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Chapter 9

Legal Concepts in Real Estate

In This Chapter

A general understanding of basic civil law and other legal concepts is important in the real estate and mortgage industries. These concepts detail legal relationships between the parties and also affect property value. This chapter explains the distinction between real property and personal property, with an in-depth discussion of the rights of ownership that go with real property. These rules are important to everyone involved in the sale of real estate because they determine exactly what is being sold—and what is being mortgaged. We will also discuss public and private restrictions on property and how those and other interferences with property rights may affect value.

At the end of this chapter, you will be able to:

- Identify the essential elements of a valid contract.
- Contrast real property and personal property.
- Identify the bundle of real property rights.
- Identify public and private restrictions on real property.

Key Terms

Annexation
Appurtenances
Attachments
Bundle of Rights
Contract
Deed Restrictions
Easement
Eminent Domain
Encroachment
Escheat
Fixtures
Improvement
Location Survey
Nuisance
Personal Property
Police Power
Real Property
Trade Fixtures
Trespass
Waste

Basic Civil Law Concepts

Civil law is the *body of law concerned with the rights and liabilities of one individual in relation to another.* A person who fails to live up to a legal duty or to respect another's legal right may cause harm to another person or property. These rights, responsibilities, and remedies can be summed up in the three fundamental categories of civil law: Contracts, torts, and property.

Contracts

A **contract** is an *agreement between two or more parties to do, or not do, a certain thing.* A contract is a legally binding promise. When two people enter into a contractual relationship, they voluntarily take on legal duties toward one another. There is an entire body of rules that governs legal relationships based on contracts. These rules apply to any kind of contract, whether it concerns employment, the sale of a condominium, or commercial shipping. These basic rules also apply to contracts concerning real property, including real estate purchase contracts, leases, promissory notes, mortgages, and others. In the most general sense, for a contract to be binding, it must have these essential elements:

- Competent parties; each side must have the capacity to enter into a contract (which in many states requires the legal age of majority)
- Consideration, such as money or services to be performed
- Mutual agreement, also known as meeting of the minds, which requires offer and acceptance of the terms of the contract

Torts

A **tort** is a *breach of the standards of reasonable conduct imposed by law that causes harm to another person*. Unlike contract law, these legal duties are not voluntarily assumed. Rather, law requires everyone to take reasonable care to avoid injuring another person or damaging another's property. Tort law concerns the duties of reasonable conduct imposed by law. For example: Running desperately through the station to catch a train, Ann accidentally knocks down Bob. Bob's arm is broken in the fall. Ann has breached the legal duty to use reasonable care in passing through a public place. In other words, Ann has committed a tort against Bob.

Property

Property is *something that is owned—real or personal—and includes the rights of ownership.* The rights of ownership allow the owner to use, possess, transfer, or encumber the property owned. Property law includes rules about acquiring ownership and losing ownership, and about the rights and duties that ownership carries with it.

Class Activity: Legal Issues

Contract, tort, and property issues can be entwined in a single legal problem. Suppose two neighbors have a dispute about where their property boundary is, and each claims to own a particular strip of land. One neighbor's tenant slips and breaks her collarbone. It's not clear whose property she was on when she slipped because of the boundary dispute. To determine which of the neighbors, if any, must compensate her for her injury, the lawyers will have to sort out several issues.

As a class, discuss what some of those issues may include.

√ ***Note:*** The rest of this chapter deals with a more basic legal property issue: What exactly is owned when a person owns property? This is an important concept because it has significant implications for buyers and sellers, mortgagors and mortgagees. This goes right to the core of value.

Legal Concepts Affecting Property Value

There are many legal distinctions that can impact property value. Of course, **you should never give legal advice unless you are a lawyer**, but it is helpful to understand these concepts and how they may affect the value of real estate. Certain things are included with property: Real property and personal property, attachments and improvements, real property rights, and appurtenances. These are important concepts affecting real property value.

Real Property or Personal Property

The law classifies all property as either real property or personal property:

- **Real property** is defined as *the physical land and everything attached to it, plus the rights of ownership (bundle of rights) in real estate.* Real property is also called **realty**.
- **Personal property** is defined as *tangible items not permanently attached to, or part of, real estate.* Personal property is also called **personalty** or **chattel**.

