

# 7 Real Property Ownership

Wis. Stat. 70.043, 766  
ATCP 134

**Chapter Overview** This chapter provides an overview of property ownership.

## Important Terminology

*accession*  
*bill of sale*  
*bundle of rights*  
*common elements*  
*condominium*  
*condominium unit*  
*control*  
*cooperative*  
*disposition*  
*eminent domain*  
*escheat*  
*estate in land*  
*exclude*  
*fee simple absolute*  
*fee simple defeasible*  
*fixtures*  
*freehold estate*  
*grantee*  
*grantor*  
*homestead*  
*individual property*  
*joint tenancy*  
*leasehold estate*

## REAL PROPERTY OWNERSHIP

Real property ownership refers to the rights, interests, and benefits of ownership of real estate.

Ownership of real estate gives a property owner the rights to the physical land at and below the earth's surface, structures that are permanently attached to it, and the air located above it. The United States uses a property ownership system in which a purchaser of real estate is actually buying the rights of ownership held by the seller.

An owner's rights are like a **bundle of rights** with respect to the property. Degrees of ownership can be thought of as having some, none, or all of these rights:

*lessee*  
*lessor*  
*life estate*  
*life tenant*  
*limited common elements*  
*management and control*  
*marital property*  
*mixed property*  
*partition suit*  
*percentage interest*  
*personal property/chattel*  
*police power*  
*possession*  
*predetermined date property*  
*probate*  
*quiet enjoyment*  
*severalty*  
*survivorship marital property*  
*taxation*  
*tenancy in common*  
*time-share*  
*total unity*  
*trade fixtures/chattel fixtures*

1. **Disposition** - The right to sell, lease, and will a property away.
2. **Encumber** - The right to mortgage or give another party an interest in a property.
3. **Exclude** - The right to have sole use of a property.
4. **Possession** - The right to occupy a property.
5. **Quiet enjoyment** - The right to have uninterrupted use of a property without interference from former owners or tenants.
6. **Control** - The right to use a property in a lawful manner.

An owner's bundle of rights to property may also be referred to as the "bundle of sticks" of ownership. This concept comes from the Middle Ages where a seller would symbolize the transfer of property to by giving the buyer a bundle of sticks from a tree on the property. The buyer, by accepting the sticks, became the owner of the tree that the sticks came from and the land attached to the tree. Today, sellers use deeds to transfer property to new owners but the concept of property ownership as a bundle of rights or sticks remains.

## REAL VERSUS PERSONAL PROPERTY

**Personal property**, or **chattel**, is moveable or portable property. Personal property includes furniture, draperies, bank accounts, and crops. Personal property is not real estate and will not be included in a real estate transaction unless the parties agree to its inclusion.

The Occupancy section at lines 57-60 of the WB-11 Residential Offer to Purchase states that "At the time of Buyer's occupancy, Property shall be in broom swept condition and free of all debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent." Sellers cannot leave personal property behind unless the buyer agrees. If a seller is including a large amount of personal property in the purchase price for real estate, a seller transfers title to the personal property to the buyer with a **bill of sale**. The state-approved form for transferring personal property in a real estate transaction is the WB-25 Bill of Sale. This form transfers the seller's title to the personal property to the buyer. If a seller is transferring an item with a title such as a car, the seller needs to transfer that title to the buyer in addition to using the WB-25 Bill of Sale as part of the transaction. A seller does not give a bill of sale to the buyer until closing because the bill of sale transfers title at the time that seller gives it to the buyer. If a seller provides a bill of sale to a buyer before closing, the buyer now owns the items on the bill of sale even if the transaction does not close.

Only the party transferring the property needs to sign a bill of sale, which will contain a list of all the items the party is transferring to the recipient. A seller only uses a WB-25 Bill of Sale when the seller is including personal property in the real estate transaction. The WB-25 is addressed in a later chapter.

