

## Section 8 – Part 2

### SLIDE 34 – Cooperatives, Condos, CDD, HOA & Time-Sharing

To wrap up this lesson we'll take a look at alternative ownership options generally defined by the concept of a shared community.

These kinds of ownership communities are different than standard real estate purchases in that all owners must comply with the community rules and regulations defining the use of the property.

As real estate brokers and agents in Florida you will see these kinds of properties extensively.

### SLIDE 35

#### **Common communities**

Today there are various community living ownership arrangements with common areas shared by multiple owners of both land and residence.

We'll cover these kinds of communities and their associated Florida statutes:

- Cooperatives
- Condominiums
- Time shares
- Homeowner association - HOA
- Community development district - CDD

### SLIDE 36

#### **Cooperatives**

In legal terms a housing cooperative, or co-op, is a form of housing that is jointly owned and controlled by a group of people with equal shares, co-op membership and occupancy rights.

It's essentially a corporation where the shareholders (co-op members) have a right of occupancy.

### SLIDE 37

#### **Cooperatives**

The corporation pays the property taxes and the co-op members pay their prorated share based on how many shares of co-op stock is owned.

Owners also pay a maintenance fee to cover those community expenses. These can be quite expensive so it's important the buyer understand these before purchase.

Property transfer to new owners is through the sale of stock.

Specific disclosures, required by the Florida Cooperative Act, must be documented prior to a co-op sale. Brokers and agents should review Florida statute 719 to fully understand the disclosure requirements for cooperative sales. Buyers have the right to cancel contracts that don't conform to the disclosure requirements. We have included copies of relevant disclosure documents for your convenience in the course resource library.

## SLIDE 38

### **Condominiums**

A condominium is one unit within a group of housing units where each homeowner(s) owns their unit space and all units share undivided interest in common use areas.

Unit ownership is fee simple.

Property tax is levied against the appraised value of the dwelling.

Transfer of ownership is by deed.

## SLIDE 39

### **Condominiums**

Each owner is required by Florida statute be given a copy of the by-laws, rights, declaration, prospectus financials, FAQ, and the rules and regulations of the property. F.S. 718.504

For their part, owners are obligated to follow the rules, regulations and by-laws of the association, and can enjoy all rights of ownership as defined by the same. F.S. 718.303

## SLIDE 40

### **Condominiums**

In addition to the documents to be provided to prospective buyers prior to sale, The Florida Condominium Act requires specific disclosures and verbiage to be documented on any sales contracts. F.S. 718.503

## SLIDE 41

### **Time share – F.S. 721**

Owning a time share means you have a shared ownership in a specific piece of property.

Ownership allows a specific “time and period” of occupation. For example, if your period of ownership was for the third week of May, each year, you would have 1/52 undivided interest in the property. If you purchased two weeks of ownership you would own 2/52.

There are two forms of time-share ownership.

- Interval
- Right to use

## SLIDE 42

### **Time share**

**Interval ownership** is fee simple with a deed recorded and conveyed for a specific period of time.

Like other real estate holdings the owner has the right to sell, lease or rent the property for the time period owned, pursuant to the Florida Time Share Act. – F.S. 721

## SLIDE 43

### **Time share**

**Right to use** ownership is a leasehold rather than freehold type of ownership. It is more like a temporary lease over a fixed period of years, normally 20-40.

Once the lease expires ownership reverts back to the original owner.

F.S. 721

## Section 8 – Part 3

## SLIDE 1

### **Homeowners Association (HOA) – F.S.720**

An HOA is an organization in a subdivision, planned community or condominium that makes and enforces rules for that property.

HOAs collect dues to pay for upkeep of common areas – parks, pools, elevators, etc.

The HOA could levy special assessments if reserve funds are not sufficient for unexpected common area repairs.

## SLIDE 2

### **Homeowners Association (HOA) – F.S.720**

Specific Homeowners Association, (HOA) information must be disclosed to buyers prior to execution of a sales contract. F.S. 720.401

## SLIDE 3

### **Community Development Districts (CDD)**

An alternative to a municipal incorporation for managing and financing infrastructure required to support development of a community law. F.S. 190.003(6)

CDDs were established by Florida's "Uniform Community Development District Act of 1980". F.S. 190.001

Governance of CDDs are usually by a board of supervisors who answer to the landowner residents. F.S. 190.006

## SLIDE 4

### **Community Development Districts (CDD)**

There is also a specific disclosure that must be made on any contract for sale of a property within the CDD. F.S. 190.048

