

Fee Simple vs. Land Lease

Looking to buy Real Property? What will you really own?

This is a question many buyers ask when looking to purchase a home, and the answer is based on two main components: **the legal description and the estate.**

Legal Description:

The legal description defines “*where*” your ownership extends and exists. Most buyers know a home simply by the address, but your title insurance policy will always refer to the real property by the legal description. The legal description is unique to every property and can only describe one specific piece of real estate as it exists and that can physically be located on the ground. For many real estate professionals, the legal description is basic and well understood.

Estate:

It’s the estate that is very often overlooked, misunderstood or possibly not understood in its entirety. This is not always common knowledge, and some real estate professionals do not even know that the estate exists and it defines what the buyer will own. While the legal description lets a buyer know where the real property is, many people think of the estate as an area or amount of land or property, but California Civil Code section 761 defines the estate as the degree, quantity, nature and extent of the interest an entity (the owner) has in real property.

Let’s look at this in more detail...

There are several types of estates you can have in real property:

Estate of Inheritance (*Perpetual*)

- Fee (*Simple*) (*Absolute*)
- Fee Defeasible (*Qualified*) (*Conditional*)
- Easement

Estate for Years

- Leasehold

Estate for Life

- Life Estate

Estate at Will (*Periodic*)

- Estate at Sufferance

Fee (Simple) (Absolute):

When you own the fee, you own the best possible interest you can have, an unrestricted use and enjoyment of the real property. Fee is the same as Fee Simple and/or Fee Simple Absolute. They are all considered the same, the extra words do not give an owner “*more*” of an interest. Fee is the most common interest that is transferred when a house sells as it is the highest interest an entity can have in real property.

Continued...



EQUITY TITLE[®]
COMPANY

Fee Defeasible (Qualified) (Conditional):

Fee defeasible means that something can impinge on your ownership, such as a reversionary right. Due to this limitation, fee defeasible is rarely seen as most buyers do not want to purchase an interest that can be challenged and taken away.

Easement:

An easement is a limited interest defined by the easement creation document. Easements are common and most often used for utilities, ingress and egress and/or service/maintenance. A typical home sale can be for a fee interest in the real property with the house on it and an easement over a portion of another property to provide ingress and egress to a public road. Your title insurance policy will set out the interest of each parcel of your legal description.

Leasehold:

A Leasehold is an interest for a specified time for specified real property interests, all as set forth in the lease. A lease will have a defined time period, a lessor, a lessee, a description, and terms. A lease is a valid conveyance that will expire at the end of the agreed to term or termination thereof by either the parties or the terms. The lease can be for all the real property owned by the lessor, or for structure(s) to be used, or for anything in between, as long as it is adequately defined by a legal description.

There are many types of leases, such as a ground lease, a pad lease, a unit lease, etc. Leases are very common with commercial and agricultural property, and while they can be used for residential property, this is not a common practice as a buyer does not want a “temporary” interest or have to deal with the lease being renegotiated at a future point in time. Additionally, there may also be issues with obtaining financing, as lenders may have a concern about security in trust in the property. One unique use for residential leases is by universities; the university buys the fee ownership to houses and then leases the houses to professors while they are teaching at the university. Title insurance policies can insure leaseholds as long as the leases conform to California Civil Code requirements. If you need more information on leases please contact your title representative for more information.

Life Estate:

The Life Estate was at one time the primary way to pass real property on to your heirs. Equitable title was held by the Life Tenant and the legal title was held by the Remainderman. The Life Tenant had the use of the property while alive, and when they passed, the property then went to the Remainderman. This process has been replaced in large part by living trusts.

Estate at Sufferance:

The Estate at Sufferance occurs most often when you have a lease that expires and the tenant (lessee) remains on the property. This condition will remain as long as the lease is not renewed or renegotiated, or until the tenant moves out.

The Title Insurance policy will always define the legal description and the estate, removing any question or doubt of what a buyer will be purchasing and owning. Please let your title insurance representative know if you want more information regarding legal descriptions or any of the estates described above.