### Fixtures

When a person permanently attaches personal property to real estate, it becomes a fixture and is part of the real estate. **Fixtures** are items that once were personal property but are now real property because they are permanently attached to the real estate. Fixtures are automatically sold with the real estate unless the parties agree to exclude listed fixtures from the transaction. Examples of fixtures include wall-to-wall carpeting, light fixtures, heating and central air conditioning units, and built-in cabinets. Wisconsin's residential listing contract and offer to purchase contain a list of standard fixtures but whether an item is a fixture is not always clear.

If parties disagree about whether an item is a fixture, a court will consider the following questions:

1. How is the item attached? Can the item be easily removed without damaging the property to which it is attached?
2. How is it adapted? Is the item being used as personal property or real property?
3. What was the intent? Did the party that installed the property intend for it to be used as personal property or as a fixture?
4. Is there an agreement? Does the sales contract state if the property is to be treated as real or personal property?

Improvements to property can also be fixtures. Improvements are valuable additions to a property made to enhance the value of the property. Improvements cost capital and labor and are more than just repairs.

## Trade Fixtures

Tenants of commercial properties may install trade fixtures for conducting business. Trade fixtures, or **chattel fixtures**, include items such as shelving and counters that a tenant installs in a retail store or kitchen equipment installed in a restaurant. Trade fixtures are the tenant's personal property even though the tenant attaches or installs them in the building. Tenants usually intend on removing trade fixtures at the termination of a lease. If a tenant does not remove trade fixtures at the termination of a lease, the tenant abandons the trade fixtures and they become the real property of the property owner by **accession**. There is no established statutory time frame that needs to be met before accession takes place.

## Mobile Homes

Depending on the characteristics of a mobile home, it may be real or personal property. A mobile home is a prefabricated housing unit that the owner may or may not attach to the land underneath the home. An owner can remove a mobile home from a foundation to which it is attached and move it to a new location. Mobile homes exhibit characteristics of both real and personal property.

In Wisconsin, a mobile home is personal property unless it is on a foundation, attached to utilities, and on land owned by the mobile home owner. If those three characteristics exist, the mobile home is treated as real property and a licensee can be involved in transferring ownership of the mobile home from a seller to a buyer. If the mobile home does not exhibit all three characteristics, it is a recreational vehicle and personal property. Because the mobile home is not real estate, a licensee should not engage in the transaction transferring ownership. Any person who sells more than one recreational vehicle per calendar year must have a license as a recreational vehicle dealer or salesperson. If a licensee is going to assist in a permissible sale of a personal property recreational vehicle, the licensee cannot use state-approved real estate contracts because the transfer does not involve real estate. Licensees should consult their employing broker to learn about the broker's mobile home sale policy.

## ESTATES IN LAND

A person has an **estate in land** when the person has some or all of the bundle of rights or "sticks" of ownership. An estate in land gives the owner possession of the land for a determinate duration. An estate in land is the interest an owner has to use, possess, control, and dispose of the land and it defines the nature, degree, extent, and duration of a person's ownership. Estates in land are divided into two primary categories: freehold and leasehold.

1. **Freehold Estate:** A freehold estate in real property lasts until the owner chooses to sell the property, transfer it to another as a gift, or dies, which transfers the deceased owner's interest in the property to heirs by a will or by the laws of intestacy. The owner maintains all six "sticks" in the bundle of rights until some action by the owner, including death, grants the property to a new recipient.
2. **Leasehold Estate:** A leasehold estate is a personal property interest in land that lasts until some event occurs. Under a leasehold estate, a tenant has the rights to exclusion, possession, quiet enjoyment, and control for a period of time set forth under the lease. At the end of the lease term, the rights held by the lessee revert back to the property owners. Interest in a leasehold estate survives the death of the tenant, the property owner, or both.

## Freehold Estates

Freehold estates allow for ownership and possession of a property but a grantee's bundle of rights is limited by the kind of estate granted by the grantor.

