

19.6: Summary and Exercises

Summary

Real property can be held in various forms of ownership. The most common forms are tenancy in common, joint tenancy, and tenancy by the entirety. Ten states recognize the community property form of ownership.

In selling real property, various common-law and statutory provisions come into play. Among the more important statutory provisions are the Civil Rights Acts of 1866 and 1968. These laws control the manner in which property may be listed and prohibit discrimination in sales. Sellers and buyers must also be mindful of contract and agency principles governing the listing agreement. Whether the real estate broker has an exclusive right to sell, an exclusive agency, or an open listing will have an important bearing on the fee to which the broker will be entitled when the property is sold.

The Statute of Frauds requires contracts for the sale of real property to be in writing. Such contracts must include the names of buyers and sellers, a description of the property, the price, and signatures. Unless the contract states otherwise, the seller must deliver marketable title, and the buyer will bear the loss if the property is damaged after the contract is signed but before the closing. The seller will usually insist on being paid earnest money, and the buyer will usually protect himself contractually against certain contingencies, such as failure to obtain financing. The contract should also specify the type of deed to be given to the buyer.

To provide protection to subsequent buyers, most states have enacted recording statutes that require buyers to record their purchases in a county office. The statutes vary: which of two purchasers will prevail depends on whether the state has a notice, notice-race, or race statute. To protect themselves, buyers usually purchase an abstract and opinion or title insurance. Although sale is the usual method of acquiring real property, it is possible to take legal title without the consent of the owner. That method is adverse possession, by which one who openly, continuously, and exclusively possesses property and asserts his right to do so in a manner hostile to the interest of the owner will take title in twenty years in most states.

Exercises

1. Rufus enters into a contract to purchase the Brooklyn Bridge from Sharpy. The contract provides that Sharpy is to give Rufus a quitclaim deed at the closing. After the closing, Rufus learns that Sharpy did not own the bridge and sues him for violating the terms of the deed. What is the result? Why?
2. Pancho and Cisco decide to purchase ten acres of real estate. Pancho is to provide 75 percent of the purchase price, Cisco the other 25 percent. They want to use either a joint tenancy or tenancy in common form of ownership. What do you recommend? Why?
3. Suppose in Exercise 2 that a friend recommends that Pancho and Cisco use a tenancy by the entirety. Would this form of ownership be appropriate? Why?
4. Richard and Elizabeth, a married couple, live in a community property state. During their marriage, they save \$500,000 from Elizabeth's earnings. Richard does not work, but during the marriage, he inherits \$500,000. If Richard and Elizabeth are divorced, how will their property be divided? Why?
5. Jack wants to sell his house. He hires Walter, a real estate broker, to sell the house and signs an exclusive-right-to-sell listing agreement. Walter finds a buyer, who signs a sales contract with Jack. However, the buyer later refuses to perform the contract because he cannot obtain financing. Does Jack owe a commission to Walter? Why?
6. Suppose in Exercise 5 that Jack found the buyer, the buyer obtained financing, and the sale was completed. Does Jack owe a commission to Walter, who provided no assistance in finding the buyer and closing the deal? Why?
7. Suppose in Exercise 5 that Jack's house is destroyed by fire before the closing. Who bears the loss—Jack or the buyer? Must Jack pay a commission to Walter? Why?
8. Suppose in Exercise 5 that the buyer paid \$15,000 in earnest money when the contract was signed. Must Jack return the earnest money when the buyer learns that financing is unavailable? Why?

SELF CHECK QUESTIONS

1. A contract for a sale of property must include
 1. a description of the property
 2. price
 3. signatures of buyer and seller
 4. all of the above

2. If real property is damaged after a contract for sale is signed but before closing, it is generally true that the party bearing the loss is
 1. the seller
 2. the buyer
 3. both parties, who split the loss evenly
 4. none of the above
3. The following deeds extend warranties to the buyer:
 1. quitclaim and special warranty
 2. quitclaim and general warranty
 3. general and special warranty
 4. all of the above
4. Under a notice-race statute,
 1. whoever records first is given title, regardless of the good faith of the purchaser
 2. whoever records first and is a bona fide purchaser is given title
 3. either of the above may be acceptable
 4. none of the above is acceptable
5. The elements of adverse possession do not include
 1. actual possession
 2. open and notorious use
 3. consent of the owner
 4. continuous possession

Answers

1. d
2. b
3. c
4. b
5. c

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