

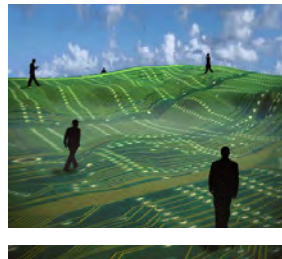
## Insuring Transfers of Severed and Lesser Estates



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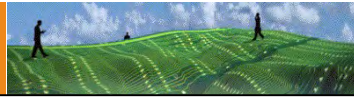
Washington Land  
Title Association  
Education Seminar

Lynnwood, WA  
October 19, 2019



## Discussion Subjects

- **What Types of Estates in Real Property Can be Owned?**
- **Estates Owned in Real Property Distinguished from Rights Against in Real Property**
- **Severance of Real Property Distinguished from Transfer of a Lesser Estate**
- **Customizing Commitments and Policies for Lesser Estates**



## What Rights are Owned by the Vested Owner of a Fee Simple Absolute Estate?

- **Possession without sharing with any other owner**
- **“Simple:” The right to convey to others, or to pass the property to heirs**
- **“Absolute:” Subject to no conditions or restrictions from a prior grantor [or “the Crown”]**
- **Subject to no covenants or easements**
- **Subject to no payments due to any party secured by liens or mortgages**



After bullets,

Ask how to show all those rights, the “bundle of sticks,” all together?

Click to reveal ADAM

## What Estates Can Be Owned in Land?

- **Fee Simple Absolute**
- **Fee Simple Subject to Reversion**
- **Fee Simple Subject to a Condition**
- **Life and Remainder Estates**
- **Leasehold Estates**



Upon violation of a REVERSION the prior grantor automatically becomes the fee simple owner.

Upon violation of a CONDITION, the prior grantor has a power of termination

## **Liens and Easements are Rights Against Real Property, Not Estates in Real Property**



## **Liens and Easements Distinguished from Ownership Estates in Real Property**

- **Liens give rights and remedies that allow foreclosure**
- **Liens give no rights of use and no rights of possession**
- **Easements give certain rights of use on the land, a right of possession without ownership**
- **The owner of an easement has no ownership interest in the burdened property**

Click to reveal easement bullets

The creation of a liens or easement is not a severance of the property itself.

Liens and easements are not ownership of an estate in real property.

## **Severance of the Property Divides the Parcel, but does not Divide the Ownership Estate**



## Severance of Real Property

- **Severance creates a separate parcel of land with a separate legal description**
- **Severance creates a new separated chain of title**
- **Severance of all ownership rights in a portion of the real property is a transfer by all owners giving up all ownership rights as to a portion of the land, but retaining a different portion of land**
- **The severance of property is not division of an ownership estate in land**
- **The severed property and the retained property both remain owned in the same estate as the initial estate**
  - If the property was owned in fee, then was divided, then each separate property is owned in fee

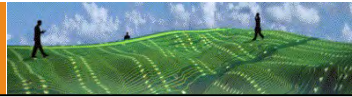


All bullet points will play automatically.



## Severance of Real Property

- **The severed property remains subject to all rights and estates that existed with the initial property**
  - A subdivision without the joinder of a lien holder does not sever the lien holder's right to the initial legal description
  - A mechanic's lien burdening the whole parcel is not required to accept the subdivision
    - But a condominium created after commencement of a mechanic's lien does require the mechanic's lien claimant to accept payoff of a portion of the debt in return for a partial release of the condominium unit
  - A subdivision without the joinder of the owner of an easement that burdens the whole initial parcel does not affect the appurtenant easement owner's rights