**Fee simple absolute** is the maximum ownership and greatest estate in land. In most transactions, the buyer (**grantee**) is receiving from the seller (**grantor**) a fee simple estate. Ownership is forever and the owner has the full bundle of rights until the owner chooses to dispose of the property. An owner's rights to property held as fee simple absolute are only subject to government powers. Federal, state, and local governments have the power to create laws to protect public health, safety, and welfare. Government powers protect the general welfare of the community and they supersede the rights of individual property owners.

The government powers are:

1. **Police power:** State power that the legislature passes to municipalities through enabling acts. Municipalities use police power to preserve order, protect public health and safety, and promote general welfare. Zoning is an example of a municipality's police power.
2. **Eminent domain:** A government's right to take private land for public use. A government exercises eminent domain through condemnation. To use eminent domain, a government must show that the taking of the land is in the public interest and must pay the property owner just compensation.
3. **Taxation:** A government charges taxes on real estate to raise funds to meet public needs such as schools and roads.
4. **Escheat:** Escheat occurs when a property owner dies without a will and without heirs and the state or county becomes the owner of the property. Escheat prevents a property from becoming abandoned and without an owner.

**Fee simple defeasible** estates continue indefinitely as long as the estate holder observes the terms of the estate. Ownership depends on the occurrence or the nonoccurrence of an event. A grantor creates a fee simple defeasible by encumbering a deed with a condition requiring the grantee to use the property in a certain way or observe some other condition to maintain ownership of the estate.

For example, a grantor grants land to a city as long as the city uses it for a park. If the city uses the land for a parking lot, the city violates the deed condition and the title to the property transfers to a subsequent grantee according to the terms of the deed condition. A licensee should refer transactions involving a fee simple defeasible to an attorney.

**Life estates** are estates in land where parties measure ownership by the life of the life estate holder or some other person. When the life estate terminates on the death of the life estate holder, the property passes to a future owner based on the terms of the life estate. A life estate is not inheritable. An owner of a life estate is a **life tenant**. A life tenant is the legal owner of the property during the lifetime of the life tenant. The party who will receive the property at the death of the life estate holder is the remainder person.

A hospital planning for future expansion purchases surrounding properties, giving life estates to the individual sellers. The sellers receive market value for the homes and retain the right to live in the homes until death. As the individual homeowners die, the property passes to the party holding the remainder interest, which is the hospital. Over time, the hospital acquires the property it needs to expand.

An parent deeds a house to an adult child, reserving a life estate. The parent is the life tenant and holds a life estate. The adult child is the remainder person and holds a remainder interest in the home. The life tenant can sell the property, subject to the life estate, which means that the property still transfers to the adult child/ remainder person at the death of the life tenant.

A life tenant:

1. May possess the property, use it in its ordinary fashion, and receive profits of property.
2. Must keep the premises in a reasonable state of repair so that the property received by the remainder person is in good condition and has maintained its overall value.
3. Must pay taxes, special assessments and other debts of the property.
4. Cannot create any interest that extends beyond the life estate.

## Leasehold Estates

A leasehold estate, under common law, is a personal property estate in land that transfers from the **lessor** (landlord/ property owner) to the **lessee** (tenant). Parties use a lease to transfer the estate from the lessor to the lessee. A lease defines the period of time the lessee has to exclusively use and possess the property, the amount of money the lessor is charging for that use, and any other duties or obligations of the property owner and tenant. The tenant holds a less-than-freehold estate in land. Leasehold estates are less-than-freehold estates because the entire bundle of rights does not pass to the tenant. When a tenant and property owner enter into a lease, the rights of exclusion, possession, quiet enjoyment, and control pass to the tenant and the property owner retains a reversionary interest. The tenant receives the bundle of rights or “sticks” of ownership except disposition and the right to encumber. When the leasehold estate expires, the tenant-held rights transfer or revert back to the property owner. The property owner’s reversionary right is the right to have the tenant’s rights of exclusion, possession, quiet enjoyment, and control revert back to the property owner’s bundle of rights.

