

# AREA 1A:

# Property Ownership and Land Use Controls and Regulations

## Ownership of Real Property

### Real Property Defined

Real property can be defined as **land, anything affixed to the land, and anything appurtenant to the land.**

#### I. Land

Land includes the soil, rocks, and other substances that compose the earth. It also includes the space below the surface all the way to the center of the earth, as well as the airspace up to the heavens (at least as much as a property owner can *reasonably use*).

Courts have recognized a public right to use the airspace above real property as a highway as long as it does not unreasonably interfere with the landowner's enjoyment of the property.

In addition, the courts recognize the fluid nature of subsurface gas and oil and a property owner has the right to drill vertically to capture these substances. However, an adjoining landowner does not have the right to drill slantwise to capture a neighbor's subsurface gas or oil.

Un-mined minerals, soil, vegetation, and a stream are all considered real property.

Real property differs from personal property in that real property is any item that is immovable by law.



## II. Anything Affixed To The Land

This includes buildings, trees, and anything permanently affixed to the land. Real property does NOT usually move. Examples include houses and things permanently attached to a house, which may include satellite dishes and built-in microwave ovens. Since these items are **immovable**, they are considered real property.

If a microwave oven is sitting on the top of a kitchen counter (instead of being built into the cabinets) it will probably be personal property because it is movable and mobile.

### Fixtures

Fixtures are personal property that is incorporated into the land and thus becomes real property. Kitchen cabinets and a satellite dish would generally be considered fixtures and, therefore real property.

Tests for a fixture include **MARIA**:

- 1 **Method of attachment** This is the method by which property is incorporated into the land. The degree of permanence of the *annexation* is also important. If the fixture is attached by cement or concrete it is probably classified as a fixture, and therefore considered real property.
- 2 **Adaptability or Annexation** Personal property that is attached to the land and is being used as an ordinary use in connection with the land is good evidence of being a fixture. A house key is a good example.
- 3 **Relationship** The relationship between the person who placed the item (possible fixture) on the property and the person who disputes it's classification is another important test in determining if it is a fixture. Examples include a buyer/seller and a landlord/tenant.
- 4 **Intent** This is the most important test for a fixture. Examples include satellite dishes, valances, and window coverings.
- 5 **Agreement** When there is a clear agreement between the parties, whether the item is a fixture should not be a disputed area. It should be plainly determined through the agreement.

TIME and COST are NOT tests for a fixture.

When cabinets are permanently attached to a home, the cabinets become real property because they are \_\_\_\_\_ and become a fixture.

The following is real property:

- (A) A harvested crop of wheat
- (B) A bearing wall in a single-family dwelling
- (C) A built-in refrigerator in a mobile home which is not attached to a foundation
- (D) A trade fixture attached in such a way that can be removed without damage

## Emblements

Emblements include *planted trees, vegetation, and trees in nature*.

Planted trees

Vegetation

Trees in Nature

When emblements are severed they become personal property.

Which of the following would normally be considered real property?

- (A) trade fixtures
- (B) chattel reals
- (C) vegetation
- (D) deeds of trust

What is real property?

- (A) soil, harvested crops, and vegetation
- (B) subterranean water, mineral rights, and encumbrances
- (C) soil, vegetation, and a stream
- (D) soil, lumber, and vegetation

Real property includes:

- (A) chattel mortgages
- (B) trust deeds
- (C) vegetation
- (D) furniture

Able owned a farm where he was growing corn. Before he harvested the corn he sold the property to Baker. He intended to harvest the corn after the sale, however, he did not state this intention in the purchase agreement. Therefore, the corn would/would not transfer to Baker as real property.

A growing corn crop is considered real property since it is attached to the land. However, once it is severed (harvested) it becomes personal property. Therefore, the un-harvested corn crop is REAL PROPERTY unless specified in the purchase contract. If the seller of the real property would like to harvest the corn crop after the sale, and he doesn't state this in the contract, the corn transfers with the property and is now owned by the buyer. If, however, the growing crop was sold it is personal property.

An unpicked fruit crop is/is not considered real property.

### III. Anything Appurtenant To The Land/Incidental To The Land

An *appurtenance* is anything that is used with the land for its benefit. Hence the name, "runs with the land." Examples of appurtenances include: easements, water company stock, covenants, minerals, and right-of-ways.

An appurtenance runs with the land and is considered real property.

- \_\_\_\_\_ An **easement** is the right to use someone else's land. For example, an easement over "B's land" benefits A. The easement is appurtenant to A's parcel and must stay with that parcel.

If owner Smith who owns Parcel A decides to sell it, the easement across Parcel B (which is in the deed) must STAY with the property. Smith cannot take the easement with him when he leaves the property. Any future owners of Parcel A will enjoy the rights to drive across Parcel B.

1 \_\_\_\_\_ Water users may organize a mutual water company in order to secure an ample water supply at a reasonable cost. In most cases, the stock is made appurtenant to the land; that is, each share of stock is attached to a particular portion of land and cannot be sold separately. This enables the company to plan its distribution more easily and prevents speculation in shares. No cash dividends are given to the mutual water company stockholder; however, credits are given if there is a water surplus. If operating revenues are not covered, then a special assessment may be levied to make up the loss.

Stock in a mutual water company:

- (A) must be held as tenants in common
- (B) must be mentioned in the deed in order to transfer it to the buyer
- (C) is appurtenant to the land and thus automatically transfers to the buyer
- (D) requires a separate written agreement in order to convey it to the buyer

Which of the following is considered real property?

- (A) rights of a mutual water company/stock in a mutual water company
- (B) unpicked fruit crop
- (C) unmined minerals
- (D) All of the above

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\_\_\_\_\_ A covenant is usually defined within the framework of "CC&R's." This stands for Covenants, Conditions, and Restrictions. CC&R's are explained in detail later, however, they usually run with the land and are thus appurtenant to the land and automatically go to the new owner.

## Ownership Of Real Property

According to the English Common Law (derived from court cases) the word *property* referred to an owner's rights and interests in the thing owned. The right to use, possess, enjoy, transfer, and dispose of a thing is called the *bundle of rights* a person has in a thing (real or personal). Real property is defined as immovable, bearing wall, and not a leasehold estate.

Ownership of real property is/is not legally and technically defined as rights and interests in the thing owned.

Legally and technically, property is defined as:

- (A) the rights or interests which a person has in the thing owned.
- (B) freehold estates.
- (C) only personal property.
- (D) things that buyers and sellers own.

# Personal Property

The principle difference between real property and personal property is **mobility**. If it moves, it is probably personal property.

## Bill of Sale

The ownership of personal property is transferred by using a \_\_\_\_\_.

The ownership of personal property is transferred by using a:

- (A) grant deed.
- (B) financing statement.
- (C) trust deed.
- (D) bill of sale

## Loans Secured by Personal Property

The instrument used to secure a loan on personal property is called a \_\_\_\_\_.

Regarding a mortgage on personal property, what can one do with it?

- (A) alienate.
- (B) hypothecate.
- (C) assess.
- (D) all of the above

Under the Uniform Commercial Code, the document used to mortgage personal property is:

- (A) trust deed.
- (B) bill of sale.
- (C) grant deed.
- (D) security agreement.

## Personal Property Interest

Which of the following would be considered a personal property interest?

- (A) stock in a mutual water company
- (B) mineral rights
- (C) leasehold
- (D) trees planted in nature