## SLIDES 5 – 23, Summary

Slide 5

### Summary

#### LAND, REAL ESTATE AND REAL PROPERTY

Surface rights	Landowner's rights to the exterior or upper boundary of the land and water and other substances and natural attachments to the land.
Subsurface rights	With subsurface rights the owner has the right to extract from the earth below the surface any materials found there and can profit off those minerals or sell the rights to those minerals to a third party.
Air rights	Air rights refers the owner's freedom to use and develop the empty space above a property. The Federal Government maintains some rights and restrictions for air travel and defense. Surface rights extend to water on, adjacent to or traveling through a piece of property and are either riparian or littoral rights.
Riparian rights	Concern properties abutting moving water such as streams and rivers. Riparian rights are determined by whether the water is navigable or not navigable.

Section 8: Property Rights: Estates and Tenancies



Slide 6

### Summary

#### LAND, REAL ESTATE AND REAL PROPERTY

Riparian rights	If boats can navigate the water, then the property rights end at water's edge. The state owns the land beneath the water. 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.
Littoral rights	Owners of properties abutting a navigable, non-moving body of water (lake, ocean or sea) 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.
Accretion	The increase in land by the natural motion of water deposits soil along the property.
Erosion	The decrease of land caused by the moving water taking away the soil.
Alluvion	The soil deposited by a moving body of water as it spills into a larger body – a Delta area.

Section 8: Property Rights: Estates and Tenancies



Slide 7

### Summary

#### LAND, REAL ESTATE AND REAL PROPERTY

Reliction	An increase of land by water receding away from land.
-----------	---

Section 8: Property Rights: Estates and Tenancies



Slide 8

Summary

REAL VS. PERSONAL PROPERTY

Real Property	The land, the appurtenances, rights and privileges aggregated together.
Personal property	It's anything not considered real property – the opposite of real property; any right or interest an individual has in movable things, usually items having a limited life. Personal property is sometimes referred to as chattel (personalty).
Fixtures	Objects that were personal property but have been permanently attached to or made part of real property. There are legal tests to help determine if personal property now meets the definition of <i>fixture</i> . <ul style="list-style-type: none"> <li>• Intent of the parties</li> <li>• Method or degree of attachment</li> <li>• Agreement/Relationship of parties</li> <li>• Adaptation of the item</li> </ul>

Section 8: Property Rights: Estates and Tenancies



Slide 9

Summary

REAL VS. PERSONAL PROPERTY

Intent of the parties	The intention of the individual when the property was attached.
Degree of attachment	The method of attachment would dictate whether the item had become a fixture and part of the real estate
Agreement	Buyers and sellers may agree something that appears to be a fixture is really personal property of the seller.
Adaptability	How the item fits with the property or if the item has become an integral part of the home.
Transfer of personal property	Listing and sale contracts should clearly specify which items are considered real property in the transaction and any personal property that is to be included.
Trade fixtures	A piece of equipment on or attached to the real estate which is used in a trade or business. Trade fixtures may be removed from the property (even if attached) at the end of the business tenancy.

Section 8: Property Rights: Estates and Tenancies



Slide 10

Summary

BASIC PROPERTY RIGHTS

Bundle of Rights	A set of legal rights afforded to real estate title holders. Possession, enjoyment, disposition, control and exclusion
Right of possession	A property is owned by whomever holds title. A mortgage lien holder can take possession of the property if the owner defaults on the mortgage.
Right of enjoyment	Property owners can enjoy the use of the property in any legal manner.
Right of disposition	The title holder can sell, rent or transfer ownership or use of the property at will. Mortgage must be paid off and any other liens settled before the property can be sold.
Right of control	Within the laws the owner controls use of the property. Local laws, subdivision covenants or homeowner restrictions may forbid certain property use.
Right of exclusion	Homeowners are within their right to exclude others from their property with few exceptions. Utility companies are generally allowed access to maintain their easements and law enforcement with warrants will have full access.

Section 8: Property Rights: Estates and Tenancies



Slide 11

Summary

FREEHOLD ESTATES	
Estate	Refers to the degree, quantity, nature and extent of interest (ownership rights) a person can have in real property.
Freehold estates	Freehold estates can be either fee simple estates or life estates.
Fee simple estate	The title holder has absolute ownership with full rights of ownership for at least his or her lifetime.
Life estate	Ownership title is only for his or her lifetime and cannot be transferred to heirs.
Life estate remainder	When a grantor creates a life estate for another it is a tenancy possession only for the lifetime of the tenant. The grantor would name a third party, the remaindermen, at the time the life estate is created. Upon the death of the life tenant the title would then transfer to the remaindermen rather than the grantor.

