

Bundle of Sticks—Real Property Rights and Title Insurance Coverage

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What Does Title Insurance “Insure”?

- **Title is Vested in Named Insured**
- **Title is Free of Liens and Encumbrances**
- **Title is Marketable**
- **Full Legal Use and Access to Property**

Real Property Defined

All land, structures, fixtures, anything growing on the land, and all interests in the property, which may include the right to future ownership (remainder), right to occupy for a period of time (tenancy or life estate), the right to build up (airspace) and drill down (minerals), the right to get the property back (reversion), or an easement across another's property.”

Bundle of Sticks—Start with Fee Simple Absolute

- **Fee Simple Absolute**
- **The Greatest Possible Rights Insured by ALTA 2006 Policy**
- **“The greatest possible estate in land, wherein the owner has the right to use it, exclusively possess it, improve it, dispose of it by deed or will, and take its fruits.”**

Fee Simple—Lots of Rights

- **Includes Right to:**
 - **Occupy (ALTA 2006)**
 - **Use (ALTA 2006)**
 - **Lease (Schedule B-Rights of Tenants)**
 - **Mortgage (Schedule B-Mortgage)**
 - **Subdivide (Subject to Zoning—Insurable in Certain States)**
 - **Create a Covenant Running with the Land (Schedule B)**
 - **Dispose**

Life Estate Stick

- **Life Estate to Person to Occupy for His Lifetime**
- **Life Estate can be Conveyed but Only for the Original Grantee's Lifetime**
- **Remainderman—Defined in Deed**
- **Right of Reversion—Defined in Deed**

Sticks Above, On and Below the Ground

- **Subsurface Rights**
- **Drilling, Removing Minerals**
- **Grazing Rights**
- **Air Rights (Not Development Rights—TDRs)**
- **Cantilever Over a Property**
- **Subject to FAA Rules**

NYC Air Rights –Actually Development Rights

- **Development Rights are not Real Property**
- **Purely Statutory Rights**
- **Transferrable Development Rights (TDRs)
Under the NYC Zoning Resolution and
Department of Buildings Rules**
- **Not Insurable as They are Not Real Property**

Title Insurance on NYC “Air Rights”

- Easement is an Insurable Real Property Interest**
- Easement for Light and Air Gives the Owner of the Merged Lots Ability to Insure.**
- Development Rights Endorsement Attaches to Title Policy (Easement or Otherwise)**

NYC Air Rights Endorsement

- **Endorsement insures that**
 - **All of the Parties in Interest as Defined in §12-10 (d) Either Executed the Certificate of Parties in Interest Certificate or Waived Their Right to do so**
 - **Any Recorded ZLDA is a Valid Agreement in Accordance with §12-10, and**
 - **Any Easement for Light and Air Referred to in the ZLDA was Properly Recorded.**
- **Does Not Insure Amount of Air Rights**

Leases—Another Stick

- **Carved out Estate from Fee Simple**
- **Only a Portion of the Owner's Legal Bundle of Rights – the Right to Possess, Use, and Enjoy the Property – are Conveyed.**

Leasehold Title Insurance

- **Leasehold Estate is a Right to Occupy and use Real Property for a Term of Years.**
- **Insures Value of Leasehold, Improvements, Relocation Costs**
- **Leasehold Title Insurance Answers/Insures Questions Such as:**
 - **Is the Landlord the Owner of the Property?**
 - **Is the Consent of a Mortgagee Needed to Lease Property?**
 - **Are there any Covenants or Restrictions of Record that Limit the Tenant's Use?**
 - **Is the Tenant's Possession at Risk in a Mortgage Foreclosure?**
 - **Who are Necessary Parties to Nondisturbance Agreements?**
 - **Is the Leased Property Subject to any Easements or Restrictions that may Limit Use of the Property?**

Leasehold Title Insurance Calculations

Owner's Rate According to One of the Following Methods:

- For Leases Having a Term of Six (6) Years or Less, the Aggregate of the Total Rents Payable Under the Lease; or**
- (2) For Leases Having a Term of More than Six (6) Years, an Amount Not Less than the Aggregate of the Total Rents for the First Six (6) Years; or**
- (3) Not Less than the Fair Market Value of the Land and Improvements at the time of the Lease; or**
- (4) Not less than the Appraised Value of the Land and Improvements at the time of the Lease.**

Stick on Someone Else's Property— Easement

- **A Non-Possessory Right to use the Property of Another**
- **Insurable Real Property Interest**
- **Easements Run with the Land or Can be for a Term of Years**
- **Can be Extinguished by Mutual Consent or Unity of Ownership**

Condominiums—Everyone's Sticks Together

- **In Condominium the Buyer Owns her Apartment and, Together with the Owners, an Undivided Interest in the Common Areas (Lobby, Hallways, Driveways, Amenities, Roads, Utility Systems.)**
- **Insures Unit and Common Area Ownership**
- **Unit Owners Power of Attorney**
- **No Survey Coverage**

Coop Apartments: Not Really a Stick.....

- **Not Real Property—Stock and Lease**
- **Judgment and Lien Search**
- **Limited Search and Limited Liability**
- **Coop “Title” Insurance (Coop Leasehold Insurance)**

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