



Chapter 2- Property Ownership

Learning Goals:

- Define and describe *land, real estate, and real property*.
- Identify and explain the concept of the *bundle of legal rights* in the ownership of real property.
- Define and describe *surface rights, subsurface rights, and air rights*.
- Describe the differences between *real property* and *personal property*.
- Define and describe the differences between a *fixture* and a *trade fixture*.
- Identify and apply the legal tests of a fixture.
- List and explain the economic and physical characteristics of *real property*.



Chapter 2 VOCABULARY

Characteristics of Real Property include:

- A. Physical characteristics
 1. Immobility—the land can be changed, but it cannot be moved
 2. Indestructibility—the land can be changed, but it cannot be destroyed
 3. Nonhomogeneity—all parcels of land are unique
- B. Economic characteristics
 1. Relative scarcity—land in the immediate areas may be limited or unavailable
 2. Improvements—one property can affect the uses and values of many properties
 3. Permanence of investment—real estate investments tend to be long-term and relatively stable
 4. Area preference (situs)—refers to people’s preferences and choices in an area
- C. Real estate characteristics define land use
 1. Contour and elevation of the parcel
 2. Prevailing winds
 3. Transportation
 4. Public improvements
 5. Availability of natural resources, such as minerals and water

Land: the surface of the earth plus the subsurface rights, extending downward to the center of the earth and upward infinitely into space; including things permanently attached by nature - such as trees and water.

Real Estate: Land and man-made improvements attached to land, such as buildings, fences, utilities and plants.

Real Property: broadest definition including interests, benefits and rights that are automatically included in the ownership of land and real estate

- the tangible (corporeal) real estate plus the intangible (incorporeal) bundle of rights of ownership
- also includes appurtenances
- may become personal property by severance

Bundle of Legal Rights:

- possession
- control (within the framework of the law)
- enjoyment (use the property in any legal manner)
- exclusion (keep others from entering or using the property)
- alienation (sell, will, transfer)

Personal Property:

- also called personality
- all property that is not real property
- movable
- also called chattel
- may become real property if permanently affixed to the land (annexation)
- sometimes hard to tell the difference between real and personal property

Appurtenance:

- Something that is attached or added.
- an incidental right or privilege, etc., attached to some thing and passing with it, as by conveyance or sale
- A right, privilege, or property that is considered incident to the principal property for purposes such as passage of title, conveyance, or inheritance.³

Location: also called **SITUS**

Improvement: any structure, usually privately owned, built to enhance the value of the property. An immobile manmade object.

Chattel Mortgage: a mortgage on personal property.

Bill of Sale: transfers the ownership of personal property.

³ <http://www.yourdictionary.com/appurtenance> Accessed July 6, 2010.



Practice of Law by Licensees is not legal.

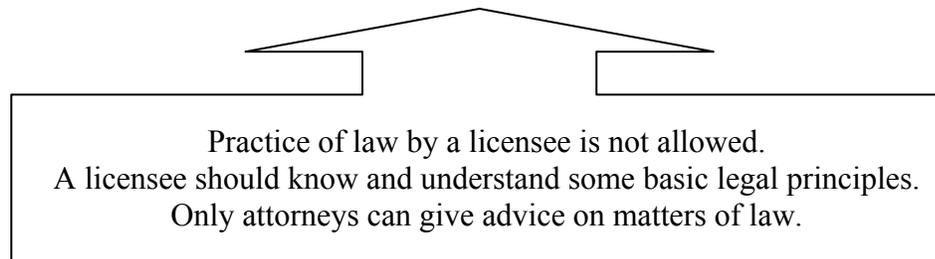
Licensees assist consumers with their most expensive purchase. A licensee is a negotiator, an agent for a client, a professional skilled in consummating a real estate transaction.

Many experts are involved in a real estate transaction. Often a lender evaluates the financial strengths and weaknesses of the buyer and facilitates the loan, a title company sells the parties title insurance and sees to it that all of the contract conditions are met, an insurance company evaluates the property being purchased and insures its' condition, an appraiser compares the value of other similar properties with the property and estimates its value, an inspector discovers any defects obvious to the inspector, a seller points out defects obvious to him, a buyer contracts a financial commitment, an accountant explains any tax implications of the transaction to the client, an attorney explains any legal implications of the transaction to the client, and the licensee explains contract terms, negotiates the best terms for his client, and keeps parties informed of the transactions progress along the way.

