



**D**efinitions of the term *fee simple* typically focus on one of two things: the bundle of rights or the duration of the estate. A recent Property Rights Symposium and the associated *Discussion Paper* published by the Appraisal Institute brings to light a significant difference in how the term *fee simple* is customarily defined by appraisers and how it is defined by the legal profession and others in the real estate industry. This issue is important since eminent domain and property taxation typically require valuation of the *fee simple* interest. It is therefore worth

examining how the valuation profession can modify its conceptual understanding of *fee simple* to better conform to how others understand and use the term.

### **A History Overview**

The concept of "fee" dates back to the feudal social system of Medieval Europe, where a *fief* was a property right granted by an overlord to a vassal whose fealty (fee) required some type



# RETHINKING FEE SIMPLE

Proposed changes to fee simple and leased fee definitions

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would create interests in favor of a lessor and lessee, but these were defined strictly in terms of the value attributed to the respective interests. The current definition in Black's Law Dictionary similarly recognizes fee simple as an inheritable estate and the broadest possible property interest allowed by law, defining *fee simple absolute* as "an estate of indefinite or potentially infinite duration."

In the 1962 edition of *Appraisal Terminology and Handbook*, the definition of fee simple was changed by adding that it was limited by the governmental powers of eminent domain, escheat, police power and taxation. While defined as "an inheritable estate," the revised definition subtly introduced the idea that fee simple was also defined by limitations on the bundle of rights.

The 1975 and 1982 editions of *Real Estate Appraisal Terminology* contained no changes to the definition of fee simple, but added a new term called *leased fee estate*, which is defined as "the ownership interest of the owner or landlord." This was significant because it created a new fee ownership estate defined solely by the bundle of rights—the right to receive rental income and a reversion at lease termination, with use and occupancy conveyed to a tenant.

## Major Changes

It was the publication of the first edition of *The Dictionary of Real Estate Appraisal* in 1984 that produced the most profound change by redefining the term *fee simple estate* as "absolute ownership unencumbered by any other interest or estate; subject only to the limitations of eminent domain, escheat, police power and taxation."

For the first time, fee simple was defined solely in terms of the interests associated with the estate (bundle of rights), rather than the character of the estate, such as inheritability and indefinite duration. The leased fee estate was also redefined by incorporating the prior definition of *leased fee*, resulting in a more expansive but functionally equivalent definition. The current edition of *The Dictionary of Real Estate Appraisal* contains a nearly identical definition of fee simple estate. The term *leased fee interest* replaces leased fee estate but is still defined as "the ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease, plus the reversionary right when the lease expires."

The terms "estate" and "interest" tend to be used interchangeably but legal definitions of these terms suggest

of service in exchange. When feudal land tenure disappeared in the 1600's, fiefs effectively became "simple" without conditions (fee simple).

An early definition of fee simple in the 1950 edition of *Appraisal Terminology and Handbook* is as follows: "An absolute fee: a fee without limitation to any particular class of heirs or restrictions." The same text recognized that a lease

# The changes proposed are important in bringing consistency to the definition of fee simple...



subtle differences. It might be helpful to think of *estate* as the character of ownership in terms of both possession and duration, while *interest* pertains to rights in real property. In this context, the estate is what is owned, while the interest is what has value.

## A New Definition

The *Property Rights Symposium Discussion Paper* proposes defining fee simple estate in a manner more consistent with the legal definition: "The highest estate allowed by law. An inheritable estate of indefinite duration."

It is noteworthy that the new definition makes no mention of rights associated with fee simple ownership. Additionally, it comes with a proposal to discontinue use of the terms leased fee, leased fee estate and presumably leased fee interest. Estates to be valued could include any of the following:

- Fee Simple (indefinite duration; alienable, devisable and descendible)
- Life Estate (ownership for the duration of a person's life)
- Leasehold (tenancy for a periodic or specific time, or terminable at will)

In addition to specification of the estate, the new paradigm would also require appraisers to specify the interest to be valued, including any claims or limitations by other parties. What was previously identified as leased fee would now be described as "fee simple subject to existing lease(s)." This has the advantage of allowing the appraiser to be very specific about the interest to be valued and any assumptions to be incorporated. For example, a vacant property could be appraised as fee simple assuming market rent or as vacant and available for lease or occupancy. Similarly, a property could be appraised subject to specific encumbrances or restrictions that might affect the valuation. Other interests can also be specified and valued, including easements, remainders and fractional interests.

## In Summary

The Uniform Standards of Professional Appraisal Practice (USPAP) require appraisers to "identify . . . the real property interest to be valued . . . [including] any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature." Most valuation assignments aim to appraise either the fee simple or leased fee interest, depending on whether or not existing lease(s) are considered in the valuation. But the definition of fee simple has changed significantly over time, with the notion of a leased fee estate added to appraisal nomenclature in the 1970's. Appraisers' current understanding of the terms fee simple and leased fee focuses primarily on the assumed bundle of rights rather than the duration of the estate, as it is commonly understood in the legal profession and elsewhere in the real estate industry.

The changes proposed are important in bringing consistency to the definition of fee simple, discontinuing use of the term leased fee, and encouraging appraisers to be more specific regarding the ownership estate and associated property rights, including actual or assumed encumbrances on the interest appraised. 🔄



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