



## CHICAGO TITLE INSURANCE COMPANY

### **TOPIC: Ownership Interests**

#### **TITLE SEARCH & CLOSING RULES:**

Ownership interests frequently encountered, whether in deeds or wills, often take the following forms, *though there are frequent exceptions or provisions in the conveying instrument changing this presumption which the title attorney must always be alert to address:*

John Doe and his heirs and assigns	Fee simple (subject to spousal rights, if any)
John Doe and wife, Sally Doe	Tenancy by entireties (unless from a co-tenant)
John Doe and Sally Doe, as tenants in common, each with an undivided ½ interest	Tenancy in common
John Doe and Sally Doe, as joint tenants with right of survivorship	Joint tenancy, with true right of survivorship
To Sally Doe for life, with remainder to John's children Sam and David, with the share of any predeceased child to their issue per stirpes	Life estate in Sally Remainder in Sam and David as tenants in common, or their children per stirpes if they have predeceased
to a church, "for so long as" the property is used for church purposes	Fee simple determinable in church, subject to possibility of reverter back to the Grantor or his/her heirs (The reversion may be automatic or may require some action by Grantor or his/her heirs, depending on the terms of the specific instrument and case and statutory law at the time.)
To a church "on condition that" the property be used for church purposes	Fee simple in church, subject to condition subsequent in favor of Grantor or his/her heirs who have a potential right of re-entry

#### **TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE:**

Title insurers basically require joinder in a conveyance of all potential owners, including those holding reversions or rights of re-entry. If these are held by a group of people, the "class" (or group) may not be finally "closed" so that the actual individuals can be determined unless and until the event happens – in the above case, when the church stops

using the property for church purposes. The interests of these contingent remaindermen can only be extinguished by complying with statutory procedures.

**FORMS:**

None

**LEGAL DISCUSSION:**

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Generally, we think of ownership of real property as giving an owner the right to possess the property, to dispose of the property during the owner's life, or to pass the property by descent to the owner's heirs upon her death. However, ownership of real property can be divided into many different interests. The division of real property interests can affect the time of the right of the owner to possess the property (present v. future), the ability of the owner to pass the property by descent, and whether or not the ownership rights are shared with another party. While all of the interests discussed below are insurable, we must clearly limit our coverage to only those interests which we are insuring. For example, if we are insuring only a life estate interest, then we must except for the remainder interest.

Fee Simple: A fee simple - also called a fee simple absolute - interest is the entire interest that can be owned in land and has the potential for infinite duration. It gives the owner unconditional powers to dispose of the entire property during the owner's life, and will pass by descent to the owner's heirs or devisees upon her death.

Life Estates: A life estate is an interest in real property which is limited by the length of the life of some person or persons. Upon the death of the designated person, the remainder interest passes as described in the creating document (will or deed). For example, a deed may convey property "to Al for life, then to George." Al has the right to possess the property until his death. At Al's death, George's remainder interest becomes a fee simple interest. The property does not pass through Al's estate and is not subject to marital rights. In order to insure a life estate, we must include an exception for the remainder interest in schedule B. More likely, we will need to require the remaindermen and spouses to join a conveyance and insure that the new owner has a fee simple interest.

Remainder: A remainder interest is a future interest in property which becomes possessory upon the termination of the prior estate (usually a life estate). Remainders may be contingent upon some future event (such as surviving the person with the life estate) or vested (already owned by the remainderman, just not a current interest until, for example, the life tenant dies).

1. Contingent Remainder - a remainder that is subject to satisfying a future condition. For example, "to Al for life, then to George if George attains the

age of 21." In order for George, or his heirs, to acquire the fee at Al's death, George must reach the age of 21.

2. Vested Remainder - A vested remainder is not subject to satisfying a future condition. The remainder will become possessory upon the happening of a necessary event. For example, "to Al for life, then to George." Al cannot live forever, so George, or his heirs, will eventually acquire the fee simple interest.

In order to insure a remainder interest, we must include an exception for the prior interest - life estate - in schedule B. More likely, we will need to require the life tenant to join a conveyance and insure that the new owner has a fee simple interest.

