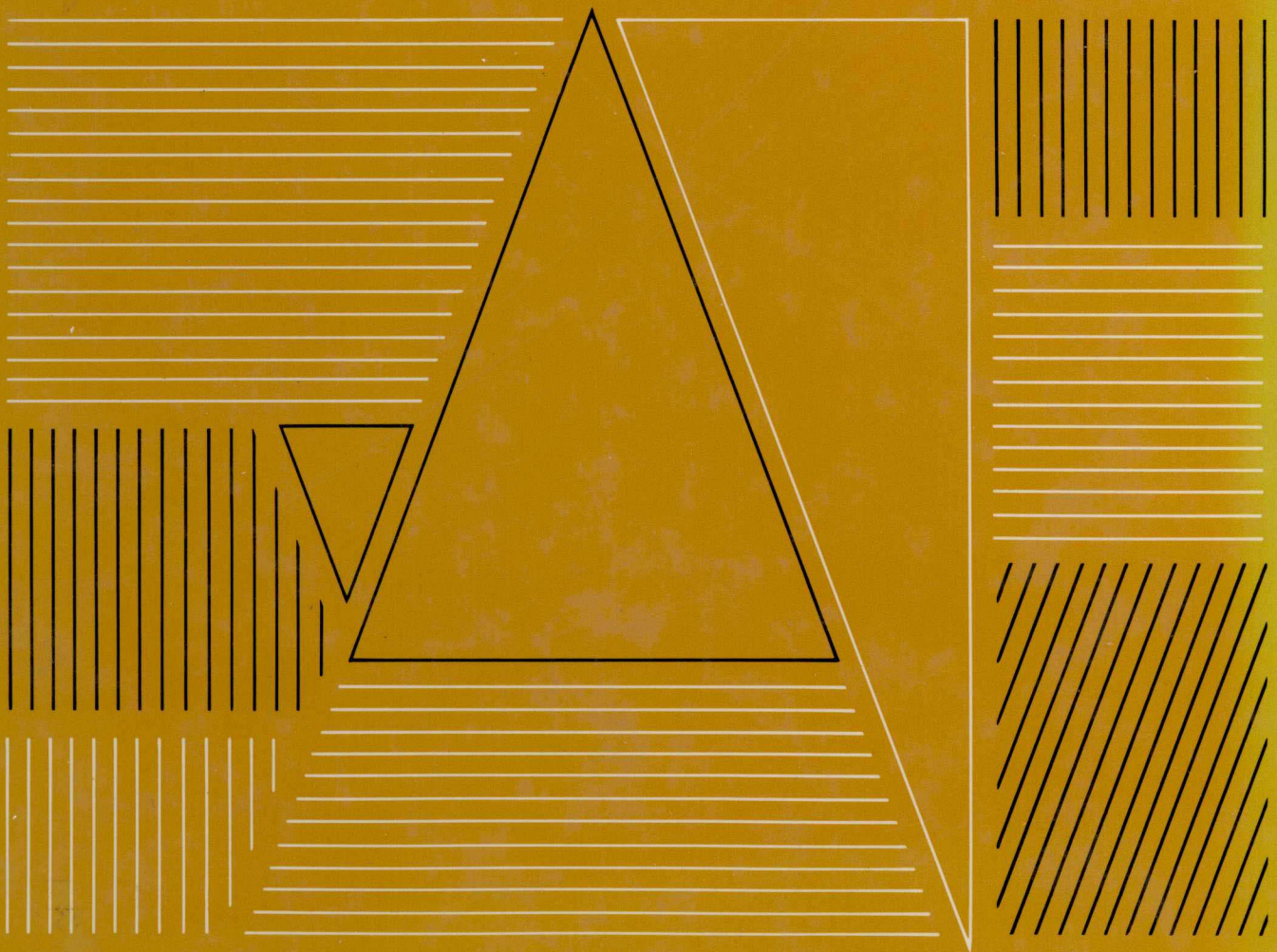


**updated
and revised**

california real estate principles

Dennis J. McKenzie • Lowell Anderson • Frank Battino • Cecilia A. Hopkins



third edition

UPDATED

CALIFORNIA REAL ESTATE PRINCIPLES

THIRD EDITION

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PREFACE

This book is an outgrowth of years of teaching real estate principles at California community colleges. The material is current and designed to maintain student interest. This new edition incorporates all of the latest real estate changes.