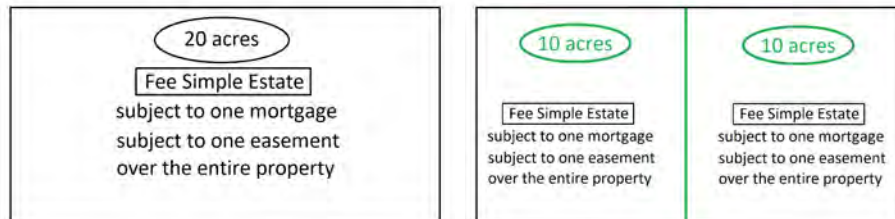
Click to reveal example of mechanic's liens

Click to reveal example of easement rights

## Severance of Real Property

- **Examples:**

- Horizontal Subdivision of description into two adjoining lots
- Vertical Subdivision of ground ownership into condominium units



Click to reveal BEFORE

Click to reveal AFTER

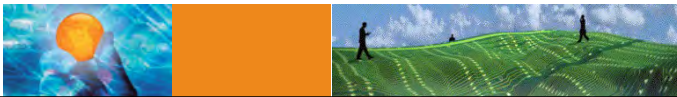
Click to reveal condo example – the same

**Transfer of a Lesser Estate  
Divides the Ownership Estate,  
but does not Divide the Parcel**



## Transfer of a Lesser Estate

- Transfer of a lesser estate is a division of the ownership estate
- Transfer of a lesser estate is a transfer by all owners of the initial estate, giving a portion of those ownership rights, but retaining the remainder of ownership rights
- Transfer of a portion of an estate does not affect the legal description of a parcel of land
- Transfer of a lesser estate is not a severance of the land
- Transfer of a portion of an estate is not a subdivision of the parcel



First 2 bullets are automatic

Click to reveal not a division of land

Last 2 bullets are automatic

## Transfer of a Lesser Estate

- **The estate that was transferred and the estate that was retained are different, but both ownership estates are the same parcel of property**
  - If the property was owned in fee, then was divided into a life estate and a remainder estate, both those estates are upon the same parcel
- **The severed estate and the retained estate remain subject to all rights that affected the initial property**
  - A transfer of a lesser estate without the joinder of a lien holder does not sever the lien holder's right to the initial ownership estate
  - A transfer of a lesser estate without the joinder of the owner of an easement that burdens the whole initial parcel does not affect the appurtenant easement owner's rights affecting all estates

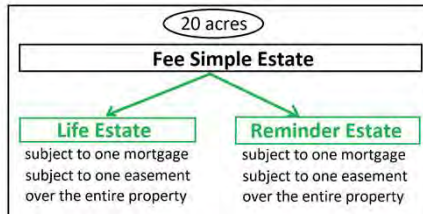
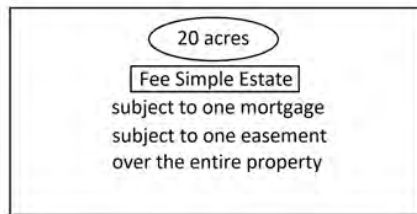


**Click** to reveal both estates are subject to all rights that affected the initial estate.

2 sub-bullets are automatic

## Transfer of a Lesser Estate

- The estate that was transferred and the estate that was retained are different, but both ownership estates are the same parcel of property
- The severed estate and the retained estate remain subject to all rights that affected the initial property
- Examples:
  - The of the parcel creates a life estate owned by one party and a remainder estate owned by another party



Remember the example diagram that showed the effect of a SEVERANCE of Land  
Click to reveal Example After

**Questions about  
Severance of Real  
Property Distinguished  
from Transfer of a  
Lesser Estate**

*Next we will  
work with a  
series of  
transfers as  
examples*



If y'all have understanding  
distinguishing a SEVERANCE of land  
from a CONVEYANCE of a LESSER ESTATE  
Then we are prepared to have fun with examples...

	<p><b>Examples of Severance and Transfers of Lesser Estates:</b></p> <p><b>What will the Commitment Look Like?</b></p>
	<div></div>

For each SEVERANCE and Transfer of a Lesser Estate, how would we show the ESTATE in Schedule A?