Tenancy by the Entireties: A tenancy by the entireties is a form of co-ownership by husband and wife with the right of survivorship. Any conveyance to the husband and wife while they are married will create a tenancy by the entirety unless a contrary intent is expressly stated in the document or the conveyance results from a voluntary partition where only one spouse was a tenant in common. Upon divorce, the tenancy by the entireties is severed and the property is held by the former spouses as tenants in common. Tenancy by the entireties has two special characteristics:

1. Judgments - Judgments against only one spouse will not attach to entireties property unless and until the tenancy by the entireties is severed, either by divorce (so the judgment attaches to the spouse's ½ undivided interest) or death of the non-debtor spouse (so the judgment attaches to the fee, effective at the death of the non-debtor spouse)..
2. Right of Survivorship - Upon the death of one spouse, the property automatically vests into the surviving spouse. The property is not part of the deceased spouse's estate and is not subject to the claims of the individual creditors of the deceased spouse. However, the right is subject to a disclaimer by the surviving spouse of the presumed one-half interest, shifting title back into the estate. (See related Topic "Estates of Decedent's")

Tenants in Common: Concurrent ownership of property between persons or entities, where the ownership is specifically not provided to be some other estate, such as tenancy by the entireties (for spouses) or with right of survivorship (joint tenancy, below). Each tenant in common owns a separate undivided interest in the property and has equal right to possession. Judgments against a tenant in common will attach to that tenant's interest, payment in full or joinder of the judgment creditor in a partition action seeking attachment of the lien to the proceeds of sale rather than the property. Upon death of a tenant in common, that tenant's interest will pass by descent to her heirs and is a part of her estate. A tenant in common can convey their interest to a third party without joinder of the other tenants in common. But conveyance of the entire fee requires joinder of all tenants in common (and spouses), partition proceeding or voluntary partition deeds.

Joint Tenancy with Right of Survivorship: Concurrent ownership of property between persons other than husband and wife, where such ownership was created in each joint tenant at the same time, from the same source, and with the same interest and right to possession. In addition, North Carolina law requires that the conveyance which creates the joint tenancy specifically state that the intent is to create a joint tenancy with a right of survivorship.

Like a tenancy in common, each joint tenant owns a separate undivided interest in the property and has equal right to possession. Judgments against a tenant in common will attach to that tenant's interest.

Unlike a tenancy in common, upon the death of one joint tenant, the property automatically vests into the surviving joint tenant(s). The property is not part of the deceased joint tenant's estate.

Fee Simple Determinable: A fee simple determinable differs from a fee simple absolute in that the interest terminates upon the happening of some stated event. For example, a conveyance to a church, "for so long as" the property is used for church purposes. If the property stops being used for church purposes, then the fee simple determinable expires and it automatically reverts back to the grantor or her heirs or assigns. In order to insure a "fee simple determinable" in the vesting provision of Schedule A, we must include an exception for the grantor's "possibility of reverter" in schedule B. **Please contact underwriting counsel prior to insuring.**

Fee Simple Subject to a Condition Subsequent: A fee simple subject to a condition subsequent is similar to a fee simple determinable. The difference being that fee simple subject to a condition subsequent does not automatically expire upon the happening of the specified event, but rather requires the grantor, or her heirs or assigns, to exercise the power of termination. The grantor, or her heirs, retain a "right to re-enter" and may divest the interest. In order to insure a "fee simple subject to condition subsequent" in the vesting provision of Schedule A, we must include an exception for the grantor's "right to re-enter" in schedule B. **Please contact underwriting counsel prior to insuring.**

Fee Simple Subject to an Executory Interest: A fee simple subject to an executory interest is similar to a fee simple determinable and fee simple subject to condition subsequent. The difference being that the upon the happening of the specified event, the interest passes to a third party and not the original grantor or her heirs or assigns. In addition, an executory interest may be subject to the Rule Against Perpetuities. In order to insure a fee simple subject to an executory interest in Schedule A, we must include an exception for the third party's executory interest (springing or shifting) in schedule B. **Please contact underwriting counsel prior to insuring.**