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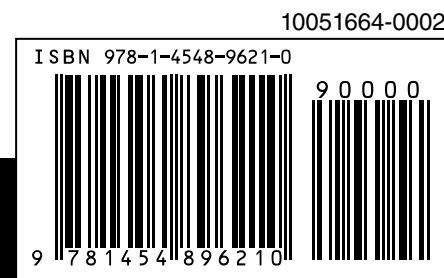
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Fifth Edition

NEAL R. BEVANS, J.D.

Western Piedmont Community College

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**For my stepchildren, Tamara Tigani and Camilo Lopez-Escobar and
their mother, my friend and my wife, Nilsa Bevans**

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RIGHTS ASSOCIATED WITH REAL ESTATE**Focus of This Chapter**

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LANDLORD AND TENANT LAW

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MORTGAGES AND FINANCING THE PURCHASE OF REAL ESTATE

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**PUBLIC AND PRIVATE RESTRICTIONS ON THE
USE OF LAND**

Focus of This Chapter

This chapter explores both public and private restrictions on the use of real estate by landowners. Public restrictions, such as zoning, are explained. Private restrictions, such as restrictive covenants, are examined in detail. Specific emphasis is placed on the role of the paralegal in researching, preparing, and locating various public and private land use restrictions.

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REAL ESTATE PROFESSIONS

Focus of This Chapter

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Focus of This Chapter

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THE CLOSING

Focus of This Chapter

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Preface

INTRODUCTION

The fifth edition of this book is a major revision of all previous editions. Following the Great Recession, when thousands of homeowners faced foreclosure and then a dramatic tightening of lending, the real estate market has rebounded, at least somewhat. The lessons of that economic downturn are still fresh in everyone's mind, although they will certainly fade with time. In addition, changes instigated by Dodd-Frank have brought about a sweeping overhaul in the way that borrowers apply for, obtain, and eventually receive funding to purchase real estate. These changes have affected almost every area of real estate practice from lending to closings. This text addresses many of those changes, while continuing to stick to the original concept of balancing theory and practice. Several chapters have been completely redone in light of the requirements of Dodd-Frank and the requirements of TRID (TILA/RESPA Integrated Disclosure Rule). I have updated the materials as much as possible, while continuing to lay a proper foundation in real estate law that covers such diverse topics as the basics of fee simple ownership, landlord-tenant law, restrictive covenants, closing procedures, and taxation, to name just a few.

As in previous editions, the day-to-day practice of law is never far from consideration in the material presented. The text continues to place a strong emphasis on practical applications of real estate law. Graphs, exhibits, and other visual aids have also been revamped, and new learning features placed at the end of the chapters will further engage students. Ethical issues continue to be of paramount concern, especially in the wake of some of the questionable, if not illegal, practices engaged in by some attorneys, lending institutions, and others that may have caused in whole or in part the recent economic downturn in the United States and many other countries. The text continues to provide information for paralegals about practical issues, such as how to research deeds, decipher mortgage clauses, and even conduct a full-blown title examination, with special emphasis on the impact that software and the Internet have had on all of these endeavors.

FEATURES

The book was designed with the reader in mind. The text presents the material in a variety of methods to tap into different learning styles. Many examples of actual

documents are provided as figures throughout each chapter. In addition, various features lend a strong visual element to the text. The features found in the text include the following:

■ **Chapter Objectives**

Each chapter begins with clearly stated learning objectives to guide readers in their studies.

■ **Issue at a Glance**

Scattered throughout each chapter are small synopses of issues discussed in the chapter. These synopses are positioned adjacent to the material under discussion, not only as a way of helping the reader synthesize important issues, but also as a visual marker for later study.

■ **Tech Topics**

Each chapter presents an examination of technological innovations that affect the practice of real estate law, updated from the previous edition to reflect the constant changes in technology and the impact that they have on real estate practice.

■ **Definitions**

As each new term is introduced, it is also defined for the student. These on-the-spot definitions provide a handy reference.

■ **Examples**

Each chapter contains not only discussions of the theoretical underpinnings of law, but also practical examples to assist the student in building the reasoning skills needed to succeed in the legal field.

