Lesson 2: Real Property

Lesson Topics
This lesson focuses on the following topics:

• Terms You Will Want to Know
• Introduction
• Land, Real Estate, and Real Property
• Personal Property
• What Is Real Property?
• Appurtenances
• Attachments

Lesson Learning Objectives
At the conclusion of this lesson you will be able to:

• Describe the difference between land, real estate, and real property.
• Recognize the difference between real property and personal property.
• State the definition of a fixture.
• Explain the general character of surface, subsurface, and air rights, as well as littoral and riparian rights.

Terms You Will Want to Know

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Introduction

Before covering the definitions and details of modern real property and land use, we will first examine the development of these ideas. We are primarily concerned with present-day land use and the various controls and ownership conditions that shape the contemporary views of property. To understand the modern versions of these ideas, one must understand their evolution. In this lesson, we will discuss the physical and economic characteristics that distinguish land from other commodities and also cover the distinctions between land, real estate, and real property. We will also examine the rights associated with real property and learn the difference between real property and personal property. Within this exploration, we will discuss alterations to land and property and how they can affect whether something counts as personal property or real property.

History of Land Ownership

In medieval Europe, the average person did not own land in the way that we think of someone owning land today. Much contemporary land ownership is what we call allodial, or complete, whereas in medieval times, a kind of abbreviated land ownership was established through a system known as feudalism.

Feudalism was a system of land ownership in which all the land in the kingdom was considered to be owned by the head of the state (the king or queen). The king would allow a few lords (the king’s vassals) to use some of the land in exchange for taxes and allegiance. The lords, following the same system, would allow peasants or their vassals to live on and work the land in exchange for survival. Within the feudal system, however, the lord did have responsibilities to the vassal, which included the provision of:

- A portion of land called a “fief” that was neither given nor sold to vassals, but only loaned for use to provide a return to the “owner”
- Just protection under the law
- Maintenance of the land

In brief, the lord had to protect the vassal’s land interest and guarantee the vassal’s quiet occupation. If the vassal became involved in a dispute, then the lord was obligated to
defend the vassal in order to protect his land. In return for the use of the lord’s land and his broad protection, a vassal had responsibilities to the lord. He was generally obligated to provide certain services to the lord, including military service if the lord became involved in a military campaign. These services were the means by which the vassal gained his property rights (but not yet ownership) and the protection of those rights.

**Allodial Land Ownership**

In contrast to feudal land tenure with obligations and duties to the owner, an allodial ownership system is one in which the land is owned completely without an obligation of services or duties to another. The land is owned absolutely and may be passed to heirs. This sort of complete ownership is commonly called an allodial estate or “fee simple estate” (a concept that will be discussed further in later lessons). This contemporary concept of land ownership stands in stark contrast to the reciprocal obligations and ongoing relationships under medieval feudalism.

**Land, Real Estate and Real Property**

At first glance, the terms “land,” “real estate,” and “real property” appear to be interchangeable. The technical use of these terms in real estate practice involves subtle but important differences that licensees must understand. Each of these three terms, beginning with “land,” builds upon the previous term adding more characteristics. Previously, we discussed the physical and economic characteristics of the three commodities and the traits that set them apart from personal property. Now we must consider the characteristics of each of the commodities individually:

- **Land** - Refers to more than a tract of earth. "Land" is defined as not only the natural resources seen on the surface of the land but the minerals below the surface and the air above the surface. When a person acquires land, it is possible to acquire all that lies below and above it as well.

- **Real estate** - Encompasses everything in the definition of “land,” but it adds permanent buildings and structures (known as improvements) to the definition,
which basically comprises the land and everything attached to the land. Real estate is also referred to as “realty.”

- **Real property** - Property ownership includes a set of legal rights, specifically the owner's rights, which deals with the right to control the property, the right of exclusion, the right of possession, the right of disposition, and the right of enjoyment. While “real estate” refers to the land and improvements on it, “real property” refers to both the real estate and the set of rights associated with it.

