

## Chapter 1: Real Property Introduction

5 Questions

**Real Property Introduction**

In this first chapter of the national topics, we will explore the basics of property ownership, including:

- **Real property**
- **Personal property**
- **Fixtures and trade fixtures**
- **Land rights**
- **Water rights**
- **Land characteristics**



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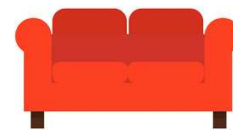
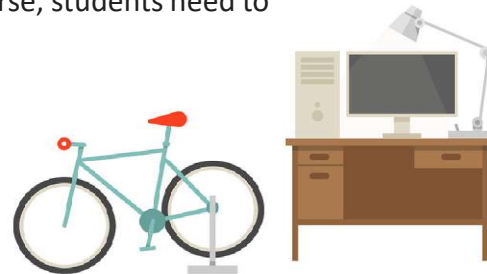
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## Chapter 1: Real Property Introduction

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**Real Property Introduction**

The American legal system recognizes two major classifications of property: **real property** and **personal property**. For this course, students need to know key differences in each.



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## Real Property

**Real property** is property that cannot be physically moved.

Specifically, it is collectively defined as the **land**, plus the **improvements**, which are all man-made structures permanently attached to the land, and the **bundle of legal rights**, which are the interests, benefits, and rights, that are automatically included in the ownership of real property.

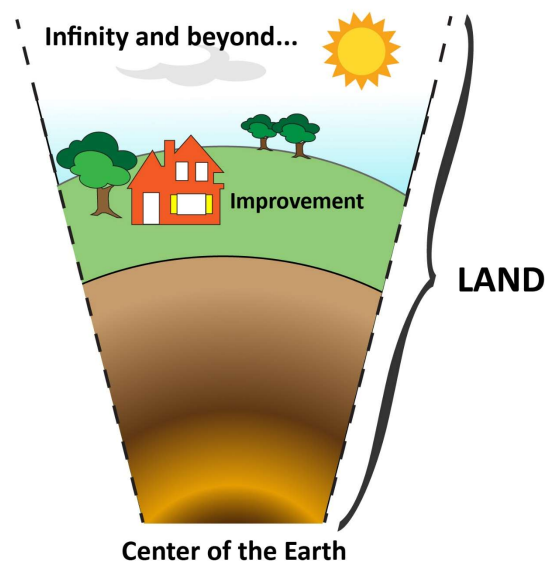


## Land

**Land** is defined as the Earth's surface extending downward to the center of the Earth and upward to infinity.

A **parcel, tract, or lot** of land is a portion of land delineated by boundaries.

These three terms are typically interchanged when discussing real estate but mean the same thing.



## Improvements

**Improvements** are all man-made structures permanently attached to the land such as house, buildings, driveways, sewers, landscaping, etc.

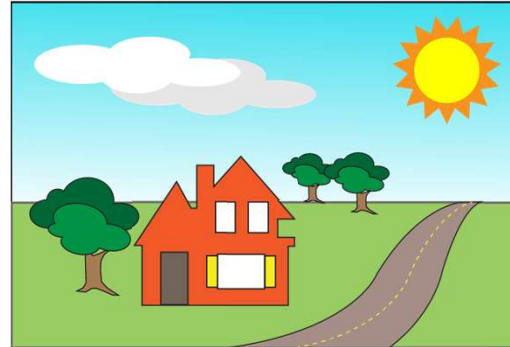
*An improvement is considered real property because it is immobile.*

### Why are they call improvements?

Raw land that is just dirt, grass, shrubs and trees is called **unimproved land**.

However, once man-made structures are added to the land, such as roads and buildings, the land is now said to be made better or “improved.” Thus, these man-made additions are called **improvements**.

