

CALIFORNIA

REAL ESTATE ESCROW and TITLE

George W. Lawrence



Dearborn[™]
Real Estate Education

CALIFORNIA

REAL ESTATE ESCROW AND TITLE

George W. Lawrence

SAMPLE

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

President: Dr. Andrew Temte
Chief Learning Officer: Dr. Tim Smaby
Executive Director, Real Estate Education: Melissa Kleeman-Moy
Development Editor: Adam Bissen

CALIFORNIA REAL ESTATE ESCROW AND TITLE
©2014 Kaplan, Inc.
Published by DF Institute, Inc., d/b/a Dearborn Real Estate Education
332 Front St. S., Suite 501
La Crosse, WI 54601

All rights reserved. The text of this publication, or any part thereof, may not be reproduced in any manner whatsoever without written permission from the publisher.

Printed in the United States of America

ISBN: 978-1-4277-9093-4 / 1-4277-9093-0
PPN: 1609-0420

CONTENTS

	Acknowledgments	vii
	Introduction	ix
CHAPTER 1	Property Rights	1
	Key Terms	1
	Learning Objectives	1
	A History of California Real Property Title	2
	Land Divisions and Descriptions	5
	Interests in Property	9
	Estates in Real Property	11
	Chapter 1 Quiz	14
CHAPTER 2	Transfer of Interests	17
	Key Terms	17
	Learning Objectives	17
	Acquisition of Property	18
	Transfer of Title	20
	Deeds and Trust Deeds	21
	Chapter 2 Quiz	50
CHAPTER 3	Elements of Escrow	53
	Key Terms	53
	Learning Objectives	53
	California Law and the Escrow Agent	54
	Purpose of Escrow	57
	Escrow and Title Services in Early America	59
	Escrow Practitioners	61
	Northern California Versus Southern California Escrow Companies	64
	The Role of the Escrow Holder	65
	Professional Escrow Associations	68
	Chapter 3 Quiz	73
CHAPTER 4	Title Insurance Basics	77
	Key Terms	77
	Learning Objectives	77
	The Title Company and the Escrow Holder	78
	Title Records	80
	The Title Search	82
	Underwriting and the Preliminary Title Report	88
	Regulation of Title Insurers	90
	Chapter 4 Quiz	94

CHAPTER 5	Title Insurance Policies	97
	Key Terms	97
	Learning Objectives	97
	Title Insurance Policies	98
	High Liability Transactions	127
	Special Title Considerations	128
	Chapter 5 Quiz	137
CHAPTER 6	Contracts	141
	Key Terms	141
	Learning Objectives	141
	Contractual Relationships	142
	Parties to the Transaction	147
	Government Agencies	157
	Chapter 6 Quiz	172
CHAPTER 7	Real Estate Practice	175
	Key Terms	175
	Learning Objectives	175
	The Real Estate Agent's Role	176
	California Real Estate License Requirements	177
	The Purchase Contract and Escrow	181
	Property requirements	186
	Selection of Escrow and Title Services	189
	Chapter 7 Quiz	193
CHAPTER 8	Opening Escrow	197
	Key Terms	197
	Learning Objectives	197
	Steps in the Escrow	198
	Buyer's Financing Procedures and Escrow Holder Involvement	201
	Obtaining the Information	206
	Opening Interview	208
	Transaction Outline	215
	Chapter 8 Quiz	217
CHAPTER 9	The Escrow Instructions	221
	Key Terms	221
	Learning Objectives	221
	Accuracy Through Technology	222
	Preparation of the Instructions	222
	Special Escrow Disclosures	227
	Conveying Title: Preparing the Transfer Deeds	239
	Chapter 9 Quiz	242
CHAPTER 10	Northern and Southern California Regional Variations and Practices	245
	Key Terms	245
	Learning Objectives	245
	Northern California Escrow Procedures	246
	Southern California Escrow Procedures	254
	Chapter 10 Quiz	260

