

Unit 2: Real Property and the Law

LECTURE OUTLINE

- I. Land, Real Estate, and Real Property (See Figures 2.1– 2.3)
 - A. Land—the earth's surface extending downward to the center of the earth and upward to infinity, including things permanently attached by nature, such as trees and water; land has three physical characteristics
 1. Immobility: The geographic location of any given parcel of land can never be changed.
 2. Indestructibility: Land is durable and indestructible, even though erosion, flood, volcanic action, and fire may change its topography and value.
 3. Uniqueness: The law holds that no two parcels of land are exactly the same; this uniqueness is also known as "nonhomogeneity."
 - B. Real estate—the land and all things permanently attached to it by either nature or people (improvements)
 - C. Real property—real estate plus the interests, benefits, and rights inherent in the ownership of real estate
In Practice: "real estate" and "realty" are casual uses of the term accurately described as "real property"
 1. Ownership of real property: bundle of legal rights; concept comes from old English law
 2. The bundle of legal rights includes the rights of:
 - a. Possession—the right to occupy the premises
 - b. Control—the right to determine certain interests for others
 - c. Enjoyment—possession without harassment or interference
 - d. Exclusion—legally refusing to create interests for others
 - e. Disposition—determining how the property will be disposed of
 3. Title to real property—(1) right to property, and (2) evidence of ownership by deed
 4. Appurtenance: right or privilege associated with the property, although not necessarily a part of it
 - D. Surface, subsurface, and air rights
 1. Surface rights—may be sold or leased to others
 2. Subsurface rights—includes rights to minerals and other substances under

the earth's surface. Such rights may be sold or leased to others in the same ways as surface rights and independent of surface ownership.

3. Air rights may also be sold or leased independent of surface ownership. Solar or sun rights have become an ownership issue in recent years primarily because of solar energy applications that require direct access to sunlight.

E. Water rights are held by owners of land adjacent to rivers, lake, or oceans

1. Riparian rights—rights granted to owners of land along a river, stream, or similar body of water
2. Littoral rights—rights of owners whose land borders commercially navigable lakes, seas, and oceans
3. Accretion, erosion, and avulsion
 - a. Accretion—increases in land resulting from deposit of soil by water's action
 - b. Erosion—loss of soil by gradually wearing away by natural forces
 - c. Avulsion—sudden removal of soil due to act of nature
4. Doctrine of prior appropriation—the right to use any water, except for limited domestic use, is controlled by the state rather than the adjacent landowner.
5. Coastal Waters—defined by the Law of the Sea
 - a. Territorial waters extend up to 12 nautical miles from the mean low-water line
 - b. Exclusive Economic Zones extend 200 nautical miles from the coastal base line

F. Economic characteristics

1. Scarcity: Although the total supply of land is not in short supply, land of a particular quality or location may be limited.
2. Improvements: They can affect both the improved parcel and surrounding parcels, either favorably or unfavorably.
3. Permanence of investment: Improvements are considered to create fixed investments.
4. Area preference or situs: Peoples' choices of one area or site over another (area preference or situs) are the most important economic characteristic.

- II. Real Property vs. Personal Property—personal property is all property that does not fit the definition of real property
 - A. Personal property is movable; also referred to as chattels
 - B. Factory-built housing is defined as dwellings that are not constructed at the site but are built off-site and transported to the building lot where they are installed or assembled. Manufactured housing (mobile homes) and modular housing laws vary depending on when and how the housing is permanently attached to the ground.
 - C. Plants fall into one of two categories:
 - 1. Trees, perennial shrubbery, and grasses not requiring annual cultivation are real property (*fructus naturales*).
 - 2. Crops with a growing season of less than a year (annuals), known as emblements, are personal property (*fructus industriales*).
 - D. An item of real property may be changed to personal property through severance. Trees are real estate that becomes personal property when an owner cuts them down.
 - E. An item of personal property may become real estate by annexation. Construction materials routinely become real estate.
 - F. Classification of fixtures
 - 1. Fixture—an article that was once personal property but has been so affixed to land or a building that the law now recognizes it as part of the real property
 - 2.. Legal tests of a fixture: overall test is intention of the annexer
 - a. The method of annexation
 - b. The adaptation to the real estate
 - c. The relationship of the parties
 - d. The intention of the person in placing the item on the land
 - e. The existence of an agreement between the parties
 - 3. Trade fixture—an article owned by a tenant and attached to rented space or a building for use in operating a business
 - a. Tenant's personal property
 - b. Must remove on or before last day of lease
 - c. If not removed, trade fixtures become landlord's property
 - 4. Importance in a real estate transaction—to avoid confusion about which items are intended to be included in the sale, they should be clarified when a property is listed and the sales agreement is negotiated.

III. Laws Affecting Real Estate

A. Specific areas of law important to real estate practitioners

1. Contract law
2. General property law
3. Agency law
4. Real estate license law
5. Federal regulations
6. Federal, state, and local law and regulations

B. Real estate practitioners may not act as attorneys.

C. Real estate license laws

1. Purpose is to protect the public from fraud, dishonesty, and incompetence in real estate transactions
2. Licensing required by all 50 states, District of Columbia, and Canadian provinces
3. State laws similar, but differ in detail
4. Specific education requirements for licensing