■ **Annotated Documents**

In addition to the documents provided as figures throughout the text, each chapter contains one relevant annotated document to highlight the practical application of issues discussed in the chapter.

■ **Ethics**

Ethics is a vital component of any legal text, so the ethical implications of a real estate practice are emphasized in each chapter. In order to emphasize the important role that ethics plays in law, each chapter contains a separate ethical discussion.

■ **Skills You Need in the Real World**

The text places strong emphasis on balancing theoretical discussion with practical examples. This is readily apparent in the “Skills” section found at the conclusion of each chapter. Here, the author addresses how the student can build an entire skill set, from researching public records to drafting property descriptions.

■ Case Excerpts

Each chapter contains a case excerpt designed to emphasize some of the points raised in that chapter and to provide material for classroom discussions. These cases have been updated to reflect recent changes in the law since the publication of the first edition.

■ Case Questions

At the conclusion of each case are questions relevant to that case that spur classroom discussion and ask the student to relate the case to the material brought out in each chapter.

■ Chapter Summary

Each chapter contains a concise summary of the major issues discussed. This feature helps readers focus on the important points raised in the chapter.

■ Review Questions

Extensive review questions test the student's comprehension of the issues under discussion. These review questions, coupled with the discussion questions, provide rich material for classroom discussions.

■ Practical Applications

The practical applications section, found at the conclusion of each chapter, emphasizes the practical aspects of law and building important skills. Where the review and discussion questions encourage dialogue about the topics in each chapter, the practical applications allow the student to put this theoretical knowledge to practical use and to make a stronger connection with the material.

■ Websites

The Internet is becoming an increasingly vital link for students, and a list of websites is included at the end of each chapter to assist students in gathering more information about the chapter topics. Websites in each chapter focus on important real estate concepts or provide direct access to the amazing amount of detail currently provided about real estate topics, including access to public documents.

■ Key Terms and Phrases

A list of key terms and phrases used in each chapter assists the student in mastering the concepts presented.

TECH TOOL

In addition to discussing the ever-expanding role of technology in real estate practice, I have also added a new feature that discusses a specific type of technology

or software that is currently in use in the real estate field. While some of the “tech tools” may become industry standards, others may not. In any event, any student of real estate law should be familiar with them and know how to use them.

■ **Crosswords and Word Mazes**

Additional student activities are included in this latest edition, including crosswords and word mazes that help students master the terms and phrases presented.

■ **Cases Relevant to the Chapter**

In order to assist both students and instructors, the author has included a new section that cites noteworthy or other significant cases relevant to the topics discussed in the chapter. This feature may allow instructors additional case law to discuss or additional materials for the reader to explore case-specific issues.

■ **Non-Gender Specific Language**

In recognition of the impact of gender-specific language, the author has adopted the following convention in the text: Even-numbered chapters use “he” in general discussions and examples, while the odd-numbered chapters use “she” for the same purposes.

PEDAGOGY

The following features are included in the text to take advantage of different student learning styles:

- Learning objectives stated at the beginning of each chapter
- Terms and legal vocabulary in bold and defined immediately for the student; also listed in the Glossary for later reference
- Many different forms of visual aids that illustrate crucial points
- Professional profiles to help the student make a personal connection with the material
- Lesson plans in the instructor’s manual that provide alternative presentations of the material
- End-of-chapter questions, activities, and assignments to hone the student’s understanding
- End-of-chapter ethical discussion
- Websites for further research and/or discussion

INSTRUCTOR'S MANUAL

The author has developed an extensive instructor's manual to accompany the text. This instructor's manual provides a wealth of resources for the instructor. The instructor's manual and other ancillary materials are available at the Companion Website that accompanies the text.

■ **Suggested Syllabi**

Suggested syllabi are provided for various versions of an Introduction to Law course, including alternate syllabi for instructors who emphasize theoretical over practical, or practical over theoretical.

■ **Lesson Plans**

The author provides several different lesson plans to help instructors who must present introductory courses in 6-, 8-, 10-, 12-, or 16-week formats.