People tend to think of the land itself when they hear the term "real property." The term refers to much more than rocks and dirt, however. It also encompasses items attached to the land (attachments or improvements), rights that go with ownership of the land (appurtenances), and limitations on the use of land (public and private restrictions). These are important because mortgage professionals must be aware of real property issues and distinctions that may impact value for property being considered as collateral for a loan.

The distinction between real property and personal property becomes important whenever the ownership or possession of land is transferred. Unless otherwise agreed, the law says that all of the real property is included in the transfer, but personal property that happens to be on the land—but is not permanently attached to the land—is *not* included. Because of this legal doctrine, buyers and sellers, landlords and tenants, and owners and foreclosing lenders often disagree about whether something is real property or personal property. Determining what is personal property and what is real property can sometimes lead to serious disputes and court battles.

Case in Point

A built-in dishwasher would be considered part of the real property; a refrigerator would more likely be considered personal property. Built-in bookcases are considered real property; a sofa is personal property. An in-ground pool is real property, but an above ground pool is personal property. Lenders must be aware of this because the presence or absence of built-in items might affect the value of the property; but personal property items should not influence value.

One less clear-cut example to contemplate is a chandelier. A light fixture that is attached to the ceiling would normally be considered part of the real property. It's not uncommon, however, for homeowners to want to take such items with them when they move. Fixtures may be detached from real property through the process of **severance**, becoming personal property again. As you can imagine, this can create serious disputes in a real estate transaction, even if the seller replaces the chandelier with some other light fixture before closing. When one person considers an item to be personal property and another person thinks it is real property, trouble arises. To avoid this, the purchase contract should specifically list any questionable items to make sure everyone knows what is and isn't intended to be part of the sale.

Attachments

Attachments are *things connected to the land, whether natural or man-made.* All attachments are generally considered real property. Attachments both grow on the land (trees and shrubs) and are built on the land (houses and fences). Natural attachments that grow on the land are treated essentially the same way, whether naturally occurring or planted. Both types of natural attachments are ordinarily considered part of the real property while they're growing, but when they are severed from the land, they become personal property. For example, timber growing in a wooded area of the land is part of the real property. Once the timber has been cut down, however, it's personal property. The same concept applies to crops: Apple trees are real property; harvested apples are personal property.

Fixtures

Fixtures are *man-made attachments.* They include any item of personal property attached to or closely associated with real property in such a way that it has legally become part of the real property. For instance, an air conditioner is personal property, but it becomes a fixture when it's permanently installed in a building. A window air conditioner, on the other hand, is more likely to be personal property. A pile of lumber is personal property, but it's turned into a fixture when it's used to build a barn. A *major fixture that impacts the value of the property (such as a building)* is commonly called an **improvement**. When present, an improvement becomes the focal point of an appraisal.

Trade Fixtures

Trade fixtures are *any equipment or personal property a tenant installs for business purposes.* Generally, a tenant is allowed to remove trade fixtures before a lease ends (unless a written document, such as the lease, forbids it). Thus, a tenant who opens a pizza shop can remove the ovens, even though they're attached to the floor, but the tenant must repair any damage caused by the removal.

Annexation

Annexation is the *legal term for attaching or affixing personal property to real property.* Since fixtures and improvements are part of the land, they generally need not be mentioned in the purchase agreement. They are included by implication in the description of the real estate. Trouble can arise, however, when one encounters questionable items that could be classified different ways depending on who is asked and the interests of the parties involved.

Legal Considerations

The legal aspects of what makes something real property versus personal property can be distilled down to two basic questions which most courts consider:

1. What was the intention of the annexer?
2. What was the purpose of the annexation?

The **annexer** is *the person who owned the item as personal property and brought it onto the real property.* Did the annexer intend for the disputed item to become part of the real property, or to remain personal property? Did the annexer acquire the item to improve the real property, or just for personal use?

In answering these questions, the court will look for objective evidence of the annexer's intent. It's not enough for the annexer to claim that he or she always intended to remove the item. The court looks at the nature of the item and the manner of annexation as objective evidence of intent. For example, embedding a birdbath in concrete shows intent to make it a fixture; simply setting one out on the lawn does not.

The original rule was that if the item was securely attached to the real property (e.g., nailed down), then it was considered a fixture. If it wasn't securely attached, then it wasn't a fixture. This test isn't rigidly applied today. Physical attachment is still taken into account, but it isn't decisive. Consider a rug in the foyer of a home. Even if the owner tacked it down to keep it from sliding, it could still be considered personal property if the owner never meant for the rug to stay with the house.

