

WHAT DO YOU MEAN MY REAL ESTATE LEASE IS NOT A GROUND LEASE?

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TYPES OF REAL ESTATE LEASES

- Ground Leases
- Building Leases
- Space Leases
- Air Rights/Roof Top Leases
- Subsurface/Oil, Gas, Mineral Rights Leases

UNIQUE CHARACTERISTICS OF GROUND LEASES

- Vacant Land/Pad Sites
- Longer Term
- More Flexibility/Control for Tenant
- Feasibility/Permitting Period
- Construction of Improvements
- Leasehold Mortgages/Subordinated Fee

UNIQUE CHARACTERISTICS OF GROUND LEASES (cont.)

- Required Easements
- Broader Use Rights
- Tenant Responsible for All Maintenance
- Broad Rights to Make Alterations
- Ownership of Improvements
- Tenant Maintains All Insurance

UNIQUE CHARACTERISTICS OF GROUND LEASES (cont.)

- Casualty/Condemnation
- Broader Assignment/Subletting Rights
- Non-Disturbance
- Environmental Indemnification
- Purchase Options/Rights of First Refusal
- Tax Benefits for Tenants – Depreciation on Improvements

WHY A GROUND LEASE?

- Landlord Retains Ownership of Land
- Development Risks Shifted to Tenant
- Tenant Wants More Control
- Tenant Avoids Cash Out Lay Required to Purchase
- May Avoid Subdivision/Platting Issues

UNIQUE CHARACTERISTICS OF BUILDING LEASE

- Build to Suit/Tenant Improvement Allowances
- Tenant Sole Occupant
- Sole Use of Common Areas/Parking Areas
- Tenant Pays All CAM/Real Estate Taxes

UNIQUE CHARACTERISTICS OF BUILDING LEASE (cont.)

- Broader Use Rights
- Broader Obligations with Respect to Maintenance
- Broader Rights with Respect to Alterations
- Broader Rights with Respect to Signage

UNIQUE CHARACTERISTICS OF BUILDING LEASE (cont.)

- Less Ability to Surrender Space Early/Downsize
- Ability to Assign/Sublease/Grant Licenses
- Landlord and its Lender More Inclined to Provide Non-Disturbance
- Purchase Options/Rights of First Refusal or First Offer

WHY A BUILDING LEASE?

- Space Requirements
- No Development Risk for Tenant
- More Flexibility/Control for Tenant vs. Space Lease
- Build to Suit to Customize to Tenant's Specific Needs
- Stability for a Long Term

UNIQUE CHARACTERISTICS OF SPACE LEASE

- Tenant Not Sole Occupant
- More Limited Use Rights
- Shared Use of Common Areas/Parking Areas
- Landlord Maintenance of Common Areas/Parking Areas
- Tenant Paying Pro Rata Share of CAM/Real Estate Taxes or Gross Amount

UNIQUE CHARACTERISTICS OF SPACE LEASE (cont.)

- More Limited Maintenance Obligations
- Landlord's Access Rights/Improvements to Other Tenant Spaces
- More Limited Alteration Rights
- Different Insurance Requirements vs. Building Lease (maybe)
- Different Rights Following Casualty/Condemnation
- Options to Expand or Reduce Space

UNIQUE CHARACTERISTICS OF SPACE LEASE (cont.)

- Less Leverage Generally
- Flexibility in Term Length, With Options to Extend
- Used for Residential, Commercial, Office, Industrial
- Less Control Over Other Tenants in the Building
- Less Flexibility for Tenant Improvements
- Use Subject to Building Rules

WHY A SPACE LEASE?

- Space Requirements
- Typically Shorter Term than Building Lease
- Maintenance Obligations Undertaken by Landlord
- Other Business Considerations

UNIQUE CHARACTERISTICS OF AIR RIGHTS/ROOF TOP LEASES

- Nature of Leased Premises
- Air Rights – Construction Equipment
- Roof Tops – Communications Equipment
- Roof Tops – Signage
- Roof Tops – Access to Building & Electrical/ Mechanical Systems
- Roof Tops – Interference Issues

UNIQUE CHARACTERISTICS OF AIR RIGHTS/ROOF TOP LEASES (cont.)

- Roof Tops – Installation/Screening/Removal
- Roof Tops – Existing Roof Warranties
- Roof Tops – Relocation
- Insurance/Liability Issues
- Generation of Power for the Building or the Grid

WHY AN AIR RIGHTS/ROOF TOP LEASE

- Construction Related Issues
- Need for Space for Communications Equipment
- Green Development
- Signage/Advertisement