**General Considerations**

As a practical convention, real estate licensees do not burden a conversation with the technical distinctions between the three commodities. In everyday use, these terms are interchangeable. While in the field or otherwise discussing land, real estate, or real property, it is not generally important that one differentiate between the three. In fact, we will use the three terms interchangeably in subsequent lessons. It is still important for the student to understand these basic technical distinctions for their own professional education and for the state licensing exam. Land is the land and everything naturally associated with its surface, what lies beneath it, and the air above it. Real estate is the land plus any buildings. Real property is real estate plus the rights of ownership.

**Ownership Rights**

There are four ownership rights associated with real property: subsurface rights, surface rights, air rights, and water rights. We defined “real property” earlier as covering real estate plus the owner’s set of rights. It is important to understand that these four different rights may be sold separately, sometimes to different persons, thus creating situations in which multiple people can have an ownership interest in the same piece of property. We will now discuss the details of these various rights.
Subsurface Rights
Subsurface rights relate to everything beneath the surface of a tract. The importance of this right lies largely in the fact that it may secure ownership of mineral deposits located under the surface of a property.

In some states, subsurface rights are sold separately from surface rights. In the event that two parties each hold an interest in a property - one holding the subsurface rights and the other holding the surface rights - the holder of subsurface rights may legally enter the property to extract the minerals he or she has rights to, but he or she must take care to not materially disturb the surface.

Surface Rights
Surface rights are rights and interests with respect to the surface of the earth, including natural elements and structures built on or attached to it.

Air Rights
Air rights are the right to use the airspace above a property. These rights may be sold or leased independently of the tract itself.

Water Rights
When a property borders a body of water or a river, the right to enjoy the water is usually included in the bundle of rights. There are two types of rights associated with waterfront properties: riparian rights and littoral rights.

Riparian rights govern the use of flowing water, such as rivers and streams, that pass through or border a property. In accordance with riparian rights, a property owner does not own the water, but he or she may use the water and shares those same rights and uses with other property owners whose land also borders the water.
“Littoral rights” govern lakefront or seafront property and usually allow the property owner to use the water bordering his or her property. Littoral use does prohibit the property owner from artificially changing the water’s location.

It is important to note that water rights connect to surface rights in that a permanent right to enjoy a body of water surrounded by privately-owned realty usually necessitates surface ownership of waterfront property.

**Personal Property**

Property can be thought of in two different terms; either real or personal. Recall that “real estate” is the land, including everything on, under, and above the land. Also recall that “real property” is the definition of real estate plus the set of owner’s rights associated with it. So, simply put, “personal property” is all that is not covered by real property’s definition. Therefore personal property includes objects that can be moved such as couches, tables, and clothing (here the student may recall the indestructibility and immobility of land, and note the way that these traits set real estate apart from personal property). Personal property is sometimes also called “personalty” or “chattels.”

Another difference between real property and personal property is the way in which each transfers. Ownership to a parcel of real estate is transferred by a recordable document such as a deed or will, whereas ownership to personal property usually transfers by a bill of sale. A bill of sale is a written agreement used to sell, reassign, or transfer one’s right to or interest in personal property. A deed, on the other hand, is a written instrument used specifically to transfer real property, which the owner (sometimes called the “grantor”) uses to convey ownership in real property to the buyer (or “grantee”).

In the same way that there are subtle differences between the concepts of real estate, land, and real property, there are specific technical terms used to discuss subtle differences in personal property. The term “personal property” actually refers to the theory of *ownership rights* in personal property (like the set of rights associated with real
property). “Personalty” is effectively a synonym for “personal property” but “personalty” refers to the actual, tangible object itself, such as a chair (this distinction corresponds to the way that the terms “real estate” and “realty” identify the tangible buildings and trees associated with a parcel of land, in addition to the land itself). This technical distinction arises only rarely; however, these ideas may shed more light on the nature of real property, real estate, and land, all of which are important concepts for this course.

**Severance**

It is possible to turn some elements of real estate into personal property. The most common way that real estate is converted to personal property is through “severance.” Severance is the act of separating some element of the real estate from the land. For example, a tree is real estate, but if the owner cuts down the tree, literally severing it from the earth, the tree is now personal property, which can be carried off.