At the other end of the spectrum are personal property items that are so closely associated with the house they become real property items, even though they may not be physically attached to the house. Some examples include the keys to the house and garage door openers. Another unusual circumstance may be a built-in appliance that is at the repair shop on the day of closing. The buyer still takes possession of the built-in item even if it is not physically in the house at the time of closing.

When disputes arise, the courts also take into account the relationship of the parties involved. Buyers are generally favored over sellers (because the item may have induced the buyer to make the purchase), lenders over borrowers (so as not to diminish the value of the lender's collateral), but tenants over landlords (because courts recognize that personal property items are installed for personal or business use rather than for the benefit of the property).

The Uniform Commercial Code

The **Uniform Commercial Code (UCC)** is a *comprehensive code governing, among other things, transactions involving personal and real property.* The UCC is a model code that has been enacted in some form or another by all 50 states. It supports the concept that personal property becomes realty when any of the criteria for fixtures is met. Therefore, the UCC and its procedures may be able to protect the vendor of the personal property, the new owner of the property, the lender, and the seller, by fixing the rights of each at the time of the sale regarding the item to be affixed.

Suppose, for example, someone purchases a home with a new furnace. It is clear from any test that this furnace is a fixture, that is, part of the house. At one time, however, it stood on a showroom floor or was crated in a box in a warehouse as personal property. Let's assume that at the time the furnace was purchased, the owner entered into an installment contract to pay for the furnace, and that it was not completely paid off when that person sold the home. The seller of the home assumes that the new buyer will have to pay for the furnace, since the buyer bought the furnace as part of the real estate. The vendor's contract, however, is with the seller. But the seller has moved and, perhaps, is no longer in the area.

The vendor could decide to file suit to seek satisfaction from the seller or from the buyer. Depending on the laws of his state, the vendor might instead be able to file a mechanic's or materialman's lien against the property, which would also burden the new homeowner.

The UCC addresses situations like this by requiring vendors to file a financing statement with the county recorder where the property is located when installing fixtures such as a furnace. This fixture filing is intended to make the resolution less contentious because it would include a legal description of the land as well as the name and address of the landowner. The homebuyer would, therefore, be on notice of the debt, and the seller might not be able to convey marketable title without first paying for the furnace. It makes it more likely that the vendor will not have to chase the parties in litigation. This also gives the lender public notice of any potential disputes. Vendors who fail to file in a timely manner could lose their rights against the owner in cases like the one just described.

Real Success

As a mortgage professional, you must be aware of potential areas of dispute as they may impact the value of the collateral property, especially when foreclosure is necessary. If items are to be included or excluded, that fact should be clearly stated in the purchase contract. While the inclusion of personal property items (such as appliances) would likely not increase the value of real property, any real property items that are being excluded may have a negative impact on valuation, for example, built-in bookcases removed by the seller.

If a dispute arises, the courts will look at some of the criteria just mentioned in deciding the case. One criterion that is rarely considered, though, is the value of the item. Furthermore, a written agreement between the parties, such as a purchase contract, will almost always be enforced by the courts.

Real Property Rights

Real property rights are defined in terms of a bundle of rights. The **bundle of rights** refers to *all real property rights conferred with ownership.* These rights include, but are not limited to these:

- The **right of possession** gives the owner the right to physically occupy the land and to use the land and make it productive. Owners can use the land in any way they want—as long as it is legal and does not interfere with other people's rights (or government restrictions).
- The **right of enjoyment** confers upon the owner the freedom to use the land without undue interference from the outside. This also includes the responsibility to ensure that neighbors' enjoyment of their land is not adversely affected.
- The **right of disposal** confers upon the owner the ability to transfer all or some of the bundle of rights to others. A landowner normally has the right to sell the land, divide and retain part while selling the rest, lease the land, give it away, bequeath it upon death, or dispose of the land in some other way.
- The **right of exclusion** allows the owner to stop others from using the property or even from entering the property.
- The **right of control** allows the owner to *physically alter or change the property*. For example, a property owner can build a garage, tear down a fence, put in a swimming pool, etc. (Of course, there could be zoning issues related to this.)