## Severance of Surface



After the owner of all rights conveys the surface (by a deed that excepts "the land below the surface"):

- What is the ownership estate that Baker owns?
- Does Adam hold any right, title or interest upon the surface estate?



Open Adam and remove Baker

Ask: For a transfer of the surface estate, what ESTATE is shown? Who is/are the vested owners?

## Mortgage Upon Surface Fee



- Baker (the fee owner of the surface) conveys a mortgage
- to First Bank for construction of a 15-floor office building.
- Adam (the ground fee owner) does not join in that mortgage.
- Baker completes construction of that office building.

**If Adam does not join onto the mortgage, will the mortgage be a lien upon a fee simple absolute estate?**



Put RED mortgage around Baker

Click to reveal QUESTION 1?

Answer is YES.

After a SEVERANCE,

Both severed parcels have the same ESTATE

So a Mtg /s/ by Baker alone is upon the FEE

## Conveyance of a Lease upon the Entire Building



- Baker (the owner of the building) conveys a lease to Davis
- It describes the entire building
- First Bank (the construction lender) does not sign the lease.
- **If First Bank forecloses, will the lease be terminated?**



Open Baker (carefully) to remove Davis

Ask What about Mtg?

Move Red Mtg around Baker AND Davis.

Click to reveal Question 2?

Answer is Yes. The conveyance of the leasehold remained subject to the Mtg.

## Mortgage Encumbering the Leasehold



- Davis (building lessee) conveys a mortgage to Second Bank.
- Baker (building owner and lessor) does not sign.
- **If only Second Bank forecloses, what estate or rights upon the surface fee estate would the lender obtain by the Trustee's Deed?**



Ask: On a commitment for a MTG upon the leasehold estate, what is on Schedule A “Estate or Interest Insured” and who is/are vested?

Put PINK Mortgage around Davis

Ask: Why not around Baker? He did not /s/

Click to reveal Question 3?

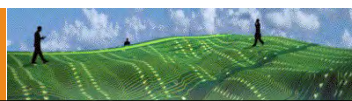
Answer is Second Bank would get NO Estate or Rights upon the surface fee estate!

Click to NEXT SLIDE for explanation.

## Mortgage Encumbering the Leasehold



- *That was a hard question!*
- The answer is that Second Bank would not be the owner of any estate upon the surface fee.
- Since Davis only owned a leasehold estate, the mortgage is only a lien upon the leasehold estate.
- **After foreclosure, Second Bank would then be the owner of the leasehold estate in the building**



Click to reveal last bullet, that  
Second Bank would own a leasehold estate.

## Mortgage Encumbering the Leasehold



- After foreclosure, Second Bank would then be the owner of the leasehold estate in the building,
- **but Baker would continue to be the sole owner of the building**, subject to the possession rights of Second Bank as the sole owner of the leasehold.
- **Would Second Bank, as successor lessee, have to pay rent to Baker?**



Click to reveal Question 4?

Answer YES.

The leasehold estate comes with burdens owed to Baker (the owner of fee upon the ground that are not eliminated by the foreclosure.

## Mortgage Encumbering the Leasehold




First Bank is paid in full and that mortgage encumbering the surface fee estate is released.




Remove the Red Mortgage



## Conveyance of a Lesser Estate upon the Surface



- Baker (the building fee owner) conveys a future remainder estate to Charlie
- Baker retains a life estate upon the surface fee
- **Is the estate owned by Charlie subject to the lien held by Second Bank?**



Ask: On a commitment for the estate owned by Baker, what estate is on Schedule A?

Are the leasehold or the Mtg on Schedule B?

Open Baker (again) and now remove Charlie


Click to reveal Question 5?

Ask: The Second Mtg was recorded first, so  
shouldn't Second Mortgage encumber Charlie's estate?

Answer: Baker's estate does not include the leasehold estate. Nothing done with the leasehold estate can affect the life estate and remainder estates owned by Baker and Charlie.