**Fixtures**

Conversely, personal property can be turned into real estate. This is accomplished by making that personal property a “fixture.” A fixture is a chattel bound to real estate and refers to an object that was once personal property but which has now been firmly attached to the land in such a way that it becomes part of the real estate. For example, a person can purchase wood, nails and paint, which are all personal property. But when the wood, nails and paint are made into a fence on the land, the former items of personal property are now real estate. The items have been transformed from movable personal property into an attached fixture on the land, i.e. real estate.

The most common way to turn personal property into real property is by permanently affixing the object(s) to real estate. Some examples of fixtures are:

- Elevators
- Central air conditioning units
- Garage door openers
Trade Fixtures

When a tenant makes a physical alteration or permanent addition to the property he or she is renting, the altered or added object usually belongs to the landlord upon expiration of the lease agreement. For example, if a tenant installs new kitchen cabinets in his or her apartment, generally speaking, these cabinets are considered fixtures, and thus revert to the landlord’s possession when the lease agreement expires.

One can see how this might impose undue hardship on a tenant who is leasing commercial property because of the large amount of money that many businesspeople have invested in items they use in the course of business and have affixed to the real estate they lease. For example, what if a tenant is leasing a commercial retail property in a shopping mall: Are all the shelving, racks, and cash registers that the tenant installs automatically the landlord's property when the lease expires? Generally, they are not.

Objects affixed to the leased property that are owned by and necessary for the tenant's trade or business are called “trade fixtures,” and they are not subject to the same rules of transfer as fixtures in general. Trade fixtures are items that the tenant owns but has attached in some permanent way to leased (especially commercial) real estate. Trade fixtures remain the tenant’s property when his or her lease expires. Examples of trade fixtures include:

- Check-out stands
- Coolers
- Display shelves
- Display racks
- Counters
- Desks

Courts usually conclude that all trade fixtures are the tenant's property, regardless of the method of installation. Nevertheless, for a tenant to retain ownership of a trade fixture, the tenant must remove the fixture by the last day of the lease. That is to say, a tenant
may not leave a trade fixture on a property after the lease has expired and then later request that the landlord relinquish the item.

**Determining What Counts as a Fixture**
While the exact definition of a fixture varies slightly between states, there are some common attributes that allow us to make some general remarks about what sort of thing counts as a fixture. All licensees should acquaint themselves with state and local regulations that help to identify fixtures for the type(s) of property with which they work. When trying to determine whether something is a fixture, we can consider the following issues: annexation, adaptation, and intention.

**Annexation**
One trait that separates fixtures from non-fixtures is the way the item is annexed, or attached, to the land. Usually, personal property can be removed without the aid of tools or heavy machinery; we can see this in the case of furniture, decorative items, utensils, wall hangings, and the like. With a comparatively minimal amount of effort, one can easily remove, shift, and replace a chattel. This is not the case with a fixture, the removal of which generally involves a great deal of effort and can require professional assistance because of its permanent nature.

Earlier, we mentioned an elevator as an example of a fixture, and it is easy to see how annexation might be used as a criterion for identifying it as such. The installation and removal of an elevator is a lengthy and often costly endeavor, which will probably require the aid of several professionals and a few days of labor. If an owner installs an elevator on his or her property, then unless it needs to be replaced, he or she generally intends to leave it there indefinitely.

**Adaptation**
As real estate transactions become increasingly complex, so do our definitions of key terms like “fixture.” In the past, the definition of a fixture depended solely on the means of attachment, that is, annexation. Nowadays, it is important to consider the issue of
adaptation as well. “Adaptation” refers to the use and modification of a particular item for a specific use in a property. If one can show that an item was custom designed for a specific use on the property, then it is likely that the item would be considered a fixture rather than a chattel.

**Intention**

The most important characteristic to consider when deciding whether something is a fixture is the owner's intent for that item. Intention is inferred from the nature of the item and blends annexation and adaptation. That is to say, we can look at how the item is attached and the way in which it has been modified to suit its purpose or role in a given property. From these we can often infer whether the item was intended to be a fixture or personal property. Each case is unique and the individual parties involved in the decision must consider the method and purpose of adaptation and annexation when determining whether something is a fixture. It is often best to ask when unsure and write into a contract what will stay on the property and what is intended to be removed.