■ **Chapter Lecture Outline and Discussion**

Each chapter is outlined for the instructor and annotations are provided throughout the outline to provide additional discussion and classroom material for the instructor.

■ **Additional Web Resources**

The instructor's manual also contains additional websites to provide other resources for classroom discussion and assignments.

■ **Additional Assignments**

In addition to the chapter review questions and discussion questions, the author also provides more assignments in the instructor's manual.

■ **Answers to Review Questions and Discussion Questions**

The end-of-chapter review questions are answered in detail. The author also provides suggested answers for the discussion questions.

■ **Test Bank**

The test bank includes a variety of test questions, including:
Essay Questions (five per chapter)
Short Answer (ten per chapter)
Multiple Choice (25 per chapter)
True-False (ten per chapter)

■ **Additional Instructor's Materials**

1 Power Point Slides

The author has prepared a PowerPoint® presentation for each chapter of the text.

2 Additional Cases

Additional cases are provided for classroom discussion. These can be used in a variety of ways, including as lecture handouts and additional assignments.

Acknowledgments

The author would like to thank the following for their help in creating this book: Betsy Kenny, Carol McGeehan, Richard Mixter, David Herzig, Troy Froebe, Renee Cote, Paul Sobel, and Sarah Dawson.

Real Estate and Property Law for Paralegals

An Introduction to Real Estate

Chapter Objectives

- Explain the differences between real and personal property
- Explain the economic characteristics of real property
- Describe the real estate market
- List and explain the various classifications of real property
- Explain the differences between residential, commercial, and industrial property

INTRODUCTION

In this chapter we examine the basic concepts of real property. We first examine how real property differs from personal property, and then dig deeper into the issues by showing how the unique qualities of real property are revealed in a wide variety of ways, from how land is classified to how title to real property is conveyed from a seller to a buyer.

REAL PROPERTY VERSUS PERSONAL PROPERTY

All property can be divided into two classifications: real property and personal property. Although the original meanings of these terms had special relevance to how a case was brought—and the court in which the action could be brought—these days the differences have more to do with the way that ownership interests are transferred. In the modern era, real property refers to land and anything permanently attached to land. Personal property refers to all other types of property. As such, real property refers to the land, houses, trees, and any other permanent structures. Personal property refers to non-real estate items, including everything from apples to automobiles.

REAL ESTATE BASICS AT A GLANCE



“Real property” refers to land and anything permanently attached to land.

The reason that the law makes a distinction between these two types of property is that the classification affects many of the rights and legal remedies available to the owners. For one thing, the way that ownership is transferred in real estate is different from the way it is transferred in personal property. We will see time and again that there is a great deal of symbolism in real estate transactions. In Chapter 2, we will see that the modern real estate transaction still holds many of the same features used in the Middle Ages and earlier. This is particularly true when it comes to transferring title to real property.

The transfer of ownership interest in real estate is required to be in writing under the **Statute of Frauds** (explored in greater detail in Chapter 8); however, most transfers of personal property are not required to be in writing. For personal property, possession often equates to ownership. Bills of sale, receipts, and other indicia of title are helpful in proving ownership of personal property, but possession is the best way. In fact, the old common law rule that “possession is nine-tenths of the law” is a maxim that applies to personal property (but not to real property). Real property ownership interests, by contrast, are transferred by deed. The deed is the evidence of ownership, and the delivery and acceptance of the deed are the physical acts that transfer ownership from one person to another.

Statute of Frauds

Originally enacted in England and later adopted in all American states, this statute requires certain types of contracts to be in writing before they can be enforced. Typical contracts covered by the Statute of Frauds include contracts to answer for the debt of another and transactions involving real estate.

REAL ESTATE BASICS AT A GLANCE



Real property ownership interests are transferred in a different way than ownership interests in personal property.

Knowing how to classify property as real or personal also has a practical consideration: In a real estate transaction, there is no need to refer to or list the specific items of real property that are being sold because the sale of real property involves the sale of all items that are permanently attached to the land. The house, trees, soil, and attached garage are never mentioned in the deed. Personal property transactions, on the other hand, must specifically list all items for which the title is changing hands.

