



Chapter 2 Summary

California: Legal Aspects of Real Estate

The Constitution guarantees private ownership of real estate. However, ownership rights are not absolute; others may exert claims against one's property.

Land - surface, all natural things attached to it, subsurface, and air above the surface

Real estate - land plus all permanently attached man-made structures, called improvements

Property - something that is owned by someone, and the associated rights of ownership; property is real or personal, tangible or intangible

Real property rights - the bundle of rights associated with owning a parcel of real estate. Foremost of these rights is the right of possession.

An item may be real or personal property depending on the "attachment" criterion and other circumstances.

Fixtures - real property converted from personal property by attachment to real estate

Trade fixtures - personal property items temporarily attached to real estate in order to conduct business; to be removed at some point

Emblements - plants or crops considered personal property since human intervention is necessary for planting, harvesting

Conversion - transforming real to personal property through severance, or personal to real property through affixing

A legal description of real property is one which accurately locates and identifies the boundaries of the subject parcel to a degree acceptable by courts of law in the state where the property is located.

A legal description is required for:

- Public recording
- Creating a valid deed of conveyance or lease
- Completing mortgage documents
- Executing and recording other legal documents

The **Public Land Survey System (PLSS)** is the method traditionally used over the largest part of the United States to survey and classify land parcels and is occasionally referred to as the **rectangular survey**.

The three accepted methods of legally describing parcels of real estate are:

- Metes and bounds - A metes and bounds description identifies the boundaries of a parcel of real estate using reference points, distances, and angles
- Rectangular survey system, or government survey method - The federal government developed this method to simplify and standardize property descriptions as a replacement for the cumbersome and often inaccurate metes and bounds method. The system was further modified to facilitate the transfer of large quantities of government-owned western lands to private parties.
- Lot and block method, or recorded plat method – This system is used to describe properties in residential, commercial, and industrial *subdivisions*.



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Licensed surveyors use those techniques which will allow them to determine the legal description of a parcel of property. There are a number of different types of surveys, including the following:

- **Boundary Survey**
- **Location Survey**
- **Topographic Survey**
- **Site Planning Survey**
- **Subdivision Survey**
- **Construction Survey**
- **Geographic Positioning System**
- **ALTA/ACSM Survey**

Surveyors conduct property surveys most frequently when land is being sold.

Land has three unique physical characteristics: *immobility, indestructibility, and heterogeneity.*

Real property is ownership of real estate and the bundle of rights associated with owning the real estate.

Personal property is ownership of anything that is not real estate, and the rights associated with owning the personal property item.

Manufactured homes and mobile homes are considered personal property, because they are moveable. However, in California, a manufactured home may be considered real estate by removing the wheels and attaching it to a permanent foundation.

All real estate, by its physical nature, is tangible property. Personal property may be tangible or intangible.

Bundle of rights associated with owning real property include:

- Right of possession
- Right to use
- Right to transfer
- Right to encumber
- Right to exclude

Surface rights apply to the real estate contained within the surface boundaries of the parcel. This includes the ground, all natural things affixed to the ground, and all improvements.

Water rights basically concern the rights to own and use water found in lakes, streams, rivers, and the ocean.

Littoral rights concern properties abutting bodies of water that are not moving, such as lakes and seas. Owners of properties abutting a navigable, non-moving body of water enjoy the littoral right of use, but do not own the water or the land beneath the water. Littoral rights attach to the property. When the property is sold, the littoral rights transfer with the property to the new owner.

Riparian rights concern properties abutting moving water, such as streams and rivers. If a property abuts a stream or river, the owner's riparian rights are determined by whether the water *is navigable or not navigable*. Navigable and non-navigable waterways must be determined by an official source.



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California has a complex system regulating the use of water. Rights to water are based upon the *right to use water* and not upon ownership of water.

Subsurface rights apply to land beneath the surface of the real estate parcel extending from its surface boundaries downward to the center of the earth. Notable subsurface rights are the rights to extract mineral, oil and gas deposits, and subsurface water from the water table.

Air rights apply to the space above the surface boundaries of the parcel, as delineated by imaginary vertical lines extended to infinity. A landowner's air rights entail the exclusive right to that air space necessary for the reasonable use and enjoyment of the property.

Regulation Of Real Property Interests

- **Federal regulation** - grants overall rights of ownership; controls broad usage standards, discrimination
- **State regulation** - governs the real estate business; sets regional usage standards
- **Local regulation** - levies real estate taxes; controls specific usage
- **Judicial regulation** - applies case law and common law to disputes