**Changing Chattels into Real Estate and Vice Versa**

Because a chattel can be converted to real estate, and vice versa, the difference between the two can be confusing. The following screens will provide a few more examples and explanations to help you better understand when a thing is real estate and when a thing is personal property.

**Trees and Crops**

Plants pose a unique challenge when we are trying to judge whether they are real estate or personal property. Are crops, which can be harvested and sold, personal property or real estate while they are still attached to the earth? What about trees and decorative flora that one could remove - are they chattels or reality?

To decide whether plants are personal property or real property, one must generally consider their use and the duration of their existence. Trees, persistent decorative plantings (such as perennial landscape plants) and uncultivated plants are referred to as
fructus naturales and are usually considered to be realty because of their permanence. Annually-cultivated crops are called fructus industriales, or “emblements,” and are generally considered to be personal property, even prior to harvesting.

Therefore, the broad general rules for making judgments about plants are as follows:

- Trees, bushes, and grasses, or fructus naturales that do not require annual cultivation are real estate.
- Cultivated annual crops, or emblements, are personal property.

**Minerals**

When substances are still underground, they are considered real estate. But when an owner extracts things from underground and stores them topside, the item is converted from real estate into personal property.

**Mobile Homes or Manufactured Housing**

Mobile homes are, for the most part, movable. Therefore mobile homes fall into the personal property category. If a mobile home is sold in conjunction with a parcel of land or is permanently attached, then it may be considered real estate. Some states, such as Texas, require the home to be connected to utilities and permanently attached to the land in which the owner of the home also owns through a deed or contract for deed filed in the county records as real property.

It is worth noting here that real estate licensees should be familiar with their local real estate laws before attempting to market mobile or manufactured homes. They should also make sure they are acquainted with any clauses of their state licensing laws that apply to the sale of mobile or manufactured homes, because some states impose special restrictions regarding this type of property. Mortgage lenders as well as insurance companies may have special requirements or may not offer services on mobile or manufactured houses.
What Is Real Property?

Let's dive into real property in more detail. There are two types of real property; real property, which is reality and personal property, which is personalty. Real property can be defined as land, anything affixed or attached to the land and anything incidental or appurtenant to the land. Sometimes real property is described as that which is immovable. Personal property is usually movable. A car, sofa, and a hat are simple examples of personal property. Anything that is not real property is personal property.

The distinction between real and personal property is very important in real estate transactions. When a piece of land is sold, anything that is considered to be part of the real property is transferred to the buyers along with the land, unless otherwise negotiated. But if an item is personal property, the sellers can take it with them when they move away, unless the parties stipulate otherwise.

What is Land?

The principle component of real property is land. This means more than just the surface of the earth. Real property also includes the subsurface, which is everything beneath the surface down to the center of the earth. It also includes the upper reaches of the sky.

A parcel of real property can be imagined as an inverted pyramid, with its tip at the center of the globe and its base above the earth’s surface. The landowner owns not only the earth’s surface within the boundaries of the parcel, but also everything under and over the surface.

Improvements

In addition to the land itself, any improvements to the land are part of the landowner’s real property. Improvements are things that have been added to, built on, or done to the land to improve or develop it. A house, driveway, and landscaping are all examples of improvements.
Bundle of Rights
The rights, privileges, and interests associated with the land ownership are also considered part of the real property. Real property can be considered the land, improvements plus a “bundle of rights.” The owner’s bundle of rights includes the right to possess, use, enjoy, encumber, will, sell, or do nothing at all with the land. However, these rights are not absolute; they are subject to government regulation which will be covered later.

Appurtenances
In addition to the bundle of ownership rights, a landowner has appurtenant rights to the property. An appurtenance is a right or interest that goes along with or pertains to a piece of land. A landowner’s property may include any or all of these appurtenances:

- Air rights
- Water rights
- Solid mineral rights
- Oil and gas rights
- Support rights

Appurtenances are normally transferred with the land, but the landowner can sell certain appurtenant rights separately from the land. For example, the owner may keep the land but sell his mineral rights to a mining company.