It is impossible to acknowledge all the assistance we have received from students, colleagues, and friends. We hope we have successfully communicated the insights that they have given to us. Particular thanks go to the many other real estate instructors who have participated at instructor and coordinator workshops sponsored by the California Department of Real Estate, the Community College Chancellor's Office, and the California Association of Real Estate Teachers.

Special recognition is given to Carden Young, instructor at American River College, Sacramento City College, and real estate lecturer for University of Southern California; to Hugh Stanton, instructor and coordinator of real estate at Ohlone College; to Marjorie Reed, coordinator of real estate, San Diego Community Colleges; to William Reid, instructor of real estate; and to Si Ely, real estate instructor, Santa Monica City College. They all reviewed the manuscript and submitted many helpful suggestions for which we are most grateful. The manuscript was edited by Barbara Wrede and assembled and typed by Frankie Jimboy. Many illustrations were provided by Allison McKenzie. We also thank the staff at John Wiley & Sons, Inc., for helping us through the publishing maze.

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Chapter 1

Introduction to Real Estate

Preview

California property ownership has had an interesting and romantic history. In this chapter, the historical, legal, civic, and economic importance of real estate will be stressed. This chapter will also highlight the characteristics and differences between real and personal property and their effect on today's real estate market. At the conclusion of the chapter you will be able to:

1. *Trace the history of real estate property ownership in California.*
2. *List the four-part definition of real property.*
3. *Explain the term "bundle of rights," and list each of those rights.*
4. *List the five legal tests of a fixture and explain their meaning.*

1.1 PRESENT AND HISTORICAL IMPORTANCE OF REAL ESTATE

Impressive Statistics

Real estate touches the lives of more people than any other single commodity. Real property provides two-thirds of all the national wealth and contributes to a substantial amount of commerce in the United States.

Of almost 2.5 billion acres of land in the United States, nearly 100 million acres are in California. According to the U.S. Bureau of Census, the population in California is presently over 28.5 million, with a projected increase of 10 million by the year 2000.

These statistics are important only if they help people to become aware of the significance of real estate in their lives.

Historical Importance of Real Estate

California has perhaps the most interesting and romantic history of any state in the Union. The historical story of California can be told in terms of the use and occupancy of its land.

The earliest inhabitants of California were the native American Indians. Although they led a nomadic existence, they were still governed by tribal rights to the land they occupied, including hunting, fishing, and gathering rights. The American Indians respected and cherished the land, because they recognized that their survival was based upon products derived from the land.

Spanish Rule

In 1513, a Spanish explorer by the name of Balboa first sighted the Pacific Ocean and claimed it for the king of Spain. Many other Spanish explorers followed in the ensuing years. The years 1542 to 1822 were known as the period of exploration, discovery, and colonization.

The Spanish colonizers established forts called *presidios* in selected areas along the California coast to protect against invaders. Communities and agricultural villages known as *pueblos* appeared throughout the land to supply food for colonizers. During this period, the land was under Spanish domination. All land was held in the name of the king of Spain and private activities were governed by the law of Spain. Spain did not recognize the ownership rights of native American Indians.

During Spanish occupation of California, missionaries strived to spread Christianity among the natives by establishing a string of 21 missions ranging from San Diego to Sonoma, north of San Francisco.

Mexican Rule in California

In 1822, Mexico, then a territory of Spain, established her independence and, in the process, took over the territory of California. During the Mexican reign, the colonization of the territory of California continued to expand. Large Mexican land grants, called *ranchos*, were created and given to private citizens. Much of this rancho land was converted to agricultural use.

Under Mexican rule, colonization was encouraged, and land grants made extensive private ownership a reality for the first time in California history.