CHAPTER 11	Preclosing	263
	Key Terms	263
	Learning Objectives	263
	Seller's Matters	264
	Buyer's Matters	271
	Preclosing Documentation Review	273
	Transmittal of Documents	281
	Final Audit by Escrow	281
	Closing and Recordation	283
	Chapter 11 Quiz	285
CHAPTER 12	Escrow Accounting	289
	Key Terms	289
	Learning Objectives	289
	The Closing Statement	290
	Escrow Mathematics	292
	Settlement Statement (HUD-1)	304
	Chapter 12 Quiz	317
CHAPTER 13	Lending and the Escrow Process	321
	Key Terms	321
	Learning Objectives	321
	A History of Lending	322
	The Secondary Mortgage Market Today	329
	Loan Programs and Lender's Requirements	332
	FHA Mortgage Insurance	337
	The Loan Refinance Escrow	345
	Chapter 13 Quiz	351
CHAPTER 14	Protecting the Consumer	355
	Key Terms	355
	Learning Objectives	355
	Consumer Financial Protection Bureau	356
	Lender's Disclosures and Restrictions	356
	Property Use Restrictions Disclosures	367
	Chapter 14 Quiz	371
CHAPTER 15	Apartment Buildings, Commercial Properties, and Exchanges	375
	Key Terms	375
	Learning Objectives	375
	Special Requirements	376
	Apartment Buildings	376
	Commercial (Nonresidential) Properties	379
	Exchanges	388
	Chapter 15 Quiz	394
CHAPTER 16	Specialty Escrow Transactions	397
	Key Terms	397
	Learning Objectives	397
	Escrow Specialists	398
	Bulk Sale Transactions	398
	Liquor License Transfer	402

Manufactured Housing and Mobile Homes 404
Subdivision Escrow 408
Chapter 16 Quiz 411

CHAPTER 17 Advanced Title Insurance Underwriting 415

Key Terms 415
Learning Objectives 415
Easements 416
Other Rights and Privileges 422
Complex Land Descriptions 424
Chapter 17 Quiz 434

CHAPTER 18 Default, Foreclosure, and the Title Insurer 437

Key Terms 437
Learning Objectives 437
Preforeclosure Considerations 438
Foreclosure Process 444
Chapter 18 Quiz 448

Quiz Answer Key 451

APPENDIX I California Laws 463

California Escrow Law 463
Transferring Title—Escrow Holder Duties 467
California Recordation Laws 472

APPENDIX II How to Read a Preliminary Title Report 479

Glossary 507
Index 529

ACKNOWLEDGMENTS

I dedicate this book to my wife, Regina, who devoted countless hours of technical advice and assistance in helping to make this book a reality. Sharing her twenty-five years' experience in the title and escrow industry, she helped to provide invaluable insight into the practices and ever present challenges of the title and escrow professional. And to my daughter, Tera (who followed her mother into the business), contributing her administrative skills and technical knowledge from start to finish, with the laborious and tedious task of proofreading, especially the technical content and terminology that “spell-check” simply cannot do.

I would also like to thank the following title and escrow professionals, who helped me navigate through and explain much of the technical material:

- Darth Eliopulos, Vice President, Fidelity National Financial
- Don Overton, Chicago Title Company
- Steven A. Sokol, Esq., Hastings & Sokol, LLP, Lawyers

INTRODUCTION

With homeownership rates in the United States reaching 64% in 2013 (down from its all-time high of nearly 70% in 2004), most Americans have been introduced to “escrow.” Yet many may not have a clear understanding of the escrow process or why an escrow was used.

The term *escrow*, when used in the context of a transaction involving the sale or hypothecation (offering an asset as collateral for a loan) of real or personal property, refers either to the process of handling and accounting for documents and monies involved in the transaction or to the provider of such services. Escrow may also refer to monies belonging to a borrower that are held by the lender to be used for paying the borrower’s property taxes and hazard (homeowner’s) insurance when they become due.

Simply put, an escrow exists when a neutral third party depository holds property belonging to another for its disposition.

Title insurance is another matter. The purchaser of a piece of real estate who is required or encouraged to obtain title insurance may find it difficult to understand the need for such insurance and the protection it offers. Whereas escrow provides an immediate service, title insurance offers protection against a future event that may never occur. Few people really want to buy any type of insurance. Many people would not buy auto insurance if not required to do so by state law, and then oftentimes they purchase only the minimum amount of coverage required by the law. While term life insurance provides for the beneficiaries of the policy, it offers no financial benefit to the insured. The prospective property owner, therefore, must be informed about the benefits of title insurance, why it may be required, the coverage and protection it offers, who it protects, and who pays for it.

