

# Real Property: Other Possessory Interests

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

### OTHER POSSESSORY INTERESTS IN LAND

#### CONCURRENT ESTATES

#### LEASEHOLD ESTATES

#### UNWANTED POSSESSORS

##### JOINT TENANCY

##### TENANCY IN COMMON

##### ENTIRETY/COMMUNITY

##### TENANCY FOR YEARS

##### PERIODIC TENANCY

##### HOLDOVER TENANCY (SUFFERANCE)

##### AT WILL TENANCY

##### ADVERSE POSSESSION

##### MORTGAGE

## STEP TWO: What will the effect be? Three questions

### A. Was the interest validly created?

Must include language: "to A & B as joint tenants with right of survivorship."

Need 4 unities: time, title, int., possession

SOF

"To A & B as TICs." Also the default if vague ("To A & B as joint owners" = TIC)

SOF

For spouses  
"To A and B, a married couple, as a tenancy by the entirety."

SOF

If > 1 yr. SOF applies

Fixed term lease

May be by express agreement or can happen by default at end of lease (if both parties wish)

Only a "tenant" until eviction. One is a holdover tenant if wrongfully staying past term of lease or after breach.

Landlord agrees to temporary tenancy revocable at any time. Very rare modernly.

Possession that is:  
1. Open & notorious  
2. Actual & Exclusive  
3. Continuous & Uninterrupted  
4. Hostile  
5. For statutory period of time

Like every interest in land, must be in writing. Not possessory unless forecls.

Variations:  
1. Deed of trust  
2. Installment land contract  
3. Equit. mort.

### B. What are the characteristics of the interest?

Co-owners w/ equal interest, each has right to possess the whole. Upon death of one, share goes to surviv. JTs automatically in equal shares

Co-owners w/ equal interest, each has right to possess the whole, but may agree to split it up. No right of survivorship.

Special type of joint tenancy for marrieds, mostly in non-commun. prop. states.

Contract for specific fixed period of time

Covenants are indepen. of ea. other except RENT

Landlord: reversion

Month-to-month, ongoing for indefinite period.

No right to possession of land or unit, but right to formal eviction procedure & habitability in meantime

Similar to license: Completely subject to landlord's whim.

Record owner may not eject adverse possessor as a trespasser. Adverse possessor gains legal title. If more than one APer in chain, interests may be tacked.

Security int. in land, for debt. A debtor/landowner (mortgagor) gives mortgage to a creditor (mortgagee) to secure debt (w/ promisory note)

### C. What are the limitations on the interest?

Co-tenants can treat land as their own, live there, profit from land, but if rented out to 3rd party, or ouster, co-owners reimbursed for exclusion

No convync or encmbrnc. Attempt is void: no severance.

Automatically terminates at end of term unless other terms in lease (i.e. notice). Or by breach or surrender.

If not rent control or just cause eviction jurisdiction, eviction for no reason after notice

Nothing but limits: no rights but the right to be evicted properly. May also be held to a new tenancy if LL chooses

Modernly, almost never used b/c of conseq. to tenant. Some convert to periodic upon rent payment.

Statute tolled if owner under disability to sue (but can't tack)  
Stat. doesn't run against fut. int. holders until vested.  
Can't AP gov't or Torrens land

Foreclosure limited to judicial sale.  
Mortgagor has last-min. right: redemp. (all \$)  
Deed of trust: private mort.  
Equit. mort.: deed conveyed but mort. facts

## STEP THREE: Conveyancing issues

Conveyance severs joint tenancy (int. becomes TIC) EXCEPT:  
Mortgage (until forecls)  
Lease or K to convey. (some states)

If co-tenant mortgages her interest & mgee forecloses, mgee only gets mgor's int.

May be freely transferred.

One spouse cannot convey or encumber. Any attempt is void.

Lease silent: T's absolute right to trnsf: assignment if permanent, sublease if temporary.

Asgnee is bound to land covenants but not special K provisions.

T can only assign right to one period (month).

Tenant has no rights to convey.

Tenant can't assign  
Attempt results in termination of tenancy.  
Landlord transfer of int. also terminates.

Chain of title broken, so no marketbl title.  
If title owner bound by cov, APer is bound if she used land subject to covenant.

Either party may transfer.  
Morgr transf. by deed: buyer takes w/ mrg.: assignment.  
Mrgee transf. by endorsing promsry. note & assign mge. 2 things: must go together.

## STEP FOUR: Remedies

Remedy of judicial partition when one or more co-tenants wants co-tenancy terminated. Either in kind (divide into parcels) or by sale and divide proceeds.

Contribution is a remedy for co-tenants who make necessary repairs or pay taxes. Each co-tenant must pay her share. Not so for major improvements.

The co-tenancy ends upon divorce (becomes TIC) or by mutual agreement. Upon death, survivor gets whole in fee simple & co-tenancy ends.

LL's remed: Eviction (no self help) or breach dmg.  
T's remed: complnt to insptr for habitbl. issue or self help: withhold rent for repairs. Breach dmgs.

Same as tenancy for years.

When tenant holds over, LL may evict or may choose to create a periodic tenancy on lease terms (or new terms if notice given)

T has very few rights, but can't be held liable for damages because right to terminate must be mutual.

If adverse possession applies, orig. title holder may not use remedy of ejectment against APer. Remedy for APer as  $\pi$  is transfer of title

Mgor default: mgee can sue on debt or foreclose on mge.  
Foreclsr sale: mgee gets & Possession before foreclsr: only in title theory state, not lien theory. Junior morts extinguished.