

Modern Real Estate Practice in Illinois, 6th Edition
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Chapter 2: Real Property and the Law

Learning Objectives

After reading this chapter, students should be able to:

- Identify the rights that convey with ownership of real property and the characteristics of real estate.
- Describe the difference between real and personal property, and the various types of personalty.
- Explain the types of laws that affect real estate.
- Distinguish among the concepts of land, real estate, and real property.
- Define the following key terms: accession; air rights; annexation; attachment; area preference; bill of sale; bundle of legal rights; chattels; deed; emblements; fixture; improvement; land; location; manufactured housing; personal property; real estate Real Estate License Act of 2000; real property; severance; situs; subsurface rights; surface rights; trade fixture.

Why Learn About Real Property And The Law?

Real estate is a market like any other one. Real property is a product, and the licensee is the salesperson or leasing agent. As any successful salesperson will tell you, product knowledge is the key to success: You need to know enough about your product to be able to educate and influence your customers, whether they are buyers, sellers, renters, or investors. Also, you are dealing with a product that has very specific and often very complicated legal issues involved. This chapter will help you understand the most basic, fundamental principles of the product you will be dealing with for the rest of your career. Your chance at success will improve if you understand the effects of various laws on your business.

Suggested Items to Bring To Class

1. Newspaper articles concerning disputes between parties over whether an article was real property or personal property.
2. Sample leases for either residential or commercial property.
3. New home brochures or advertisements showing how identical homes by the same builder can have different prices based exclusively on their location.
4. Ads or brochures that show personal property being sold with real estate.

Lecture Outline

I. Land, Real Estate, and Real Property

The words *land*, *real estate*, and *real property* refer to different aspects of the same idea.

A. Land

Land is defined as the earth's surface extending downward to the center of the earth and upward to infinity. The term includes permanent natural objects such as trees, water and the underlying soil. Land includes subsurface and airspace rights.

B. Real Estate

Real estate is defined as land at, above and below the earth's surface, plus all things permanently attached to it, whether natural or artificial (improvements).

C. Real Property

Real property is the broadest term, including both land and real estate. It is defined as the interests, benefits and rights that are automatically included in the ownership of land and real estate. Real property includes the bundle of legal rights: the legal rights of ownership that attach to ownership of a parcel of real estate.

1. Surface, subsurface and air rights

The right to use the surface of the earth is referred to as a surface right. However, real property ownership can also include subsurface rights to the natural resources lying below the earth's surface. An owner may transfer surface rights without transferring the subsurface rights. The rights to use the air above the land (air rights) also may be sold or leased independently.

II. Real Property and Personal Property

Personal property, sometimes called *personalty*, is all property that does not fit the definition of real property. Items of personal property are also referred to as *chattels*.

A. Manufactured Housing

Manufactured housing is defined as dwellings that are not constructed at the site but are built off-site and trucked to a building where they are installed or assembled. The distinction between real and personal property is not always obvious. Manufactured housing is generally considered personal property. It may, however, be considered real property if it becomes permanently affixed to the land.

B. Plants

Trees, perennial shrubbery, and grasses that do not require annual cultivation are real estate. Annual plantings or crops of wheat, corn, vegetables, and fruit (*emblems*), planted for person consumption or for profit, are generally considered personal property. As long as an annual crop is growing, it will be transferred as part of the real property unless other provisions are made in the sales contract.

IN ILLINOIS . . . *when farmland is sold, it is customary for possession to be transferred to the buyer on March 1, after the last year's crops have been harvested and before the new crops are planted.*

C. Severance and Annexation

1. **Severance:** Process by which real property is detached and converted to personal property.
2. **Attachment (annexation):** Process by which personal property is attached to real property and, therefore, changed into real property.