## Raw Land = “Unimproved” Land



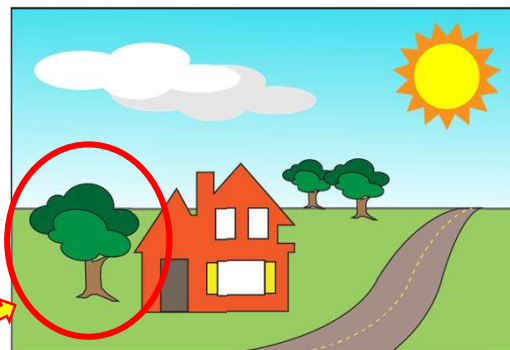
## Improvements

## Improvements

**Improvements** are all man-made structures permanently attached to the land such as house, buildings, driveways, sewers, landscaping, etc.

Be careful not to confuse the term **improvement** with the term **home improvement**, which is a repair or upgrade that adds value, such as remodeling a kitchen or installing new carpet.

*fructus naturales*



## Improvements

Naturally growing or planted trees, shrubs and grasses are called **fructus naturales** and are also considered to be real property because they are immobile and remain with the property when it is sold.

**Title: Ownership of Real Property**

Ownership of real property is called **title**. Thus, owning real property is commonly referred to as “holding title” to real property.

**Title** can be transferred from the old owner to the new owner in various ways, including selling, gifting, or leaving property to an heir after death.



Transferring title is referred to as “conveying title.” Ownership of real property is conveyed between old and new owners either with a **deed** or with a **will**.

**Title: Ownership of Real Property**

If both old and new owners are alive, then a **deed** is used to **convey** the title.

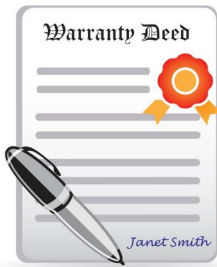
A **deed** is a legal document used specifically to transfer title between the old and the new owners.



If ownership of real property is to be transferred after the original owner dies, then a **will** would be used.

A **will** is a legal document that coordinates the distribution of an individual’s assets after death and can appoint guardians for minor children.





### What does CONVEY mean?

**Convey** is a verb that means to transfer title either through a sale, gift or inheritance of real property between individuals using either a **deed** or a **will**.

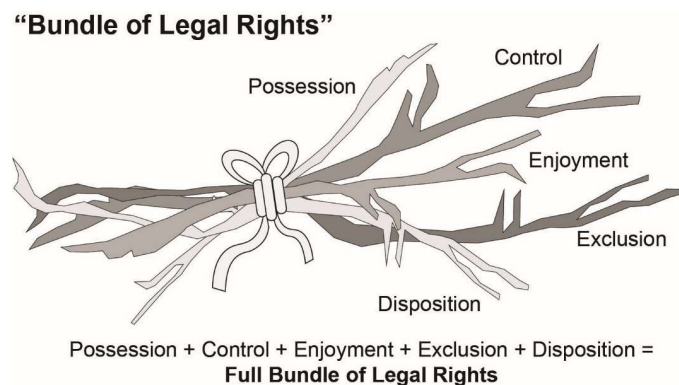
So, the term **conveyance** is the act of transferring title either through a sale, gift or inheritance of real property between individuals using either via a **deed** or with a **will**.



### The Bundle of Legal Rights

When an individual holds title, then he also holds a **bundle of legal rights**, which is the interests, benefits, and rights that are associated with the ownership of real property.

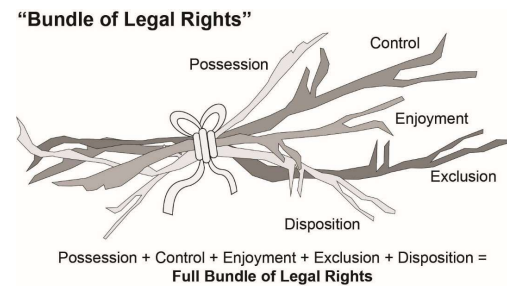
Imagine a bundle of sticks tied together and each stick represents a separate right. This bundle includes five essential rights that the property owner enjoys.



