**Unit 7 Outline**

**Interests In Real Estate**

**Outline**

I. Government Powers

* Individual ownership rights are subject to certain powers, or rights, held by federal, state, and local governments.

IN ILLINOIS . . . The state and local government powers discussed in this section are all held by the state of Illinois and various county **and municipal governing bodies.**

A. Police Power

1. Every state has the power to enact legislation to preserve order, protect the public health and safety, and promote the general welfare. The laws must be uniform and nondiscriminatory.

B. Eminent Domain

1. *Eminent domain* is the right of the government to acquire privately owned real estate for public use.

2. *Condemnation* is the process by which the right is exercised by either judicial or administrative proceedings.

3. The proposed use must be for the public good, just compensation must be paid to the owner, and the rights of the property owner must be protected by due process of law.

4. Equity in Eminent Domain Act

a. effective in Illinois on January 1, 2007

b. the government must prove an area is blighted before forcing property owners to sell their property for private development projects

c. helps property owners receive fair market value for their property; requires relocation costs for displaced residents and businesses

C. Taxation

1. Taxation is a charge on real estate to raise funds to meet the public needs of a government.

D. Escheatment

1. Escheatment is an avenue by which the state may acquire privately owned real or personal property when an owner dies without a will and leaves no heirs.

IN ILLINOIS . . . Real property escheats to the county in which it is located, rather than to the state.

II. Estates in Land

A. Historically, estates in land have been classified as *freehold* and *leasehold* estates.

1. Freehold estates last for an indeterminable length of time and include fee simple, fee simple defeasible, and life estates.

IN ILLINOIS . . . *The traditional freehold estates are recognized under Illinois law.*

2. Leasehold estates last for a fixed period of time. They include estates for years and estates from period to period.

B. Fee Simple Estate

1. An estate in fee simple (or fee simple absolute) is the highest interest in real estate recognized by law: the holder is entitled to all rights to the property, limited only by public and private restrictions. Upon the death of the owner, the property passes to the owner’s heirs or as provided by will.

C. Fee Simple Defeasible

1. Subject to the occurrence or nonoccurrence of some specified event.

2. Condition subsequent: the new owner must not perform some action or activity. If the condition is broken, the former owner can retake possession of the property through legal action (right of reentry).

3. Special limitation: estate ends automatically upon the current owner’s failure to comply with the limitation (possibility of reverter). Also called a fee simple determinable.

4. Right of reentry and possibility of reverter are considered future interests.

D. Life Estate

1. A freehold estate limited in duration to the life of the owner or the life of some other designated person or persons. The ownership may be sold, mortgaged, or leased, but it is always subject to the limitations of the life estate.

**2. Conventional life estate is created intentionally by the owner. The life tenant has full enjoyment of the ownership for the duration of his or her life. When the life tenant dies, the estate ends and its ownership passes to another designated individual or returns to the previous owner.**

a. A life estate that is based on the lifetime of a person other than the life tenant is known as a life estate *pur autre vie*.

b. A life tenant may not injure, or *waste*, the property.

**3. Remainder and reversion**

a. Remainder interest: The creator of the life estate may name a remainderman as the person to whom the property will pass when the life estate ends.

b. Reversionary interest: The creator of the life estate may choose not to name a remainderman, in which case the creator will recapture ownership when the life estate ends.

**4. Legal life estate is a form of life estate established by state law: dower, curtesy, and homestead.**

IN ILLINOIS . . . *As in most separate property states, the common-law concepts of dower and curtesy have been abolished in favor of the Uniform Probate Code, which gives the surviving spouse a right to an elective share upon the death of the other spouse.*

a. Homestead: a legal life estate owned and occupied as the family home. At least part of the home is protected from creditors during the occupant’s lifetime.

IN ILLINOIS . . . *Every homeowner is entitled to a homestead estate up to a value of $15,000 in the land and buildings he or she occupies as a principal residence. Homestead estates of a husband and wife can be combined for a total of $30,000. The estate extends to all types of residential property, both real and personal, including condominiums, cooperatives, beneficial interests in land trusts, and leaseholds. Single persons, as well as householders with spouses and families, qualify.*

*No notice needs to be recorded or filed to establish a homestead in Illinois. Therefore, prospective purchasers, lienholders and other concerned parties are charged with inspecting a property to see if it serves as the residence of the potential debtor and if homestead estate rights can be claimed. A family can have only one homestead at any one time. The Illinois homestead exemption is not applicable between co-owners but is applicable to any co-tenant’s unsecured creditors. The exemption continues after the death of an individual for the benefit of the surviving spouse as long as the surviving spouse continues to occupy the homestead residence and extends for the benefit of all children living there until the youngest reaches 18 years of age.*

III. Encumbrances

An encumbrance is a claim, charge, or liability that attaches to real estate; a right or an interest held by someone other than the fee owner of the property that affects title.

