



County Technical Assistance Service

Published on e-Li (<https://eli.ctas.tennessee.edu>)

December 08, 2021

Bundle of Rights Theory

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Capitol Blvd. Suite 400
Nashville, TN. 37219
615-532-3555 phone
615-532-3699 fax
ctas@tennessee.edu
www.ctas.tennessee.edu

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Bundle of Rights Theory

Reference Number: CTAS-771

Interests in real property are usually conveyed; that is, ownership interests are transferred, by instruments known as deeds. A person may convey all or part of what he or she owns by deed. Ownership interests or estates in land may be thought of as a bundle of sticks. A deed may convey one stick, two or three sticks, or the entire bundle. The person or group of persons, or legal entity such as a corporation, which owns a full bundle of all the “sticks” (all that it is possible to own under our law) has what is known as a fee simple absolute estate in the real property. This type of ownership involves complete control of the land, subject only to the requirements of government such as taxes which can encumber the property, the right of government to take the property for a public purpose for just compensation (power of eminent domain), and land use restrictions in the form of zoning and the prohibition against creating a public nuisance. The owner of the fee can convey interests and still be considered the owner of the fee. An example of this is an easement, which is a right to use the land for a certain purpose, such as movement over the land. Another example is mineral interests. The interests which can be conveyed by deed are known as freehold interests because they do not end at a certain time. Most are perpetual, but need not be, as in the case of the life estate, which is a transfer of interests for the duration of the life of someone alive at the time of the conveyance. The person who has the ownership interest in the future after the expiration of the life estate has a remainder interest. The interest which does not constitute a form of “ownership” but represents a possessory interest for a fixed period of time is a leasehold interest. The transfer of a leasehold interest is by an instrument referred to as a lease agreement or contract.

Even within freehold estates alone, there exists the major division possibility between so-called “legal” and “equitable” interests. “Legal” interests refer to formal legal title and are commonly conveyed to someone who holds this interest “in trust” for the benefit of lenders of money, such as banks and savings and loan associations, by instruments known as deeds of trust which is the usual method in Tennessee of establishing a mortgage. The person conveying the “legal” interest retains the “equitable” interest (an interest a court doing equity will enforce) and is generally considered the “owner” of the property and must pay taxes as the owner, although many mortgage companies pay this and recoup this by payments from the equitable owner. The holder of the legal interest, of course, cannot take possession of the land unless there is default on the loan and unless the terms of the deed of trust allow the trustee to sell the property and to use the proceeds to satisfy the lender.

Going back to our analogy, the “owner” of real property may have the most “sticks,” but he or she may have conveyed many other “sticks,” such as an easement to a water company to run a pipe line under the surface and along a certain path, mineral or subsurface rights to a coal company, and the “legal” interest to a trustee for the benefit of a bank to secure a loan. Most of these types of transfers of interest are evidenced by some form of deed.

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