A leasehold estate survives the death of the lessor or lessee and it binds heirs of the deceased party. Wisconsin limits the liability of residential tenants for lease obligations if a tenant dies during the term of the lease. If a tenant dies, the tenancy is terminated on the earlier of either sixty days after a property owner receives notice of the death or the expiration of the rental term. A lease survives transfer of title. A seller shall assign the seller’s rights under a lease and transfer all security deposits and prepaid rents to the buyer at closing. The seller remains liable under a lease unless released by the tenant. The seller should consider obtaining an indemnification agreement from the buyer for liabilities under the lease unless the tenants are willing to release the property owner from the lease obligations. An indemnification agreement is an agreement to reimburse or compensate someone for a loss. If a seller obtains an indemnification agreement from the buyer and the buyer, as the new owner, breaches a lease term and causes damage to the former owner, the buyer must compensate the former owner for losses.

### Lessor/Lessee Obligations

Neither a property owner nor a tenant is required to make improvements to property unless specifically stated in the terms of the lease. A property owner must keep property in habitable condition, and tenants must return premises in the same condition as when the tenant received it. A lease agreement should address whether a tenant has the right to install fixtures during the lease term and what happens to the fixtures at the termination of the lease.

The Department of Agriculture, Trade and Consumer Protection (DATCP) regulates residential rental practice. A property owner must notify tenants of the following before accepting a security deposit:

1. The tenant has seven days to inspect the dwelling unit at the beginning of the tenancy.
2. The tenant has seven days to request a list of physical damages or defects, if any, charged to the previous tenant’s security deposit.

A property owner must provide a standardized information check-in sheet to a new tenant. The sheet must contain an itemized description of the condition of the premises at the time of check-in. The tenant shall be given 7 days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The property owner is not required to provide the information check-in sheet to a tenant upon renewal of a rental agreement.

A property owner must return the full amount of the security deposit, less any amounts properly withheld within 21 days after any of the following:

1. If the tenant vacates on the date the rental agreement terminates, the date on which the rental agreement terminates;
2. If the tenant vacates the premises before the termination date of the rental agreement, the date on which the tenant's rental agreement terminates or, if the property owner re-rents the premises before the tenant's rental agreement terminates, the date on which the new tenant's tenancy begins;
3. If the tenant vacates the premises after the termination date of the rental agreement, the date on which the landlord learns that the tenant has vacated the premises;
4. If the tenant is evicted, the date on which a writ of restitution is executed or the date on which the landlord learns that the tenant has vacated the premises, whichever occurs first.

A property owner must make the security deposit check payable to all tenants who are parties to the rental agreement unless the tenants designate a payee in writing. Most property owners will request that the tenants designate a payee at the time the tenants execute the lease or rental agreement to facilitate the later return of the security deposit.

Security deposits may be withheld for any of the following reasons:

1. Tenant damage, waste or neglect of the premises.
2. Unpaid rent for which a tenant is legally responsible.
3. Payment that a tenant owes under the rental agreement for utility service.
4. Unpaid mobile home parking fees.

Security deposits may not be withheld for normal wear and tear. This means a property owner cannot withhold money from a tenant's security deposit for routine carpet cleaning.

Prohibited Practices:

1. Property owners may not rent or advertise for rent a premises that has been placarded and condemned for human habitation.
2. No property owner may enter a dwelling unit during tenancy except to inspect the premises, make repairs, or show the premises to prospective tenants or purchasers.
3. No property owner may enter a dwelling unit during tenancy except upon advance notice and at reasonable times. Advance notice means at least 12 hours advance notice unless the tenant, upon being notified of the proposed entry consents to a shorter time period.
4. A property owner may enter a premises if the tenant, knowing the proposed time of entry, requests or consents in advance to the entry, a health and safety emergency exists, or the tenant is absent and the property owner reasonably believes that entry is necessary to protect the premises from damage.
5. No property owner may enter a dwelling unit during tenancy without first announcing his or her presence to persons who may be present in the dwelling unit, identifying himself or herself upon request.