Air Rights
Air rights give the landowner the right to the use the airspace above her land. In theory, these rights extend to the upper limits of the sky. In practice, however, this is no longer true. Congress gave complete control of the nation’s airspace to the federal government. Landowners still have the exclusive right to the use of the lower reaches of the airspace over their property, but may do nothing that would interfere with normal air traffic.
On the other hand, sometimes air traffic interferes with a landowner’s right to the normal use of her land. If aircraft overflights cause substantial harm to the landowner, he may sue the government for some form of reimbursement. The classic example is an airport built right next to a chicken farm. The noise and vibrations from overflights are so severe that the chickens no longer lay eggs. If the land can’t be used for any other reasonable purpose, the value of the land is significantly diminished. The landowner may be able to force the government to condemn the property and compensate her for its fair market value.

Water Rights
The right to use water can be, but not necessarily, an appurtenant right, tied to land ownership. Because water is vital for agriculture, industry, and day-to-day living, water rights are an important issue in many places, including many parts of Texas.

Water is found both on and beneath the earth’s surface. The natural level at which water can be located in a particular piece of land is called the water table. Surface water may be confined to a channel or basin, or it may be unconfined water, such as runoff or flood water. The water beneath the surface may also be “confined” in the sense that it runs in recognizable underground streams, or it may collect in porous ground layers called aquifers.

With confined surface waters, two systems govern water rights:

1. Riparian rights system
2. Appropriative rights system

Riparian Rights System
Riparian rights are with respect to water that flows through or adjacent to the owner’s property. This landowner, called a riparian landowner, has a right to make reasonable use of the stream’s natural flow. A riparian landowner also has the right to use stream water for domestic uses, such as drinking, bathing, and watering a personal-use produce
garden. However, upstream riparian owners aren’t allowed to use the water in ways that could deprive downstream owners of its use; they must not substantially diminish the stream’s flow in quantity, quality, or velocity.

Whether a riparian owner also owns the land under the stream, depends on whether the stream is navigable or not. A waterway is generally considered navigable if it is large enough to be used in commerce. If a stream is not navigable, the riparian owns the land under the water. If the stream is the boundary between two parcels of land, each owner owns the land under the water to the midpoint of the streambed. If a stream is navigable, the government owns the land under the water and the riparian landowner owns the land only to the mean high water mark of the streambed. The general public has the right to use navigable waterways for transportation and recreation.

Sometimes a distinction is made between riparian water and littoral water. Riparian is flowing water, such as the water in a river, stream, creek, or other watercourse. Littoral water, on the other hand, is standing water such as a pond, lake, or even an ocean.

Under the riparian rights system, someone who owns littoral land such as land on a lakefront has essentially the same water rights as someone who owns the land beside a river. Owners of littoral property have the right to use the water for domestic purposes, and they’re also entitled to have the lake maintained at its natural level, to use the lake for fishing or recreation, and to have the natural purity of the lake’s waters maintained. If the lake is not navigable, each littoral owner owns a portion of the lake bed adjacent to his or her property.

There is an important restriction on a riparian owner’s water rights. A riparian owner is not permitted to divert water from a stream or lake for use on non-riparian land that is, land that does not adjoin the stream or lake from which the water is taken.

**Example:** Alvarez is a riparian landowner. She owns Parcel A, property that borders on the Swiftwater River. She also owns Parcel B, property that is about 300 feet inland. She
cannot divert water from the Swiftwater River to irrigate crops on her non-riparian property.

**Appropriative Rights System**

Riparian and littoral rights are tied to ownership of land beside a body of water. The second major type of water rights, appropriative rights, do not depend on land ownership. Instead, appropriative rights are based on the priority of use — first in time, first in right. The appropriative system is also called the prior appropriation system.

To establish an appropriative right, someone who wants to use water from a particular lake or stream applies to the state government for a permit. It is not necessary for the applicant to own land beside a body of water, and water taken by a permit holder doesn’t have to be used on property adjacent to the water source.

If someone with an appropriative right fails to use the water for a certain period of time, she is likely to lose the appropriative right. Another person can then apply for a permit to use the water.