## The Bundle of Legal Rights

The bundle includes five essential rights that the property owner enjoys:

- **Right of possession:** The individual holds title and therefore, owns the property.
- **Right to control:** The owner controls the usage of the property within the constraints of law.
- **Right of enjoyment:** The owner can enjoy the property for legal uses.
- **Right of exclusion:** The owner can keep others from entering or using the property, except when a warrant authorizing the search of the property is properly acquired.
- **Right of disposition:** The owner can convey title of the property as he pleases.



## Personal Property

**Personal property** is any property that is not real property.

- Personal property is movable and is not fixed permanently to one location.
- Personal property can be either tangible or intangible.
- Personal property is transferred between owners with a **bill of sale**, *NOT with a deed or will like real property.*



### Types of Personal Property

- **Chattels:** Items of tangible personal property such as chairs, tables, and clothing.
  - **Chattels agreement:** An agreement attached to sales contract that outlines the transfer of personal property between a buyer and a seller.
- **Emblements (*fructus industriales*):** Annually cultivated crops that can be removed at harvest.



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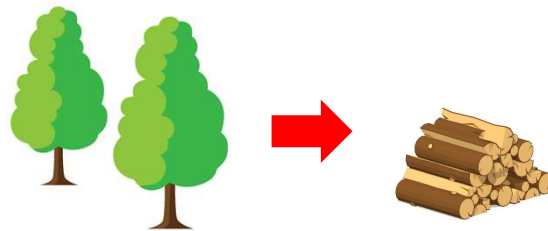
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### Can property status be changed?

- **Severance:** The act of changing **real property to personal property.**

*Example:* A property owner cuts down a tree on his property to use as firewood.



- **Annexation:** The act of changing **personal property to real property.**

*Example:* A property owner uses cement, gravel and sand to add a driveway to his house.



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**Fixtures**

A **fixture** is item that is originally considered to be **personal property**, but after it is installed or attached, it is considered to be **real property**.

The installation of the fixture is done in a such a manner that makes it look as if the item has been permanently installed and remains attached to the building when the property is sold.



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**Fixtures**

For example, a new sink faucet purchased from a home improvement store that is still in the box would be considered personal property.

However, once the faucet has been installed in a bathroom vanity in a home, the faucet is now considered real property.

Examples of fixtures include heating systems, water heaters, light fixtures, kitchen cabinets, and toilets.



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### How to Determine Fixtures

When determining if an item is a fixture or not, this rule of thumb usually applies:

**A fixture is anything that is “nailed, glued or screwed” and, if removed, would make the item inoperable.**

So, if you removed the sink faucet, the bathroom vanity would become inoperable.

Installation and removal of a fixture also requires some sort of handyman skills. Thus, any item that you can easily unplug and remove from the property like a refrigerator or a microwave is considered personal property, not a fixture.



### Fixture or Personal Property?



**Toilet = Fixture!**



**Sink & Faucet =  
Fixture!**



**Dryer =  
Personal Property  
NOT a Fixture!**

## Fixture or Personal Property?



Ceiling fan = **Fixture!**



Microwave  
= **Personal Property**  
**NOT a Fixture!**



Furnace = **Fixture!**

## Trade Fixtures

We know that a trade is a skilled job, typically one requiring manual skills and special training such as a hairstylist, electrician, plumber or barber.

Hence, a **trade fixture** is any item used for a particular purpose in a trade business in a commercial building and installed for his use in his business.

Examples of trade fixtures include hydraulic barber chairs, beauty parlor sinks, cooking hood vents, store shelves, display counters and the like.



## Appurtenances

The rights, benefits, and improvements that transfers with real property are called **appurtenances**. Examples of appurtenances include buildings, easement rights, and water rights.

The term appurtenance is a very broad category that many items may be defines as.

Basically, an appurtenance is something that is installed in a property or is built on a property and such, is considered to be part of the property.

**When the property is sold, the appurtenance is passed on to the new owners.**



## Appurtenances

Some common examples of appurtenances include:

Exterior buildings	Existing crops	A tree
A fence	Mineral rights	Cabinetry
Inground pool	Water rights	Furnace
Water heater	A shared driveway	Ceiling fans

Based on the examples above, it may seem like anything attached to the property can be considered an appurtenance. However, that's not necessarily true.

