

Real Property: Future Interests

STEP ONE: What type of interest in land is claimed?

PRESENTLY-HELD FUTURE POSSESSORY INTERESTS IN LAND

FUTURE INTEREST IN GRANTOR			FUTURE INTEREST HELD BY ANOTHER				
REVERSION	POSSIBILITY OF REVERTER	RIGHT OF RE-ENTRY	CONTINGENT REMAINDER	INDEFEASIBLY VESTED REMAINDER	VESTED REMAINDER SUBJ. TO OPEN	VESTED RMDR. SUBJ. TO FULL DIVESTMENT	EXECUTORY INTEREST
<p>STEP TWO: What will the effect be? Three questions</p> <p>A. Was the interest validly created?</p>							
Created by owner's grant of life estate or other lesser estate in land No Rule Against Perps (RAP): owner interest is always vested	Created by owner granting an FSD. Need not be express reservation. No RAP: vested	Created by owner granting FSSCS. Must be expressly reserved by grantor, or right is invalid. No RAP: vested	Remainders always follow life estates. Future interest that will vest if contingency occurs. RAP applies.	Remainders always follow life estates. Created in ascertained person or persons in being and no conditions. No RAP.	Remainders always follow life estates. Created by a "class gift" where class may grow. RAP applies as long as the class is still open.	Remainders always follow life estates. Created by remainder w/ language of condition subsequent. No RAP.	Any future interest not in grantor and not following a life estate RAP applies
<p>B. What are the characteristics of the interest?</p>							
Owner's future interest in the return of the whole interest. (E.g. if owner had FSA and granted a life estate, she has a future int. in a fee simple.	Owner's future int. in return of land interest if condition fails. Happens automatically upon failure of condition; not waivable.	Owner's future int.: right to re-enter (retake permanent possession of) land if cond. subs. occurs.	Not vested yet: depends on condition precedent OR on birth of as yet unascertained remaindermen	Certain to become posses. @ termination of prev. estate. Not subject to being divested or diminished.	Subject to being reduced in size because more may be born into class of int. holders	Fully vested remainder subj. to full divest. if condition subseq. occurs.	Springing: "Follows a Gap" or divests a transferor. Shifting: Divests a transferee
<p>C. What are the limitations on the interest?</p> <p>All future interests are "limited" in that they do not constitute any present right of possession. The interest is held in the present, but it is the interest in coming into future possession of an estate in land.</p>							
No limits: transferable, devisable, descendible	May have stat. exp. date	May be waived by words or conduct. Inaction upon cond. subseq. not enough, but if det. reliance: waiver / estop.	Old C/L rules: Destructibility Merger Shelley's Case Doctrine of Worthier Title	No limits.	Rule of convenience: as soon as one member may collect her share, the class closes.	Limited by terms that created it.	Limited by terms that created it.
<p>STEP THREE: Conveyancing issues</p> <p>A general problem with conveyance of future interests is that the holder of the present estate and the holder of the future interest may want to join forces to create marketable title for sale of the land. If the future interest is not vested, especially if it is held by unborn or unascertained parties, it is impossible to create marketable title.</p>							
No limits: transferable, devisable, descendible	C/L: no inter vivos transfr & not devisable, but descends to heirs. Modern: most allow all transfrs.	C/L: no inter vivos transfr & not devisable, but descends. Modern: devise OK but not inter viv.	Always devisable & descendible (C/L & mod) Modernly also transfrble inter vivos.	C/L & modern: Transferable, devisable, & descendible.	C/L & modern: Transferable, devisable, & descendible.	C/L & modern: Transferable, devisable, & descendible.	Always devisable & descendible (C/L & mod) Modernly also transfer inter vivos.
<p>STEP FOUR: Remedies</p>							