joint tenancy existed and the joint tenants died one at a time, it would eventually result in a tenancy in severalty through the right of survivorship -- the one who outlived the others would end up owning it all.
Land Trusts
Title to real estate can also be held in a trust. The real estate involved must be conveyed by a trustor to a trustee, who will own the property for one or more people or legal entities called beneficiaries.

The trustee is a fiduciary and can be either an individual or a corporation. The public records usually do not indicate the identity of the beneficiary, allowing the beneficiary to remain anonymous.

Partnerships
An association of two or more people to carry on a business as co-owners and share in the business' profits and losses is a partnership. There are two kinds of partnerships:

- **General Partnership** -- In a general partnership, all partners participate to some extent in the operation and management of the business and may be held personally liable for business losses and obligations.
- **Limited Partnership** -- A limited partnership includes general partners as well as limited, or silent, partners. The business is run by the general partner or partners. The limited partners do not participate, and each can be held liable for a business' losses only to the extent of his or her investment. The limited partner is a popular method of organizing investors in a real estate project.

A partnership is not usually a legal entity, and technically, under common law, a partnership cannot own real estate. Title must be vested in the partners as individuals as tenancy in common or joint tenancy, not in the partnership. Most states, however, have adopted the Uniform Partnership Act, which establishes the legality of the limited partnership form and also provides that realty may be held in the partnership name.

General partnerships are dissolved and must be reorganized if one partner dies, withdraws, or goes bankrupt.

In a limited partnership, the agreement creating the partnership may provide for the continuation of the organization upon the death or withdrawal of one of the partners.
Corporations

A corporation is an artificial person or legal entity, created under the authority of the laws of the state from which it receives its charter. Because the corporation is a legal entity, real estate ownership by a corporation is an ownership in severalty.

- A corporation is managed and operated by its board of directors.
- A corporation's charter sets forth the powers of the corporation, including its right to buy and sell real estate after passage of a resolution to that effect by its board of directors. Some charters permit a corporation to purchase real estate for any purpose; others limit such purchases to land that is needed to fulfill the entity's corporate purpose.
- As a legal entity, a corporation exists in perpetuity until it is formally dissolved. The death of one of the officers or directors does not affect title to property that is owned by the corporation.
- Individuals participate, or invest, in a corporation by purchasing stock. Since stock is personal property, stockholders do not have a direct ownership interest in real estate owned by a corporation. Each stockholder's liability for the corporation's losses is usually limited to the amount of his or her investment.
- One of the main disadvantages of corporate ownership of income property is that the profits are subject to double taxation. As a legal entity, a corporation must file an income-tax return and pay tax on its profits. In addition, the portions of the remaining profits distributed to stockholders as dividends are taxed again as part of the stockholders' individual incomes.
- Corporations are prohibited from entering into a joint tenancy as co-owner form of ownership.
Syndicates

Generally speaking, a syndicate is a joining together of two or more people or firms in order to make and operate a real estate investment. A syndicate is not in itself a legal entity.

Most syndicates are organized as limited partnerships with the syndicator heading it acting as a general partner and investors putting up the money acting as limited partners.

A joint venture is a form of partnership in which two or more people or firms carry out a single business project. Joint ventures are characterized by a time limitation resulting from the fact that the joint venturers do not intend to establish a permanent relationship.

Cooperatives

Under the usual cooperative arrangement, title to land and building is held by a corporation. The building management sets a price for each apartment in the building. Each purchaser of an apartment in the building receives stock in the corporation when he or she pays the agreed-upon price for the apartment. The purchaser then becomes a stockholder of the corporation and, by virtue of that stock ownership, receives a proprietary lease to his or her apartment for the life of the corporation. He or she is called a cooperator.

The cooperative building's real estate taxes are assessed against the corporation as owner. The mortgage is signed by the corporation, creating one lien on the entire parcel of real estate. Taxes, mortgage interest and principal, and operating and maintenance expenses on the property are shared by the tenant-shareholders in the form of monthly assessments similar to rent. Cooperators are allowed to deduct their pro rata share of certain corporation expenses, so they have an advantage over paying pure rent.

Thus, while the cooperative tenant-owners do not actually own an interest in real estate (they own stock, which is personal property), for all practical purposes they control the property through their stock ownership and their voice in the management of the corporation.

For example, the by-laws of the corporation generally provide that each
prospective purchaser of an apartment lease must be approved by an administrative board.

**Condominiums**

The *condominium* form of occupant ownership has gained increased popularity in recent years. Condominium laws, often called *horizontal property acts* or *strata title acts*, have been enacted in every state. Under these laws, the *occupant-owner of each unit holds a fee simple title to his or her unit and also a specified share of the indivisible parts of the building and land, known as the common elements*. The individual unit owners in a condominium own these *common elements together as tenants in common*. State law usually limits this relationship among unit owners in that there is no right to partition.

The condominium form of ownership is usually used for apartment buildings. These may range from freestanding high-rise buildings to townhouse arrangements. The common elements include such items as the land, walls, hallways, elevators, stairways, and roof. In some instances (particularly with townhouse developments) lawns and recreational facilities such as swimming pools, clubhouses, tennis courts, and golf courses, may also be considered common elements. In addition, the condominium form of ownership is used for such other types of properties as commercial property, office buildings, or multi-use buildings that contain offices and shops as well as residential units.

