

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

TABLE OF CONTENTS

Topics	Sections
PURPOSE	6.1 What is the purpose of this chapter?
PROGRAMS	6.2 To which grant programs do the Wildlife and Sport Fish Restoration (WSFR) Program’s real property chapters apply?
AUTHORITIES	6.3 What are the authorities for WSFR’s real property chapters?
DEFINITIONS	6.4 What terms do you need to know to understand WSFR’s real property chapters?
PARTIAL INTERESTS	6.5 How are partial interests in real property created, and what are some examples?

Throughout the chapter, we have linked terms to their definitions in section 6.4 for better comprehension.

PURPOSE

6.1 What is the purpose of this chapter? This chapter lays the foundation for [real property](#) chapter 520 FW 7 on the [acquisition](#) of real property through grants administered by the Wildlife and Sport Fish Restoration (WSFR) Program. The chapter:

- A. Provides the scope of and the authorities for this chapter and 520 FW 7,
- B. Defines the real property terms that we use in these chapters, and
- C. Describes [partial interests](#) in real property.

PROGRAMS

6.2 To which grant programs do the WSFR Program’s real property chapters apply?

Chapters 520 FW 6 and 7 apply to all WSFR-administered programs and subprograms. We list these programs in Table 1-1 of [518 FW 1](#), *WSFR – Authorities and Responsibilities*.

AUTHORITIES

6.3 What are the authorities for WSFR’s real property chapters?

A. The authorities for chapters 520 FW 6 and 7 are in Table 6–1. The appraisal standards, audit reports, and technical references that we used as sources of information or guidance for these chapters are also in Table 6–1.

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

B. The authorities for specific WSFR-administered programs and subprograms are in Table 1–1 of [518 FW 1](#), *WSFR – Authorities and Responsibilities*.

Table 6-1: Authorities, Appraisal Standards, Audit Reports, and Technical References

Authorities: United States Code
<p>(1) Banks and Banking—Appraisal Subcommittee of Federal Financial Institutions Examination Council, 12 U.S.C. 3331 <i>et seq.</i></p> <p><i>This codifies the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, title IX 1101, as amended. It created the Appraisal subcommittee, which monitors the activities of The Appraisal Foundation (TAF). TAF appoints and oversees the Appraisal Standards Board, which develops the Uniform Standards of Professional Appraisal Practice. TAF also appoints and oversees the Appraisal Qualifications Board, which issues minimum standards for appraisal certification and licensing.</i></p>
<p>(2) Conservation—Permits for grazing livestock on national forests, 16 U.S.C. 580l.</p> <p><i>This codifies the Granger-Thye Act of 1950, Pub. L. 81–478, which authorizes the U.S. Forest Service to issue permits in national forests and other lands administered by the Department of Agriculture for the grazing of livestock for periods up to 10 years, and renewals are allowed. These permits do not limit or restrict any right, title, or interest in the land or resources.</i></p>
<p>(3) The Public Health and Welfare—Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C. 4601 <i>et seq.</i></p> <p><i>This codifies the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, as amended.</i></p>
<p>(4) Public Lands—Grazing permits; fees; vested water rights; permits not to create right in land, 43 U.S.C. 315b.</p> <p><i>This codifies the Taylor Grazing Act of 1934, Pub. L. 73-482, as amended.</i></p>
Authorities: Code of Federal Regulations
<p>(5) Nondiscrimination in Federally Assisted Programs of the Department of the Interior—Nondiscrimination on the Basis of Handicap—Assurances Required, 43 Code of Federal Regulations (CFR) 17.204.</p>
<p>(6) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200.</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

(7) Financial Assistance Interior Regulation, Supplementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 1402.

(8) Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 CFR 24.

Authorities: Federal Court Judgments

(9) *Federal Lands Legal Consortium [FLLC] v. United States*, 195 F.3d 1190 – Court of Appeals, 10th Circuit 1999. *Concluded:* FLLC failed to demonstrate a property interest in the terms and conditions of members’ permits to graze in two national forests.

(10) *United States v. Fuller*, 409 U.S. 488, (1973) *Concluded:* The Fifth Amendment requires no compensation for any value added to the fee lands by the permits, which are revocable and, by the [Taylor Grazing] Act’s terms, create no property rights.

Appraisal Standards

(11) Uniform [Appraisal](#) Standards for Federal Land Acquisitions, Interagency Land Acquisition Conference, 2016, The Appraisal Foundation in cooperation with the U.S. Department of Justice (Yellow Book).

(12) Uniform Standards of Professional Appraisal Practice, 2018–2019 edition, Appraisal Standards Board of The [Appraisal](#) Foundation (USPAP).

Audits: U.S. Department of the Interior, Office of the Inspector General

(13) Management of the Coastal Impact Assistance Program, State of Louisiana; Office of the Inspector General, U.S. Department of the Interior, Report No. ER-IN-FWS-0010-2013, September 2014.

Recommended recovery of \$6.5 million in ineligible costs associated with appraisals that did not use an allowable highest and best use.

(14) Management of the Coastal Impact Assistance Program, State of Mississippi; Office of the Inspector General, U.S. Department of the Interior, Report No. ER-IN-MOA-0013-2011, June 2013.

Recommended that the Service should: (a) ensure reviewers are competitively selected and have demonstrated the ability to perform [appraisal reviews](#) according to Federal standards; and (b) review appraisals and appraisal reviews on a regular basis to ensure compliance with Federal appraisal standards.

