**Unit 2 Outline**

**Real Property and the Law**

**Outline**

I. Land, Real Estate, and Real Property

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

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

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

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

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

II. Ownership of Real Property

Ownership of real estate consists of a bundle of legal rights. A purchaser of real estate buys either a part or the entire bundle of ownership rights held by the seller. These rights include

• possession;

• control of the property within the framework of the law;

• enjoyment (that is, to use the property in any legal manner);

• exclusion (to keep others from entering or using the property); and

• disposition (to sell, will, transfer or otherwise dispose of or encumber the property).

III. Real Property and Personal Property

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

A. Manufactured Housing

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

B. Plants

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

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

C. Severance and Annexation

1. Severance is the process by which real property is detached and converted to personal property.

2. Attachment (annexation) is the process by which personal property is attached to real property and, therefore, changed into real property.

D. Classifications of Fixtures

1. Fixtures defined

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

a. Legal tests of a fixture

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

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

• Method of attachment: How permanent is the method of attachment? Can the item be removed without causing damage to the surrounding property?

• Adaptation to real estate: Is the item being used as real property or personal property?

• Agreement: Have the parties agreed in writing on whether the item is real or personal property?

2. Trade fixtures

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

a. Trade fixtures v. fixtures

• Fixtures belong to the owner of the real estate; trade fixtures are usually owned and installed by a tenant for the tenant’s use.

• Fixtures are permanent parts of a building; trade fixtures are removable.

• Fixtures are real property, included in any sale or mortgage; trade fixtures are personal property, included only by special agreement.

IV. Characteristics of Real Estate

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

A. Economic Characteristics of Land

1. Scarcity

2. Improvements

3. Permanence of investment

4. Location

B. Physical Characteristics of Land

1. Immobility

2. Indestructibility

3. Uniqueness

V. Laws Affecting Real Estate

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

A. Types of Real Estate Laws

1. Contract law

2. General property law

3. Agency law

4. Real estate license law

5. Federal regulations

6. Federal, state, and local tax laws

7. Zoning and land use laws

8. Federal, state, and local environmental regulations

B. Seven Sources of Law

1. United States Constitution

2. Laws passed by Congress

3. Rules of the regulatory agencies

4. State constitutions

5. State statutes

6. Local ordinances

7. Common law

IN ILLINOIS . . . *the practice of real estate in Illinois is governed by the* ***Real Estate License Act of 2000***