This book provides an in-depth explanation of the escrow, title, and related real estate services and the specific duties of the professionals who perform

these services. It is directed toward those who work in any of the variety of occupations of the real estate industry, including escrow, title insurance, real estate brokerage, appraisal, and lending, and especially those new to their respective professions and careers.

The subjects covered provide the reader with a comprehensive overview of the responsibilities of the escrow and title insurance professional and offers an introduction to the activities, qualifications, and practices of the real estate and loan professionals and the services they deliver.

■ TERMINOLOGY

The following terms are used interchangeably throughout the book:

- *Real estate agents.* When referring to a real estate agent, unless specifically otherwise defined within the context of the subject matter, the terms *agent*, *real estate agent*, *broker*, *real estate broker*, *salesperson*, *real estate salesperson*, and *licensee* are all used interchangeably in this text.
- *Escrow holder.* Reference to the escrow holder may also mean the escrow officer, whereas referring to simply “escrow” will usually mean the escrow process itself.
- *Title insurance company.* The title insurance company may simply be called the title company. A reference to the insurer or the insurance company will be identified by the context in which it appears, such as either the title insurance company or a hazard insurance company—or simply homeowner’s insurance company.
- *Title officer.* The title officer may also be called the title examiner.
- **REALTOR®.** Not all real estate agents are REALTORS®. Only those real estate professionals who are members of the National Association of REALTORS® may call themselves REALTORS® and use the logo identifying themselves as such. Since 1908, the National Association of REALTORS® and its membership have not only helped make the dream of homeownership a reality, they have adopted the mission of building better communities by helping to shape and promote community values and strengthen community

bonds. The objectives of the National Association of REALTORS®, its members, and their collective commitment to the consumer in providing the highest standards of honest and ethical real estate practices are described in Chapter 7.

The real estate business, including escrow, title, and lending services, is often in a state of change. New laws and regulations require changes in the way business practices and procedures are executed. Innovations in technology cause change as well, typically providing greater efficiency and oftentimes with less cost. Some things, on the other hand, never change, such as the fundamental concepts of acquisition and protection of land, title, ownership interests, and property rights. The reader may find the information regarding those subjects covered in this book to be an interesting refresher, perhaps even forgotten or never clearly understood in the first place. The book revisits the past and shares the historical significance of events that contributed to the evolution of the title insurance and escrow industry. By looking at the times when the nation entered and emerged from financial crisis, history can provide a better understanding of the customs and laws that direct today's real estate and financial services practices.

CHAPTER ONE



PROPERTY RIGHTS

■ KEY TERMS

absolute ownership
estates
government lots
land descriptions
legal descriptions
meridian and base line

metes and bounds
property
Public Land Survey
System
public lands
qualified ownership

state lands
submerged lands
tidelands
Treaty of Guadalupe
Hidalgo

■ LEARNING OBJECTIVES

Upon completing this chapter, you will be able to

- explain the significance of the Treaty of Guadalupe Hidalgo;
- identify basic land divisions, descriptions, and measurements;
- explain the legal description of and the difference between personal and real property;
- identify and explain types of real property ownership; and
- identify the different estates in property.

■ A HISTORY OF CALIFORNIA REAL PROPERTY TITLE

Following the American War of Independence, each state adopted statutes that, for the most part, accepted English common law. California's system of law is founded in this English common law.

However, the characteristics of property interests and private property rights in California (then called Alta California, an area that included all or parts of Arizona, Utah, Nevada, Colorado, Wyoming, and California) actually come from the Spanish. In 1769, Spanish missions began appearing along the California coast. Among the first major property owners were those who received sizable land grants from California's Spanish governors. Two of the largest consisted of nearly all of what is now Los Angeles County.

The Spanish established forts called "presidios" to provide protection for settlers. Four in all, these eventually became some of California's largest and most beautiful cities: San Diego, San Francisco, Santa Barbara, and Monterey.