D. Classifications of Fixtures

1. **Fixtures defined**

A *fixture* is personal property that has been so affixed to land or a building that, by law, it becomes part of the real estate.

a. **Legal tests of a fixture**

- The overall test for determining whether an item is a fixture or personal property is *intent*. Did the person who installed the item intend for it to remain permanently on the property or for it to be removable in the future?

b. **In determining intent, courts use the following basic tests:**

- Method of attachment: How permanent is the method of attachment? Can the item be removed without causing damage to the surrounding property?
- Adaptation to real estate: Is the item being used as real property or personal property?
- Agreement: Have the parties agreed in writing on whether the item is real or personal property?

2. **Trade fixtures**

An article owned by a tenant and attached to a rented space or building or used in conducting a business is a trade fixture. Trade fixtures that are not removed at the end of the term become the real property of the landlord, a process of acquisition known as

accession. Trade fixtures are sometimes sold to the new lessee or tenant of the property.

a. Trade fixtures v. fixtures

- Fixtures belong to the owner of the real estate; trade fixtures are usually owned and installed by a tenant for the tenant's use.
- Fixtures are a permanent part of a building; trade fixtures are removable.
- Fixtures are real property, included in any sale or mortgage. Trade fixtures are personal property, included only by special agreement.

III. Ownership of Real Property

Ownership of real estate consists of a bundle of rights. A purchaser of real estate buys part or all of the bundle of ownership rights held by the seller:

- Possession
- Control of the property within the framework of the law
- Enjoyment (that is, to use the property in any legal manner)
- Exclusion (to keep others from entering or using the property)
- Disposition (to sell, will, transfer or otherwise dispose of or encumber the property)

IV. Characteristics of Real Estate

Real estate possesses seven basic characteristics that fall into two broad categories: economic characteristics and physical characteristics.

A. Economic Characteristics of Land

1. Scarcity
2. Improvements
3. Permanence of investment
4. Location

B. Physical Characteristics of Land

1. Immobility
2. Indestructibility
3. Uniqueness ("heterogeneity" or "nonhomogeneity")

V. Laws Affecting Real Estate

The unique nature of real estate has given rise to an equally unique set of laws and rights. Even the simplest real estate transaction involves a body of complex laws. Licensees must have a clear and accurate understanding of the laws that affect real estate.

A. Types of Real Estate Laws

1. Contract law
2. General property law
3. Agency law
4. Real estate license law
5. Federal regulations
6. Federal, state and local tax laws
7. Zoning and land use laws
8. Federal, state and local environmental regulations

B. Seven Sources of Law

1. United States Constitution
2. Laws passed by Congress
3. Rules of the regulatory agencies
4. State constitutions
5. State statutes
6. Local ordinances
7. Common law

IN ILLINOIS . . . *the practice of real estate is governed by the Real Estate License Act of 2000, as amended from time to time by the legislature, and by the rules established by the Illinois Department of Financial and Professional Regulation. The License Law may be found at 225 Illinois Compiled Statutes Act. 454. Other laws affecting real estate in Illinois are found throughout the Illinois Compiled Statutes, although many property issues are addressed in 765 ILCS.*

Classroom Exercises

1. Ask students to define land graphically on a sheet of notebook paper by means of a drawing, a sketch, a graph — any description without words. Show some of the better sketches to the class; you will get sketches of a pastoral scene, a lot, a section, etc. Then have the students define real estate, which includes improvements; discuss the differences in the definitions. Next, have the students illustrate their conceptions of the

bundle of legal rights, incorporating their concepts into the other drawings. You may see pictures of a house or other improvements with a "keep out" sign on the fence or people in the yard picnicking, any of which can picture the concept of real property.

2. To illustrate characteristics that define land use, the instructor may draw on the board a scene of some mountains, some flat land, a river, railroad track, power transmission lines, some water, a road, and some prevailing winds as the students list them — or draw them first and then have the students name the characteristics.
3. Identify a type of business and determine what kind of trade fixtures might be useful to the operation.
4. Make a list of reasons that air rights or subsurface rights might be sold or leased.