

## Chapter 1

# Getting the Lowdown on Property Law

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### *In This Chapter*

- ▶ Defining property
  - ▶ Introducing ways of sharing ownership simultaneously or over time
  - ▶ Looking at ways of acquiring and transferring property
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**P**roperty law is the law about property. Okay, that's probably not helpful, but I have to start the book somehow.

Maybe it's not that helpful, but it's true. Because property law is law about property, understanding what property law is requires understanding what property is. In this chapter, I explain the types of legal rights that constitute property and what the two big categories of property — real and personal — include.

I also describe the ways that ownership may be shared and divided up over time, and I identify ways people may become property owners and transfer their ownership to other people.

## *Defining Property*

Because property law is simply all types of laws about property, describing property law requires defining property. That's the organizing principle, the common denominator, for law school courses about property law and for this book. The following sections explain how property means having certain types of legal rights in relation to a thing and introduce the two main types of property.

## Viewing property as legal rights



*Property* may refer to things that people own, but from a legal perspective, thinking of property as legal rights in relation to things is more accurate. A legal right is essentially a right that a court will recognize and enforce. (Chapter 2 introduces the ways that courts enforce property rights.)

Although you can be much more specific about the legal rights that constitute property, all property rights fit in four basic categories:

- ✓ **Rights to possess:** The owner of land has the right to occupy it. The owner of other kinds of property has the right to physically control it.
- ✓ **Rights to use:** The owner of property can use it in all sorts of ways. Of course, the right to use can't be absolute because one person's use of her property may interfere with others' use of their property.
- ✓ **Rights to exclude others:** An owner can keep others from using or invading her property.
- ✓ **Rights to transfer:** An owner can transfer her legal rights in whole or in part to other people.

## Describing property law

Unlike other traditional first-year law subjects (namely contract law, tort law, criminal law, constitutional law, and civil procedure), property law is organized by the subject matter of legal rights rather than the type or source of legal rights. Property law includes the study of some contracts, torts, constitutional clauses, procedures, and maybe even some crimes — grouped together because they all concern property. The following list illustrates and explains:

- ✓ **Torts:** Interferences with property rights are torts. Torts related to property law include nuisance, trespass, *conversion* (taking or wrongfully keeping someone else's property), and waste.
- ✓ **Contracts:** Much of property law is about contracts that transfer and shape property rights. Covenants and easements contractually adjust property rights.

Contracts transferring property rights include leases, purchase agreements, deeds, and mortgages.

- ✓ **Statutes:** Property law also includes some statutory law related to property, including oil and gas laws, zoning laws, marital property laws, landlord/tenant laws, finders statutes, recording statutes, and mortgage and foreclosure laws.
- ✓ **Constitutional protection:** The U.S. and state constitutions protect private property against governmental intrusions. An owner's property rights therefore include constitutional rights against the government. These rights include the rights to substantive due process, just compensation for taken property, and equal protection. See Chapter 8 for details on these three constitutional property protections.

None of these rights are absolute; they're simply categories and types of legal rights that constitute property ownership. But owning property means having these four rights to some extent.



The extent of these rights for any particular owner depends on the combined effect of all the sources of legal rights and rules. Specific property rights are determined by the following:

- ✔ **Common law:** The common law describes traditional property rights that constitute property ownership, created and shaped by judicial decisions over time. Chapter 4 talks about some of the main common-law property rights.
- ✔ **Rights created by contract:** Property owners can adjust their rights by private agreement with others. Under the common law, for example, a property owner has the right to exclude others from entering her land, but she can contractually give another person the property right to enter her land. Such rights are called *easements*, which I discuss in Chapter 6. Similarly, the common law may give a property owner the right to run a business on her land, but she can give away that legal right through a contract called a *covenant*, which promises someone else that she will or won't do certain things in connection with her land. Chapter 5 discusses such covenants.
- ✔ **Statutory rules:** Legislative bodies may adopt statutes and ordinances to create new property rights or adjust existing property rights. Zoning ordinances, which I cover in Chapter 7, restrict the types of buildings and uses permitted on the land, which limits the rights that property owners would otherwise have to use their property. Chapter 8 talks about constitutional restrictions on the legislative power to adopt new property rules by statute.

## *Categorizing property as real or personal*

Even though having the legal rights to possess, use, exclude, and transfer in relation to any kind of thing that can be owned is property, there are two main categories or types of property:

- ✔ **Real:** Real property means property in land and things attached to land, like buildings.
- ✔ **Personal:** Personal property means any property that isn't real. More specifically, personal property includes *chattels*, which are tangible things not connected to land, and *intangible property*, which includes things like intellectual property in ideas, patents, copyrights, and trademarks.

Chapter 2 talks more about these types of property and the differences between them.