In the past, the difference in classification between real and personal property had an effect on probate law. Real property interests were transferred to heirs in different ways than personal property. Although many of those probate rules have changed, there are still important differences that arise in transferring title through an estate proceeding.

Another difference between real property and personal property is taxation. Taxes are assessed differently on personal property and real property. Taxes on

Personal Property	Real Property
Usually refers to mobile items	Always refers to land
Often taxed on sale price	Often taxed on assessed value
Ownership is evidenced by possession	Ownership is evidenced by deed
Statute of Frauds usually does not apply	Statute of Frauds applies to almost all transactions

FIGURE 1-1

Differences Between Real Property and Personal Property

personal property are usually imposed based on its sale price, while taxes on real property are based on its assessed value. We explore these and many other differences in later chapters. See Figure 1-1 for a summary of differences between real and personal property.

A. WHAT MAKES REAL PROPERTY SO UNIQUE?

Real property is a unique and specialized area of law for several reasons. As we will see throughout this chapter, real property has its own set of rules for selling, buying, mortgaging, and investing. Real property also has unique physical attributes. For one thing, real estate occupies a fixed point on the globe. Rivers may change course, houses may be torn down, but the underlying land remains where it is. Land that is submerged under a lake is still there, albeit inaccessible.

Real property has its own set of laws, statutes, cases, and judicial interpretations that make it an entirely separate branch of law. Many attorneys devote their careers to this one area. It is as specialized as criminal defense, trademark, and labor law. Attorneys and paralegals can spend decades in the practice of real property law and still not learn all its aspects. During the course of this book, we discuss many of the legal implications that arise from real property, from easements to encroachments, from mortgages to metes and bounds descriptions, while learning a great deal about property law in all its rich diversity.

Real property is also unique because of the financial arrangements used to purchase it. Later, we examine the issue of deeds of trust and mortgages and the legal impact of these financing instruments on real estate ownership.

B. PHYSICAL CHARACTERISTICS OF LAND

Real property has several distinctive characteristics that separate it from personal property (see Figure 1-2). As mentioned above, land occupies a specific point on the globe. Unlike personal property, land is fixed and immovable; it cannot be relocated. For this reason, it is the perfect vehicle for assessing taxes. (In Chapter 14, we explore how real estate taxes are assessed.) Another physical characteristic of real estate is that no two pieces of land are identical. Each one is unique, with its own special characteristics and chain of ownership. Also, because land is located

Sidebar

Most states have their own statewide real estate treatises. Usually written by a noted scholar or attorney, a real estate treatise is a great source of information about real property law in a particular state. It provides not only legal background but also practical applications. You should locate and acquire your own copy of the real property treatise for your state.

FIGURE 1-2**Physical Characteristics of Land****Land is:**

- Permanently fixed and immovable.
- Unique; no two pieces of land are exactly the same.
- Used by local governments for assessing taxes.

Personal jurisdiction

A court's power to render decisions based on an individual's personal connections and interactions within the court's geographic boundaries.

In rem jurisdiction

A court's power to render decisions based on the location of the land within the court's geographic boundaries.

within different jurisdictions, the rules governing real estate transactions vary considerably. Land falls under the law of whatever state it happens to be located in. A single individual can own land in any number of different states, and each parcel falls under different rules and statutes. An owner cannot claim that simply because he is the owner of all the tracts that they should all fall under one set of rules.

This fact controls some of the rules regarding lawsuits involving real estate. In most lawsuits, the court's jurisdiction is based on **personal jurisdiction**, that is, power over the people involved in the suit. However, in some lawsuits, a court acquires jurisdictional power simply because a tract of land lies within its geographic boundaries. There is a specific term for this type of jurisdiction: **in rem jurisdiction**. This is a court's power to enter decisions and rulings simply because the land involved happens to be within the court's geographic limits. We explore many of these jurisdictional questions in Chapter 4.

C. ECONOMIC CHARACTERISTICS OF LAND

In addition to its unique physical characteristics, land also has some interesting economic characteristics. For one thing, land has traditionally been an excellent investment. In the past, a person's wealth was measured by the extent of his real estate holdings. Land ownership continues to be an important source of investment income for many individuals. See Figure 1-3.