State laws usually specify that a condominium is created and *established when the owners or developers of the property execute and record an enabling declaration or master deed* of its creation in the county where the property is located. The various state laws require other items be contained in or attached to the declaration. At the same time the *declarant* files the *master deed, by-laws and covenants, conditions, and restrictions (CC&Rs)* are also filed.

Once the property is established as a condominium, each unit becomes a separate parcel of real estate, called an *air lot*, which may be dealt with like
any other parcel of real property. A condominium unit is owned in fee simple.

Real estate taxes are assessed and collected on each unit as an individual property. Default in payment of taxes or a mortgage loan by one unit owner may result in a foreclosure sale of that owner's unit, but does not affect the ownership of the other unit owners.

A condominium is usually administered by a **condo owners' association** which must meet at least once a year. The association operates according to the by-laws. Unit owners in a condo generally have voting power based on a percentage of common interest. A change in **by-laws** requires a 3/4 (75%) vote, while a change in the **CC&R** requires a 2/3 (67%) vote. Any changes in **House Rules** only require a **majority**.

The condominium property is generally administered by an association of unit owners according to the by-laws set forth in the declaration. The association may be governed by a board of directors or other official entity, it may manage the property on its own, or it may engage a professional property manager to perform this function.

Acting through its board of directors or other officers, the association must enforce any rules it adopts regarding the operation and use of the property. The association is responsible for the maintenance, repair, cleaning, and sanitation of the common elements and structural portions of the property. It must also maintain fire and extended-coverage insurance as well as liability insurance for these portions of the property.

Expenses incurred in fulfilling these responsibilities are paid for by the unit owners in the form of monthly assessments, collected by the owners' association. Such fees are assessed each unit owner. They are due monthly, quarterly, semi-annually, or annually, depending on the provisions of the by-laws. If such assessments are not paid, the association usually has the option to seek a court-ordered judgment to have the property sold to cover the out-standing amount.
Timesharing

Timesharing is a variation of condominium ownership that permits multiple purchasers to buy undivided interests in real estate --- usually a unit of a resort hotel or development -- with a right to use the facility for a fixed or variable time period. Some timesharing programs allow for a rotation system in which the tenant in common can occupy his or her unit at different times of the year in different years. Other programs sell only specific months or weeks of the year.

For example, 12 individuals could own equal, undivided interests in one condominium unit, with each owner entitled to use the premises for a specified month of each year.

- Timesharing enables a person to own a share in a vacation home in a desirable location for a fraction of the cost of full ownership and year-round maintenance.
- Maintenance and other common expenses are prorated among the unit owners.
- Management of a timeshare is performed by the developer and is usually turned over to a timeshare management firm when development is complete.

Planned Unit Development

Planned unit developments (PUDs) are created by local zoning ordinance and are areas of diversified land use.

If you buy into a condominium, you get a dwelling unit as separate property plus an undivided interest in the land and other common elements. If you buy into a cooperative, you get stock in the corporation that owns the building and a lease on a particular apartment.

- If you buy into a planned unit development (PUD), you get a house and lot as separate property plus membership in a community association that owns the common areas. Common areas may be as minimal as a few green spaces in open areas between houses or as extensive as to also include parks, pools, clubhouse facilities, jogging
trails, boat docks, horse trails and a golf course. Members in the association are entitled to use the common areas.

Although you own your lot and house as separate property in a PUD, there will be CC&Rs to follow. The PUD developer will establish an initial set of CC&Rs and turn them over to the association for enforcement. Thus, your lot and home are not quite all yours to do with as you please because your association can dictate what color you can paint the exterior of your home, what you can and cannot plant in your front yard, and how many people and pets can reside with you. As with condominiums and cooperatives, PUD CC&Rs are not meant to be burdensome for the sake of being burdensome, but rather to maintain the attractiveness and tranquility of the development and, in doing so, keep home values up.

The dwellings in a planned unit development typically take the form of detached houses and houses that share a common wall, such as row houses, townhouses, and cluster houses. Because each owner owns his land, vertical stacking of homes is limited to one owner and housing densities to 8 or 10 units per acre. Even though this is twice the density of a typical detached house subdivision, by planning, a developer can give each owner the feeling of more spaciousness.

**In Review**

- Sole ownership is when an estate in land is held by one person or a single legal entity; it is referred to as an estate in severalty or tenancy in severalty.
- Co-ownership or concurrent ownership involves two or more owners, and may exist as a tenancy in common, joint tenancy, or tenancy by the entirety.
- An association of two or more people to carry on a business as co-owners and share in the business' profits and losses is a partnership; there are general and limited partnerships.
- A corporation is an artificial person or legal entity created under the authority of the laws of the state from which it receives its charter. Because the corporation is a legal entity, real estate ownership by a corporation is an ownership in severalty.
- A syndicate is a joining together of two or more people or firms in order to make and operate a real estate investment. A syndicate is not in itself a legal entity.
Under a typical cooperative arrangement, title to land and building is held by a corporation.
Other forms of ownership include timeshares, condominiums, and ownership in a planned unit development.