## Applying the same rules to real and personal property

Even though some rules are different for personal property and real property, many of the rules are basically the same. Here are some examples from this book:

- ✔ Chapter 9 examines estates in real property, but a person may generally create estates in personal property subject to the same rules.
- ✔ Chapter 10 discusses concurrent estates, in which two or more people own the same
- property at the same time. That chapter focuses on co-ownership of real property, but people can co-own personal property in the same way.
- ✔ Chapter 11 talks about marital property rights that may apply to both real and personal property.
- ✔ Chapter 14 talks about acquiring title to real property by adverse possession, but the same principles apply to personal property.

Law school property law courses (as well as this book) mostly talk about rules concerning real property. Chapter 13 is the only chapter in this book that focuses on rules unique to personal property — rules about the rights and duties of people who find chattels.

## Describing the Duration and Sharing of Ownership

An individual can own all the legal ownership rights in an item of real or personal property. But often, more than one person has some ownership rights in a particular property.

Sometimes different people have the legal right to possess and use the same property at different times: One person has the right to use the property for a certain time, and then another person has the right to the property, then another, and so on. Estates and leaseholds are forms of successive ownership rights like this:

- ✔ **Estates:** An *estate* is ownership of property for some amount of time. A person can own property indefinitely, for a lifetime, for a specified number of years, and for other time periods. For example, one person may own the property for her lifetime, and then another person gets it when she dies. Chapter 9 describes how estates may divide property ownership over time.

- ✔ **Leaseholds:** A *lease* is a contract between a landlord and a tenant that gives the tenant the present estate (which may be called a *leasehold*). The tenant has the right to possess the property for a time, and the landlord has the right to take possession back when the leasehold ends. Chapter 12 covers landlord-tenant law in detail.

Different people also may share ownership of the same property at the same time rather than successively. Such ownership may be called *concurrent ownership* (Chapter 10 covers the forms of concurrent ownership of property and the rights and duties that co-owners have in relation to each other). Married couples may share ownership of property in unique ways. (Chapter 11 describes how spouses share property.)

## Acquiring Original Property Rights

Anything that's owned must have a first owner. Here are some of the ways that a thing first becomes owned as property:

- ✔ **Sovereign acquisition:** In the U.S. legal system, all land was originally owned by a government. As Chapter 3 explains, federal, state, and foreign governments originated title to lands in the U.S. by asserting sovereign claims based upon discovery and conquest.
- ✔ **Adverse possession:** If a person possesses property as if she owned it openly and continuously for a long period of time, she acquires title to the property. This is called *adverse possession*. Even though someone else formerly owned the property, the theory of adverse possession is that the adverse possessor acquires a new title instead of getting title from the former owner. Chapter 14 examines the doctrine of adverse possession in detail.
- ✔ **Creation:** People can create new personal property. Much personal property is originally owned by the person who creates it. Even then, she probably has to acquire raw materials from someone else. But if she gets the raw materials, she can create a new thing, like a hat, and she's its first owner. Similarly, a person can create intangible property like an idea and become its first owner.
- ✔ **Capture:** Some things exist in nature but aren't privately owned until captured. Chapter 13 talks about acquiring original ownership in this way. For example, wild animals aren't owned until someone captures them. Similarly, underground water, oil, and gas may not be owned until someone lawfully draws them out from underground, as Chapter 4 explains.

- ✔ **Taking possession:** Even when someone else already owned personal property, a person can acquire original ownership rights by taking possession. If the former owner abandons the property, for example, whoever finds and possesses it first becomes its owner, without acquiring ownership from the former owner. Even if the former owner doesn't abandon the thing, a finder or the owner of the property where the thing was mislaid may acquire ownership rights against the rest of the world — and maybe even against the former owner. See Chapter 13 for details on acquiring ownership by taking possession.

## *Transferring Property Rights to Another*

One of the basic rights of property ownership is the right to transfer your rights to other people. An owner can give away just some of her rights but remain the owner, such as by giving someone an easement to use her property. An owner also can transfer her entire ownership — the basic rights to possess, use, and exclude. Following are some ways she can transfer her ownership rights:

- ✔ **Deed:** An owner can transfer her ownership by delivering a valid deed to a grantee. Chapter 16 talks about deeds in detail.
- ✔ **Will:** An owner can transfer her ownership at her death by a will. Chapter 3 covers wills.
- ✔ **Mortgage:** In some states, a mortgage is treated as a conveyance of title to the mortgagee; in others, it's merely a *lien*, the legal right to sell the property to satisfy an unpaid debt. In either case, if the mortgagor defaults on the debt that the mortgage secures, the mortgagee can foreclose, hold an auction sale, and have the title transferred to the high bidder. Chapter 18 talks about mortgages.

When an owner transfers property to another person, the new owner wants to be sure that the world knows she now owns the property. She does that by recording her interest with the county clerk or other public officer who maintains records related to real property. If she doesn't, as Chapter 17 explains, state recording statutes may allow someone else who buys the property without knowing about her interest to become the owner instead.