American Rule in California

American settlers coming from the east were confronted by Mexican authorities, and these tensions led to the Mexican-American War in 1846. In 1848, the Treaty of Guadalupe Hidalgo ended the war with Mexico, and California became a territory of the United States.

California achieved full statehood September 9, 1850, and from that time on, the population rapidly increased, augmented by the gold rush in the Sacramento valley. The new California legislature adopted a land ownership recording system, which recognized and protected some of the early Mexican land grants.

1.2 PROPERTY RIGHTS

As you launch into your study of real estate, it is important to differentiate between real estate in a physical sense, such as land and buildings, and real property in the legal sense, that of property rights.

The law defines property as "that which is the subject of ownership." It explains ownership as essentially, "the right of one or more persons to possess and to use the thing which is owned, to the exclusion of others."

Technically, then, in the legal sense, the word "property" does not refer exclusively to the thing owned. In fact, real estate law is concerned with the rights and the interests that the owner has in the thing he or she owns.

What kind of rights does an individual have as an owner of real property? The law designates these rights, which accompany ownership, as the "*bundle of rights*."



Bundle of rights

The right to own property.

The right to possess property.

The right to use property.

The right to enjoy property.

The right to encumber property or borrow money on property.

The right to dispose of property.

The right to exclude those who do not share ownership of the property from all of the above mentioned rights.

Although owners of real estate have a “bundle of rights,” they have certain responsibilities to other persons regarding the use they can make of their property. Their rights are not absolute, or unlimited. Ownership rights are subject to government control to promote public health, safety, and welfare. Zoning, building codes, and antidiscrimination laws are all examples of government control of property rights. These restrictions to the rights of a real property owner come under the designation of the police power of the government.

1.3 REAL PROPERTY VERSUS PERSONAL PROPERTY

To better understand regulations relating to the acquisition and transfer of real property, we need to distinguish between real and personal property.

The law states that anything that is not real property is personal property. Likewise, any property that is not personal property is real property. To fully understand this concept, we need to understand what we mean by “real property.”

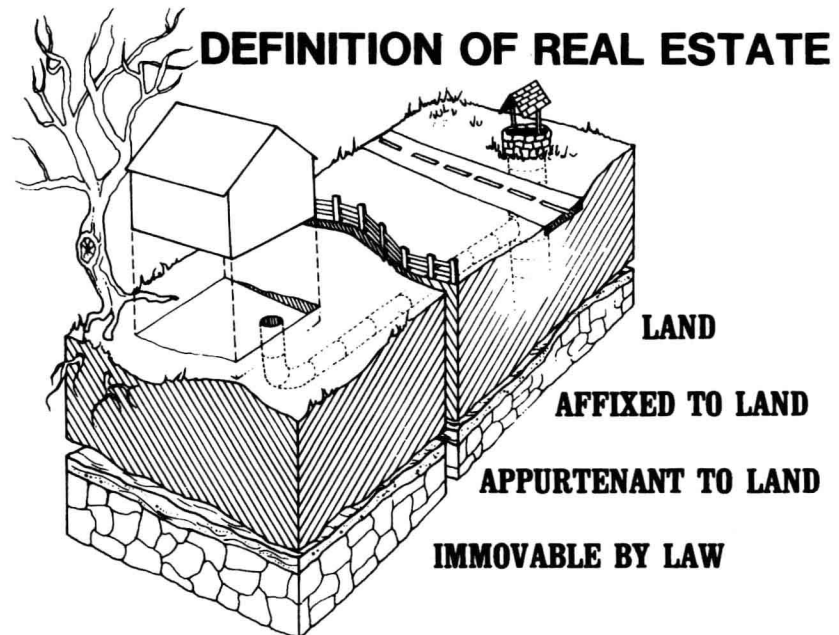
Real property consists of: (1) *land*, (2) *that which is affixed to the land*, (3) *that which is appurtenant or incidental to the land*, and (4) *that which is immovable by law*.

