

## Chapter 1

### PROPERTY OWNERSHIP AND LAND USE CONTROLS

(Approximately 15% of Salesperson Exam)

- I. **PROPERTY** - the owner of property owns a bundle of rights. Property is defined as "**the rights or interests a person has in the thing owned.**" All property is either real property or personal property.
  - A. **Real Property** (Land, Fixtures, Easements, Stock in a Mutual Water Company, etc.) - real property is generally immovable. Real property can also be defined as "**that which is immovable by law.**". Real property includes:
    - 1. **Land** - includes reasonable use of surface, mineral, airspace above the land and water rights. Mineral rights transfer automatically when land is sold. A land owner's water rights include the right to make reasonable use of water on, under, or adjacent to the land. These water rights may be severed by voluntary transfer, condemnation or prescription.
      - a. **Riparian rights** refer to **moving water (a brook, stream, river, or watercourse)**.  
When a river or stream is the boundary of a piece of land, the riparian owner owns the land to the midpoint of the river or stream. If it is a navigable waterway, then the owner only owns the land up to the water's edge. A running stream is real property. The ownership of riparian rights may **not** be accurately determined from an examination of public records.
      - b. **Littoral rights** refer to **non-moving water** (pond, lake, ocean).
      - c. **Appropriation** - the government may give permission to a non-riparian owner to take water from another landowner or a public waterway.
      - d. **Accession** - the acquisition of property by it being added to other property.
      - e. **Accretion** - the process of gradual or imperceptible additions to land bordering a river or stream. An individual acquires title to land by natural causes as a result of accretion.
      - f. **Alluvion** (alluvium) - the soil deposited by accretion.
      - g. **Avulsion** - the sudden violent tearing away of land by the action of water.
      - h. **Erosion** - the gradual wearing away of land by natural forces. Erosion results in the loss of title.
      - i. **Reliction** - an increase in land by the permanent withdrawal of a sea or river.

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Question #1 Legally and technically, property is defined as: (A) that which is capable of involuntary transfer; (B) things with buyers or sellers; (C) rights or interests which a person has in a thing owned; (D) only personal property.

Question #2 The owner of land owns riparian rights to water on, under, or adjacent to the land in which of the following? (A) oceans and bays; (B) rivers or streams; (C) underground caves with water; (D) all of the above.

Question #3 When the government has granted permission to a nonriparian owner of a ranch to use a nearby lake, the owner has received this right by: (A) eminent domain; (B) prescription; (C) appropriation; (D) percolation.

**2. Anything Affixed to the Land**

- a. **Fixtures (M A R I A)** - objects attached to the land may become real property (such as, homes, load bearing walls, built-in swimming pools). A **fixture** is defined as **something incorporated into real property**. This is determined by the **M**ethod of attachment or **annexation**, **A**greement between the parties, **R**elationship of parties, **I**ntention of the parties, and/or **A**daptability of the object. **The cost, size, or time installed are not factors** used in determining whether an object is a fixture.
- b. **Vegetation** is real property (grass, bushes, trees).

**3. Appurtenances - things used with the land for its benefit.** Appurtenances are **real property**. Appurtenances run with the land. **Stock in a mutual water company is appurtenant** to the land; it is considered real property.

**B. Personal Property (chattel, chose)** - generally movable; it includes leases, trade fixtures, business opportunities, and most mobile homes. Title to personal property is not generally found by searching the public records. Personal property may be hypothecated. Most personal property is transferred with a bill of sale. A bill of sale must be signed by the seller.

- Notes:**
1. **Hypothecate - borrower retains possession** of the item securing the debt (like a trust deed, a mortgage, or a pink slip for a car loan).
  2. A **trade fixture** is a fixture which is attached to leased property by a business tenant specifically for use in his trade or business. **Trade fixtures remain the personal property of a business tenant.**
  3. **Crops** may be real or personal property. Crops which replenish themselves and do not require annual planting (orange trees, apple trees, etc.), are usually real property. Crops which must be planted annually (**emblems**) such as **corn and wheat are usually personal property** of the owner of the farm or of a tenant farmer who planted them. All crops when cut, mortgaged, or sold, become personal property.
  4. **Severance** - the act of removing something attached to the land and, by doing so, changing its status from real property to personal property.

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Question #4 What is usually considered real property? (A) crops which have been harvested; (B) minerals which have been mined; (C) stock in a mutual water company; (D) growing crops which have been sold.

Question #5 Which of the following would be considered real property? (A) a built-in refrigerator in a mobile home not attached to a permanent foundation; (B) trade fixtures installed by a tenant but which are removable without damage; (C) a mature grape crop which is under a sales contract and to be harvested later; (D) a load bearing wall in a single-family house.

Question #6 When the owner of a parcel of land cuts down a tree, it becomes personal property by the process of: (A) annexation; (B) mobility; (C) severance; (D) fixation.

**II. ENCUMBRANCES** - burdens on property, including money burdens (liens - such as trust deeds, mortgages, taxes, judgments, etc.) and non-money burdens (zoning, easements, deed restrictions, leases, etc.). **Buyers commonly purchase encumbered property.**

**Note:** *A homestead is not an encumbrance.*

**A. Money Encumbrances (Liens)** - are placed against the property either **voluntarily** (with the owner's consent) or **involuntarily** (without the owner's consent). **A lien is a "charge against property."**

**1. Types**

- a. **Specific Liens** - burdens on a particular parcel (**mechanic's lien, trust deed, mortgage, attachment, property tax, lis pendens**).
- b. **General Liens** - burdens on any and all real property of the owner in the county where they are recorded (**judgment lien and income tax lien**).

**2. Voluntary Liens** - mortgages and trust deeds (See Chapter 3 - Financing Real Estate).

**3. Involuntary Liens**

- a. **Mechanic's Liens** - money encumbrances recorded by people who have performed work or furnished materials for the improvement of real property and were not paid for their work. Mechanic's liens are the **only liens which must be both verified and recorded**.
  - (1) **Priority of payment** - unlike most other liens, mechanic's liens take priority earlier than the date of recording. Mechanic's liens take priority as of the day work began or materials were first furnished (except for some government liens).
  - (2) **Notice of Nonresponsibility** - recorded by the owner if someone else (like a tenant or vendee in a land contract) has work done on the owner's property. The notice must be recorded within **ten days** of obtaining knowledge of the improvement.

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**Question #7** Which of the following is **not** an encumbrance? (A) a lease; (B) an easement; (C) a lien; (D) a homestead.

**Question #8** An owner employed Super Construction Co. to install a swimming pool at their home. If the pool company was not paid and it was necessary for them to file a lien for payment of the contract, the encumbrance created would be: (A) a specific lien; (B) a general lien; (C) a voluntary lien; (D) none of the above.

**Question #9** Each of the following are specific liens, **except**: (A) judgment liens; (B) property tax liens; (C) attachment liens; (D) mechanic's liens.