

TITLE 55
PROPERTY IN GENERAL

CHAPTER 1
PROPERTY AND OWNERSHIP -- GENERAL PROVISIONS

55-101. REAL PROPERTY DEFINED. Real property or real estate consists of:

1. Lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer.
2. That which is affixed to land.
3. That which is appurtenant to land.

[(55-101) R.S., sec. 2825; reen. R.C. & C.L., sec. 3056; C.S., sec. 5325; I.C.A., sec. 54-101.]

55-101A. "LANDS" DEFINED. Lands are the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and include free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed and rights in the use of airspace granted, by law.

[55-101A, added 1965, ch. 104, sec. 1, p. 190.]

55-101B. "CONDOMINIUM" DEFINED. A condominium is an estate consisting of (i) an undivided interest in common in real property, in an interest or interests in real property, or in any combination thereof, together with (ii) a separate interest in real property, in an interest or interests in real property, or in any combination thereof.

[55-101B, added 1965, ch. 104, sec. 2, p. 190.]

55-102. PERSONAL PROPERTY DEFINED. Every kind of property that is not real is personal.

[55-102, added R.S., sec. 2826; reen. R.C. & C.L., sec. 3057; C.S., sec. 5326; I.C.A., sec. 54-102.]

55-103. WHO MAY OWN PROPERTY. (1) Except as provided in subsection (2) of this section, any person, whether citizen or alien, may take, hold, and dispose of property, real or personal.

(2) Notwithstanding any provision of law to the contrary, on and after the effective date of this subsection, a foreign government or a foreign state-controlled enterprise shall not purchase, acquire, or hold any controlling interest in agricultural land, water rights, mining claims, or mineral rights in the state of Idaho. This subsection does not apply to any interest in agricultural land, water rights, mining claims, or mineral rights acquired by a foreign government or foreign state-controlled enterprise prior to the effective date of this subsection or to any foreign pension fund.

(3) As used in this section:

(a) "Agricultural land" shall have the same meaning as "land actively devoted to agricultural purposes" as provided in section [63-604](#), Idaho Code.

- (b) "Controlling interest" means:
- (i) Possession of more than fifty percent (50%) of the ownership interest in an entity; or
 - (ii) A percentage of ownership interest in an entity that is fifty percent (50%) or less if a foreign government actually directs the business and affairs of the entity without the requirement or consent of any other party.
- (c) "Foreign government" means a government other than the federal government of the United States or the government of any state, political subdivision of a state, territory, or possession of the United States.
- (d) "Foreign pension fund" means a trust, corporation, or other entity created or organized under the law of a country other than the United States to provide retirement or pension fund benefits. However, the term "foreign pension fund" shall not include any trust, corporation, or other entity that is owned by or subject to a controlling interest of a sovereign wealth fund.
- (e) "Mineral right" shall have the same meaning as provided in section [47-701](#), Idaho Code.
- (f) "Mining claim" means a portion of land containing minerals that a miner has a right to occupy and possess for the purpose of extracting minerals.
- (g) "State-controlled enterprise" means a business enterprise, however denominated, sovereign wealth fund, or state-backed investment fund in which a foreign government has a controlling interest.
- (h) "Water right" shall have the same meaning as provided in section [42-230](#), Idaho Code.

[55-103, added R.S., sec. 2827; reen. R.C. & C.L., sec. 3058; C.S., sec. 2827; I.C.A., sec. 54-103; am. 2023, ch. 251, sec. 1, p. 768.]

55-104. INTERESTS IN COMMON. Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, or unless acquired as community property.

[55-104, added R.S., sec. 2828; reen. R.C. & C.L., sec. 3059; C.S., sec. 5328; I.C.A., sec. 54-104.]

55-105. FUTURE INTERESTS -- WHEN VESTED. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the immediate or precedent interest.

[55-105, added R.S., sec. 2830; reen. R.C. & C.L., sec. 3061; C.S., sec. 5329; I.C.A., sec. 54-105.]