After the development of the presidios, the Spanish government created "pueblos," which provided resources such as food and other supplies for the presidios. Three of these pueblos evolved into the cities of San Jose, Los Angeles, and Sonoma.

After the end of the Mexican War of Independence from Spain in 1821, California was part of Mexico. Californians who agreed to become citizens of the new Mexican government received land grants. Known as Californios, they turned their lands into large cattle ranches, called ranchos. One of the largest, Tejon Ranch, was founded in 1843 and contained 270,000 acres. It still operates today as a working cattle ranch about 75 miles north of the city of Los Angeles. Other evidence of the former ranchos appears throughout California. Many cities stand on land once home to these ranchos: Pasadena, San Clemente, and Oakland, to name a few.

Other settlers began emigrating from Canada and the United States to California (remember, California was not part of the United States at this time). In 1846, a group of these settlers rebelled against the oppressive rule of Mexico. Rallying behind the newly adopted California Republic's "Bear Flag" (which would become the basis for the state flag of California), these Americans fought against General Antonio Lopez de Santa Anna and Mexico's rule.

The California Republic, which had been established on June 14, 1846, was short-lived. During the Mexican-American War, the U.S. government gained possession of the republic, and at war's end, California was admitted into the Union as a state. Note that unlike many of the future states that had been part of Alta Cali-

fornia—such as Nevada, Arizona, Colorado and Utah—California never became a territory before obtaining statehood. The Mexican-American War ended in 1848 with the **Treaty of Guadalupe Hidalgo**. Under that treaty, Alta California (except for California) and Santa Fé de Nuevo México became territories of the United States.

The title officer will frequently find reference to the historical significance of the Treaty of Guadalupe Hidalgo, as well as ranchos established by Mexican land grants. The title professional will find the names and places founded in California's history sprinkled throughout many legal descriptions. Properties located on former ranchos are legally described using the following format as suggested by California law:

That portion of the Rancho _____, in the City of _____, County of _____, State of California, as shown on map filed for record in Book____, page_____ of Patents, in the office of the County Recorder of said county, described as follows . . .

The Treaty of Guadalupe Hidalgo

The Treaty of Guadalupe Hidalgo was initially signed on February 2, 1848; ratified by Congress on March 10, 1848; and finalized on May 30, 1848. The treaty led to California's establishment as the 31st state in 1850 and served as the underlying authority for establishing title to property. The treaty is an important part of California's real estate history, having established the fundamental principles of title to property.

The following is an excerpt from the treaty. The title professional may recognize the importance of the treaty as it relates to certain elements of property rights and the protection afforded some parties.

The Treaty of Guadalupe Hidalgo (excerpts)

Article VIII

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever. Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States. In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

Article IX

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the mean time, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without; restriction.

Under the Treaty of Guadalupe Hidalgo, title to properties was established as follows:

Mexican Land Grants Ranchos and public grants delivered by Spain and Mexico were confirmed to be valid.

State Lands State lands were granted by the U.S. Congress to the State of California

Tidelands and Submerged Lands The federal Submerged Lands Act of 1953 granted ownership of **tidelands** and **submerged lands** and resources to coastal states such as California. The Outer Continental Shelf Lands Act of 1953, legislation passed along with Submerged Lands Act, validated and guaranteed that the U.S. government possessed control and jurisdiction over lands, waters, and other resources beyond three nautical miles from the shore.

Under a 1988 proclamation issued by President Ronald Reagan, the United States has complete and sovereign rights over the lands and waters out to 12 nautical miles from shore (from the original 3 miles).

Public Lands All other lands became property of the United States and are identified as **public lands**.

■ LAND DIVISIONS AND DESCRIPTIONS

Land divisions range from vast areas including townships to sections and fractional sections and individual lots. Title officers and, to a lesser degree, escrow officers must have a thorough understanding of the process of both dividing and describing real property. Real property is identified in a number of ways.

Land Descriptions and Legal Descriptions

Land may be described in several ways, some of which may not be its “legal description.” The **legal description** is how a property is recorded in title records and on all deeds—including deeds of trust (or mortgages, although these are seldom used in California)—involved in real estate lending. A legal description may be recorded as a lot and tract, a metes and bounds, or a section and township. Other descriptions, which are not considered legal descriptions, would include the street address and the assessor’s parcel number.

