



## What Exactly do you Own, When you Own Real Property? by Dennis M. Foerster

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Many people own their own home or hope to one day. Often homeowners consider their mortgage payment as being similar to rent; it is a payment every month made to your financial institution. The difference between rent and a mortgage payment is that a portion of your mortgage payment goes towards the actual debt borrowed to pay for your home and the remainder goes to pay the interest on the debt. It is incredible to see, at least at the beginning of your mortgage how little goes directly against the debt and how much goes towards interest. It is a special day when your mortgage is paid off and you have fulfilled your obligations to your financial institution. People sometimes say that the “bank” owns the home; this however is not accurate.

Ownership is unique in that, provided that you are in compliance with various laws, by-laws and other legal requirements, you can do what you like with your home. If you have a mortgage, your

financial institution does not own your home, your financial institution does however have an interest in your property.

Ownership of real property, although generally a simple concept for non-lawyers, is actually a very slippery concept at law. It is best understood, not as possession of the property, but as a bundle of rights with respect to the property. One writer has said that to say you own something completely means that no one has the legal right to stop you from destroying it. This may seem like a strange definition, but it is legally accurate. When you own something, but for the restrictions or interests of others you can do what you want with it. The interests of other individuals or entities take away from the owner’s rights or ownership.

Technically speaking, no one, whether there is a mortgage on your home or not, owns or can own the property on which it is located. When Canada and eventually Manitoba was created, all the land was owned and continues to be owned by

the Crown. The best type of title or ownership we can obtain is called “fee simple” which basically means our title to the property is complete but subject to the rights of the Crown.

For example, suppose you own a farm and you find oil on your property. You may believe that since it was found on your property you will automatically own the oil found underneath the property. This however is not the case. Owners of property generally have only surface rights which give the property owner certain rights with respect to what is located, placed or done on the surface of the property. This does not however give the surface owner rights to the oil or minerals found under the property. These rights, known as mineral rights, or the ownership of this aspect of your property remain with the Crown unless someone has purchased from the Crown or the Province. In fact it is not uncommon for there to be one owner of the surface rights and another of the mineral rights.

Various other legal interests which take away from your

property rights also are created and take away from your rights as an owner. The most common example is a mortgage on your property. Your mortgage is not only the loan that your financial institution gave you to purchase your home. It also represents security for the financial institution. If you do not make your mortgage payments, the mortgage entitles your financial institution to take title to your home and sell it in order to cover your indebtedness. The mortgage therefore gives some of your rights over your property to your financial institution.

Another common type of interest created in your property is called an easement. An easement is a right over your property which is granted to a third party. Usually, an easement grants access to your property or allows someone to make limited use of your property. For example, hydro or telephone companies often have easements over a person's property in order to either place or access their equipment located on it. Without an easement, these companies would not have the legal right

to enter your property or to have their equipment or wiring over your property.

A homeowner is subject to the various laws and by-laws of the province and the municipality where the home is located. These laws and by-laws limit how you can make use of your property. Although these laws restrict your use of your property, generally they are a benefit to both you and your community. They limit how your neighbours can make use of their properties. You would never want someone to have the right to play loud music on their property at all hours of the day and night. Various laws and municipal by-laws limit the rights of property owners that they would otherwise have.

Despite the restrictions on the ownership of your home, you have many rights which others who are renting or have other living arrangements do not have. The rights available to others in our common law system and legislative scheme limit our property rights, but generally speaking these rights are reasonable. The interests created by either mortgages or easements allow for the

provision of essential services and to provide most people the ability to own their home. There are other interests, to be discussed in a future article, in your property that are not so benign. Some of which you may not even be aware.