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Chapter 1

PROPERTY OWNERSHIP AND LAND USE CONTROLS

(Approximately 15% of Broker 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 surface, mineral, air and water rights. Mineral rights transfer automatically when land is sold. A land owner also has water rights. These water rights include the right to make reasonable and appropriate 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.
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 **a**nnexation, **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).

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 an owner acquires land which includes riparian rights, such riparian rights: (A) give the owner absolute ownership of the water; (B) must be expressed in the trust deed; (C) may be determined accurately from an examination of public records at the County Recorder's Office; (D) concern the use of moving water, such as a stream or brook within the watershed.

Answers: #1-C; #2-B; #3-D

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 mobilehomes. 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.

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.

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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 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.

Question #6 Which of the following is **not** an encumbrance? (A) a lease; (B) an easement; (C) a lien; (D) a homestead.

Question #7 Mr. and Mrs. Walters employed the Super Construction Company to install a swimming pool at their home. In the event the construction company was unpaid 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 #8 Each of the following are specific liens, **except**: (A) judgment liens; (B) property tax liens; (C) attachment liens; (D) mechanic's liens.

At the end of each chapter of our Course Outline is a section containing information specifically for the broker exam. A sample of the broker specific information is below.

**Broker Exam Information
Chapter #1**

1. A construction loan might **lose its priority** if the loan is **recorded after a construction project started**.
2. A notice of nonresponsibility **does not protect a construction lender**.
3. The demolition of an old home on a lot in preparation for building a new home on the same lot often acts as the start date of the project to establish the priority of mechanic's liens.
4. A condition against conveying property without the consent of the grantor, or for only a specified price, is void as a restraint of alienation. When a homeowners association prohibits the posting of "for sale" signs, the prohibition infringes on the condominium owner's "right of alienation."
5. Restrictions in a deed limiting the use of a property for religious or charitable purposes only are enforceable.
6. Public restrictions contained in zoning ordinances and building codes seldom cause title to real property to become unmarketable.
7. The terms "**net net**" and "**net net net**" describe a "net lease."
8. The term "**index lease**" describes a lease in which the rent may adjust up or down with an economic index such as the cost of living index.
9. The percentage lease would assure the lessor he will receive the greatest income from the productivity of the property being leased.
10. Tenants renting real property who know or suspect that a hazardous substance (asbestos) exists, or may exist on or beneath the property, are required to provide written notice of that condition to the property owner or lessor. Failure of the tenant to provide written notice to the property owner or lessor may subject the tenant to actual damages and/or civil penalties.

Question #B-1 When a construction lender wants to make sure that his loan is adequately secured as the primary lien and a purchase money loan is already an encumbrance against the property, the construction lender would be **least** protected by which of the following? (A) ordering an ALTA policy of title insurance; (B) recording a subordination agreement from the purchase money lender; (C) making a physical inspection of the property; (D) recording, publishing and posting a notice of nonresponsibility.

Question #B-2 Sometimes the title to real property becomes unmarketable. Which of the following causes would be **least** likely to result in that eventuality? (A) imperfect title, resulting from a claim of adverse possession against a prior owner; (B) a lis pendens filed by the spouse of the owner of record; (C) restrictions imposed by a private owner through a deed restriction; (D) public restrictions contained in zoning ordinances and building codes.

Question #B-3 When a tenant moves out, a landlord can retain as much of the security deposit as is reasonably necessary to cover all of the following expenses, **except**: (A) unpaid rent; (B) reasonable cleaning of the premises; (C) storage costs for items of personal property left in the premises by the tenant; (D) repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant.

Answers: #B-1 D; # B-2 D; #B-3 C

11. When a tenant moves out, a landlord can retain as much of the security deposit as is reasonably necessary to cover unpaid rent, damage caused by the tenant, and reasonable cleaning costs. The **security deposit may not be used to cover the costs of storage** of items of personal property left by the tenant.
12. A clause in a residential lease making the **security deposit nonrefundable is prohibited by law.**
13. Constructive eviction may be described as any disturbance of a tenant's use or possession of a leased premises. It is caused by a landlord. For there to be constructive eviction, a property must be rendered wholly or substantially unsuitable for the use for which it was leased. **Examples of constructive eviction include:** landlord has shown the property to a new prospective tenant and has entered into lease negotiations with the new tenant; landlord has failed to make necessary repairs to the premises, and the landlord has made extensive and unwarranted alterations to the premises, making it no longer usable for its original purpose.
14. **Attornment** - occurs when a tenant agrees to recognize a new person as the owner of rented property and pays rent to this new owner.
15. When a commercial building is taken by eminent domain, the owner of the building is entitled to **just compensation.**

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