Land Descriptions are often dependent on land surveying and the subdividing of properties based on the **Public Land Survey System (PLSS)**. The PLSS is called a “rectangular” system and dates back to the original 13 colonies.

Today’s survey methods are much more precise than those used in early California, when sophisticated surveying equipment did not exist. The practices employed in measuring distances were often crude and inaccurate. The equipment included chains, ropes, and steel-rimmed wheels.

The crude methods and instruments used often resulted in inaccurate property descriptions. The sizes of wheels, for example, may not have been uniform, result-

ing in completely inaccurate measurements. Accurate measurements depend on fixed standards. Using today's equipment, the surveyor relies on standard and uniform units of measure (one foot, one yard, one mile, etc.) and knows the conversion factor for each. The conversion of units of measure, such as from the Spanish-language description, requires translation. Title companies depend on experienced title officers and engineers, who have the expertise to prepare accurate and insurable legal descriptions and understand the meaning of centuries-old descriptions.

Public Land Survey System

The Public Land Survey System is the recognized method of subdividing and describing land in the United States. The PLSS is used to divide lands owned by the federal government, including all land granted to the federal government by the original colonies. Most of those lands are now in private ownership.

Division of Lands

Townships are 6 miles square, totaling 36 square miles. Townships are then subdivided into 36 sections, each 1 mile square. Sections can be further subdivided into smaller sections called "aliquots parts." These consist of half-sections or smaller. They also include what are known as government lots, parcels smaller than one-quarter section or irregular in shape.

Survey Process

The surveyor places a permanent marker, called a "monument," at the corner of each section, which enables it to be easily located. Monuments are also placed at the corners of each quarter-section.

Early surveyors often used objects such as a distinctive tree, a rock formation or other natural feature as monuments, or failing any of these being available, they would simply drive a stake into the ground. The result was that with the elements or the passing of time, these monuments oftentimes simply eroded away or disappeared. Today's contemporary monuments are typically inscribed markers placed in concrete or mounted on iron or steel posts, certainly more permanent.

In order to complete the survey of a given parcel, surveyors begin at an arbitrary initial point and measure "to the winds," going north, south, east, and west. The process is repeated from each destination point. While many early surveys were inaccurate because of the more primitive methods employed by the surveyor, today's survey practices are considerably more reliable. Keep in mind, however,

that because of these early survey methods, some sections are not square and actually may be greater or less than the standard uniform acreage.

Principal Meridian and Base Line

The line that extends from north to south and runs through the initial point is called the principal **meridian**.

The principal meridian has what is called a **base line**, the east to west line that runs through the initial point.

Townships represent the land's location north or south of the base line. Ranges represent the land's location east or west of the principal meridian.

In forming the township, base lines are horizontal and meridians are vertical, creating a grid. The lines are six miles apart. A box is created at the intersections. The box is six miles long and six miles wide (36 square miles) and forms the township.

Because the earth is not completely round, additional meridians are included to adjust for the discrepancy and are called correction lines, usually located every 24 miles north and south of the base line.

In basic land descriptions, townships extend north or south from a principal base line, whereas ranges extend east or west from a principal meridian.

Basic land measurements and comparative conversions include the following:

- One mile: 5,280 feet in length
- One square mile: 27,878,400 square feet
- One acre: 43,560 square feet
- One township: 6 miles on each side and containing 36 sections
- One section in a township: a square, one mile on each side and containing 640 acres
- One-half section: 320 acres
- One-quarter section: 160 acres

California's Base Lines and Meridians

California has three sets of base lines and meridians: the Humboldt Base Line and Meridian (northern California), the Mt. Diablo Base Line and Meridian

(central California), and the San Bernardino Base Line and Meridian (southern California). Comparative land measurements under the system include **metes and bounds** and **government lots**.

Metes and Bounds

Metes are specific units of measure: feet, yards, etc.

Bounds identify the borders of the property. They may be natural—such as rivers, streams, and even unique rock formations—or man-made, such as roads, trails, and highways.