A. Liens

1. A lien is a charge against property that provides security for a debt or obligation of the owner.

B. Restrictions

1. Deed restrictions, also referred to as covenants, conditions and restrictions (CC&Rs) are private agreements that affect the use of land.

C. Easements

1. An easement is the right to use the land of another for a particular purpose.

a. Appurtenant easement: annexed to the ownership of one parcel and allows the owner the use of a neighbor’s land.

2. The parcel over which the easement runs is the servient tenement; the neighboring parcel that benefits is the dominant tenement.

a. An appurtenant easement is part of the dominant tenement. If the dominant tenement is conveyed to another party, the easement transfers with the title.

**3. An easement may be created by**

a. a written agreement between the parties,

b. the grantor in a deed of conveyance,

c. longtime usage, as in an easement by prescription,

d. necessity, or

e. implication.

4. Party wall easement—Each lot owner owns the half of a shared wall on his or her lot, and each has an appurtenant easement in the other half. A written party wall agreement must be used to create the easement rights.

5. Easement by necessity arises when owners sell part of their land that has no access except over the seller’s remaining land.

a. Created by court order

6. Easement by prescription—The claimant’s use must have been continuous, exclusive and without the owner’s approval. The use must be visible, open and notorious; that is, the owner must have been able to learn of it.

a. The concept of taking provides that successive periods of continuous occupation by different parties may be combined to reach the required total number of years.

IN ILLINOIS . . . *To establish an easement by prescription, the use must be adverse, exclusive, under claim of right and continuous and uninterrupted for a period of 20 years. Illinois law permits owners of pedestrian walkways in shopping centers and large commercial or industrial buildings to prevent the establishment of prescriptive easements by the public. The owner must display signs stating that access to the property is by permission (and thus not adverse).*

**7.** Easement in gross is an individual interest in or a right to use someone else’s land.

a. Commercial easements in gross may be assigned, conveyed, and inherited.

b. Personal easements in gross usually are not assignable and terminate upon the death of the easement owner.

8. Easement by condemnation is an easement acquired for a public purpose through the right of eminent domain.

9. An easement may be ended

a. when its purpose no longer exists,

b. when the properties are merged under one legal description (termination by merger) when acquired by a single owner,

c. by release of the right to the owner of the servient tenement,

d. by abandonment,

e. by nonuse of a prescriptive easement,

f. by adverse possession by the owner of the servient tenement,

g. by destruction of the servient tenement,

h. by lawsuit against someone claiming an easement, *or*

i. by property conversion.

D. Licenses

1. A license is a personal privilege to enter the land of another for a specific purpose.

a. A license differs from an easement: it can be terminated or canceled by the licensor.

b. A right to use another’s property that is given orally or informally, is generally considered to be a license rather than a personal easement in gross.

c. A license ends upon the death of either party or the sale of the land by the licensor.

E. Encroachments

1. An encroachment occurs when all or part of a structure illegally extends beyond the land of its owner or beyond the legal building lines.

IV. Nature and Water: Rights and Restrictions

A. *Riparian rights* are rights of owners of land along the course of a river, stream, or similar body of water.

B. *Littoral rights* are the rights of owners whose land borders commercially navigable lakes, seas, and oceans.

C. Accretion, Erosion, and Avulsion

1. *Accretion* is an increase in the land resulting from the deposit of soil by the water’s action (called alluvion or alluvium). If water recedes, new land is acquired by reliction.

2. *Erosion* is the gradual wearing away of the land by natural forces.

3. *Avulsion* is the sudden removal of soil by an act of nature.

4. *Reliction* is when water recedes. New land is acquired.

D. Doctrine of Prior Appropriation

Under this doctrine, the right to use any water, with the exception of limited domestic use, is controlled by the state rather than by the landowner whose property lies adjacent to the water. To secure water rights, landowners must demonstrate to a state agency that they plan a beneficial use of the water.