**Ground Water**

Ground water is subsurface water. It may collect in porous underground layers called aquifers. Landowners have the overlay rights in regard to the ground water in aquifers beneath their property. Overlying rights are similar to riparian rights; the landowner may make reasonable use of the ground water, but isn’t allowed to transport it for use on land outside the ground water basin from which it was removed. The appropriative rights system may also be applied to ground water.

**Solid Mineral Rights**

Land may contain a wide of range of minerals, such as coal, copper, gemstones, or gold. A landowner owns all of the solid minerals within the “inverted pyramid” under the surface of his property. These minerals are considered to be real property until they are extracted from the earth, at which point they become personal property.
As was mentioned earlier, a landowner can sell his mineral rights separately from the rest of the property. When rights to a particular mineral are sold, the purchaser automatically acquires an implied easement, the right to enter the land in order to extract the minerals from it.

**Oil and Gas Rights**
Ownership of oil and gas is not as straightforward as ownership of solid minerals. In their natural state, oil and gas lie trapped beneath the surface in porous layers of earth. However, once an oil or gas reservoir has been pierced by the well, a well on one parcel of land can attract all of the oil and gas from the surrounding properties.

Ownership of oil and gas is governed by the “rule of capture.” That is, a landowner owns all of the oil and gas produced from wells on her property. The oil and gas become the personal property of the landowner once they are brought to the surface. The rule of capture has the effect of stimulating oil and gas production, since the only way for a landowner to protect her interest in the underlying gas and oil is to drill an offset well to keep the oil and gas from migrating to her neighbor’s wells.

**Fugitive Substances**
Oil, gas, and water are sometimes referred to as “fugitive substances” because they are not stationary in their natural state. As previously discussed, appurtenant rights to extract oil and gas and to use water are classified as real property; and the substances themselves become personal property once they been captured or contained.

**Other Appurtenant Rights**
In addition to rights concerning air, water, minerals, and oil and gas, there are some other appurtenant rights.

A piece of land is supported by the other land that surrounds it. A landowner has “support rights,” meaning the right to the natural support provided by the land beside and beneath
his property. “Lateral support” is support form adjacent land; it may be disturbed by construction or excavations on the adjacent property. “Subjacent support” is support from the underlying earth. Subjacent support may become an issue when a landowner sells his mineral rights.

Easements and restrictive covenants also create appurtenant rights. These are discussed later.

Stock in a mutual water company is considered appurtenant to real property. A mutual water company is a company that is created to secure adequate water supplies at reasonable rates for water users in a particular area. The company’s stock is issued to the water users.

**Attachments**

So far it has been established that the land and appurtenances are considered part of the real property. The third element is attachments. There are two main categories of attachments: natural and man-made.

**Natural Attachments**

Natural attachments are things attached to the earth by roots, such as trees, shrubs and crops. This includes plants that grow without the help of humans, and plants cultivated by people. Natural attachments are classified as part of the real property they’re growing on. This means that if the property is sold, the natural attachments are transferred along with the land, unless otherwise agreed.

In accordance with that rule, when farmland is sold, unharvested crops are ordinarily treated as part of the real property and included in the sale of the land. However, if crops are sold separately from the land, they’re treated as personal property as soon as they’re subject to a contract of sale, even before they’ve been harvested.
**Example:** The owner of an apple orchard enters into a contract to sell her crop of apples to a juice company. The apples are now considered the personal property of the juice company, even while they’re still on the trees. If the orchard owner sells the land to a third party before the apples are harvested, the apple trees will be included in the sale of the land, but the apples themselves will not be.

A special rule called the doctrine of emblements applies to crops planted by a tenant farmer. If the tenancy is for an indefinite period of time and the tenancy is terminated through no fault of the tenant before the crops are ready for harvest, she has the right to re-enter the land and harvest the crop that matures after the tenancy is terminated.

**Man-Made Attachments**

Things that have been attached to the land are called fixtures. Houses, fences, and cement patios are examples of fixtures. Like natural attachments, fixtures are considered part of the real property.