Section 8: Property Rights: Estates and Tenancies



Slide 12

Summary

FREEHOLD ESTATES	
Life estate reversion	In this case the grantor does not name a third party. Upon the death of the life tenant the title would revert back to the grantor or if deceased, to the legal heirs.
Legal life estates	A legal life estate is created automatically by law. The Constitution of the State of Florida as revised and amended has given specific Homestead rights to protect families from eviction by creditors and to protect marital spouse rights of joint ownership. Florida homestead law provides that certain creditors holding a judgement against a homeowner cannot force the sale of the homestead to pay off the judgement debt.
Exceptions to homestead creditor protection	Government entities collecting property taxes Mortgage lienholders Mechanics owed money for work on the property A creditor with a lien pre-dating the homestead

Section 8: Property Rights: Estates and Tenancies



Slide 13

Summary

HOW OWNERSHIP CAN BE HELD	
Property ownership	There are four ways in which property can be held in ownership. <ol style="list-style-type: none"> <li>1. Severalty – sole ownership</li> <li>2. Tenancy in common</li> <li>3. Joint tenancy with right of survivorship</li> <li>4. Tenancy by entireties</li> </ol>
Severalty	Ownership of real estate by a single individual. No other person is joined or connected with the individual in the possession of the estate.
Co-ownership – Tenancy in common	The tenancy in common is the most common form of co-ownership when the owners are not married. The defining characteristics are: Two or more owners, identical rights, interests individually owned, electable ownership shares, no survivorship and no unity of time

Section 8: Property Rights: Estates and Tenancies



Slide 14

## Summary

### HOW OWNERSHIP CAN BE HELD

Dissolving a tenancy in common	One or more co-tenants can always buy out the others. Property can be sold and the proceeds distributed equally among the owners A partition action can be filed. The property would be sold under court order and the proceeds would then be distributed among the owners.
Co-ownership – Joint tenancy	Commonly referred to as unity of ownership. Four specific things must exist before Joint Tenancy happens: <ol style="list-style-type: none"><li><b>1. Time:</b> Each person must obtain property title at the same time.</li><li><b>2. Title:</b> The deed must reflect each owner's name on the document</li><li><b>3. Interest:</b> Shares must be equal</li><li><b>4. Possession:</b> Each person has the same right to occupy the property.</li></ol>

Section 8: Property Rights: Estates and Tenancies



Slide 15

## Summary

### HOW OWNERSHIP CAN BE HELD

Co-ownership – Joint tenancy	The defining characteristics and requirements of joint tenancy are: Unity of ownership – Joint tenants hold a single title to the property Equal ownership – Four tenants, each own 25%; 10 tenants, each own 10% Transfer of interest – joint tenant may transfer his or her interest to an outside party Survivorship – joint tenants enjoy rights of survivorship; rights pass to surviving joint tenants without probate
Ways to dissolve a joint tenancy	One partner sells his/her interest in the property. Partition Law suit: a court can dissolve the ownership. Bankruptcy of any of the joint tenants Property foreclosure

Section 8: Property Rights: Estates and Tenancies



Slide 16

## Summary

### HOW OWNERSHIP CAN BE HELD

Co-ownership – Tenancy by Entireties	Tenancy by the entireties is a form of ownership reserved exclusively for husband and wife. It features survivorship, equal interests and limited exposure to foreclosure. In the event of death the survivor spouse becomes an owner in severalty. The property can only be sold under agreement by both spouses.
--------------------------------------	---

Section 8: Property Rights: Estates and Tenancies



Slide 17

## Summary

### LEASEHOLD ESTATES

Nonfreehold Estates	<p>Any estate not considered a freehold estate would be a leasehold estate.</p> <p>A leasehold gives a tenant a right to occupy a property for a specific length of calendar time.</p> <p>The different types are: Estate for years, Tenancy at will and Tenancy at sufferance</p>
Estate for years	<p>The estate for years has a defined specific beginning date and an ending date for a specific term.</p> <p>The lease may not be terminated before expiration unless by agreement of both parties. The lease document will define the rights and obligations of the owner or landlord and the tenant.</p>
Tenancy at will	<p>The tenancy at will is a very unstructured type lease agreement. It doesn't have specific end date or a periodic agreement such as month to month.</p> <p>It can be terminated by either party at any time.</p>