Land also offers some economic benefits to persons who are not wealthy. In fact, one of the best economic benefits of land ownership is its tax consequences. In Chapter 4, we explore how a homeowner earns a substantial tax benefit from being able to deduct mortgage interest payments from his yearly income tax return.

Another interesting aspect of real estate is that unlike almost all other purchases, it generally appreciates in value. Because there is a fixed supply of land, and an ever-growing population, the realities of supply and demand put upward pressure on real estate prices. In many areas of the country, the value of a person's home and land increases about 6 percent a year. This makes land an attractive investment even for those of a moderate income. However, like any other item, land can also decrease in value. In recent years, the value of real estate, especially residential real estate, has either failed to rise or has actually dropped. Still, the price fluctuations of land are relatively minor, especially when you compare the long-term prices of real estate to other commodities.

In recent years, falling interest rates have also encouraged people to refinance their homes. This has the advantage of allowing an owner to receive some of the

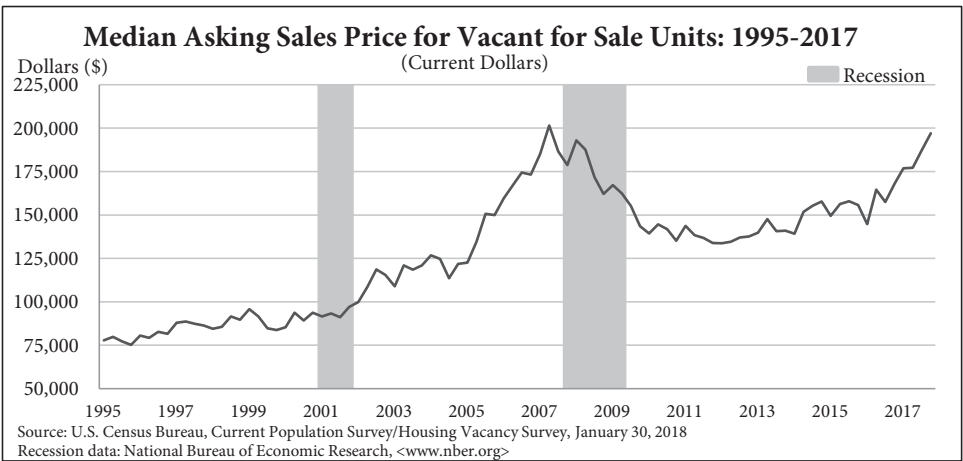


FIGURE 1-3

Median Asking Sales Price for Vacant Sale Units: 1995-2017. U.S. Census

equity value in a home as cash. Equity is another aspect of the economic characteristics of land ownership. When we say that a person has equity in his or her home, what we are saying is that there is a difference between what the person owes on the home and what the home (and land) are actually worth.

Equity
A homeowner's value in property once the amount owed on the property is subtracted from its current fair market value.

JUAN'S EQUITY

Juan purchased his home 15 years ago and has been making regular monthly mortgage payments on it. His original loan amount was for \$150,000. In the past 15 years, he has lowered the balance of the loan to \$85,000. However, because Juan's house has steadily been appreciating in value over the years, the house is now worth \$220,000. How much equity does Juan have?

Answer: Juan has \$135,000 in equity. How do we arrive at this amount? Subtract the amount that Juan owes on the house from the current value (\$220,000 – \$85,000 = \$135,000).

Although this appears to be a simple paper gain, Juan can borrow against his equity. He can apply for a second mortgage and borrow against this "paper value" for real money.

EXAMPLE 1-1

CHANGING THE EQUITY SITUATION

Let's take the same numbers and show how Juan can end up in a situation that is all too common today: with a home value that is "underwater," meaning that his house is worth less than what he owes on it.

Juan's original loan amount, 15 years ago, was \$150,000. However, three years ago, he took out a second mortgage on his home for the amount of \$40,000. He used the money to fix up the home. Using the same numbers as the first example, Juan has paid down his original loan to \$85,000, but because the real estate market has crumbled, Juan's house is worth \$100,000. Juan owes \$125,000 (\$85,000 + \$40,000). Juan now owes \$25,000 more than the house is actually worth.