Fixtures always start out as personal property. For example, lumber is personal property, but it becomes a fixture when it is used to build a fence. It is sometimes difficult to determine whether a particular item has become a fixture or is still personal property. If the item is personal property, the owner can take it away when the land is sold. But if the item is a fixture, it’s transferred to the buyer along with the land unless otherwise agreed.

Adding an item of personal property to real property so that it becomes a fixture is called annexation. Removing a fixture from real property so that it becomes personal property again is called severance. These terms may also be used for natural attachments as well as fixtures.

**Distinguishing Fixtures from Personal Property**

Buyers and sellers often have disagreements over what is purchased and sold in their transaction. For example, is the heirloom chandelier installed by the seller real property that’s transferred to the buyer, or can the seller remove it when he moves out?
Written Agreement

The easiest way to avoid such a controversy is to put the intentions of the parties in writing. If there is a written agreement between a buyer and seller (or a landlord or tenant, or a lender and borrower) stipulating how a particular item is going to be treated -- as part of the real estate or as personal property -- then the court will respect and enforce that agreement. This stipulation between a buyer and seller would ordinarily be found in their purchase agreement. For example, if a seller plans to take certain shrubs from the property before the transaction closes, a statement to that effect ought to be included in the purchase agreement, since shrubbery is considered part of the real property.

Similarly, if the seller intends to transfer personal property, such as a couch, to the buyer, that should also be stated in the purchase agreement. In addition to the deed conveying title to the real property, a separate document called a bill of sale will be needed if the personal property is worth $500 or more. A bill of sale conveys title to the personal property.

In the absence of a written agreement, courts apply a series of tests to classify the item in dispute. These tests include:

- The method of attachment
- Adaptation of the item to the real property
- The intention of the annexor
- The relationship of the parties

Method of Attachment

As a general rule, any item that a person permanently attaches to the land becomes a part of the real estate. A permanent attachment occurs when the item is:

- Annexed to the land by roots, like trees or rose bushes
- Embedded in the earth, like sewer lines or septic tanks
• Permanently resting on the land, like a storage shed
• Attached by any other enduring method, such as cement, plaster, nails, bolts, or screws

Note that it isn’t necessary for an item to be literally attached to the real property in order to be considered a fixture. There may be physical annexation even without actual attachment. The force of gravity alone may be sufficient, as in the case of a building with no foundation. Also, an article enclosed within a building may be considered annexed to the real property if it cannot be removed without dismantling it, or tearing down part of the building.

In addition, even easily movable articles may be considered constructively annexed (legally annexed) to the real property if they are essential parts of other fixtures. For example, the key to the front door of a house is a fixture. Also, fixtures that have been temporarily removed for servicing or repair remain constructively annexed to the real property. For example, a built-in dishwasher that’s been sent to the repair shop is still considered to be a part of the house in which it is ordinarily installed.

**Adaptation to the Property**

If an unattached article was designed or specially adapted for use on a particular property, then it’s probably a fixture. Examples include the pews in a church, and storm windows specifically made for a particular building.

**Intention of the Annexor**

The method of attachment was once regarded as the most important test in determining whether an item was a fixture, but over time courts decided that test was too rigid. It didn’t allow for special situations where something permanently affixed would be more justly classified as personal property. Now the intention of the annexor is considered a more important test. Courts try to determine what the person who annexed the item to the property intended. Did she intend for the item to become a part of the realty or remain personal property? Each of the other tests is viewed as objective evidence of this
intention. For instance, permanently embedding a birdbath in concrete indicates an intention to make the item a permanent fixture, while just setting a birdbath out in the yard does not.

**Relationship of the Parties**
Intent is also indicated by the relationship between the parties: landlord/tenant, buyer/seller, borrower/lender. For example, it’s generally assumed that a tenant who installs an item, such as new lighting, is doing so with the intention of removing it at the expiration of the lease. On the other hand, it’s assumed that an owner making the same alteration is trying to improve the property and does not intend to remove the item. So an item that would be considered personal property if installed by a tenant might be considered a fixture if installed by an owner.