Section 8: Property Rights: Estates and Tenancies



Slide 18

## Summary

### LEASEHOLD ESTATES

Tenancy at sufferance	<p>When a tenant overstays the lease period and continues to occupy the property this is referred to as a tenancy at sufferance.</p> <p>The landlord "suffers" because of the tenant's failure to vacate. Ending these situations normally require eviction of the tenant, usually by some court action.</p>
-----------------------	--

Section 8: Property Rights: Estates and Tenancies



Slide 19

## Summary

### COOPERATIVES, CONDOS, CDD, HOA & TIME-SHARING

Common communities	<p>Today there are various community living ownership arrangements with common areas shared by multiple owners of both land and residence.</p> <p>We'll cover these kinds of communities and associated Florida statutes: Cooperatives, condominiums, time shares, HOA, CDD</p>
Cooperatives F.S. 719	<p>A form of housing that is jointly owned and controlled by a group of people with equal shares, co-op membership and occupancy rights.</p> <p>The corporation pays the property taxes and the co-op members pay their prorated share based on how many shares of co-op stock is owned.</p> <p>Owners also pay a maintenance fee to cover those community expenses. These can be quite expensive so it's important the buyer understand these before purchase.</p> <p>Property transfer to new owners is through stock sale.</p> <p>Specific disclosures, required by the Florida Cooperative Act, must be documented prior to a co-op sale. FS 719</p>

Section 8: Property Rights: Estates and Tenancies





Slide 20

### Summary

#### COOPERATIVES, CONDOS, CDD, HOA & TIME-SHARING

Condominiums F.S. 718	<p>One unit within a group of housing units where each homeowner(s) owns their unit space and all units share undivided interest in common use areas.</p> <p>Unit ownership is fee simple.</p> <p>Property tax is levied against the appraised value of the dwelling. Transfer of ownership is by deed.</p> <p>Each owner is required by Florida statute be given a copy of the by-laws, rights, declaration, prospectus financials, FAQ, and the rules and regulations of the property.</p> <p>For their part, owners are obligated to follow the rules, regulations and by-laws of the association, and can enjoy all rights of ownership as defined by the same.</p> <p>The Florida Condominium Act requires specific disclosures and verbiage to be documented on any sales contracts. F.S. 718.503</p>
--------------------------	---

Section 8: Property Rights: Estates and Tenancies



Slide 21

### Summary

#### COOPERATIVES, CONDOS, CDD, HOA & TIME-SHARING

Time share F.S. 721	<p>Owning a time share means you have a shared ownership in a specific piece of property. Ownership allows a specific "time and period" of occupation.</p> <p>There are two forms of time-share ownership. Interval and right to use.</p>
Interval ownership	<p>Fee simple with a deed recorded and conveyed for a specific period of time.</p> <p>Like other real estate holdings the owner has the right to sell, lease or rent the property for the time period owned, pursuant to the Florida Time Share Act.</p>
Right to use	<p>A leasehold rather than freehold type of ownership. It is more like a temporary lease over a fixed period of years, normally 20-40 years.</p> <p>Once the lease expires ownership reverts back to the original owner.</p> <p>Several disclosures and statements are required for time share listing and sales agreements. (see FAC 61J2-721.06 &amp; .07)</p>

Section 8: Property Rights: Estates and Tenancies



Slide 22

### Summary

#### COOPERATIVES, CONDOS, CDD, HOA & TIME-SHARING

Homeowners Association (HOA) – F.S.720	<p>An HOA is an organization in a subdivision, planned community or condominium that makes and enforces rules for that property.</p> <p>HOAs collect dues to pay for upkeep of common areas – parks, pools, elevators, etc.</p> <p>The HOA could levy special assessments if reserve funds are not sufficient for unexpected common area repairs</p>
HOA Disclosures	<p>Specific Homeowners Association, (HOA) information must be disclosed to buyers prior to execution of a sales contract. F.S. 720.401</p>
Community Development Districts (CDD) F.S. 190	<p>An alternative to a municipal incorporation for managing and financing infrastructure required to support development of a community law. F.S. 190.003(6)</p> <p>CDDs were established by Florida's "Uniform Community Development District Act of 1980". F.S. 190.001</p> <p>Governance of CDDs are usually by a board of supervisors who answer to the landowner residents. F.S. 190.006</p>

Section 8: Property Rights: Estates and Tenancies



### Summary

**COOPERATIVES, CONDOS, CDD, HOA & TIME-SHARING**

**CDD Disclosures** There is also a specific disclosure that must be made on any contract for sale of a property within the CDD. F.S. 190.048