Laws that impact real estate include:

- * contract law
- * general property law
- * agency law
- * real estate license law
- * federal regulations
- * federal, state and local tax laws
- * zoning and land use laws
- * federal, state and local environmental regulations

Even though a licensee is responsible for understanding basic legal principles, reviewing and explaining contracts and filling-in written information on legal documents; *a licensee is not an attorney*. Only attorneys can give advice on matters of law. In many states, only attorneys can create contracts. Even if not required specifically by state law, it is always recommended that a licensee use pre-printed, tested contracts and not create their own contracts. In addition, licensees also need to refer a client to an expert for all specific advice and not voice an opinion about subject matter when an expert exists to handle it.





What are buyers actually purchasing?



Bundle of Legal Rights:

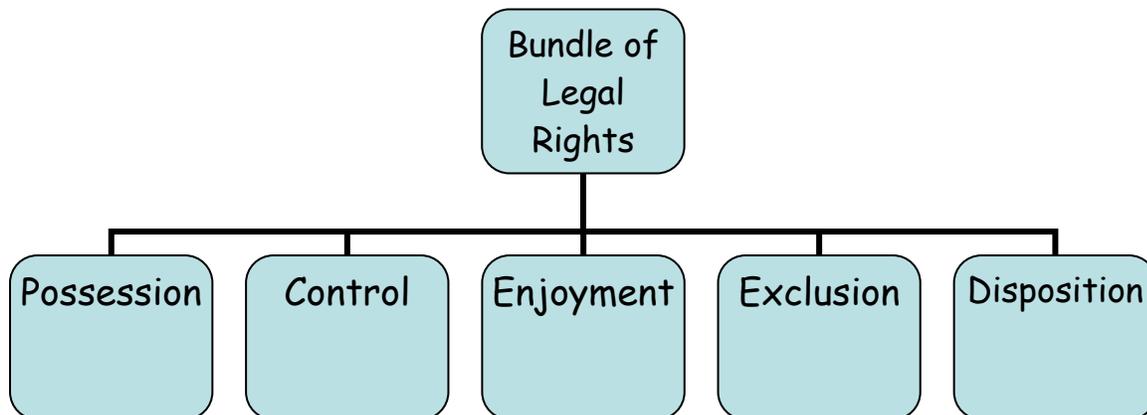
Think of a bundle of sticks. An owner of an unspoiled/untouched piece of property has mineral rights, air rights, water rights, etc. Sometimes owners sell off some of those rights. Sometimes owners lose some of their rights due to other community needs.

For example, in a city with busy air traffic, a homeowner or business owner will be limited to a building height a safe distance under the flight pattern. Another owner of a piece of property may not longer have mineral rights, because they were separated and sold off by a previous owner.

Legal rights included with real property include:

1. Occupy or possession
2. Control within the framework of the law
3. Enjoyment in any legal manner
4. Exclusion (to keep others from entering or occupying the property)
5. Disposition (the ability to sell or otherwise convey the property)

For example, Mr. Fry purchased a home. He can occupy the home or maybe even rent it out. He can control its color, size, aesthetic characteristics (trees, design, roof pitch, patios), as long as he follows any laws and requirements required of him by governmental agencies and neighborhood. He can sit on his deck, or play with his dog in his back yard (enjoy it as he sees fit, as long as it fits under the laws of the property). He can refuse to allow strangers into his home. He can also dispose of it, or sell it when he is ready.

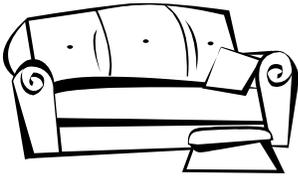


Is it Real Property or Personal Property?



Real Property

When a buyer purchases real estate, also known as real property or realty; he or she is purchasing a unique, immobile piece of land, including the air above it, and ground below it and anything either natural or man-made permanently attached to it.



Personal Property

Personal property, also known as chattel or personalty; is something that is tangible and movable. Examples include a couch, drapes, fireplace tools and a hanging light. A fixture, discussed next, may be either personal property or real property. Sometimes when it is difficult to distinguish between personal and real property, it is necessary to include and clarify items included in the sale in contracts. A *bill of sale* transfers the ownership of personal property.



Fixtures

Fixtures, also called 'chattel' were personal property – but now are real property. Fixtures are affixed to land or buildings in a permanent fashion so that they become immovable and part of the real estate. Examples of fixtures are ceiling fans, fireplace mantels, dishwashers, door knobs, chandeliers, cement, fences, paint, etc. The Legal Tests of a fixture are:

- Method of attachment (Is it permanently attached?)
- Intent (Did the installer expect it to be removable or permanent?)
- Adaptation to a specific use (How is the item being used?)
- Agreement between the relevant parties (Did the parties agree on whether the item is real or personal? – This should be done, if a family heirloom, or questionable.)