EXAMPLE 1-2



Tech Topic

CLOUD-BASED COMPUTING

In an era when the Internet is king and individuals, businesses, and governments alike are moving to online services and storage, it is tempting for law firms to follow suit. Before making the leap, however, it is important to consider both the ethical and the practical implications of a shift to cloud-based computing.

First, what is “cloud-based computing”? In broad terms, it is the use of software and services developed and hosted by third parties and delivered via the Internet rather than stored locally on a single user’s computer. This is also known as “Software as a Service” (SaaS). In contrast to the traditional model of a user purchasing a software, installing it on her computer, and storing both it and its products on her local drive, SaaS calls for users to purchase a subscription to a software that they then access online. Rather than on a hard drive, the software and its products are stored in “the cloud,” which is a federated group of hardware and software combined together to form an ecosystem through which they deliver users storage, hosting, and software capabilities. It is similar to the idea of a public utility like water or electricity, wherein users share a pool of resources, each drawing on them when necessary and leaving them free for others to use when not.

While SaaS is undoubtedly an appealing model for legal professionals—given that it usually provides more current software at a lower price, massive amounts of storage without the need to find space locally, and built-in disaster recovery options—there are strong ethical implications inherent in its use. The most obvious issue is, of course,

that using the cloud places sensitive and confidential client data outside of the law firm’s direct control. As is apparent in the frequent data breaches reported on the news, information stored online is never fully secure, and even the most secure system can be hacked. And while there are segregated cloud environments that cater to the security demands of industries that deal with highly sensitive information (such as government agencies, the health care industry, and education), even those environments are not foolproof.

Different states have different rules and regulations in place regarding attorney use of SaaS. Many of the states that have issued opinions expressly permitting its use have also imposed certain “reasonable care” standards that require users to investigate the security measures in place before using any SaaS. The first step in deciding whether to use cloud-based computing is to find out if the state in which the law firm is located allows attorneys to use SaaS, and then to deal with any restrictions or requirements in place if SaaS is allowed.

It is then up to each attorney or firm to weigh for itself the risks of cloud-based computing versus the gains. Is the increased storage and software power worth a potential breach of privileged data? Is the immediate convenience worth a potential lawsuit down the road? As the use of SaaS continues to expand and more services move to cloud-only options, these are questions more and more of those in the legal profession will find themselves needing to wrestle with.



THE REAL ESTATE MARKET

There is a market for land, just as there is a market for commodities or goods. The real estate market has its own rules and regulations. It also has participants, such as brokers, agents, loan correspondents, and attorneys and paralegals, to name just a few. We explore the role played by these participants as we develop the concepts of real estate in later chapters.

We begin our discussion of the real estate market with a straightforward example: Maria and Vern Seller have outgrown their house and want to put it up for sale. They contact Good & Better Real Estate Agency to discuss their options.

Alvin Agent tells them that if they sign a listing agreement with the agency, Good & Better will advertise their house for sale, put a sign in their yard, list the home in the Multiple Listing Service, and make every effort to give the house the best chance of being sold.

Maria and Vern decide to list their house with Good & Better. Bill Buyer sees the house listed and decides that he wants to purchase the home. He contacts Good & Better and gets the price particulars. Then he goes to a bank, meets with a loan officer, and arranges financing to purchase the home. Finally, he buys the home from the Sellers.

Although we have oversimplified the typical real estate transaction in this example, it gives us a starting point to discuss how the real estate market functions.

In any market, there must be buyers and sellers. Maria and Vern are sellers, and Bill is a buyer. Good & Better is acting for Maria and Vern to list the house for sale. In exchange for this service, Good & Better will receive a percentage of the total sale price (called a *commission*). The Sellers could have put their house up for sale on their own. They could have paid for an ad in the local newspaper, put a sign in their yard, and printed brochures to distribute to various places around the city, but they have decided that they would prefer to leave the job of marketing their home to professionals. Later, we will see that listing a home with a real estate agent brings certain advantages that are almost impossible for a single home seller to match.