Essentially, anything that is intended to stay with the home on a permanent basis can fall into this category.

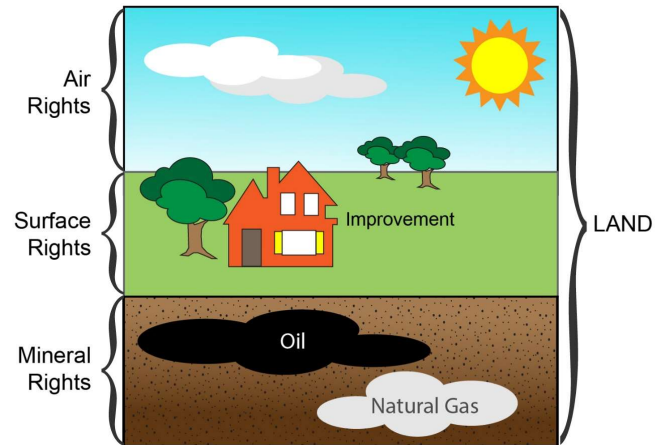


## Land Rights

Most of you are familiar with the selling and buying of residential homes. During these transactions, the land that the house sits on (and its land rights) are packaged and sold as one item.

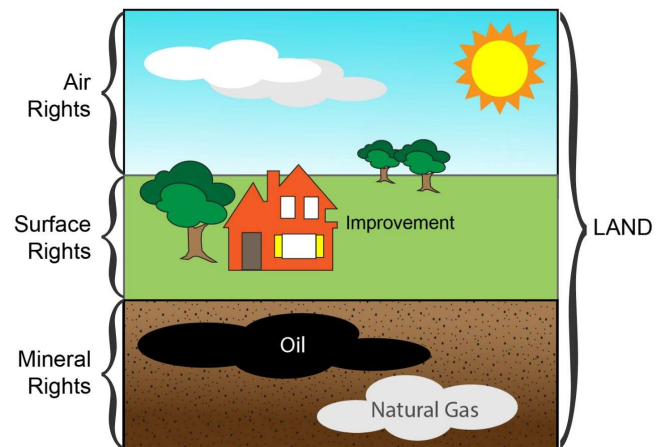
However, in more complex commercial real estate deals, each “layer” of land and its rights can be sold separately.

The three “layers” of land rights are **air rights**, **surface rights** and **mineral rights (subsurface rights)**.