(15) The Office of Acquisition and Property Management’s (PAM) “*Misinterpretation of Federal*

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Regulations Resulted in PAM Disagreeing with Recommendations to Track Data for Land Purchases Made with Grant Funds;” Office of the Inspector General, U.S. Department of the Interior, Report No. 2016-ER-016-A, September 2017.

[PAM = Office of Acquisition and Property Management]

Cover memorandum reads: “...[G]rant officers should understand the critical components of a land appraisal and have the ability to recognize major errors or omissions that may invalidate the appraisal. ...The DOI could save millions of dollars in potentially overvalued properties if grant officers received the basic tools and knowledge to identify potentially flawed appraisals for further review by a certified appraiser.”

Technical References

- (16)** The Appraisal of Real Estate, 14th edition, Appraisal Institute, 2013.
- (17)** The Dictionary of Real Estate Appraisal, 6th edition, Appraisal Institute, 2015.
- (18)** Encyclopedia of Real Estate Terms, Damien Abbott, 3rd edition, Delta Alpha Publishing, 2008.
- (19)** The Language of Real Estate, John W. Reilly, 7th edition, Dearborn Financial Publishing, 2013.
- (20)** Law of Easements and Licenses in Land, Jon W. Bruce, and James Ely, Jr., Thomsen Reuters/West, updated periodically.
- (21)** The Real Property Appraiser Qualification Criteria and Interpretations of the Criteria, The Appraisal Foundation, Appraiser Qualification Board, 2018.

DEFINITIONS

6.4 What terms do you need to know to understand WSFR’s real property chapters?

Definitions of terms we use in 520 FW 6–7 are in Table 6–2. These definitions are specific to WSFR’s grant programs and may differ in minor ways from those used in some real estate texts.

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
A	<p>Acquisition means taking ownership or control of a designated area of land or an interest in land by purchase, exchange, assignment, reversion, gift, eminent domain, or any other method consistent with state or Federal law.</p> <p>Administrative review means a review of an appraisal to confirm that:</p>

FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>(1) The property appraised corresponds to the description of the property in the client’s instructions and the title report, if available.</p> <p>(2) Factual data contain no obvious errors and the mathematics are correct.</p> <p>(3) The report includes a certification signed by the appraiser similar to what is prescribed in the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition.</p> <p>(4) The report conforms to other elements of the appraisal standards that do not require an opinion on the quality of the analysis, the appraiser’s judgment, or the opinion of market value.</p> <p>Appraisal means one of the following, depending on the context:</p> <p>(1) The act or process of developing an opinion of value, or</p> <p>(2) An opinion of value.</p> <p>Appraisal review means the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal or appraisal review assignment. An appraisal review is completed by a professional appraiser who qualifies as a <i>review appraiser</i> under 520 FW 7.17. An appraisal review is often referred to as a <i>technical review</i> or <i>technical appraisal review</i> to distinguish it from an <i>administrative review</i>. The terms <i>technical reviewer</i> and <i>technical review appraiser</i> are synonymous with <i>review appraiser</i>.</p> <p>Assemblage means the combining of two or more parcels into one ownership for the same use. The parcels are usually, but not necessarily, contiguous. This usually increases the value of the individual parcels because it may enable a developer to construct a larger structure or group of related structures on the larger parcel.</p> <p>Assignment means one of the following, depending on the context:</p> <p>(1) A general term for a written instrument that conveys the title, a partial interest, or a specific right to real property. Specific terms for the instruments are: <i>deed</i>, <i>lease</i>, assignment of lease, sublease, patent, and declaration of taking.</p> <p>(2) An agreement between an appraiser and a client to provide a valuation service.</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>(3) An agreement between a review appraiser and a client to provide an appraisal review, which may include an authorization to review, present, and analyze market information in support of a recommended value.</p> <p>(4) The service that an appraiser or review appraiser provides a client under an agreement.</p> <p>Assignment of lease is a contract in which a lessee transfers all of its rights under the lease to a third party for the full remaining period of the lease. If the lessee retains a right of reentry, the lessee’s rights transfer as a sublease.</p>
B	<p>Business day means a day that most commercial enterprises, professional offices, institutions, and governmental offices are open. The following are <u>NOT</u> business days:</p> <p>(1) Saturdays and Sundays;</p> <p>(2) Days that government offices are closed for official holidays of the Federal, state, tribal, territorial, or local governments; and</p> <p>(3) Days that most government offices, commercial enterprises, professional offices, and institutions are closed due to disaster, civil disturbance, or severe weather.</p> <p>Buyer means an entity that acquires real property from another entity for use in a financially assisted project. A buyer may be:</p> <p>(1) A recipient or subrecipient,</p> <p>(2) A prospective recipient or subrecipient if the acquisition occurs as a preaward cost, or</p> <p>(3) A state agency that has been authorized to buy and hold land in the name of the state for management and control by the agency designated as the recipient on the award document.</p>
C	<p>Certificate of title is a statement of opinion on the status of a title to real property based on the examination of public records. A title company, licensed abstracter, or an attorney issues the opinion. A certificate of title does not promise to indemnify a buyer of real property or defend the buyer against lawsuits that arise from:</p> <p>(1) Unrecorded and undisclosed encumbrances, e.g., liens, leases, easements, and assignments of rights;</p> <p>(2) Hidden defects in the records such as fraud, forgery, lack of competence, or lack of delivery of a deed; or</p>

FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>(3) Issues related to surveys.</p> <p>Some states use the term <i>title opinion</i> or <i>opinion of title</i>. A certificate of title in the Torrens system has a similar meaning, but its use and procedures for issuance are specific to the Torrens system.</p> <p>Closing statement is a cash accounting of a real estate transaction by a broker, escrow officer, attorney, or other person. It shows cash received, charges and credits made, and cash paid out in the transaction. Other names for a closing statement are a <i>settlement statement</i> or <i>adjustment sheet</i>. A closing statement shows how closing and adjustment costs and prepaid and unpaid expenses are allocated between the buyer and seller. The buyer, seller, and broker often receive different closing statements specific to their roles in the transaction.</p> <p>Cloud on title means any document, claim, unreleased lien, or encumbrance that may cast doubt on the title’s validity. Examples are:</p> <ol style="list-style-type: none">(1) A recorded option that was not rescinded even though it was not exercised,(2) A sale of property by a spouse without the release of any dower or curtesy interest held by the other spouse (few states still recognize this interest),(3) An heir of a previous owner who may have a claim to the property,(4) A previous sale with an incomplete legal description, and(5) A previous sale with a deed that lacks the signature of one of the heirs. <p>Condemnation means a judicial or administrative proceeding in which a government or another public or quasi-public entity exercises a right of eminent domain to take real property for a public purpose. A recipient has eminent-domain authority only if the agency or organization designated as the recipient on the award document can initiate a condemnation action without the approval of an external official or entity. For example, if a state fish and wildlife agency is the recipient on the award document, then it has eminent-domain authority if its director can initiate condemnation without obtaining the approval of the state legislature, the Governor, or the Secretary of the Department of which the fish and wildlife agency is a part. However, if condemnation by a state fish and wildlife agency is subject to the approval of an oversight commission specific to the agency, the authority to condemn resides with the agency for purposes of this chapter and 520 FW 7.</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>Conservation easement means a partial interest in real property that restricts development and other activities. The purpose of the restriction is to protect the conservation values of the property, which may include fish and wildlife and their habitat.</p> <p>Conveyance means the voluntary transfer of title or an interest in real property from one party to another by means of a written instrument such as a deed or an assignment of lease.</p> <p>Cost principles are the standards in 2 CFR 200, subpart E, for determining the allowable costs for Federal awards carried out through grants and cooperative agreements.</p>
D	<p>Date of conveyance (or transfer) of real property is the date on which real property legally transfers from one owner (or holder of an interest) to another. Generally, this takes place at one of the following times depending on the requirements of state law:</p> <p>(1) The entity(ies) that owns or holds the real property signs the deed or other instrument affecting the title, and gives or delivers it to the entity(ies) acquiring the real property in exchange for cash or something else of value. If the real property is a matching in-kind contribution in its entirety, i.e., not a bargain sale, then the title may transfer on a <i>deed of gift</i> or <i>gratuitous deed</i>, which does not require giving or delivering cash or something else of value to the contributor of the in-kind match. The entity(ies) acquiring the real property must accept and sign the deed or other instrument. The legally recognized date of conveyance is the date when the last of the above entities signs the deed. In some states the signatures must be witnessed or notarized, or both.</p> <p>(2) Same as (1) except that the entity(ies) acquiring the real property must accept and sign the deed or other instrument <u>only if it assumes an obligation as a result of receiving it</u>, such as a mortgage or abiding by a restrictive provision in the deed.</p> <p>(3) A registrar in one of the 10 states that authorize the use of the Torrens system cancels an old certificate of title and issues a new one to the new owner.</p> <p>Despite the lack of equivalency of <i>date recorded</i> and <i>date of conveyance (or transfer) of real property</i>, WSFR will use the date recorded if the recipient does not provide the date of conveyance (or transfer) consistent with state law.</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
D	<p>Declaration of taking is a written instrument that transfers real property to the state or Federal government or another public or quasi-public entity by condemnation.</p> <p>Deed is a written instrument that generally transfers to another entity the title to, or a partial interest in, real property. Other instruments used in specific situations are: <i>lease, assignment of lease, sublease, patent, and declaration of taking</i>. For transactions not under the Torrens system, the “grantor” of the interest must sign the deed and deliver it to the person authorized to accept the real property for the acquiring agency or organization. An authorized representative of the acquiring agency or organization must accept the real property by signing the deed if it has a restrictive provision, or if a state statute requires the signature. In some states, signatures must be witnessed or notarized. After delivery and acceptance, the deed is merely evidence of the transfer of title, and its destruction would not affect the title. Under the Torrens system, the transfer occurs when the new owner registers the property with the court. The registrar issues a certificate of title, which confirms the registration and becomes evidence of the transfer.</p> <p>Dispose means to sell, exchange, or transfer to another entity the title or other documentation of legal possession of real or personal property acquired under a Federal financial assistance award. The term also refers to the approved retention by the recipient or subrecipient of any real or personal property acquired under a Federal financial assistance award if the property will no longer be used for the purpose authorized in the award.</p>
E	<p>Easement is a partial interest in a designated area of land owned by another entity. The holder of the easement may have the right to (1) use the land or the area above or below its surface for a specific purpose, or (2) prevent specific uses of the land. An easement does not allow its holder to take anything from the land. An easement must be in writing, usually as a separate deed, a reservation in a deed, a declaration of taking, or a judicial decree. Some easements are based on documentary evidence of a landowner’s intent rather than an explicit description.</p> <p>Effective date of value is the date on which the analyses, opinions, and advice in an appraisal, appraisal review, or consulting service apply. The term <i>effective date of value</i> is interchangeable with the terms <i>date of value</i> and <i>effective date</i>. The <i>effective date of value</i> is NOT the same as the <i>date of the report</i>, which is the date of the transmittal letter of the appraisal or appraisal review report.</p>

FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

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[A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#)

Eminent domain means the right to take private property for a necessary public use without the owner’s consent if the owner receives just compensation. Both the state and Federal governments have this authority. States have often conveyed it to local governments, development commissions, public utility companies, and other public and quasi-public entities. When a government or another authorized entity exercises its right of eminent domain to take real property, it *condemns* it (see [condemnation](#)).

Encumbrance is a legally binding limitation on real property, which may lessen its value or burden, obstruct or impair its use, but not necessarily prevent transfer of title.

Estate means the degree, quantity, nature, and extent of the [ownership](#) interest that a person has in real property. The owner of the estate must have the right to use, occupy, and exclude others from a [parcel](#) of land, when the right is supported by a deed, patent, certificate of title, [assignment](#) of lease, or an equivalent document. A fee interest, a [life estate](#), and a leasehold interest are estates. A lessor’s interest (leased fee estate) is also an estate because the lessor will regain possession when the lease expires. Profits and easements are interests in real property, but they are not estates.

Estimate of value or **estimated value** means an informal determination of the market value of a specific [parcel](#) of real property. Estimated value is one of the two determinants of whether an appraisal report or a waiver valuation report is required. The person who estimates value cannot be an appraiser, but the preparer must understand appraisal principles well enough to do an informal determination of value. Although the formal valuation that follows an estimate of value must be supported by an appraisal report or waiver valuation, the estimate of value does not require a report.

Exception to title is the exclusion of some part of the real property from the transfer of ownership. Exceptions to title may include a:

- (1) Reservation of a certain right or interest by the entity conveying the real property.
- (2) Right or interest concurrently or previously conveyed to a third party.
- (3) Claim, e.g., a lien.
- (4) Potential claim, e.g., a surviving spouse’s rights to a share of property held by the deceased spouse during the marriage or at the time of death. These rights are recognized in only a few states and are called *dower rights, curtesy*

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p><i>rights, or a surviving spouse’s right to an elective share, depending on the circumstances and jurisdiction.</i></p> <p>Extraordinary assumption is an assignment-specific assumption, as of the appraisal’s effective date of value, about uncertain information used in an analysis which, if found to be false, could alter the appraiser’s opinions or conclusions. The uncertain information may include:</p> <ul style="list-style-type: none"> (1) Physical, legal, or economic characteristics of the subject property; (2) Conditions external to the property, such as market conditions or trends; or (3) Integrity of data used in the analysis.
F	<p>Fee simple means the same as <i>full-fee interest</i>.</p> <p>Fee with exceptions to title means the same as <i>less-than-full-fee interest</i>.</p> <p>Full-fee interest means the maximum possible interests that a person or legal entity can hold in a parcel of real property, subject only to the limitations of the four powers of government (see Table 6–3A).</p>
G–K	<p>General assumption means a typical assumption of an appraisal or appraisal-review assignment. General assumptions apply to many or most assignments, as opposed to special or extraordinary assumptions, which are directly related to a specific assignment.</p> <p>Geographic location means a description of a site with enough specificity to enable someone to locate it on a map and on the ground.</p> <p>Hypothetical condition is a condition directly related to a specific assignment, which is contrary to what the appraiser knows to exist on the effective date of value. The appraiser uses a hypothetical condition for the purpose of analysis. A hypothetical condition is contrary to facts about the:</p> <ul style="list-style-type: none"> (1) Physical, legal, or economic characteristics of the subject property; (2) Conditions external to the property, such as market conditions or trends; or (3) Integrity of data used in the analysis.
L	<p>Land is interchangeable with <i>real estate</i>. It means:</p> <ul style="list-style-type: none"> (1) That part of the earth’s surface that can be owned, whether it is upland or seasonally or permanently submerged;

FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>(2) Anything firmly attached to the part of the earth’s surface that can be owned, whether attached by people or natural processes; and</p> <p>(3) Any soil, rock, gravel, minerals, gas, oil, groundwater, trees, or other vegetation that is firmly attached to, or part of, the surface or subsurface.</p> <p>Larger parcel means the parcel or parcels of land that have a unity of ownership and have the same, or an integrated, highest and best use. The contiguity or proximity of the parcels is also a consideration to the degree that it has a bearing on the highest and best use of the property. The appraiser must make a larger-parcel determination in every appraisal that conforms to the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) unless the review appraiser decides that it is not necessary (see the UASFLA, section 1.2.8).</p> <p>Lease is a contract in which the fee owner transfers to a lessee the right of exclusive possession and use of an area of land or water for a fixed period, which may be renewable. The lessor cannot readily revoke the lease at the lessor’s discretion but must be able to regain possession of the lessee’s interest (<i>leasehold interest</i>) at the end of the lease term. This reversionary right of the lessor is the <i>leased fee estate</i>. The lessee pays rent periodically or as a single payment. An agreement that does not correspond to this definition is not a lease, even if it is labeled as one. A leasehold interest is real property unless the state’s Attorney General provides an official opinion that a leasehold interest is personal property under state law. This opinion must receive the approval of the Solicitor’s Office of the Department of the Interior.</p> <p>Legal description means information that identifies the location of real estate according to a system established or approved by law for use in deeds and other real-property conveyance documents. The information is usually sufficient for a surveyor to locate the property.</p> <p>Less-than-full-fee interest is an ownership interest in land that excludes one or more interests in real property (see Table 6–3B). Some examples are a parcel with a power-line easement through it, a parcel where one entity owns all interests except the mineral rights, or a parcel subject to a conservation easement. Most exceptions to title, but not all, are listed on the deed or a document cross-referenced to the deed. In many jurisdictions, the sale of mineral rights is recorded in a different deed book or database than the sale of surface property, so the deed to the surface property may</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

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A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
M	<p>not include mineral rights held by a third party among the exceptions to title. Another commonly used term for a less-than-full-fee interest is <i>fee with exceptions to title</i>.</p> <p>License means the consent by a landowner, a lessee, or a tenant for a person to do something that would otherwise be trespass or another violation of the law. Licenses may be verbal or written and readily revoked at the discretion of the entity consenting to the license. A license ends when the landowner sells the land; the lease or tenancy ends; or the landowner, lessee, or tenant dies. The licensee’s rights are usually not exclusive and the licensee usually may not reassign these rights to others. An agreement that corresponds to this definition is a license, even if it is labeled as a lease, easement, profit, or life estate. <u>A license is not an interest in real property.</u></p> <p>Life estate means an estate in real property limited to the remaining lifetime of a designated individual(s). The individual(s) holding a life estate has total control of the parcel during his or her lifetime, during which time the holder(s) of the life estate may transfer his or her interest to another entity or encumber it unless deed restrictions prevent this. The life estate ends at the death of the original holder of the life estate even if that individual transferred some or all of the rights in the life estate to another entity.</p> <p>Limiting condition means a law, regulation, guideline, or other condition that can affect the scope of work of a valuation or appraisal review assignment.</p> <p>Market rent means the rental price in cash or its equivalent that a leasehold would have brought on the date of value on the open competitive market, at or near the location of the property acquired, assuming reasonable time to find a tenant (UASFLA 6th Ed. Section 4.7).</p> <p>Market value means the amount in cash, or on terms reasonably equivalent to cash, for which in all probability real property would have sold on the effective date of value, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property (UASFLA 6th Ed. Section 1.2.4).</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>Mass appraisal is the process of valuing multiple properties as of a given date using standard methods and common data and allowing statistical testing. The appraiser develops a mathematical model to show the relationship between the estimated value and the supply and demand for quantitative and qualitative characteristics of the real property. A mass appraisal conforms to USPAP Standards 5 and 6. It does not conform to USPAP Standards 1 and 2, the UASFLA, or the Uniform Act.</p> <p>Mineral means a substance of economic value that occurs naturally in the earth in a solid, liquid, or gaseous state, e.g., oil, natural gas, coal, gold, peat, phosphate, and sand and gravel. The specific minerals included in any mineral rights held as a partial interest in real property are often limited by:</p> <ol style="list-style-type: none"> (1) Explicit language of the document that transferred or reserved the rights, (2) Judicial interpretation of the intent of the parties that transferred or reserved the rights, or (3) Definitions applied by statute or regulation if the language in the document is not explicit and the parties’ intent cannot be discerned.
N	<p>Non-Federal entity means a state, local government, tribe, institution of higher education, for-profit entity, or nonprofit organization that carries out a Federal award as a recipient or subrecipient.</p> <p>Notice of Federal Participation is an affirmation of the legally defined and continuing Federal interest in real property and leaseholds (whether real or personal property) acquired under a grant with Federal funds, non-Federal funds, or as an in-kind contribution. A Notice of Federal Participation states that a recipient or subrecipient acquired the real property or leasehold under the terms of a Federal grant and describes the obligations associated with the grant. A Notice of Federal Participation may be:</p> <ol style="list-style-type: none"> (1) A covenant in the deed or a condition or provision of another instrument that conveys a partial interest, such as an easement or lease; or (2) A separately recorded notice cross-referenced to the deed or other instrument that conveys the property.
O	<p>Offer of just compensation is a written offer of the full amount believed to be fair and reasonable for acquisition of real property. It is an amount not less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damage or benefits to any remaining property. Alternatively, if the valuation problem qualifies for a waiver valuation, the opinion of value may be the basis of the</p>

FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>offer of just compensation. A <i>summary statement of just compensation</i> is a written statement of the basis of this offer (see 49 CFR 24.102(e)).</p> <p>Opinion of market value means the final conclusion of market value as stated and supported in an appraisal report. The conclusion is specific to the conditions stated in the assignment. An <u>appraisal</u> report describes: the results of each approach to value, how the report weighs the results of each approach to value, and the reliability of each approach to value for solving the specific valuation problem. An appraisal report states the opinion of market value for the property as a single amount.</p> <p>Opinion of value means an estimate of the value of real property for a waiver valuation. This is an informal process that a buyer uses when an appraisal is not required. The buyer may use a waiver valuation if the valuation is uncomplicated, and the informally estimated value, based on a review of available data, does not exceed the thresholds described in 49 CFR 24.102(c)(2)(ii). A waiver valuation is not an appraisal and typically applies only the sales-comparison approach. Since waiver valuations are not appraisals, they are not expected to be completed with the same rigor expected of a professional appraiser. The <u>waiver valuation</u> states the opinion of value for the property as a single amount.</p> <p>Option means an agreement to keep open, for a set period, an offer to buy or sell real property. The owner does not sell, nor does the buyer buy the property when both sign the option. The owner must sell if the buyer gives notice, but the holder of the option does not have to buy. A lease may also be the subject of an option, but it may be called an <i>agreement for a lease</i>. An option creates a contractual right, but it is not an interest in real property.</p> <p>Ownership interest means the right to use, occupy, and exclude others from a parcel of land, when the right is supported by a deed, patent, certificate of title, lease, <u>assignment of lease</u>, sublease, or an equivalent document. A person holds this right until:</p> <ol style="list-style-type: none">(1) He or she conveys it to another person voluntarily or by due process of law, or(2) An event or condition occurs or a period expires as described in the title, lease, or other evidence of ownership.

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>Fee estates, life estates, and leasehold interests are ownership interests. The lessor’s interest (the leased fee estate) is a reversionary ownership interest because the right to use, occupy, and exclude others from the parcel will revert to the lessor when the lease expires. Easements and profits are not ownership interests. A license may give the license holder a temporary revocable right to use, occupy, and exclude others, but a license is neither an ownership interest nor an interest in real property.</p>
P–Q	<p>Parcel means a designated contiguous area of land of any size in a single ownership. Although <i>tract</i> usually refers to a larger area of land, we use <i>parcel</i> and <i>tract</i> interchangeably.</p> <p>Partial acquisition means taking ownership or control of only part of the real property interests. Examples are:</p> <ol style="list-style-type: none"> (1) Buying only 50 acres of a 100-acre parcel owned by the seller; (2) Buying all interests in a parcel from a seller except the mineral rights, which the seller reserves; (3) Buying all interests in a parcel from a seller except a life estate, which the seller reserves; and (4) Buying a conservation easement from a seller who continues to hold title to the ownership interest in the parcel. <p>Partial interest means any single right or combination of rights that have been separated from the fee simple (see section 6.5).</p> <p>Patent is the instrument that transfers real property from the state or Federal government to an individual or another private entity.</p> <p>Personal property means anything tangible or intangible that is not real property.</p> <ol style="list-style-type: none"> (1) Tangible personal property includes: <ol style="list-style-type: none"> (a) An object that is not firmly attached to the land and not considered an inherent part of the land; (b) Soil, rock, gravel, minerals, gas, oil, or water after excavation or extraction from the surface or subsurface; (c) Timber after harvest or separation from the land; and (d) Annual crops before or after harvest. (2) Intangible personal property includes: <ol style="list-style-type: none"> (a) Intellectual property, such as patents and copyrights; (b) Securities, such as bonds and interest-bearing accounts; and

