

Real Estate as a Career

An Overview of Career Opportunities

Areas of Specialization

- General Brokerage;
 - Sales of homes, land and condominiums
- Commercial Brokerage;
 - Sales of business and commercial properties
- Time Share Sales;

Property Management

- Long term rentals
- Vacation rentals
- Commercial leasing
- Association of Apartment Owners

Realtor Definition

A real estate licensee that has joined the board of Realtors; a trade association.

- NAR = National Association of Realtors
- HAR = Hawaii Association of Realtors
- Local Board of Realtors
 - Hawaii Island, Honolulu, Kauai, Kona, Maui, Molokai

Realtor & Realtor Associate

Realtor

- Broker member of local board of Realtors
- Non members are called Brokers

Realtor Associate

- Salesperson member of local board of Realtors
- Non Members are called: Salespersons

History and Development of Hawaiian Real Estate

Chapter 1, Page 1

Prior to 1840's Kings were owner

- Ahupuaa
 - From the seashore to the mountain top
- Ili
 - Subservient to or independent of ahupuaa
- Kuleanas
 - Native rights of fishery, water, mountain

These lands were often redistributed by a conqueror or successor king.

History of Hawaiian Real Estate

- 1845 Land Division appointed by King Kamehameha III
- 1848 Great Mahele
 - Changed ownership from royalty to allodial
 - Hawaii titles only need to be traced to 1840's
- 1927 Hawaiian Islands surveyed
 - Maps available at Bureau of Conveyances

Ownership of Hawaii's land

- Hawaii consists of 124 islands
 - Ranked in order of size
 - Ranked in order of population
- Percentage of Ownership of Hawaii's land
 - 39% County, State, Federal government
 - 24% by six major land owners
 - 37% for all other private landowners

State Land Use Commission

Classified all lands into four land use districts:

- Urban = 4.7%
- Rural = 0.2%
- Agricultural = 47%
- Conservation = 48%

Land, Land Elements and Waters

Chapter 2, Page 3

Land may be defined as:

- The earth's surface
- The extension of earth's surface upward to infinity
- Downward to the center of the earth

Real Estate Consists of:

- Lands
- Surface of the earth, trees, rocks, soil, minerals
- Tenements
- Includes the land, as well as the rights, tangible and intangible that arise from owning land.
- Hereditaments
 - All properties and rights that can be passed on to one's heirs upon death.

Real Estate Bundle of Rights

- Right to possess
- Right to use; or prevent others from using
- Right to encumber
- Right to enjoy
- Right to dispose

Land Elements

- Gas, Oil and Minerals
 - How treated in mainland states?
 - In Hawaii, reserved to state
- Air Rights, Owner can lease or sell
- Trees and Crops
 - Natural growth = fructus naturales
 - Annually planted = fructus industriales = emblements

Waters

- Congress has control over all navigable waters in the U.S.
- What determines navigable or non navigable and the boundaries of each?
- What are riparian rights?
- Underground water rights

Tidewater Lands & Boundaries

- U.S. Supreme Court Ruling
- State of Hawaii Decision
- PASH
 - Rights of native Hawaiians to have access to undeveloped land for customary and traditional rights of gathering, subsistence, cultural and religious needs.

Accretion, Avulsion, Reliction

- Accretion = a gradual building up of rock, sand or soil.
- Avulsion = sudden tearing away of land by the action of water.
- Reliction = water recedes gradually.
- What is Littoral property?

Personal & Real Property, Fixtures

Chapter 3, Page 6

Personal and Real Property

- If it's not real property it must be personal property. (Chattel, Personalty)
- The differences between Real and Chattel Property regarding:
 - Financing
 - Sale
- What is an example of a Chattel Real?

Fixtures

- Fixtures are articles of personal property that have become attached to and become part of real property.
- Fixtures pass with the land.

Four Tests of a Fixture

- Method of Attachment
- Adaptation to the Property
- Relationship of the Parties
- Intention of the Parties
 - Best to put it in writing

Uniform Commercial Code

- Lender records a financing statement.
- Bulk Transfer Act
- State Tax Clearance
- What if the sale includes a store lease?

Estates & Interests in Real Property

Chapter 4, Page 9

Freehold Estates

- Estate = all that a person owns in real and personal property
- Fee Simple Absolute
 - Largest bundle of ownership rights
 - An estate of inheritance
 - Freely transferable
 - Exists for an indefinite duration

Governmental Limitations:

- Right of Eminent Domain
- Escheat
- Taxation
- Police power

Private Limitations:

- Deed restrictions
- Mortgage liens
- Leases
- Easements

Conditional Fee

- An estate of inheritance that carries with it some limitations.
- The estate will come to an end upon the happening or non-happening of an event.
- The title will revert back to the grantor or the heirs or devisees.
- Also called defeasance fee.

Fee Tail

- Not recognized in Hawaii
- Cannot convey outside the family
- Reverts back to the grantor when there are no more male heirs.
- Designed to keep large estates intact.