Items installed by a tenant so she can carry on a trade or business are called trade fixtures. Trade fixtures generally remain personal property and may be removed by the tenant unless there is a contrary provision in the lease or the fixtures have become an integral part of the land or improvements. In the latter case, if the tenant wants to remove the fixtures, it is her responsibility to either restore the property to the original condition after removing them, or else compensate the landlord for any physical damage resulting from the removal. Trade fixtures that are not removed by the tenant become the property of the landlord.

**Memory Aid**
Tests of a Fixture (MARA):
- Method of attachment
- Adaptation to the property
- Relationship of the parties
- Intention of the annexor
- Agreement in writing
Mobile Homes
The distinction between personal property and real property has special significance when it comes to mobile homes, also referred to as manufactured homes. A mobile home is mostly assembled in the factory, then transported to the property it will occupy. This is in contrast to traditional houses that are built on the property they occupy which then they are referred to as site-built or stick-built homes.

Mobile homes leave the factory as personal property but may become real property later on. As long as the mobile home is classified as personal property, a real estate broker may list and sell it only if it has been registered with the Department of Housing and Community Development. Unregistered mobile homes are considered new and cannot be listed or sold by a real estate licensee who also doesn’t have a mobile home dealer’s license. When a registered mobile home is sold, the real estate broker should make sure that the title and registration are delivered to the buyer, and that the Department of Housing and Community Development is notified of the transfer in writing within 20 calendar days.

To become real property, a mobile home must be permanently affixed to land. It must be installed on a foundation, the installation must be inspected and approved, a certificate of occupancy must be issued, and the vehicle registration must be cancelled. The final step of the process is recording a document that identifies the property and the property owner and states that the mobile home has been affixed the real property on a foundation system.

A mobile home can be installed on a foundation without becoming real property. It becomes real property only if all the steps listed above are taken.

Once a mobile home becomes real property, it is treated just like a site-built home. So an agent who lists or sells a mobile home and the land it’s attached to must have a real estate license.
When a house attached to real property is purchased separately from the land so that it can be moved to another site, it is severed from the real property and becomes personal property. This is true whether it was a mobile home or site-built. Since the house is personal property, the sale is subject to sales tax. The house will become real property again once it is installed on its new site.

**Lesson 2 Summary**

This lesson covered the basic definitions and characteristics of land, real estate, real property, and personal property. It also examined the ways that personal property can be turned into real estate, and vice versa.

All land, real estate, and real property have a few characteristics in common. These characteristics are generally broken down into physical or naturally-occurring characteristics and economic or man-made characteristics. The naturally-occurring characteristics that distinguish land, realty, and real property are their immobility, durability, and uniqueness. Land is a permanent, indestructible, and non-fungible commodity; because land is an integral part of real estate, real estate generally shares many of these traits. The distinguishing economic characteristics of land, realty, and real property are scarcity, alteration, fixity, and situs.

Even though we use the terms “real estate,” “real property,” and “land” interchangeably in everyday conversation, there are important differences that separate these three commodities from each other. Land is an all-inclusive description of the natural environment for the purposes of legal ownership, which includes the Earth’s surface, the space below it, the space above it, and all things naturally attached to it, such as trees and water. “Realty” and “real estate” both identify the land and all items permanently attached to it, including manufactured items such as buildings, sidewalks, and streets. Real property encompasses everything captured by the term “real estate” but also includes the intangible benefits or rights of ownership referred to as owner’s rights.
Owner’s rights include the right to control the property, the right of exclusion, the right of possession, the right of disposition, and the right of enjoyment. In essence, real property refers to real estate and the rights to occupy and enjoy that real estate. Personal property is anything that is not real estate. As a general rule, knowing the method of attachment helps to determine the difference between real estate and personal property.

Real property ownership is divided into four rights - that is to say, there are four basic “aspects” of a property to which the owner has special rights. These rights are surface rights, subsurface rights, air rights, and water rights, any of which may be sold or leased independently of the others. For example, one person may hold the rights to minerals located under the surface of someone else's home; similarly, a local airstrip might purchase the right to use the air space over someone's home.

It is important to note that water rights connect to surface rights in a unique way. That is to say, a permanent right to enjoy a body of water surrounded by privately-owned realty usually necessitates surface ownership of waterfront property.

*Please return to the course player to take the interactivities and then the lesson quiz.*