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p style="text-align: center;">(c) Licenses.</p> <p>Plat means either:</p> <p style="padding-left: 40px;">(1) A map or sketch of an individual property that shows property lines and may include features such as soils, building locations, vegetation, and topography; or</p> <p style="padding-left: 40px;">(2) A map intended to show the division of a tract into lots or parcels.</p> <p>Profit is a special realty term that means an interest in land that gives its holder the right to enter a parcel to remove the soil or a product of the soil. It is not an ownership interest. Hard minerals, gravel, oil, gas, timber, and uncultivated food or pasture may be the subject of a profit. Many court decisions describe hunting rights as profits. Anything removed under a profit becomes personal property after removal. A profit must be in writing, usually as a separate deed, a reservation in a deed, a declaration of taking, or a judicial decree. A profit does not end when the owner transfers title to the underlying parcel. The full and original name of a profit is <i>profit à prendre</i>.</p> <p>Project appraisal is a written statement prepared independently and impartially by a qualified appraiser to give an opinion of market value of several parcels in the same appraisal report. The appraiser gives the opinions of value at the same time and includes them in the same report as a clerical shortcut, not as a valuation shortcut. A project appraisal differs from a mass appraisal by not relying on a mathematical model to estimate value.</p> <p>Purchase agreement is a contractual commitment to transfer ownership of real property for a specific price. Some states use other terms to describe the agreement. The most common are: <i>contract of sale, sales contract, deposit receipt, offer and acceptance, agreement of sale, agreement for a lease, offer to lease or purchase, and sale agreement</i>. An <i>exercised option</i> is the equivalent of a purchase agreement.</p>
	<p>Real estate means the same as land.</p> <p>Real property means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water.</p> <p style="padding-left: 40px;">(1) A parcel includes (unless limited by its legal description) the space above and below it and anything physically affixed to it by a natural process or human</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
R	<p>action. Examples include standing timber, other vegetation (except annual crops), buildings, roads, fences, and other structures.</p> <p>(2) A parcel may also have rights attached to it by a legally prescribed procedure. Examples include water rights or an access easement that allows the parcel's owner to travel across an adjacent parcel.</p> <p>(3) The legal classification of an interest, benefit, or right depends on its attributes rather than the name assigned to it.</p> <p>Recipient means a state, local government, tribe, institution of higher education, for-profit entity, or nonprofit organization that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term does not include subrecipients.</p> <p>Recording means entering into a book of public records the written instruments affecting any estate, right, title, or interest in land. Each county or equivalent jurisdiction has a public recorder’s office, e.g., recorder’s office, registrar’s office, bureau of conveyances, office of the registrar of deeds, or office of the commissioner of deeds. Recording a deed protects a buyer of real property from the claims of a subsequent buyer who believes it bought all or part of the same interest. The purpose of recording is to give anyone interested in the title notice of the interests of all parties. State recording acts generally give legal priority to those interests that are recorded first. Unless we specifically mention the Torrens system, our use of the terms <i>recording</i> and <i>record</i> includes <i>registering</i> a property in a transaction under the Torrens system. We do this to avoid repeated references to the different procedures of a Torrens transaction; it does not affect the legal distinction between the systems.</p> <p>Reservation means an article of a deed or another document for conveyance of real property that describes a specific right that the person making the transfer retains (e.g., a seller retaining the mineral rights). A reservation does not exist as an explicit use or right before the transfer. The deed or other conveyance document cannot reserve a use or interest for a third party.</p>
S	<p>Seller means an entity that owns or holds real property and transfers or considers the transfer of that real property to another entity in exchange for cash or something else of value.</p> <p>State means:</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
	<p>(1) A government or agency of any state, commonwealth, territory of the United States, or the District of Columbia;</p> <p>(2) A government or agency of a political subdivision of any of these jurisdictions, e.g., a county or city; or</p> <p>(3) An instrumentality of any of these jurisdictions, e.g., a water management district or school district.</p> <p><i>State</i> does not include a state university, a state college, or any other state-administered institution of higher education.</p> <p>Structure means a building or anything permanently attached to the land by human action. Other examples are: boat ramps, levees, water-control structures, pump stations, fences, power lines, pipelines, roads, trails, wells, towers, and windmills.</p> <p>Subject property means the real property that is the focus of an appraisal.</p> <p>Sublease. See assignment of lease.</p> <p>Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency.</p> <p>Summary statement of just compensation. See offer of just compensation.</p>
T	<p>Technical review means the same as <i>appraisal review</i> and <i>technical appraisal review</i>.</p> <p>Title is the right to ownership of land or the evidence supporting the claim to own the land, such as a deed or a certificate of title under the Torrens system. If someone owns real property, that person <i>has title</i> to it.</p> <p>Torrens is a system to register lands to verify ownership and any encumbrances. It does not require a search of public records to verify ownership after the initial registration of the property in the system. The only states that authorize the use of this system are Colorado, Georgia, Hawaii, Massachusetts, Minnesota, New York, North Carolina, Ohio, Virginia, and Washington. Recording titles is the predominant system in all these states, and Torrens is used very little or possibly not at all in some. These Service Manual chapters (520 FW 6 and 7) do not affect the status of Torrens in</p>

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Table 6–2: DEFINITIONS OF TERMS: Click on a letter below to find a term.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z	
U - V	<p>a state or the frequency of its use. A person or entity acquires title under the Torrens system after:</p> <ol style="list-style-type: none"> (1) The person or entity petitions a state court to register his, her, or its title giving notice to all interested parties, (2) The person or entity files a title search with the court if it is the first use of the Torrens system for the property, (3) The court holds a hearing and issues a decree, and (4) The registrar cancels the old certificate of title and issues a new certificate of title to the new landowner. <p>The first use of the Torrens system for real property is optional, but once the property is registered, all later transfers must follow it.</p>
U - V	<p>Uneconomic remnant means:</p> <ol style="list-style-type: none"> (1) The physical part of a larger parcel of real property that the owner continues to own after a partial acquisition, or (2) The real property rights or interests that the owner continues to hold after the acquisition of some of the owner’s rights. <p>The acquiring agency must be able to determine that the real property left to the owner has little or no value or utility to the owner for it to be an uneconomic remnant (see 49 CFR 24.2(a)(27) and 24.102(k)).</p>
W - Z	<p>Waiver valuation means the informal process used to estimate the value of real property when the buyer determines that an appraisal is not required. The buyer may use a waiver valuation if the valuation is uncomplicated, and the informally estimated value, based on a review of available data, does not exceed the thresholds described in 49 CFR 24.102(c)(2)(ii).</p> <p>Working-forest easement ensures that land managed for commercial timber production continues to be managed for that purpose by preventing conversion to other uses. The terms of the easement may allow the easement holder to prescribe or influence the design, location, or timing of forest management practices to benefit or protect specific components of the natural environment such as fish and wildlife.</p>

PARTIAL INTERESTS

6.5 How are partial interests in real property created, and what are some examples?

A. Partial interests are created by separating one or more interests from the [fee simple](#).

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

B. The separation of an interest from the fee simple occurs through:

- (1) [Reservation](#),
- (2) Lease,
- (3) [Condemnation](#), or
- (4) Other assignment of rights or interests to another owner.

C. Table 6–3 gives examples of partial interests and how they fit into the range of real property interests. Some of the partial interests in the table can be in more than one category.