SUBSURFACE/MINERAL/OIL/GAS LEASES

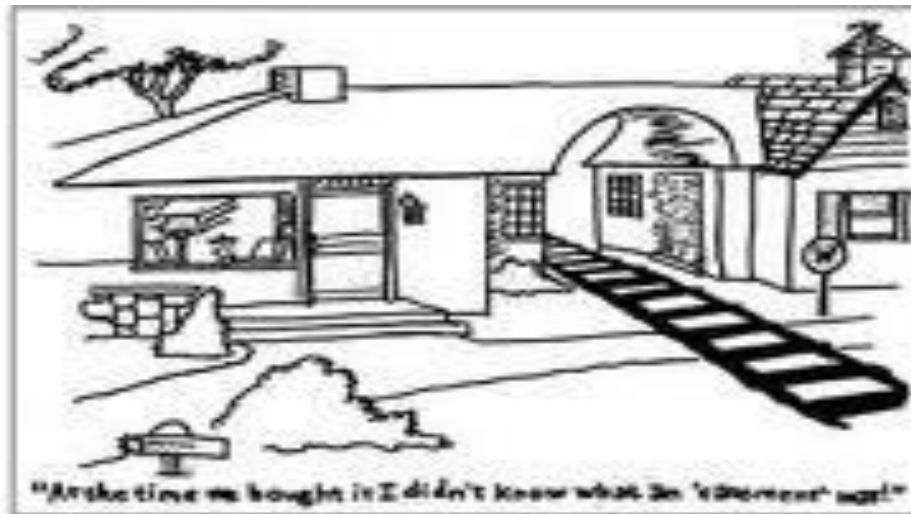
- May Not Include Surface Rights
- Obligation to Protect Structural Integrity of the Surface
- Royalties for Materials Extracted
- Pooling with Other Properties

TYPES OF OTHER REAL ESTATE AGREEMENTS

- Easements
- Licenses
- Condominiums
- Usufructs

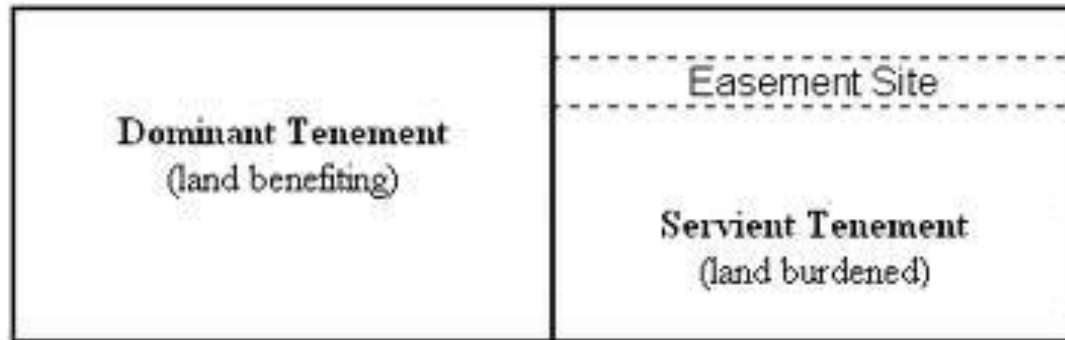
WHAT IS AN EASEMENT?

- “An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.”



CHARACTERISTICS OF EASEMENTS

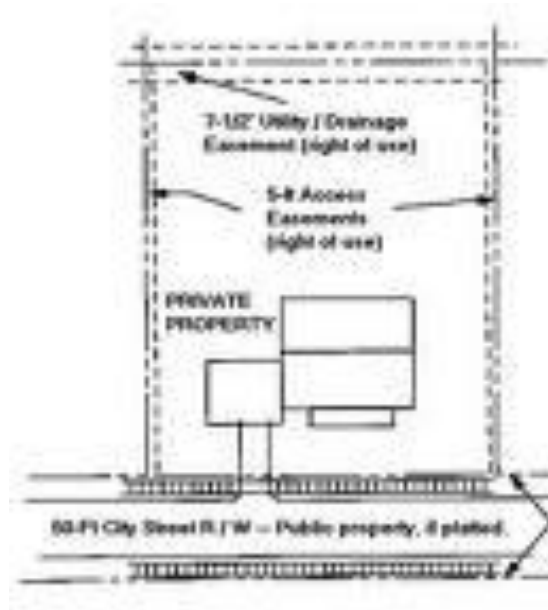
- Dominant and Servient Estates



- Typically Runs with Land
 - Subject to existing title matters
- Perpetual/Non-Perpetual
- Exclusive/Non-Exclusive

CHARACTERISTICS OF EASEMENTS (cont.)

- Blanket Easement/Defined Easement Area
- Surface/Subsurface/Aerial
- Negative/Affirmative
- Types of Easements



ISSUES FOR EASEMENTS

- Easement vs. Lease
- Grantor's Rights
- Indemnification
- Subordination/Lender Consent

CHARACTERISTICS OF LICENSES

- Typically Short Term/Revocable at Will
- License Fee
- Limited Use Rights
- Not Assignable/Transferable
- Not Recorded

CHARACTERISTICS OF LICENSES (cont.)

- Licensee Indemnification/Insurance Requirements
- Contract Remedies Rather than Lease Remedies
- Not Typically Recorded

CHARACTERISTICS OF CONDOMINIUMS

- Condominium Requirements Are State Specific
- Typically Consists of Individual Units & Common Elements
- Unit Owner Gets Undivided Interest in Common Elements
- Condo Association Manages Condominium

CHARACTERISTICS OF CONDOMINIUMS (cont.)

- Unit Owners Are Members of Condo Association
- Voting Rights of Members Set Out in Declaration and/or Bylaws
- Condominiums Often Must Be Registered with State Agencies

CHARACTERISTICS OF USUFRUCTS

- Not Widely Used in U.S. (Ejido is a Traditional Mexican Use)
- Right to Use Only/No Transfer of Owner's Estate in Property
- Not Assignable/Transferable Without Owner's Consent
- Non-Taxable Proprietary Interest

Questions or Comments?