

RE 310 – Principles of Real Estate

Private Restrictions on Ownership

1) It's My Property, Isn't It?

- a) Even someone who holds a fee simple interest in real estate is restricted in what she can do with her property
 - Private agreements and claims may restrict how the property can be used.
 - An *encumbrance* is a right or interest by someone other than the property owner that affects the title or use of real estate.

- b) Public regulations and other governmental actions may also limit an owner's use of the property.

2) Liens

- a) A *lien* is a claim or charge against a person's property, made to enforce the payment of money.
 - Mortgage liens
 - Tax liens
 - Mechanics liens

- b) If the required bills are not paid, liens can be used to force the sale of the property.
 - Often, however, liens simply represent a claim on the proceeds from the sale of the property whenever it occurs.

 - Liens "run with the property," and _____.

Although a lien is technically an encumbrance on the property, the word "encumbrance" is used to mean the other types of limitations, not liens.

3) Easements

a) An *easement* is the right of one person to use the property of another for a specified purpose and under certain conditions that specify the extent of allowable usage.

- Easement in gross

- Appurtenant easement

– Appurtenant easements are said to _____.

This means that when either my neighbor or I sell the property, the

_____.

b) Example:



c) Terminating easements

- Agreement of the parties
- Merger of the properties
- Abandonment of the rights
- Purpose of easement ceases
- Excessive use

d) Other ways someone may use your property

- An *encroachment* is _____ of a fixture, building, or other improvement over a property line.
- A *license* is _____ to temporarily use the property for a specific purpose.
- *Profit a Prendre* is non-possessory interest in real property that permits the holder to _____.

4) Adverse Possession

- a) If an individual takes possession and uses real estate as if it were his own, eventually he may file an action in court to claim title through *adverse possession*.

To do this, the use must be:

- Open and notorious;
- Continuous and uninterrupted;
- Actual and exclusive;
- Hostile; and
- Adverse to the true owner's possession.

5) Restrictive Covenants

- a) *Restrictive covenants* are designed to help mitigate spillover effects among properties.
- Positive spillover effects

 - Negative spillover effects
- b) Restrictive covenants set standards for all the parcels within a defined subdivision. They usually govern the type, height, and size of buildings that individual owners can erect, as well as land use, architectural style, construction methods, setbacks, and square footage.
- Limits on covenants
 - Reasonableness test

 - Legality of restriction
- c) Covenants require private actions by other landowners to enforce.
- If a covenant is not enforced for a long period of time, the right can be lost.