Land

Land is the *solid material of the earth such as soil, rock, or other substances*. It can be composed of mountains, valleys, swamps, or

any other kind of terrain. The technical definition of land includes:

1. Surface of the land.
2. Airspace above the land.
3. Materials and substances beneath the surface to the center of the earth.



SURFACE OF THE LAND

The surface of the land is defined as the space on the surface of the earth, upon which we live. This includes lateral support—support from adjoining land, and subjacent support—support from underlying strata.

AIRSPACE

Airspace is more difficult to define. Modern theories, based on air travel, generally agree that an owner of real property owns a reasonable amount of airspace above the land, with the remainder being public highway. Moreover, landowners have the right to prevent a use of airspace which would interfere with their use of the land. However, the issue of what constitutes a “reasonable amount” is currently determined by the courts on a case-by-case basis whenever a lawsuit arises between disputing parties.

MINERALS IN THE GROUND

Solid minerals contained in the land—such as coal, iron ore, or gold—are real property until they are taken from the ground, at which time they become personal property. A landowner who deeds the land to another, conveys the minerals contained in the land, unless the mineral rights have already been sold to some other party.

When mineral rights have been reserved by the former owner, or conveyed to another person, the owner of the mineral rights has an implied easement to enter upon the surface of the property to extract the minerals.

Oil and gas are a special class of minerals and, because of their ambulatory nature, are not considered capable of ownership until reduced to possession. However, the right to drill for oil and gas rests with the surface landowner or the owner of the mineral rights, if they belong to someone other than the surface landowner.

WATER RIGHTS

A working knowledge of the water rights of a property owner should include an understanding of the following issues:

1. Underground water rights.
2. Right of Appropriation.
3. Riparian water rights.

Underground Water

Underground, or percolating, water is water which is not confined to a well, a defined channel, or a water bed. In California, the landowner has no ownership of specific underground water, nor absolute ownership of waters running across or bordering property, such as a lake or a stream. Under the "*Doctrine of Correlative User*" the landowner may take, in common with other owners, only his or her share of underground (percolating) waters for beneficial use.

Right of Appropriation

The right of appropriation is that right given to the state to give permission to a nonriparian owner to take water from a river or lake.

Riparian Rights

Owners of land which borders on a lake or water course enjoy certain benefits regarding use of the water, under a concept known as *riparian rights*. While they have no absolute ownership of the waters, each owner has a personal right, along with other landowners, to the use of such waters in a "reasonable manner." Basically each owner has a right to an equal amount of water in proportion to the amount of land owned, and in light of the needs of all interested parties.

Affixed to the Land

The second component of the definition of real property is "*that which is affixed to the land,*" or anything regarded as a permanent part of the land. This includes:

1. Things permanently resting on the land, such as buildings.
2. Things permanently attached to a building, such as fixtures.
3. Things attached to the land by roots, such as trees.

Trees, shrubs, and vines that are the natural products of nature are generally considered part of the land to which they are attached by roots. In other words, they continue to be considered to be real prop-

erty until they are severed or gathered, at which time they become personal property. On the other hand, farm products such as growing crops which are the result of annual labor are considered to be goods and are governed by laws of personal property. Growing vegetable crops are sometimes referred to as *emblems*.

Appurtenant to the Land

The third component of the definition of real property is *that which is appurtenant, or incidental to the land*. That which is appurtenant to the land is anything which, by right, is used by the land for its benefit and “goes with the land.” Examples might be:

1. Easements—such as the rights of way over adjoining lands, or even passages for light, air, or heat from or across the land of another. (Easements will be discussed in detail in a subsequent chapter.)
2. Stock in a mutual water company is another example of an appurtenance. A mutual water company is a nonprofit company organized by or for water users in a specific district to develop and furnish water to its stockholders at reasonable rates. Usually each share is considered to be appurtenant to a specific piece of real property and cannot be sold separately. In other words, the stock is considered real property and transfers with the property.

Immovable by Law

Real property is also defined as any property that is *immovable by law*. When, by law, an item of personal property is required to stay with the land, that item becomes real property.

Personal Property

As was indicated previously, anything that is not real property is personal property.