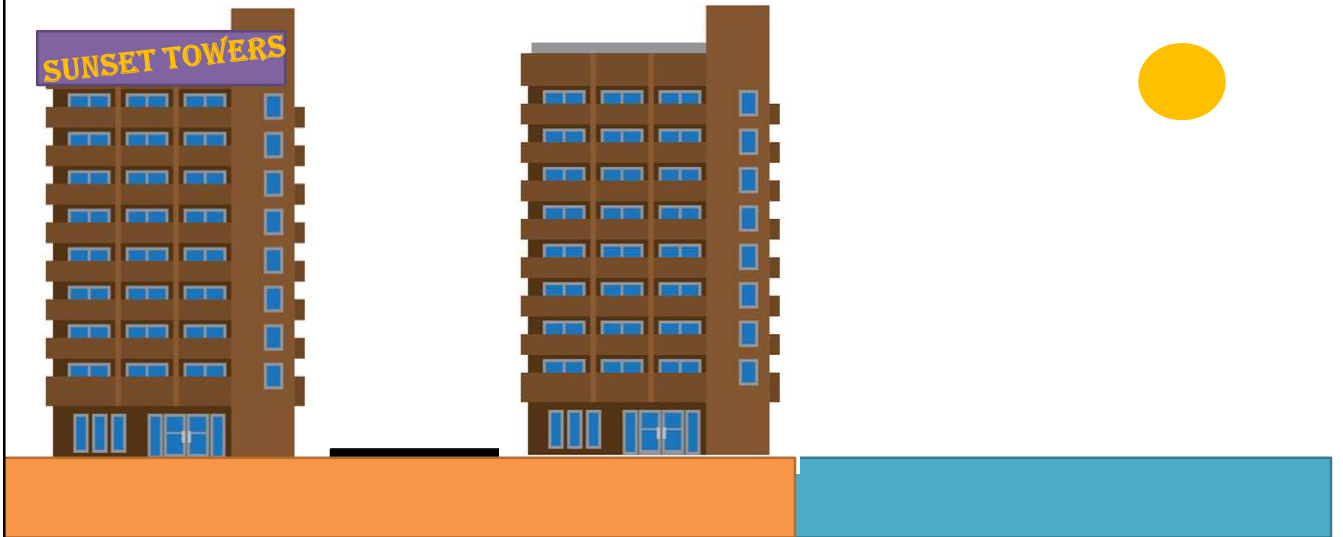


## Land Rights

- **Air rights:** Ownership rights from the surface of the land to the unlimited top border of the sky.
- **Surface rights:** Ownership rights limited to the surface of the Earth.
- **Mineral rights (subsurface rights):** Ownership rights to the natural resources below the Earth’s surface such as oil or natural gas.



## How Air Rights work



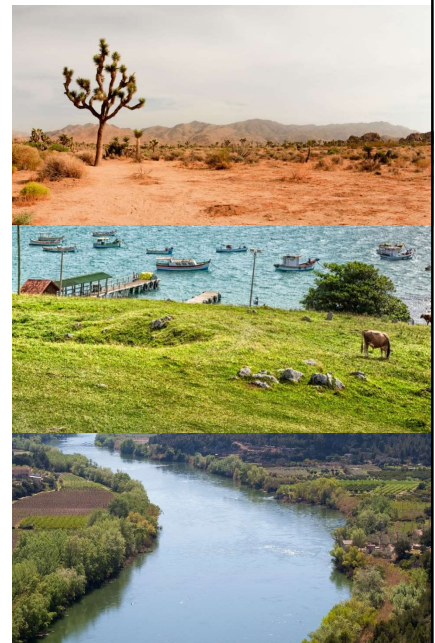
## Water Rights

If an individual owns property that borders a body of water, he has something referred to as **water rights**.

**Water rights** are a landowner's rights to the water on, under, adjacent to or near his property. While water rights give the property owner the right to own and use water that borders his property, not all water rights are the same.

States can either operate under the **doctrine of prior appropriation** or under the **common law doctrines**.

**Common law doctrines** include water rights called **littoral rights** and **riparian rights**.



***Doctrine of Prior Appropriation***

Since water is a resource necessary for survival, some states, particularly those where water is scarce, have taken the legal position that the state owns and controls all bodies of water.

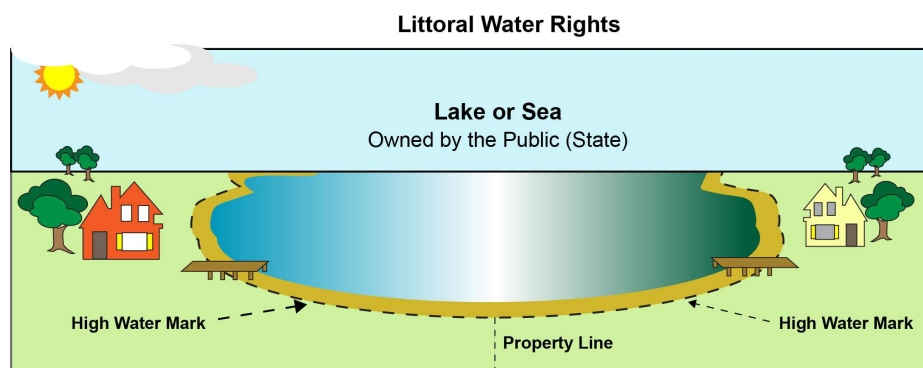
**Doctrine of prior appropriation** is the right to use any water is controlled by the state rather than the adjacent landowner.

This position requires that property owners obtain permits for use of water bordering their property instead of just being able to freely use it. The details and regulations of this type of water right varies by state.