Life Estate

- Smallest of the freehold estates
- Exists for the life of the life tenant
- Not an estate of inheritance
- Remainder
- Reversionary
- Obligations & Benefits to life tenant?
- Pour Autre Vie

Leasehold Estates

- Tenancy for years
- Periodic tenancy
- Tenancy at will
- Tenancy at sufferance

These will be fully discussed in Chapter 20.

Easements, Restrictions, & Adverse Possession

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Easements

- An easement is an encumbrance that affects the physical condition or use of the property.

Easement Appurtenant

- Attached to a piece of land that benefits from the easement.
- Servient Estate = land over which easement runs.
- Dominant Estate = land receiving the benefit of the easement.

Easement in Gross

- An easement in gross is not appurtenant to any particular land, and is a personal right which is irrevocable.
- The easement is given to a person or company rather than the dominant tenement.
- An example would be a public utility easement over private lands.

Creation of Easements

- Express Grant or Reservation
- Implied Grant or Reservation requirements
- Prescription
- Condemnation (Eminent Domain)
 - Severance Damages
- Necessity
- Dedication

Termination of an Easement

- Express Release by Dominant Estate
- Merger
- Abandonment
- Termination of Purpose

Easement & License Distinguished

- An Easement is usually created in writing, for a specific purpose. It is of permanent nature and is conveyed with the sale of the property.
- A License is created in writing or verbally, and is for a temporary period. It is personal, revocable, and non-assignable.

Private Restrictions

- Covenants are written promises.
 - The remedy for breach can be:
 - Action for dollar damages
 - Court injunction compelling compliance
- Conditions
 - If violated, grantor can bring a suit for repossession.
 - Hawaii courts generally enjoin the grantee from violating the conditions and treat like covenants.

Termination of Restrictions

- Expiration of time limit
- Merger of ownership
- Voluntary cancellation
- Courts deny enforcement
- Act of public authorities

Adverse Possession Requirements

- Hostile or Adverse
- Actual, Open and Notorious
- Exclusive
- Continuous
- Claim of Right
- Must go through quiet title proceeding.

Protected from Adverse Possession Claims

- Government owned property
- Land Court Properties
- Maximum lot size award in Hawaii is five acres.

Rights of Adjoining Owners

- Encroachments
- Lateral Support
- Party Walls
- De Minimus Structure Position Discrepancies
- Zero Lot Line

Methods of Ownership

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Principal Types of Tenancy

- Tenancy in Severalty
- Tenancy in Common
- Joint Tenancy
- Tenancy by the Entirety
- Reciprocal Beneficiaries

Tenancy in Severalty

- One person, or one entity, owns the property.
- Severalty does not mean several owners.
- The interest of the owner is “severed” and is apart from any other person.
- Examples of tenancy in severalty.

Tenancy in Common

- An estate of land held by two or more.
- Upon death, interest passes to heirs or devisees. No rights of survivorship.
- Unequal interests in the property allowed.
- Equal rights of possession.
- Partition suit is allowed.

Joint Tenancy

- Two or more owners with equal and undivided interest in property.
- Upon death of a joint tenant, property survives to the other owners.
- Partition suit is allowed.

Tenancy by the Entirety

- Only two persons, husband and wife; the marriage owns the property.
- Upon death, surviving spouse receives property.
- A creditor of one spouse cannot force the sale.
- Partition suit is not allowed.

Reciprocal Beneficiaries

- Each partner must be at least eighteen.
- Neither married nor in another reciprocal relationship.
- The parties be legally prohibited from marrying.
- Consent not obtained by force, duress, fraud.
- Each party signs declaration to relationship.

Termination of Beneficial Relationship

- Either party filing a signed notarized declaration of termination.
- Any marriage license subsequently issued to a party to a beneficial relationship.
- Either party entering into a legal marriage.

Rights of Co-Tenants

- Equal rights of possession
- Rules for retention of profits, rental income.
- Co-tenant who pays taxes & makes repairs.
- Selling their interest & selling the property.
- Confidential relationship among co-tenants.
- Rights of partition.

Other Forms of Multiple Ownership

- General Partnership; “Hui”
- Limited Partnership
- Corporation, Benefits & Liabilities
- Limited Liability Corporation (LLC)
- Joint Venture
- Real Estate Investment Trust (REIT)

Land Trusts

- Offers improvements to the Agreement of Sale
- Avoids ancillary probate for non-residents.
- Owner of beneficial interest can divide into smaller units and give away over time.
- Maintains confidential ownership to subsequent beneficiaries.

Dower, Curtesy and Wills

Chapter 7, Page 27

Dower

- Wife’s 1/3 “inchoate” interest in her husband’s property.
- Becomes consummate upon his death.
- Valid Marriage (no common law).
- Husband dies first.
- Husband can’t sell unless wife signs off.
- Curtesy similar, but.....

Effective Date, Dower & Curtesy

- Marriage on or before July 1, 1977.
- Property ownership on or before July 1, 1977
- Hawaii’s Uniform Probate Code takes effect after July 1, 1977.

Wills and Descent

- When does a will become effective?
- Define: Testate and Intestate
- Define Escheat, what is waiting period?
- Devise = Gift of real estate by will.
- Legacy = Gift of money by will.
- Bequest = Gift of personal property by will.
- Right of Election has replaced Dower & Curtesy.