Personal property is movable, while real property is considered to be immovable. Other names for personal property are *chattels* or *choses*. Examples of personal property include stocks, money, contracts, furniture, automobiles, mortgages, and so on.

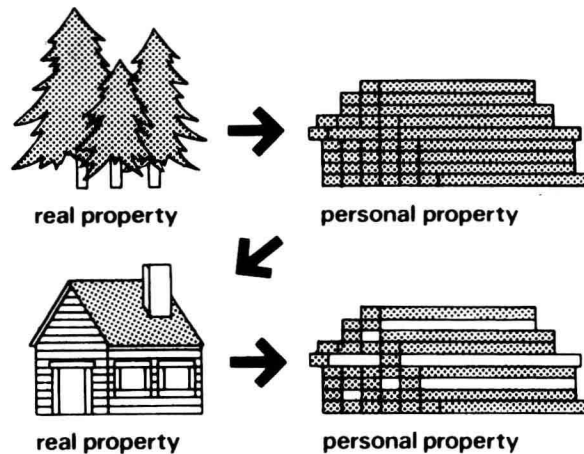
Other distinctions that might be made between real and personal property are:

1. Contracts involving the sale of real property must be in writing and signed by the person whose title is being transferred. In the sale of personal property, the transaction need not be in writing if the price is less than five hundred dollars.
2. Personal property when sold is usually transferred by using a bill of sale. Real property is transferred by delivery of a written instrument called a deed.

The Status of Property Can Change

Real property can become personal property, and personal property can become real property. For example, trees growing in a forest are considered real property. The trees are cut and transported to the

planing mill, where they are made into boards, thus personal property. The boards are used in the construction changing them back to real property. The building event its usefulness and is torn down. The salvaged lumber personal property once again.



1.4 FIXTURES

Fixtures are items of personal property that are attached to the land in such a manner as to be considered part of the land itself. Depending upon the specific circumstances, certain items of personal property may or may not become so integrated with the land that it is considered to be part of the real property and, consequently, belongs to the current owner of the real estate. The concept of fixtures can become a touchy question when land is bought or sold, or when a tenant makes improvements on the property. If a legal dispute arises, the court must make a decision as to whether the property in question is a fixture and must remain with the real property, or whether the item is still personal property and can be removed and taken by the seller, or the tenant.

AARZIA

Tests of a Fixture

To help determine whether an item is a fixture and consequently real property, or is not a fixture and consequently personal property, the courts have established "five tests of a fixture," which include *method of attachment, adaptability, relationship of parties, intention of parties, and agreement between parties*.

1. The courts are concerned with the method by which the property is incorporated into or attached to the land and its consequent degree of permanence. In other words, is it nailed, cemented, welded, or bolted down? Or is it simply leaning against the building or hanging on the wall?

Memory Tool
"MARIA"

Method of attachment
Adaptability
Relationship
Intention
Agreement

2. The courts are concerned with the adaptability to ordinary use of the attached personal property. In other words, is the item in question customized, or can it easily be used in some other building? Wall-to-wall carpeting would be considered a fixture, because it had been cut to a particular size and shaped room, and the carpet is attached to a tack strip which is nailed to the floor. Customized draperies may also become fixtures.

3. The courts are concerned with the relationship between the person who adds the article, and the party with whom he or she may be transacting business. In other words, is the dispute between a landlord and a tenant, a buyer and a seller, or a borrower and a lender?

In a dispute between a landlord and a tenant, the courts today tend to favor the tenant; between a buyer and a seller, the courts tend to favor the buyer; between a borrower and a lender, the courts will lean toward the lender.

4. The intention of the person attaching the personal property to the land is very important. Intention is indicated by action or agreement of the parties, whether it be expressed or merely implied. If intention can be proved, the courts will consider this the most important test.

5. The courts will also look to the existence of any agreements between the parties regarding the item in question. In other words, has a right to the property been established by those parties concerned by the signing of an agreement, such as mentioning the item in the listing or purchase contract?