6. Property owners cannot enforce an automatic renewal or extension provision unless the tenant was given separate written notice of the pending automatic renewal at least 15 days, but no more than 30 days before its stated effective date.
7. No property owner may seize or hold a tenant's personal property, or prevent the tenant from taking possession of the tenant's personal property.
8. No property owner shall terminate a tenancy or give notice preventing the automatic renewal of a lease, or constructively evict a tenant by any means including the termination or substantial reduction of heat, water or electricity to the dwelling unit in retaliation against a tenant because the tenant has:
  - a) Reported a law violation or a building or housing code to any governmental authority, or filed suit alleging such violation;
  - b) Joined or attempted to organize a tenant's union or association; or
  - c) Asserted, or attempted to assert any right specifically accorded to tenants under state or local law.
9. No property owner shall fail to deliver possession of the dwelling unit to the tenant at the time agreed upon in the rental agreement, except where the property owner is unable to deliver possession because of circumstances beyond the property owner's control.
10. No property owner may exclude, forcibly evict or constructively evict a tenant from a dwelling unit.
11. Late rent fees and penalties:
  - a) No property owner may charge a late rent fee or late rent penalty to a tenant, except as specifically provided under the rental agreement.
  - b) Before charging a late rent fee or late rent penalty to a tenant, a property owner shall apply all rent prepayments received from that tenant to offset the amount of rent owed by the tenant.
  - c) No property owner may charge any tenant a fee or penalty for nonpayment of a late rent fee or late rent penalty.

## FORMS OF OWNERSHIP

An estate in land defines the nature, degree, extent, and duration of a person's ownership. A property owner must designate how the owner holds title to the estate. A licensee cannot give advice on how an owner should hold title but a licensee should have an understanding of the different forms of ownership.

### Severalty

An interest that is severed from all others. The owner exclusively holds the bundle of rights. No other party has an interest in the ownership or the authority to transfer title to the property.

### Co-ownership

The title to real estate is held by more than one owner.

#### 1. Tenancy in Common

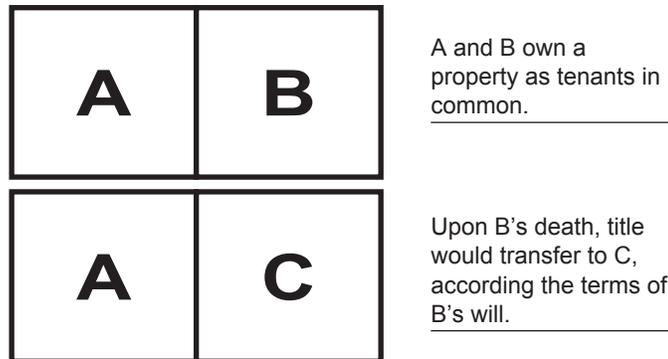
Tenants in common hold a fractional interest in a property. They have equal rights to possess the property even though they may not own equal shares.

For example, one owner owns 40% and the other two owners each own 30%.

The three people own the property as tenants in common.

Tenants in common hold their individual interests in severalty. This means that each owner has the ability to control the individual ownership interest. An owner can sell an interest without the consent of the others, unless all parties have an agreement stating otherwise. A tenant in common can will the tenant's interest upon death; it does not automatically go to the surviving owners.

In Wisconsin, the law presumes tenancy in common when more than one person owns a property. If nothing is expressed to the contrary in the deed, the owners hold the property as tenants in common and that each tenant has an equal interest. If tenants in common do not own equal interests, they must state this in the deed.



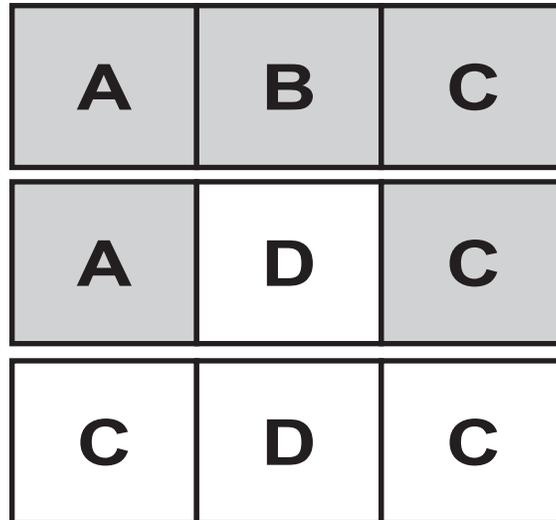
## 2. Joint Tenancy

Co-owners can title property as joint tenants. A joint tenancy can only be created by will or deed. This means either the will of a deceased person dictates that the heirs hold title to the property as joint tenants or a property's deed will list the owners as joint tenants. Unless the property's deed says otherwise, the law assumes tenancy in common with equal shares.