55-106. CONTINGENT INTERESTS. A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

[55-106, added R.S., sec. 2831; reen. R.C. & C.L., sec. 3062; C.S., sec. 5330; I.C.A., sec. 54-106.]

55-107. ALTERNATIVE FUTURE INTERESTS. Two (2) or more future interests may be created to take effect in the alternative; so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

[55-107, added R.S., sec. 2832; reen. R.C. & C.L., sec. 3063; C.S., sec. 5331; I.C.A., sec. 54-107.]

55-108. INHERITANCE BY POSTHUMOUS CHILDREN. When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

[55-108, added R.S., sec. 2833; reen. R.C. & C.L., sec. 3064; C.S., sec. 5332; I.C.A., sec. 54-108.]

55-109. TRANSFER AND DEVOLUTION OF FUTURE INTERESTS. Future interests pass by succession, will and transfer in the same manner as present interests.

[(55-109) R.S., sec. 2834; reen. R.C. & C.L., sec. 3065; C.S., sec. 5333; I.C.A., sec. 54-109.]

55-110. POSSIBILITIES. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

[(55-110) R.S., sec. 2835; reen. R.C. & C.L., sec. 3066; C.S., sec. 5334; I.C.A., sec. 54-110.]

55-111. NO RULE AGAINST PERPETUITIES. There shall be no rule against perpetuities applicable to real or personal property.

[(55-111) R.S., sec. 2836; reen. R.C. & C.L., sec. 3067; C.S., sec. 5335; I.C.A., sec. 54-111; am. 1957, ch. 54, sec. 1, p. 92; am. 2008, ch. 77, sec. 1, p. 204.]

55-111A. SUSPENSION OF POWER OF ALIENATION -- FUTURE INTEREST BY POWER OF APPOINTMENT. (1) The absolute power of alienation of property cannot be suspended by any limitation or condition whatever, for a longer permissible period than during the continuance of the lives of the persons in being at the creation of the limitation or condition, and twenty-five (25) years thereafter. No trust heretofore or hereafter created, either testamentary or inter vivos, shall be declared void, but shall be so construed as to eliminate parts violating the above provisions, and in such a way that the testators or trustors wishes are carried out to the greatest extent permitted by this section; and there shall be no presumption that a person is capable of having children at any stage of adult life.

(2) If a future interest or trust is created by exercise of a power of appointment, the permissible period is computed from the time the power is exercised if the power is a general power including a testamentary general power or from the time the power is created if the power is not a general power.

(3) Notwithstanding the provisions of subsection (1) of this section, there is no suspension of the power of alienation of property by a trust or by equitable interests under a trust if the trustee has power to sell, either

express or implied, or if there is an unlimited power to terminate in one (1) or more persons in being.

(4) Furthermore, the provisions of subsection (1) of this section shall not limit transfers, outright or in trust, for charitable purposes or transfers to charitable entities.

[55-111A, added 2008, ch. 77, sec. 2, p. 205.]

55-112. FUTURE INTERESTS DEFEATED. A future interest, depending on the contingency of the death of any person without successors, heirs, issue or children, is defeated by the birth of a posthumous child of such person capable of taking by succession.

[(55-112) R.S., sec. 2837; reen. R.C. & C.L., sec. 3068; C.S., sec. 5336; I.C.A., sec. 54-112.]

55-113. FUTURE INTERESTS NOT DEFEATED. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger or otherwise.

[(55-113) R.S., sec. 2838; reen. R.C. & C.L., sec. 3069; C.S., sec. 5337; I.C.A., sec. 54-113.]

55-114. FUTURE INTERESTS NOT DEFEATED BY PREMATURE DETERMINATION OF PRECEDENT ESTATE. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterward happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

[(55-114) R.S., sec. 2839; reen. R.C. & C.L., sec. 3070; C.S., sec. 5338; I.C.A., sec. 54-114.]