

## **CHAPTER 47-04 ESTATES IN REAL PROPERTY**

### **47-04-01. Jurisdiction - State laws.**

Real property within this state is governed by the law of this state.

### **47-04-02. Classification of estates as to duration.**

Estates in real property in respect to the duration of their enjoyment are:

1. Estates of inheritance or perpetual estates;
2. Estates for life;
3. Estates for years; or
4. Estates at will.

### **47-04-03. Estates - Classification and definition.**

Estates of inheritance and for life are called estates of freehold. Estates for years are chattels real. Estates at will are chattel interests, but are not liable as such to sale on execution.

### **47-04-04. Estate in fee defined.**

Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

### **47-04-05. Estates tail abolished - Declared fees.**

Estates tail are abolished and every estate which would be adjudged a fee tail at common law is a fee simple, and if no valid remainder is limited thereon, is a fee simple absolute.

### **47-04-06. Fee tail valid as contingent limitation upon a fee.**

Where a remainder in fee is limited upon any estate which, by the common law, would be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker, without issue living at the time of that person's death.

### **47-04-07. Estate for life is freehold.**

An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

### **47-04-08. Future estate limited.**

A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, on the termination by lapse of time, or otherwise, of a precedent estate created at the same time.

### **47-04-09. Reversion defined.**

A reversion is the residue of an estate left by operation of law in the grantor or the grantor's successors or in the successors of a testator commencing in possession on the determination of a particular estate granted or devised.

### **47-04-10. Remainder defined.**

When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder and may be created and transferred by that name.

### **47-04-11. Limitation of suspension of absolute ownership.**

Repealed by S.L. 1991, ch. 484, § 6.

### **47-04-12. Trust - Suspension of power to alienate the same.**

Repealed by S.L. 1991, ch. 484, § 6.

**47-04-13. Contingent remainder created on prior remainder - Effect.**

Repealed by omission from this code.

**47-04-14. Creation of estate - Limitation.**

Subject to the provisions of this chapter and of chapters 47-01, 47-02, and 47-03, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee upon a contingency which, if it should occur, must happen within the period prescribed in this chapter.

**47-04-15. Life estates - Successive limitations.**

Repealed by omission from this code.

**47-04-16. Remainder upon successive life estates.**

Repealed by omission from this code.

**47-04-17. Contingent remainder on term of years - Limitation.**

Repealed by omission from this code.

**47-04-18. Life estate - Limitation on term of years.**

Repealed by omission from this code.

**47-04-19. Remainder limited on contingency.**

A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate. Every such remainder shall be deemed a conditional limitation.

**47-04-20. Remainder limited to heirs of body of life tenant - Rule in Shelley's Case abolished.**

When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them and not as mere successors of the owner for life.

**47-04-21. Remainder limited on estate for life or years - When effective.**

When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it shall be deemed intended to take effect only on the death of the first taker or the expiration by lapse of time of such term of years.

**47-04-22. Estate in fee, remainder, or reversion - Right of action.**

A person having an estate in fee, in remainder, or reversion may maintain an action for an injury done to the inheritance, notwithstanding an intervening estate for life or years and although after its commission the person's estate is transferred and the person has no interest in the property at the commencement of the action.

**47-04-23. Effect of unexecuted power.**

A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

**47-04-24. Covenants running with the land defined.**

Certain covenants contained in grants of estates in real property are appurtenant to such estates and pass with them so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee in the same manner as if they personally had entered into them. Such covenants are said to run with the land.

#### **47-04-25. Covenants running with the land.**

The only covenants which run with the land are those specified in this chapter and those which are incidental thereto.

#### **47-04-25.1. Modification of covenants running with the land.**

A covenant running with the land executed after August 1, 1997, must contain provisions addressing the modification of the covenant. If a covenant running with the land does not contain provisions relating to the modification of the covenant, eighty-five percent of all of the owners of the real property subject to the covenant may agree, in writing, to amend the covenant to include provisions relating to the modification of the covenant. Following approval of any modification, the modified covenant must be filed for recording with the recorder. This section does not apply to subdivisions that are not completed unless the subdivision has been in development for over fifteen years.

#### **47-04-26. Covenants running with the land - Classification.**

All covenants contained in a grant of an estate in real property, which are made for the direct benefit of the property or some part of it then in existence, run with the land. Such covenants include covenants:

1. Of warranty;
2. For quiet enjoyment;
3. For further assurance on the part of a grantor; or
4. For the payment of rent, taxes, or assessments upon the land on the part of a grantee.

#### **47-04-27. Covenants - Limitation to designated assigns.**

A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far only as the assigns thus mentioned are concerned.

#### **47-04-28. Covenants running with the land - Owner of entire estate bound.**

A covenant running with the land binds only those who acquire the whole estate of the covenantor in some part of the property.

#### **47-04-29. Covenants running with the land - Liability as holder only.**

A person, merely by reason of having acquired an estate subject to a covenant running with the land, is not liable for breach of the covenant before the person acquired the estate, or after the person has parted with it or ceased to enjoy its benefits.

#### **47-04-30. Covenants running with the land - Apportionment of benefit or burden.**

When several persons, holding by several titles, are subject to the burden or are entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

#### **47-04-31. Highways, railways, or rights of way - Covenants of warranty.**

No covenants of warranty shall be considered as broken by the existence of a highway, railway, or a right of way for either, upon the land conveyed by any instrument of conveyance, unless otherwise particularly specified in the deed. Whenever in any instrument of conveyance delivered, filed, and recorded prior to the first day of January 1896, the grantor has conveyed real property in this state, but has reserved or sought to reserve a right of way over or across the same for the future construction of any railroad or highway without specifically locating or describing therein by metes and bounds such right of way, or proposed right of way, or by reference to permanent marks or monuments, such reservation shall be void in all things, and

such conveyance shall have the same effect as if no such reservation had been made or attempted to have been made therein unless on July 1, 1907:

1. The grantor or the grantor's successor in interest was in actual possession of, or had located and permanently marked said right of way;
2. Within one year thereafter filed or caused to be filed in the office of the recorder of the county wherein the land is situated, a plat describing such selection and such right of way, properly acknowledged so as to entitle the same to be recorded, and so as to distinguish readily and designate such right of way from the entire premises described in the conveyance from which it was attempted to be reserved; or
3. Within such one-year period, an action was commenced in a court of competent jurisdiction for the purpose of definitely determining and locating such right of way, and establishing the owner's right thereto, and in such case had filed and recorded a proper notice of lis pendens in the office of the recorder of the county in which such land was located.

**47-04-32. Covenant may not prohibit display of political signs.**

Notwithstanding any provision in a covenant, a covenant running with the land may not prohibit the outdoor display of a political yard sign by the owner or a resident on the owner's property within sixty days before any primary, general, or special election. A covenant may include reasonable rules regarding the placement and manner of display of political signs.