Under a joint tenancy, there needs to be a **total unity** of ownership. Total unity exists when all owners have equal rights to possession, hold an equal ownership interest, acquired their interest at the same time, and by the same document. Joint tenants enjoy a right of survivorship. This means that when one joint tenant dies, that deceased joint tenant's interest automatically vests in the surviving joint tenant or tenants. The surviving joint tenant or tenants take ownership of the property without the property passing through the probate process. **Probate** is the formal judicial proceeding that a court uses to prove or confirm the validity of a will, to collect the assets and claims of a decedent's estate, pay debts and taxes that the estate owes, and to determine the heirs who will inherit the remainder of the estate.

A joint tenant can sell the joint tenant's interest without the consent of the other joint tenant. The new owner does not take title as a joint tenant because the new owner did not receive the interest at the same time as the remaining joint tenants. The new owner takes title as a tenant in common. The remaining owners' interest, as joint tenants, remain the same.

A, B, and C hold title as joint tenants in equal one-third shares. B sells a one-third interest to D. D is not a joint tenant with A and C because D took title at a different time. A and C are still joint tenants and D is a tenant in common. A, C, and D each own a one-third share. If A dies, A's share transfers to C automatically because A and C are joint tenants with a right of survivorship. C and D now hold title as tenants in common. D owns a one-third interest and C owns a two-thirds interest.



A, B and C hold title as joint tenants.  
B sells to D.

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A and C continue to hold title as joint tenants. D holds title as a tenant in common.

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A dies. A's title would transfer to C, because joint tenants have a right of survivorship. C and D now hold title as tenants in common (no survivorship).

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Under a tenancy in common and a joint tenancy, co-owners can file a **partition suit** to dissolve the tenancy. A partition suit is a legal remedy used when all of the parties do not voluntarily agree to sell. A court, if unable to divide the property between the remaining owners without destroying its value, will order the sale of the property as a whole and distribute the proceeds to the owners according to their fractional interest in the property.

## WISCONSIN MARITAL PROPERTY

On January 1, 1986, Wisconsin's Marital Property Act became effective. The Marital Property Act made Wisconsin a community property state, which means that each spouse owns an undivided one-half interest in the property of the other spouse acquired after their determination date, regardless of which spouse actually acquired the property. Property includes income, assets, and real and personal property. A couple's determination date is the latest of the date the couple got married, the date they established a domicile in Wisconsin, or January 1, 1986. Property is classified as marital, individual, mixed, or survivorship. The act also addresses property acquired before a couple's determination date. The state acknowledges certain exceptions to the classification of property after the determination date. The law presumes that all of a couple's property is marital property and spouses must be able to show otherwise if the property is not marital property.

Marital Property Act classifications:

**Marital Property:** Including, but not limited to all property and salaries of married persons. Each spouse has an undivided one-half interest in each item of marital property without regard to the actual monetary value of a spouse's contribution to the asset. A spouse can convey his or her one-half interest in a marital property asset, as could a tenant in common and the non-conveying spouse will have an interest in any proceeds from the conveyance. Upon the death of a spouse, one-half of all marital property assets become part of the estate of the deceased spouse and may be distributed pursuant to the will of the deceased spouse.

**Individual Property:** Property one spouse received as a gift or inheritance; property acquired prior to marriage; income from individual property designated as individual property; appreciation of value from individual property; and property declared by decree or marital property agreement as the individual property of the spouse.