Take Proper Precautions

Many times problems arise between buyers and sellers regarding fixtures. Therefore, it behooves people to clearly spell out, in the purchase contract, the intentions of the seller and the buyer regarding the items of personal property or fixtures to be included in the sales price.

The purchase contract should state if the carpets, stove, or any other questionable item is included as a part of the sales price or if the seller reserves the right to remove these items after the sale.

Exception to the Fixture Rule

For every good rule, there is often an exception. In the case of fixtures, there are certain items that remain personal property after they have been affixed to real property. Articles of personal property, which a business tenant has attached to real property because of their necessity to the trade or business, are called *trade fixtures*. Examples are shelving, counters, or cash registers. These trade fixtures are viewed as the personal property of the business tenant and the tenant has the right to remove these items. However, a residential tenant in a house or apartment might install room dividers or different light fixtures. These fixtures may or may not be viewed as the personal property of the tenant. As noted above, the courts do tend to favor the tenant. In many cases, these fixtures may be removed by the

tenant, provided the premises are not damaged in the process of removal. However, the right to remove is not absolute; it depends upon the circumstances in each and every case.

SUMMARY

California’s colorful history is closely tied to the concept of land ownership. A study of the early inhabitants of the state gives a better understanding of the foundation upon which real estate laws and regulations have been built.

Ownership of real property includes certain property rights called the “bundle of rights.” The bundle includes the right to own, possess, use, enjoy, encumber, dispose of, and exclude.

Real property is defined as (1) land; (2) that which is appurtenant to the land, such as easements or stock in a mutual water company; (3) that which is affixed to the land, known as fixtures; and (4) that which is immovable by law.

The status of property can change. Real property can become personal property and personal property can be changed to real property.

In determining the status of real versus personal property, the courts have developed five tests to determine whether or not an item is a fixture. These tests are *Method of attachment*, *Adaptability*, *Relationship of the parties*, *Intention of the parties to the transaction*, and the *existence of and Agreement between the parties involved* (the *MARIA* memory tool).

Important Terms and Concepts

Appurtenant	Real property
Bundle of rights	Riparian rights
Correlative user	Tests of a fixture
Fixture	Treaty of Guadalupe Hidalgo
Personal property	

REVIEWING YOUR UNDERSTANDING

1. Which group of explorers and colonizers set up presidios and pueblos in the early days of California?
(a) Mexicans
(b) Americans
— (c) Spanish
(d) Indians
2. Which of the following is *not* considered to be one of the “bundle of rights?”
(a) The right to own property
— (b) The right to pay taxes
(c) The right to enjoy
(d) The right to encumber

3. The definition of land includes all but one of the following:
 - (a) Airspace above the land
 - (b) Hills and valleys
 - (c) Rocks and soil
 - (d) Oil deposits beneath the surface
4. The rights afforded an owner of land bordering on a water course, to use that water in a reasonable manner, are called:
 - (a) Appropriation rights
 - (b) Water rights
 - ✓ (c) Riparian rights
 - (d) Subjacent privileges
5. Wall-to-wall carpeting in a single-family dwelling is usually considered to be:
 - ✓ (a) A fixture
 - (b) A chattel
 - (c) Removable
 - (d) Separate property
6. Which of the following is appurtenant to the land and goes with the land?
 - (a) Stock in a mutual water company
 - (b) Trade fixtures
 - (c) An easement
 - ✓ (d) Both (a) and (c)
7. In a dispute between a buyer and seller, the courts would tend to favor the:
 - (a) Seller
 - ✓ (b) Buyer
 - (c) The one with the most money
 - (d) Neither party
8. In what year was California granted statehood?
 - (a) 1821
 - (b) 1846
 - ✓ (c) 1848
 - (d) 1850
9. The main feature of personal property is:
 - (a) Title is transferred by a deed
 - (b) Its immobility
 - (c) Its value is less than real property
 - ✓ (d) None of these
10. Which two terms do not belong together?
 - (a) Bundle of rights—use and enjoyment
 - (b) Real estate—land
 - ✓ (c) Correlative user—water rights
 - ✓ (d) Personal property—easement