Manufactured Housing/Mobile Homes

A manufactured home (mobile home) starts out as personal property. It may be placed in a park, where the owner of the home rents space for the home. If so, the home will probably continue as personal property.

If, however, the owner of the manufactured home purchases space to permanently place the home, the owner may choose to convert the manufactured home to real property. The manufactured home will not automatically become real property, just because it is sitting on real property. The owner must follow the legal procedures to permanently affix the home to the space and convert the manufactured home to real property.

Nevada requires a licensee to obtain a permit to sell manufactured homes, regulated by the Manufactured Housing Division. In addition, the licensee needs to use a state disclosure form when representing clients in the sale or lease of a manufactured home.

Similar to a manufactured home is a 'modular home'. A modular home is pre-built off site and brought to the site in pieces and re-assembled. Often times, these structures start out as real property because they are attached to a permanent foundation and often times even a basement.

What about commercial property?

Commercial property (restaurants, stores, beauty salons, factories, etc.) have 'trade fixtures' included with the property. Trade fixtures, sometimes called chattel fixtures, are personal property, usually attached to real property, that are necessary for carrying on a trade. These fixtures are installed at the premises, are unique to tenant's business, and may generally be removed by tenant at the end of the term of the lease. After removal, the real property must be restored to its original condition.

Examples of trade fixtures include shelving, robots, tables, ovens, booths, lighting, and refrigerators. If a trade fixture is not removed by the owner of the business prior to the expiration of the lease or ownership period, it usually becomes the property of the buyer or building owner through the process of 'accession' and may be considered real property at that point.

Leasehold improvements, also called tenant improvements may also be made to supply the tenant with 'trade fixtures'. These improvements may be offered as an incentive for a tenant to sign a longer lease, or used to entice or lure tenants to a building in a market with a large supply of available units. The lease should state whether these leasehold improvements are real property, staying in the unit upon the termination of the tenant's lease agreement; or personal property, becoming the tenants property at the termination of the lease agreement.



Commercial Property - Real Property or Personal Property?:

Trade Fixtures (example is a restaurant booth or commercial shelving) are:

- ⇒ Considered personal property owned by the tenant (unless the agreement says otherwise) unless left by the tenant after the termination of a lease agreement.
- ⇒ also called a chattel fixture
- ⇒ installed by a commercial tenant for use in his business
- ⇒ should be removed by the commercial tenant on or before the last day the property is rented
- ⇒ the real property must be restored to its original condition
- ⇒ Become the landlord's real property if abandoned by the tenant after the lease agreement terminates.
- ⇒ If left behind, after the termination of a lease, the trade fixture becomes the landlord's property through the process of 'accession'. In other words, the landlord acquires the trade fixture.

Leasehold improvements also know as tenant improvements are:

- * Improvements made with the landlord's permission to benefit the tenant.
- * May be paid for by the tenant or landlord – negotiated between the two.
- * Negotiated – may be owned by the landlord or tenant.
- * Examples include carpet, walls, and fixtures.



Trees and Crops can be real property or personal property

Depending on the purpose, value and type of vegetation, vegetation may be real property or it may be personal property. Is the buyer purchasing a farm that has a crop of new corn that will be ready to pick in the spring, or is the buyer purchasing a home with one single tree in the front yard? The corn crop is probably personal property that needs to be addressed individually in the sales contract. Will it still belong to the seller or did the buyer purchase the corn with the property? The single tree in the front yard is real property that does not need to be addressed separately in the sales contract, because it would automatically be included with the house. The tree is real property.

What about a property that commercially grows an abundance of plants that come up year after year (perennials) that grows a crop that needs to be harvested annually? The perennial is probably real property and the crop is probably personal property. If there could be doubt of ownership in the minds of either the buyer or seller, the vegetation should be addressed specifically in the sales contract.

Called Fructus naturales if real property:

- * Real property.
- * Plants that do not require annual cultivation.
- * Perennials.
- * Transferred by deed.
- * For example, a seller needs to leave the trees and bushes. ☺

Called Fructus industrials if personal property:

- * Plants that require annual cultivation.
- * Personal property.
- * Crop is called emblements.
- * Transferred by bill of sale.
- * For example, wheat from a farmer's field – not grass in a front yard.