**Mixed Property:** Combination of both individual and marital property. It is always treated as marital property. Spouses who want to keep individual property must keep it separate from marital property. Mixing individual property with marital property will change the individual property to marital property. If a non-owner spouse uses substantial labor, effort, inventiveness, physical, or intellectual skill, creativity or managerial activity that results in substantial appreciation of the other spouse's individual property, the property is treated as marital property unless the spouse that owns the individual property provides reasonable compensation to the non-owner spouse.

**Predetermination Date Property:** Applies to property acquired by married couples before their determination date. This property is reclassified as marital property in the event of divorce or death of one of the spouses.

**Survivorship Marital Property:** Allows a property to pass to the surviving spouse without going through the probate process. If spouses take title as joint tenants, the property will be classified as survivorship marital property. A married couple's homestead is automatically held as survivorship marital property unless they title it differently in the deed or have a marital property agreement stating otherwise.

**Homestead** is defined as the home or dwelling of a married person and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, but not less than one-fourth acre, if available, and not exceeding 40 acres. The definition is broad and covers such properties as a duplex if the couple or one of the spouses reside in one of the units.

## MANAGEMENT AND CONTROL

The rights to **management and control** of property can determine who has the authority to sell, lease, dispose, or mortgage the real estate.

If property owners title property using "or," either owner may exercise management or control over the property. If property owners title property using "and," both owners must consent to the management or control decision.

If a married couple owns a homestead, both spouses must sign any conveyance regardless of whether the deed lists both spouses as owners.

Mary owns a property. She then meets and marries John and they live in Mary's house. Mary decides to sell the property. Because it is a homestead property, both Mary and John's signatures are required to transfer title, even if only Mary is on the deed.

## CONDOMINIUM OWNERSHIP

The **condominium** form of ownership takes what otherwise might have been an apartment or townhouse and permits individual sale of the separate dwelling units. A condominium is a form of ownership of real property, just like a joint tenancy or a tenancy in common. It is important that a licensee has a basic understanding of the concepts of condominium ownership.

Historically, condominiums were generally apartment buildings where buyers could purchase individual units but condominium refers to a form of ownership, not a style of property. Condominium ownership can be used for apartment-style units, multiple-units, side-by-side units, or single-family home freestanding structures. Condominium ownership is a shared form of ownership and does not just apply to residential dwellings but can also apply to property such as airplane hangers, commercial structures, boat slips, and parking spaces.

A **condominium unit** is the part of the condominium intended for independent use. The unit owner has exclusive ownership and possession of the unit. The unit owner can use the unit as defined by the condominium declaration and plat. An owner should review the definition to determine whether, for example, a side-by-side townhouse unit includes just the cubicles of air within the interior walls or also includes the finished surfaces of the interior walls, such as wallpaper and paint. Typically, an owner owns an individual unit as an exclusive possession, which most often includes the interior of the outside wall.

**Common elements** are everything else in the condominium that are not units. In a residential condominium, common elements may include the grounds, a swimming pool, the exterior of the building, the landscaping and outdoor lighting, elevators, and fitness rooms. A unit, together with its undivided interest in common elements, is an interest in real estate. A condominium owner owns the unit in severalty and the common elements as a tenant in common with the other condominium owners.

**Limited common elements** are elements of the condominium that are identified in the declaration or plat as reserved for the exclusive use of one or more unit owners. All owners own the limited common elements but only certain owners have access or the right to use them. Limited common elements can include a storage area, patio, balcony, garage, parking space, or boat slip.

The declaration or bylaws may permit unit owners to transfer limited common elements by deed to other unit owners. For example, a unit owner could deed a parking space to another unit owner in exchange for a storage space or for some other compensation. A condominium owner would have to consult the condominium documents to determine if the association permits this kind of exchange.

A condominium association is usually responsible for the maintenance of limited common elements even though only some or a single owner has the right to use the element. A condominium association can also limit the use of limited common elements.

A condominium unit includes a patio as part of the unit. The owner of that unit will be responsible for maintenance and has exclusive use of the patio.