## Conveyance of a Lesser Estate upon the Surface



The diagram uses Russian nesting dolls to illustrate the relationship between different estates. The largest doll is labeled 'Baker' and has a text box next to it stating 'Baker owns fee estate upon land surface'. Inside it is a smaller doll labeled 'Baker', which has a text box stating 'Baker (the ground fee owner) conveys a life estate to Baker with remainder estate to Charlie.' Inside that is a doll labeled 'Charlie', with a text box stating 'Charlie owns future building fee estate'. At the bottom is a small doll labeled 'Mortgage'.

- Baker (the building fee owner) conveys a future remainder estate to Charlie
- Baker retains a life estate upon the surface fee
- **Does Charlie own the remainder estate NOW, or only after Baker dies?**



Click to reveal Question 6?

Answer: A remainder estate is vested immediately.

## Mortgage Upon the Life Estate



- Baker (owner of life estate upon building fee)
- conveys a mortgage to the Third Bank.
- Charlie (remainder estate) does not sign.
- **What is the estate or interest in the land held by Third Bank when Baker dies?**



Ask: On a commitment for a mortgage upon the surface estate, is the leasehold on Schedule B?

Put RED Mortgage around Baker only.

Ask: Why not around Charlie too?

Answer: Charlie didn't sign.

Click to reveal Question 7?

Answer: The Mtg was granted only by Baker, who owns only a life estate. When Baker dies, that estate is terminated and the remainder estate is not encumbered.

## Declaration of Condominium upon Leasehold Estate



- Davis declares a condominium upon the leasehold upon the entire building, creating two units: Residential and Retail
- Second Bank (lien upon building leasehold) does sign.
- Adam does not sign.
- Baker does not sign.
- Charlie does not sign.
- Third Bank (lien upon life estate upon building) does not sign.
- **Does the mortgage held by Third Bank encumber the condominium units?**



Ask: On a commitment [sub G], what estate is on Schedule A. Who is/are vested?

Open David and remove TWO (Russell)

Click to reveal three bullets

Click to reveal Question 8?

Answer: The creation of a condo is a severance, not a transfer of a lesser estate. Second Mortgage only signed to create the severance of the CONDO.

Charlie owns both condo units, subject to a mortgage upon both condo units.

## Conveyance of Residential Condo Unit



- Davis (owner of leasehold and Declarant) sells the Residential unit to Randall.
- Charlie does not sign.
- Second Bank (lien upon building leasehold) signs a partial reconveyance for Residential unit only.
- Third Bank (lien upon life estate upon building) does not sign.
- **What is the Schedule A estate that is shown on the policy issued to Randall?**



NOTE: the sale of Res unit is a SEVERANCE of the land owned by Davis.

Davis remains owner of (1) the leasehold upon the entire building and (2) the retail condo unit.

Click to reveal Question 9?

Answer: It is a leasehold estate. A condo unit created from a leasehold is not a fee estate. The fee estate in the building remains owned by Baker (life) and Charlie (remainder). Nevertheless, it is acceptable to call it a fee estate in Schedule A and except the leasehold in Schedule B.

## Conveyance of Easement for Tunnel



- Is the easement a severance?
- Is the easement a transfer of a lesser estate?
- **Can the easement be created without the joinder of any other party?**



Shake Adam.

Remove Tunnel Easement.

Click to reveal Question 10?

Answer: Adam continued to own a Fee Simple Absolute Estate in all the rights that were below the surfact. Adam could convey lesser estates, could convey liens and easements, all without the joinder by any of the severed surface land or any of the estates owned upon that surface land.

**Last Opportunity for  
Questions**

*Next up:*  
**Entities & Authority**

*Next up:*  
**Erin Stines**  
*Underwriting  
Counsel  
First American  
Title Ins Co*



So, what are the odds that I will finish these 30 slides within 60 minutes? *I'm giving odds!*