

## SLIDE 1 – COVER PAGE

## SLIDE 2 – TOPICS

In this section we will cover the following topics:

- I. Land, Real Estate and Real Property
- II. Real Versus Personal Property
- III. Basic Property Rights
- IV. Freehold Estates
- V. How Ownership Can Be Held
- VI. Leasehold (Nonfreehold) Estates
- VII. Cooperatives, Condominiums, Community Development Districts (CDD), Homeowner Associations (HOA) and Time-Sharing

## SLIDE 3 – LEARNING OBJECTIVES

Upon completion of this lesson, you should be able to:

- Define real property based on the definition in F.S. 475.
- List and explain the physical components of real property
- Explain the four tests courts use to determine if an item is a fixture
- Distinguish between real and personal property
- Describe the bundle of rights associated with real property ownership
- List the principal types of estates (tenancies) and describe their characteristics

## SLIDE 4 – LEARNING OBJECTIVES – (continued)

- Describe the features associated with the Florida Homestead law
- Distinguish between cooperatives, condominiums and time-shares and describe the four main documents associated with condominiums

## SLIDE 5 – KEY TERMS

Here are some key terms we'll encounter in this lesson:

- **Community development districts** – a local, special purpose government framework authorized by F.S. 190 as an alternative to municipal incorporation for a condominium community
- **Condominium** – multi-unit project, individual ownership of units, undivided ownership of common areas
- **Cooperative** – multi-unit project, corporate ownership of units, tenants purchase shares and receive a Proprietary Lease

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- **Declaration** – legal document a condominium developer must file and record in order to create a condominium under state law
- **Estate for years** – tenancy measured from a start date to an end date
- **Exempt property** – a surviving spouse and children can file an exemption claim on personal property within the homestead up to \$10,000 as well as automobiles to protect against creditor claims.
- **fee simple estate** – absolute and complete ownership

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- **Fixture** – objects that were personal property but have been permanently attached to or made part of real property
- **Freehold estate** – tenancy with no set termination date - property passed down
- **Homeowner associations** – a corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents
- **Homestead** – a tax exemption; a tract of land limited in size; a statutory condition designed to protect the interests of a spouse

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- **Joint tenancy** – estate owned by more than one person
- **Land** – surface of the earth and everything attached to it by nature
- **Leasehold estate** – tenancy under a lease arrangement for a definite numbers of years (non-freehold)
- **Life estate** – individual owns property for his/her lifetime (Owner has fewer rights than fee simple owner)
- **Personal property** – any asset that is not real property
- **Proprietary lease** – written agreement between owner-corporation and tenant-stockholder in a coop apartment

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- **Prospectus** – a formal legal document that provides details about an offering for sale to the public
- **Real estate** – land and all permanently attached improvements
- **Real property** – real estate plus the legal bundle of rights
- **Remainderman** – the person designated to receive an estate after a life estate ends
- **Right of survivorship**– when one co-owner dies, his/her shares goes to the surviving co-owner(s), not the deceased heirs

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- **Separate property** – basically separate property is controlled by the spouse owning it and outside community property for matters of divorce
- **Tenancy at sufferance** – the period of time a tenant occupies a rental property between the expiration of the original lease and before lease renegotiation
- **Tenancy at will** – estate that may be terminated by either party with proper notice (non-freehold)
- **Tenancy by the entirety** – estate created between husband and wife jointly owning real property with instant and complete right of survivorship

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- **Tenancy in common** – basically separate property is controlled by the spouse owning it and outside community property for matters of divorce
- **Time-share** – individual interest in a unit with a right of exclusive use for a specified period of time

## SLIDE 12 – Land, Real Estate and Real Property

For this section we'll look at the basic principles of property - what it is, what it includes and then later on, who has rights to it.

## SLIDE 13

First let's determine how the Florida Statute defines "Real Property"

From Florida Statute 475.01 –

*"Real property" or "real estate" means any interest or estate in land and any interest in business enterprises or business opportunities, including any assignment, leasehold, subleasehold, or mineral right.*

*The term does not include any cemetery lot or right of burial in any cemetery; nor does the term include the renting of a mobile home lot or recreational vehicle in a mobile home park or travel park.*

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It's important to understand the legal concept of land and real estate.

When someone owns "Real Estate", they own much more than a building or a plot of land. In physical terms they own from the center of the earth outwards into infinity. As the owner you have rights to the SURFACE the SUBSURFACE and the AIR above the surface. , as well as any natural attachments – such as trees, creeks and streams.

This as a whole constitutes the definition of land.

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Then when you add the ownership of any man-made items on the land such as houses, fences, swimming pools, tool sheds or barns you now have the full scope of ownership.

This is the legal concept of "Real Estate" the land plus the man-made items included on the land. It's the air, water, land, and everything affixed to the land

We'll talk about each of these ownership rights individually so you will have a full understanding.

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### **Surface rights**

Landowner's rights to the exterior or upper boundary of the land, water, other substances and natural attachments to the land.

The owner is free to use the property as he or she desires, which might include: (if local zoning allows)

- Development
- Agriculture
- Timber
- Other commercial uses

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### **Subsurface rights**

With subsurface rights the owner has the right to extract from the earth below the surface any materials found there, such as:

- Oil
- Gas
- Gold
- Gemstones

He can profit off these or sell the rights to those minerals to a third party.

For example, an oil company can buy the rights to drill the oil but it doesn't give them ownership of the land... just the oil beneath it.

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### **Air rights**

There is a medieval Roman law, credited to glossator Accursius and popularized into 18<sup>th</sup> century English common law that says:

*"For whoever owns the soil, it is theirs up to Heaven and down to Hell"*

Air rights refers the owner's freedom to use and develop the empty space above a property. Air rights can be transferable to allow a third party to build structures over existing structures.

The Federal Government maintains some rights and restrictions for air travel and defense. Local governments could take air rights above a property using eminent domain for elevated train or other public use (or subsurface for subway).

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Surface rights extend to water on, adjacent to or traveling through a piece of property.

These rights are either:

- Riparian
- Littoral

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Riparian rights concern properties abutting moving water such as streams and rivers. If a property abuts a stream or river, the owner's riparian rights are determined by whether the water is *navigable* or *not navigable*.

If boats can navigate the water, then the property rights end at water's edge. The state owns the land beneath the water.

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If the property abuts a non-navigable stream, the owner enjoys unrestricted use of the water and owns the land beneath the stream to the stream's midpoint.

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### Littoral rights

The legal premise underlying the definition of littoral rights is that a lake or sea is a navigable body of water, therefore, public property owned by the state.

By contrast, a body of water entirely contained within the boundaries of an owner's property is not navigable.

In such a case, the owner would own the water as well as unrestricted rights of usage.

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### Littoral rights

Owners of properties abutting a navigable, non-moving body of water enjoy the littoral right of use, but do not own the water nor the land beneath the water.

Ownership extends to the high-water mark of the body of water.

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### Natural rights

There's also surface and water rights associated with the natural movement of land by moving water that causes a gain or loss to the land, normally referred to as **accretion** and **erosion**.

Natural gain or loss of land can also occur by **alluvion** or **reliction**.

Let's talk about differences between these.

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### Natural rights

**Accretion** is the increase in land by the natural motion of water depositing soil along the property.

**Erosion** is the decrease of land caused by the moving water taking away the soil.

**Alluvion** is the soil deposited by a moving body of water as it spills into a larger body – a Delta area.

**Reliction** is an increase of land by water receding away from land.