The title professional may be required to rely on a metes-and-bounds description of a property that is not identified by a parcel number as found in a recorded map or, because of its physical shape, is difficult to describe, as are sections and townships. Some metes-and-bounds descriptions are so complex that only a civil engineer or surveyor is likely to understand them. Many title officers, however, are experienced in writing and interpreting an accurate description from readily available information.

A metes-and-bounds description starts at a fixed point and then continues describing the boundaries of the land, from one point or place to another and finishing at the original beginning point. While all land description elements are important in establishing these measurements, the one that is clearly more important than any other is the point of beginning (POB). If the surveyor or engineer errs in determining the point of beginning, the rest of the measurements, as well as the description, is meaningless.

Government Lots

In the original government survey system, waterways and other natural elements created parcels of land that were less than a quarter-section in size, and they were called government lots. Government lots also contain land lost as a result of adjustments made by correction lines. A title officer involved in a land development project might be faced with such a parcel. The developer is certainly interested in knowing, for example, that a government lot does not necessarily contain a standard number of acres and relies on the surveyor to determine the actual size of the property. The surveyor places markers at the corner of each government lot.

■ INTERESTS IN PROPERTY

Property is considered either “real” (immovable) or “personal” (capable of being moved).

Real Property

Real property consists of land and all objects that are “affixed” to and immovable on the land, such as buildings and other structures, walls and fences, and even trees and shrubs. It also includes rights that are “appurtenant” to the land, which means accompanying or belonging to it. An example of an appurtenance would be an easement. An appurtenance is right to use or enjoy the land or a part of it, but it may not actually be part of the land itself. When a property is sold to another person, the title to it also transfers that which is appurtenant.

Land Land consists of the earth and includes the air above it to the heavens and all that is below it to the core of the earth. One’s interest in the land may be restricted or limited by government regulation. It also may be subject to the rights of another party who owns the interest in other elements in or under the land, such as oil, gas, or minerals. In fact, seldom will the title officer discover that an interest in land also includes the rights to minerals, oil, and gas—especially in oil-producing states such as California.

Fixtures Fixtures are those items that were originally personal property but are now attached to the land. These may be natural fixtures such as trees, vines, or shrubs. Prior to being planted, these are personal property. Once planted, they are considered part of the real property. Fixtures may also be man-made, such as buildings permanently placed on the land, or components attached by fastening devices such as nail, bolts, or screws.

Title

The transfer deed, such as a grant deed, conveys title. Citizenship is not a requirement under California law to take title to real property. Issues of citizenship that arise from time to time in a real estate transaction may require the escrow officer to perform certain acts or to prepare specific documents, especially regarding income taxes. Acquiring title, however, in itself requires no extraordinary action by the escrow or title professional.

Vesting

Vesting refers to the manner in which title is held, such as “John J. Jones and Mary K. Jones, Husband and Wife as Community Property with the Right of Survivorship.”

Absolute Ownership

Absolute ownership is one’s complete control over property, with the right to use or dispose of it as the holder sees fit, is absolute ownership.

Qualified Ownership

Ownership of property with another person is considered to be qualified if the use of the property is limited or restricted. **Qualified ownership**, when owned with others, allows title to be held in several ways, as follows:

- *Joint tenants*. A joint tenancy interest exists when a property is owned by two or more persons with equal rights, and that upon the death of one joint tenant, the deceased’s share passes to the other survivor(s). Joint tenants do not need to be married to each another, or domestic partners with each another. Joint tenants cannot sell or transfer their interest without the consent of the others.
- *Tenants in common*. Also referred to as a TIC, tenants-in-common property is one owned by several persons having equal or common rights, but each owner holds a separate individual interest. Unlike joint tenancy, these separate interests may be sold, transferred, and willed freely without the consent of the others. Additionally, they may be encumbered as collateral for financing. Pragmatically speaking, however, it would be difficult to find an institutional lender willing to loan to one tenant in common without requiring all owners to be equally liable for repayment.
- *Partnership interest (tenants in partnership)*. A partnership interest is interest in a property by an association or entity consisting of two or more persons. It is assumed to be an association formed for the purpose of running a for-profit organization.
- *Community property*. Community property may held either with or without the right of survivorship, as in the vesting example described earlier. However, unlike joint tenants, it is restricted to either a married couple or domestic partners. Note that in California domestic partners need not be of the same sex. If title is held as community property without specifying the right of survivorship, the co-owners are allowed to separately place their half in a will and may provide for the property to go to someone

other than the surviving spouse. If, however, vesting includes “community property with the right of survivorship” upon the death of a spouse, the property would pass to the survivor just as it does in joint tenancy. Certain tax benefits may be available to a surviving spouse who has taken title as community property and which may not be available under joint tenancy.