***Littoral Rights***

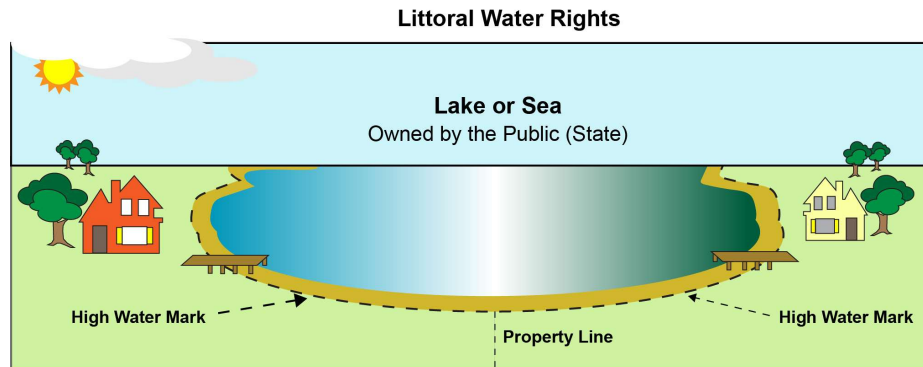
If the property borders bodies of water that are *not flowing* between banks, such as lakes and seas, then the property owner enjoys water rights called **littoral rights**.

**REMEMBER! LAKE = LITTORAL**



***Littoral Rights***

With these types of water rights, the property owner's ownership extends to the high-water mark of the body of water, but he does not own the water or the land beneath the water. ***The state owns the land beneath the water.***



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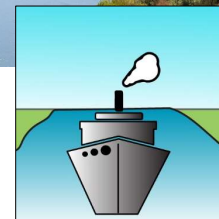
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***Riparian rights***

If the property borders water flowing between banks, such as streams and rivers, then the property enjoys water rights called **riparian rights**.

**REMEMBER!**  
**RIVER = RIPARIAN**

Who owns the land underneath the river or stream depends on if the river is navigable by a commercial vessel or not.



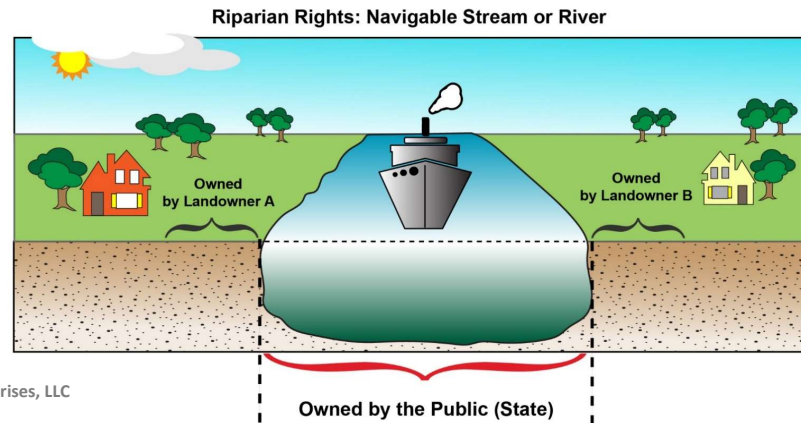
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**Riparian rights**

- **Navigable:** If the property borders a river that a commercial vessel, such as a shipping barge, can navigate, then the owner's property extends only to the water's edge, not to the midpoint of the waterway.  
**The public (state) owns the land beneath the water.**