When Bill Buyer decides to purchase the Sellers' home, he goes to a bank to borrow money. Most people who buy homes must obtain a mortgage because few people have that much ready cash on hand. The real estate market includes banks and other lending institutions. The banks in turn rely on others to review a borrower's application, assess the possible risk of the transaction, and establish the actual value of the home.

Throughout this book, we examine not only the theoretical basis of real property, but also the day-to-day activities of real estate professionals. We will see that, in many ways, the health of the real estate market is an indicator of the strength of the overall economy. The economic downturn that has come to be called "The Great Recession" was based almost exclusively in companies buying and selling mortgages, guaranteeing those transactions with insurance, and then formulating these various loans into packages that could be sold like stocks to individuals, companies, and even foreign countries. In a very real way, when the mortgage market in the United States went wrong, almost the entire economy on Earth went wrong. Before we can delve into these topics, we must have a firm understanding of the various ways that real estate is classified.



CLASSIFYING PROPERTY BY USE

One of the oldest and most easily understood methods of classifying property is by the use to which it is put. There are several different categories of property, including unimproved land, residential property, commercial property, industrial property, farm and rural property, recreational property, and government-owned land.

However, before we set out these classifications, we must first examine exactly how the term *land* is defined. For our purposes, we define land as including the

grass, soil, trees, and anything else permanently affixed to the ground, including the soil underneath and the structures above. This includes the owner's air rights in the space above the property. With this working definition of land, we can now examine specific subcategories of land.

Personal jurisdiction

A court's power to render decisions based on an individual's personal connections and interactions within the court's geographic boundaries.

Unimproved land

Raw land that contains no structures.

A. UNIMPROVED LAND

When land contains **improvements**, it means that it contains structures. **Unimproved land** has no buildings or other structures on it, so it is often referred to as *raw land*. Such property can be developed into any number of uses: homes, businesses, farms, or parks. Once land has been improved, it can be reclassified into residential, farm, commercial, industrial, or recreational land. The categories are all based on the way in which the land is used.

REAL
ESTATE
BASICS AT
A GLANCE



"Unimproved land" has no structures.

B. RESIDENTIAL PROPERTY

Property categorized as residential refers to land that has a structure designed to be used for personal living, such as a home. There are numerous subcategories of residential properties, including single- and multi-family units, apartments, condominiums and townhouses, cooperatives, mobile homes, and manufactured homes.

1. SINGLE- AND MULTI-FAMILY HOMES

The category of single- and multi-family homes includes residential houses, duplexes (two-family units sharing a single roof), triplexes (three-family units sharing a single roof), and four-family homes (four-family units sharing a single roof). When more than four family units share a single roof, the law characterizes that arrangement as an apartment.

2. APARTMENTS

The technical definition of an **apartment** is a type of residential real estate consisting of five or more living units per building; however, we use the term to describe a wide range of landlord-tenant relationships. Even if the technical definition encompasses five or more units under a single roof, most people who rent the living space above their garage to someone would undoubtedly refer to it as an "apartment" as well. The word is open to broad interpretation. In many large urban areas, there may be hundreds of apartments in any given complex. Apartments are popular because the residents have far less responsibility for maintaining the

building, they generally have no responsibility for keeping up the grounds, and they do not need to make a large initial investment to move in. On the other hand, while apartment buildings can be a great financial investment for the owners, they provide few, if any, financial advantages for the residents. Apartment residents, or tenants, pay rent to the apartment owners in exchange for the use of the premises, but they do not gain any ownership interests or equity in the property. We examine landlord-tenant law in greater detail in Chapter 7.

Apartment

A leased residence containing five or more living units sharing a single roof or foundation.