- *Trust*. Property may be held in a trust by a trustee for the benefit of the actual owners who are called beneficiaries. It is important for the escrow officer to understand that the trust cannot take title itself, but rather the trustee receives title on behalf of the trust. An example of vesting would be “John Jones as Trustee of the Jones Family Trust.”

Pro-Tip: Do Not Offer Advice on Vesting!

It is important for the escrow officer not to assume title is going to be taken in one form or another. If principals have not specified how they wish to take title the escrow officer must ask them! It is not unusual for persons who are acquiring real estate for the first time to question the escrow officer about the best way to take title, and to explain the differences, advantages, and disadvantages of each method. The only correct response to these queries is “please seek legal advice.”

■ ESTATES IN REAL PROPERTY

Estate is one of those words that is often industry-specific, part of the terminology of a specific profession. We mention this because a person new to the real estate profession, including title and escrow services, upon hearing the word *estate* might envision a grand mansion in the country. Or perhaps one has been involved in the probate of a decedent’s estate, which refers to all the property and possessions belonging to the decedent. Neither, however, refers to our discussion of the term. Rather *estate* within the context of this section refers to the degree or extent of one’s interest in land. Estates in real property can be either freehold or less-than-freehold.

Freehold Estate

The concept of freehold estates comes from medieval England, which allowed commoners to acquire real property—but subject to the interest of the king. Today, the term *freehold estate* refers to an interest in real property that is of an unspecified period.

Freehold estates include fee simple and life estates.

Fee Simple Estate A fee simple estate is the highest form of ownership in real estate. Its characteristics are as follows:

- Inheritable by either one's will or by intestate succession, if no will exists
- Transferable, capable of being freely conveyed by a property owner to another
- Perpetual and unlimited in holding term with no termination date on the owner's right to continue to own, possess, and enjoy it

Fee Simple Absolute A fee simple absolute estate generally has no restrictions placed on it, other than by the government through its powers and regulations. This is the most common form of interest in real property the escrow and title professional may encounter in a typical transaction.

Fee Simple Defeasible Specific conditions or restrictions are placed on the transferability of the property. It provides for the conveyance of title back to the transferor if the titleholder violates the terms of the agreement. However, under California's Marketable Record Title Act of 1982, court action is necessary for the original transferor to seek the return of title. Seldom will escrow or title professionals find themselves in a transaction such as this.

Life Estate This is an estate in which ownership exists only during the term of the life of a named person. The person whose life determines the holding term may be either the person who possesses the life estate (called a life tenant) or some other named individual.

■ **EXAMPLE** John Jones grants title to his property, Lonesome Oak, to Jim James for the Life of Paul Smith. When Paul Smith dies, title to Lonesome Oak reverts to John Jones.

Estate in Reversion Estate in reversion occurs, for example, when a person named under a life estate dies. In this case, title reverts to the grantor. Reversion is not limited to only life estates. For example, it may apply to a transfer of title that provides that if a certain act specified in the transfer agreement is performed by the grantee, title automatically reverts to the grantor.

■ **EXAMPLE** John Jones grants title to his property, Lonesome Oak, to Jim James, which includes an agreement that James may hold title as long as he does not change the name of Lonesome Oak. The property would revert to Jones in the event James actually changed the name of Lonesome Oak.

Estate in Remainder A life estate may be created for the life of the titleholder, with the right to occupy and enjoy the property during the titleholder's life. Upon the death of the titleholder, the estate transfers to the named heir as an estate in remainder.

■ **EXAMPLE** John Jones grants title to his property, Lonesome Oak, to Jim James for life (the life of James). The agreement also provides that upon the death of James, title is granted to Paul Smith. Smith, therefore, has an estate in remainder.