A condominium unit includes a patio as a common element. The association will be responsible for maintenance and all condominium owners can use the patio.

A condominium unit includes a patio as a limited common element. The association will be responsible for maintenance and only some condominium owners can use the patio.

Unit owners own an undivided interest in the common elements as a tenants in common. The condominium declaration determines the individual owner's **percentage interest**.

The percentage interest determines the:

1. Extent of the unit owner's undivided ownership interest in the common elements;
2. Extent of the unit owner's responsibilities for common expenses;
3. Unit owner's voting power; and
4. Amount of a unit owner's proceeds in the event that the condominium is terminated.

Condominium declarations may establish percentage interests based on the number, the square footage, the location, or the value or using some other formula.

The condominium association is made up of all unit owners acting together as a group to manage and maintain the condominium property that they collectively own. Every unit owner is automatically a member of the association and only unit owners may be members of the association. In the case of newly developed condominiums, the developer or declarant is often a member of the association. The association administers and governs the condominium.

A condominium association manages reserve accounts to protect owners from incurring large, unexpected, out-of-pocket expenditures. For example, an association may establish a reserve fund for a new roof that a building will need sometime in the future. This prevents an association from having to issue a large special assessment on owners when it is necessary to replace a roof. If the association did not reserve funds to address large-scale projects and instead assessed owners when projects became necessary, unit owners may not be able to pay the assessments at the time due, which could jeopardize the financial well-being of the association and prevent it from maintaining the common and limited common elements. Lenders are reluctant to provide mortgage loans for condominiums that do not have adequate reserves and insurance companies are unwilling to insure associations without adequate reserves because of the risks that an association will incur large-scale expenses for which funds are not available.

To create adequate reserve funds, associations often establish a long-term maintenance plan that schedules periodic repairs and improvements to common and limited common elements. Unlike other states, Wisconsin condominium law does not require that condominium associations establish reserve funds. Whether a condominium retains a reserve fund will be an important consideration for a buyer, especially for a buyer who needs to obtain a mortgage to purchase the unit.

## COOPERATIVE OWNERSHIP

**Cooperative** ownership, also called a co-op, permits owners to purchase stock in a corporation that holds title to a building. The corporation grants the stockholder a proprietary lease for a specific unit in the building. The corporation holds title to the land and building and the owners, who are shareholders of the corporation, lease the individual units. The residents are tenants of the corporation's building and owners of the corporation. Leaseholders pay a share of the corporation's expenses such as mortgages and real estate taxes in exchange for occupancy of the unit. A leaseholder's share of the expenses can depend on the size of the unit, the purchase price, or some other formula. A cooperative owner does not own the unit like a condominium owner but rather owns stock in a corporation, which holds the building as the corporation's main asset.

Unlike voting power in a condominium, which is usually based on the size or value of the unit, voting in a cooperative is usually one vote per unit. Cooperatives usually require board of director's approval of any transfers of stock and leases to new owners.

Cooperative owners are collectively responsible for the financial status of the corporation, which means if a leaseholder defaults on monthly payments, the other owners must pay the difference so that the corporation is able to pay its expenses such as the building's mortgage, utilities, and taxes. If the corporation cannot pay the mortgage, the lender could foreclose, which could terminate the stockholder's leases even if the individual stockholder has not defaulted. The lender issues the mortgage to the corporation rather than to the group of tenants. The tenants are responsible for their share of the cooperative's expenses.

A Wisconsin real estate license does not permit a licensee to sell stock because it is not real property but if the sale of stock in a cooperative ownership building is incidental to the licensee's real estate practice, the licensee can participate in the transfer. Licensees must be careful because the state approved real estate forms are not for use in the sale of stock.

## TIME-SHARE OWNERSHIP

An owner of a **time-share** has an interest in real property with the right to use the facility for a fixed or variable time period. Owners convey time-shares to new owners by deed. With time-share ownership, owners buy fixed or floating time periods for use of a specific unit within a project. Common expenses are prorated among the owners. Time-shares are common in resort communities.