Table 6-3: Partial Interests in Real Property

A. Public Interests
(1) Eminent domain – Right of government to take private property for a necessary public use with just compensation paid to the owner.
(2) Police power – Right of government to adopt and enforce laws and regulations to support the public health, safety, morals, and general welfare.
(3) Taxation – Right of government to raise revenue through assessment on valuable goods, products, and rights.
(4) Escheat – Right of government to assume ownership of property when its owner dies without heirs.
B. Private Interests
(1) Physical interests
(a) Air rights <u>Example:</u> Easements related to aviation, which are corridors for landing and take-off at specified elevations near airports. This type of easement is often known as an <i>avigation easement</i> or an <i>air lot</i> . <u>Example:</u> Scenic easements, which typically protect the view from a parkway or an historic or cultural site. <u>Example:</u> Wind rights may take the form of a temporary or perpetual easement, a lease, or a permanent assignment of the right to use a designated area and to impact the remainder of the property for wind energy purposes. These legal instruments typically grant rights to: <ul style="list-style-type: none">(i) Determine the feasibility of wind power generation;(ii) Capture the flow of the wind and convert it to electricity;(iii) Construct, operate, maintain, and gain access to infrastructure for the project;(iv) Overhang turbine rotors above the surface;(v) Prohibit improvements that interfere with the free flow of wind;(vi) Transmit electromagnetic, electrical, and radio frequencies; and

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

(vii) Impact the property through light, flicker, noise, vibration, or structures.

(b) Surface rights

Example: Access easement that grants the right to pass over the property of another, usually on a designated route. This is an *easement appurtenant* because it benefits and is attached to a parcel owned by the easement holder.

Example: Right-of-way easement to construct and maintain a high-voltage electrical transmission line as part of a regional power grid. This is usually a commercial *easement in gross* because it was not created for the specific benefit of, and is not attached to, a parcel owned by the easement holder.

Example: [Conservation easement](#) is an *easement in gross* limiting future use to the conservation of fish and wildlife habitat or other environmental values. Some states may use different terms for a conservation easement, e.g., a *conservation restriction* in Massachusetts. Specific applications of a conservation easement may also have different names, e.g., a working-forest easement may be a type of conservation easement.

Example: Flowage easement, which is the perpetual right to submerge land owned by another, where the landowner retains all rights and privileges that do not interfere with or limit this right. A flowage easement may allow either permanent or occasional submergence.

Example: [Fee with exceptions to title](#).

(c) Mineral rights

Example: Mineral interest in oil and gas, which may be the right to search for, develop, and produce oil and gas. Depending on state law and the intent of the owner, a mineral interest may be a lease, reserved or assigned right, a profit, or a fee title separate from the surface fee and confined to all or part of the subsurface. The entities that hold mineral interests in oil and gas have an implied right to use the surface in a reasonable way that is necessary to carry out their rights under the mineral interest; in other words, the mineral estate is the dominant estate in land.

Example: Landowner's royalty interest in oil or gas, which is the right to a share of production or the value or proceeds of production.

(d) Temporary rights

Example: Leasehold interest, which is the right to the exclusive use and occupancy of the leased estate for a definite period.

Example: [Life estate](#), which is the right to use, occupy, and control a parcel of land during the lifetime of a designated individual or individuals. The life tenant(s) may sell or encumber the life estate subject to deed restrictions, but the life estate still ends at the death of the designated individual(s).

Example: Term easements may be temporary instead of perpetual.

(e) Undivided partial interests (concurrently held interests)

**FISH AND WILDLIFE SERVICE
FEDERAL FINANCIAL ASSISTANCE**

Federal Financial Assistance Part 520 Wildlife and Sport Fish Restoration Projects/CMS

Chapter 6 Real Property—Overview

520 FW 6

Example: Tenancy in common, in which two or more people hold an undivided interest in the same real property. Each co-tenant holds the interest through a separate title (or another legally appropriate instrument) and cannot exclude another co-tenant or claim a specific portion of the property. When a co-tenant dies, the interest passes to his or her heirs and not to the surviving co-tenants. If a co-tenant wants to sell the entire parcel and the others do not, he or she can petition the court to partition the property or sell it at auction with each co-tenant paid a share of the proceeds. A tenancy in common is typically the result of inheritance.

Example: Joint tenancy, which is an estate or unit of interest in land that two or more people own, all having equal shares. All owners collectively hold one title. The death of one joint tenant does not terminate the owning unit. It only reduces by one the number of people who jointly own the unit. The remaining joint tenants receive the deceased tenant's interest by right of survivorship. Some form of joint tenancy is recognized by most states, but several states have eliminated the right of survivorship. A joint tenant may sell his or her interest, but the relationship of the buyer with the remaining joint tenants is that of a tenancy in common. The remaining joint tenants continue to hold an undivided title to their share as joint tenants. A joint tenant cannot transfer his or her interest by will or descent until he or she becomes the sole survivor of the original joint tenants, at which time the title held by the sole survivor would become a *sole tenancy* or *tenancy in severalty*. In real property law, a tenant is an occupant or one who possesses land, not necessarily a renter.

(2) Claims

(a) Mortgage lien – This is a voluntary lien recorded by the property owner to secure a debt obligation. The mortgage company holds a debt interest in the real property, and the property owner retains an equity interest.

(b) Judgment lien – A general lien placed by the courts on real or personal property owned by a debtor.

(c) Tax lien – A lien automatically attached to property for unpaid property taxes.

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PRINCIPAL DEPUTY DIRECTOR

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