Less Than Freehold Estate

Simply put, a “less than freehold estate” refers to a tenant's leasehold interest in the property. The interest is considered personal, not real, property. There are four types:

- *Estate for years.* A lease with a specified termination date. All leases in California greater in term than one year must be in writing, with the termination date identified in the lease agreement.
- *Estate from period to period.* Essentially a month-to-month rental. Month-to-month rental agreements in California are not required to be in writing, sometimes creating problems for a purchaser of income property.
- *Estate at will.* No specified term and with no rental agreement. This differs from the meaning of estate from period to period in that the estate at will does not include even the verbal, nonwritten understanding of a specific term that is assumed in the estate from period to period. It allows for the termination of the tenancy by the landowner at any time.
- *Estate at sufferance.* A tenant who fails to vacate the property at the end of a lease and who has neither a month-to-month agreement, which would continue the tenancy, or permission expressly granted by the landlord is considered to have an estate at sufferance. It is not uncommon for an escrow transaction to include a contingency clause addressing a tenant's possession of a property in such cases and a resolution requirement.

■ CHAPTER 1 QUIZ

1. California's property ownership concepts have their roots in
 - a. French common law.
 - b. Spanish common law.
 - c. English common law.
 - d. none of these.
2. The character of property interests and private property rights in California can be traced back to
 - a. the French.
 - b. the Spanish.
 - c. the English.
 - d. none of these.
3. Spanish missions began sprouting up along the California coast, known at the time as part of
 - a. Lower California.
 - b. Baja California.
 - c. Alta California.
 - d. Alta Mexico.
4. Following the Mexican-American War, title to properties was established under
 - a. the Treaty of Guadalupe Hidalgo.
 - b. the Treaty of Juan Valdez.
 - c. the provisions of the Bear Flag Agreement.
 - d. John C. Fremont.

5. Property is considered
 - a. either real, not capable of being moved, or personal, that which may be moved.
 - b. real, whether movable or not, and personal.
 - c. immovable.
 - d. none of these.
6. Estates in real property are
 - a. either free or not.
 - b. either freehold or less than freehold.
 - c. founded in French law.
 - d. founded in Spanish law.
7. An estate for years
 - a. is a lease with a specified termination date.
 - b. is a month-to-month rental agreement.
 - c. must always be for one year.
 - d. both a and c.
8. An estate at will
 - a. has no specified term.
 - b. is always in writing.
 - c. is for a specified term.
 - d. is for greater than one year.
9. Fee simple estates are
 - a. transferable.
 - b. perpetual.
 - c. inheritable.
 - d. all of these.

10. A common interest or tenant's property is one
 - a. with joint tenants.
 - b. with community property with right of survivorship.
 - c. with tenants in common.
 - d. none of these.

SAMPLE

Ensure your success
with these proven
study tools from
**Dearborn™ Real Estate
Education:**

California Real Estate Economics

California Real Estate Exam Guide

California Real Estate Finance

California Real Estate Law

California Real Estate Practice

California Real Estate Principles

Fundamentals of Real Estate Appraisal

*Property Management and
Managing Risk*

*Real Estate Brokerage:
A Management Guide and Workbook*

California Real Estate Escrow and Title provides a comprehensive study of escrow and title insurance principles, from early America's escrow practices to transferring title in today's high-tech environment.

Features:

- Examines the modern fields of escrow and title, and the differences in practice between northern and southern California.
- Includes frequent citation and discussion of the California Civil Code, as well as federal laws.
- Follows the entire escrow process from preliminary discussions through closing.
- Special "Pro-Tip" sections offer firsthand advice from practicing professionals.
- End-of-chapter quizzes and an answer key with rationales help students assess and retain knowledge.

Dearborn™
Real Estate Education

332 Front Street South, Suite 501, La Crosse, WI 54601
www.dearborn.com, 800.972.2220

For comments or queries about this product, please
email us at contentinquiries@dearborn.com.

ISBN-13: 978-1-4277-9093-4
ISBN-10: 1-4277-9093-0



9 781427 790934
Reorder No.: 1609-0420