3. CONDOMINIUMS AND TOWNHOUSES

Condominiums and townhouses share many characteristics, but there are important differences that a legal professional should know.

a. Condominiums

A **condominium** resembles an apartment, but it is actually more like a hybrid between a home and an apartment. The tenant in an apartment does not have any ownership interests in the dwelling. He must seek permission from the owner before making changes to the interior and is not allowed to make any changes to the exterior. By contrast, a condominium gives the resident an ownership interest in the interior of the dwelling, but no rights to the exterior. Condominiums are sold, just like homes, but the only thing that is being sold is what is inside the four walls. No actual land is transferred in the sale of a condominium. The owner of a condominium receives the same favorable tax treatment as a homeowner but does not have the responsibility of exterior upkeep and maintenance. Condominiums are very attractive to people who do not want the burden of home maintenance, yet wish to receive the financial benefits of home ownership.

Condominium

A form of real property in which the owner has full title to the interior, but not the exterior, of a structure.

Condominiums typically have common areas that are owned and maintained by a homeowners' association. These common areas consist of the sidewalks connecting the various units and the amenities, such as swimming pools, tennis courts, gym facilities, and walking trails. A condominium owner usually pays mandatory annual dues to the homeowners' association to defray the cost of maintaining these public areas; homeowners' associations generally contract with maintenance firms to take care of yard work and to maintain the various facilities.

b. Townhouses

While condominium owners have legal rights only to the inside of their individual units, **townhouse** residents own the entire unit, both the interior and the exterior. They also own the land that the townhouse is situated on. In many states, there are no specific statutes that govern townhouses. Instead, the same rules and statutes that govern single-family homes control townhouses.

Townhouse

A form of real property in which the owner has title to both the interior and exterior of a structure that resembles an apartment instead of a traditional residence.

4. COOPERATIVES

Cooperatives, unlike condominiums and townhouses, are often large tracts of land or working farms in which several persons have an ownership interest. Both

Cooperative

A land holding arrangement often organized as a corporation where the owners have shares or ownership rights in the real estate, but do not hold title to the actual land itself.

interior and exterior portions of the property—which may include large buildings—are owned jointly by all members of the cooperative.

5. MOBILE HOMES

Mobile homes

An off-site constructed living structure that can be transported by being hauled to a location, often with the benefit of an understructure that contains wheels and can then be attached to water, electrical, and sewage lines. Considered to be personal property unless and until the understructure is modified in such a way that the unit is permanently mounted to the ground.

Mobile homes are usually considered to be personal property and not real property. This classification carries with it some important consequences. The owner of a mobile home does not receive the same kind of favorable tax treatment as does a traditional homeowner. The mobile home owners cannot, for instance, “write off” their mortgage interest payments for the year on their annual income tax return. Mobile homes can be reclassified as real property, but usually only after removing the wheels of the unit and permanently affixing it to the ground. Because real property houses are by their very nature permanently attached to the land—thus meeting the definition of real property—anything that a mobile home owner can do to duplicate this process will push the mobile home away from a personal property classification toward a real property classification. In order for a mobile home to change from a classification of personal property to real property, several actions must take place. Among them are:

- The homeowner establishes the mobile home on the land with an obvious intent to make it permanent.
- The homeowner clearly intends to treat the mobile home as real property.
- The homeowner pays taxes on the mobile home as though it were a house.

When a mobile home is considered to be personal property, it usually falls under the jurisdiction of the Uniform Commercial Code, not state real property laws. The Uniform Commercial Code governs transactions in personal property and has very specific rules about the transfer of ownership, shipment of goods, and other issues. These rules differ from real property rules in significant ways. Some state decisions actually hold that a mobile home is a form of motor vehicle.

6. MANUFACTURED HOUSING AND “KIT” HOMES

In recent years there has been a huge upswing in the construction of manufactured housing. **Manufactured houses** are homes in which all or some of the fabrication occurs away from the actual home site. In prior decades, manufactured housing fell into the same category as mobile homes. However, because these newer houses are actually permanently affixed to the real estate, and are never intended to be movable, most states have abolished the distinction between manufactured homes and traditional homes that are constructed entirely on the site.

Manufactured houses

An off-site constructed building that is transported to a location where it becomes permanently attached to the ground or to another unit already present; designed to be a permanent structure and once transported is usually re-classified as real property.

C. COMMERCIAL PROPERTY

Commercial property consists of lots and buildings specifically designed for businesses. These properties range from doctors’ offices to malls. They all share some common features, however. First, they are not designed as living spaces. People