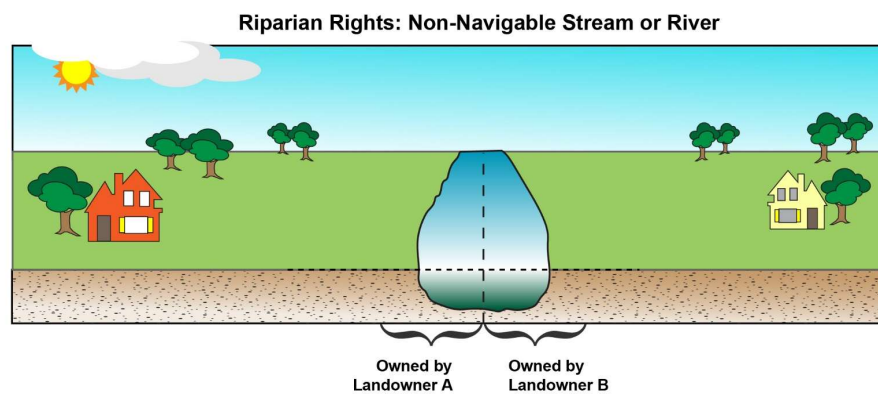
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**Riparian rights**

- **Non-navigable:** If the property borders a river that a commercial vessel cannot navigate, then **the owner's property extends to the midpoint of the waterway** and the owner enjoys unrestricted use of the water and the land underneath the water.



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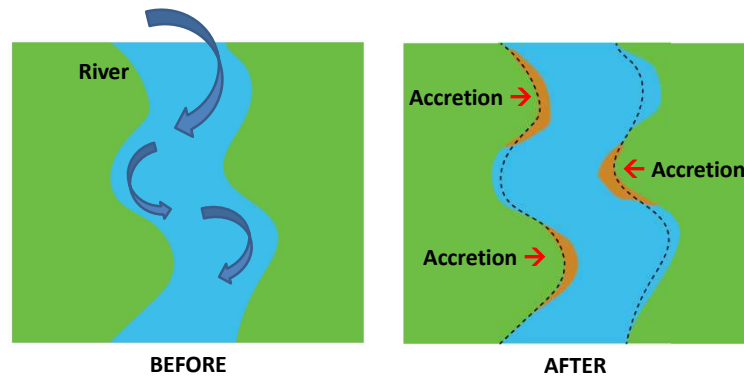
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**Other Land Terms to Know:**

- **Alluvion:** Silt; the actual soil, rock and other matter moved by flowing water which results in **accretion**.
- **Accretion:** Increases in land resulting from deposits of **alluvion** accumulating on the banks of a river or stream.



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**Other Land Terms to Know:**

- **Erosion:** Gradual wearing away of land by natural forces such as wind, rain and flowing water.
- **Avulsion:** Sudden loss of land by an act of nature such as an earthquake or land slide. Avulsion does not cause the property lines to change.  
**Remember! Avulsion = Avalanche!**
- **Reliction:** Increase in land due to the receding of water from the shore.



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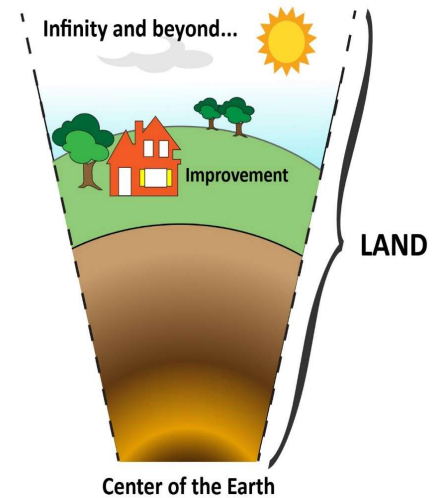
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### Land Characteristics

The value of real property is determined by certain **physical** and **economic characteristics**.

### Economic Characteristics

- **Scarcity:** Refers to the relationship of the supply of land to its demand in a particular location.
- **Location (*area preference* or *situs*):** Refers to the degree to which an area is desired because of its location. "Location, location, location."
- **Improvements:** Improvements such as parking lots, buildings or landscaping affect the value of the modified land AND the value of neighboring properties.



### Physical Characteristics

- **Immobility:** Land is physically immobile. It cannot be moved from one geographical location to another.
- **Indestructibility:** Land cannot be destroyed.
- **Uniqueness (*heterogeneity* or *non-homogeneity*):** The concept that no two parcels of land are identical. Parcels of land differ in size, shape, location, and appearance.