If someone secures the entire bundle of rights, that person is said to be the owner. This type of ownership is called fee simple. **Fee simple** is the *greatest estate one can have in real property*. It is freely transferable and inheritable—and of indefinite duration—with no conditions on the title.

Appurtenances

Appurtenances are *rights that go with real property*. When real property is sold, appurtenant rights are ordinarily sold along with it. They can, however, be sold separately, and may be limited by past transactions. In addition to knowing the boundaries of the land and which items are considered part of the real property, lenders also need to understand which rights are being transferred along with that parcel of real estate.

Fee simple ownership includes such appurtenances as *access rights, surface rights, subsurface rights, mineral rights, some water rights, and limited air rights.* One way to understand the rights that accompany real property is to imagine the property as an inverted pyramid, with its tip at the center of the earth and its base extending out into the sky. An owner has rights to the surface of the land within the property's boundaries, plus everything under or over the surface within the pyramid. This includes oil and mineral rights below the surface, and certain water and air rights. (States differ in how they confer water rights; air rights are limited to allow for air traffic.)

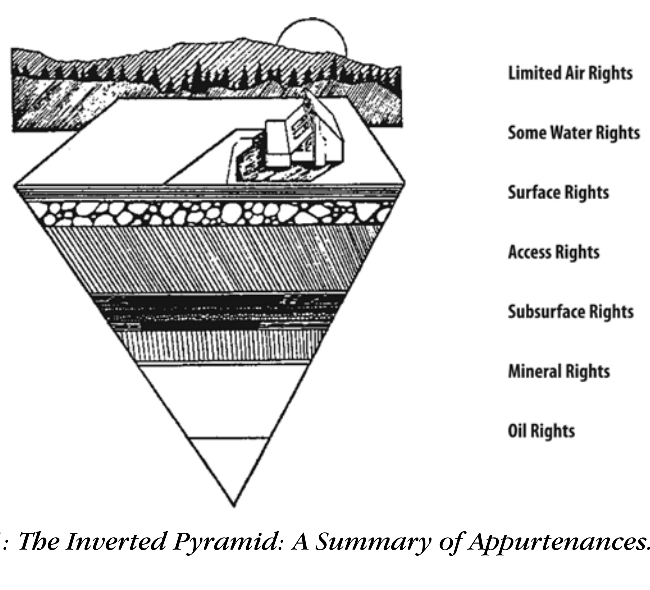

Figure 9.1: The Inverted Pyramid: A Summary of Appurtenances.

It's possible, though, for the owner to transfer only some of the rights of ownership to another person. For example, a property owner may sell the mineral rights to a piece of property, but keep ownership of the farm. Later, when the land is sold, the mineral rights will most likely stay with the mining company (depending on the wording of the contract involved), even though the rest of the bundle of rights in the land is transferred to the new owner. The new owner is limited by the past transaction of the previous owner, and may not sell these mineral rights to another party, nor transfer them in a future sale of the land.

A lender must know if the entire bundle of rights is being transferred (fee simple) or if there are restrictions or past transactions that may limit the current transfer of ownership in any way. This is important because it may have a great effect on the value of the real property. Transfer of access rights for a sidewalk to be placed across the front of a subdivision lot generally would not have a significant impact on the value of a piece of land. Transfer of mineral rights to a mining company, as in the previous example, likely would impact the value.

Public and Private Restrictions

We have discussed real property rights as a bundle of rights conferred with ownership. If one secures the entire bundle of rights, then that person is said to be the owner. It's important to realize, though, that these rights are not absolute. We talked about the owner's ability to sell some of these rights separately. In this section, we'll discuss other ways that those real property rights can be restricted—voluntarily or involuntarily—by government and the private sector. These restrictions may or may not have an impact on real property value.

Public Restrictions

Public restrictions on land use are imposed by government in a variety of ways, and for a variety of reasons. These government restrictions can have a serious impact on land's value. Governments have four powers (remember P E T E):

- Police power
- Eminent domain
- Taxation
- Escheat

Police Power

Police power is *the constitutional power of state (and local) governments to enact and enforce laws that protect the public's health, safety, morals, and general welfare.* From the lender's standpoint, the most important restrictions that government can place on land come from its police power, which can take the form of land use controls (primarily zoning laws and building codes) and environmental protection laws.

- **Zoning Laws.** Zoning laws are local ordinances dividing a city, county, etc., into zones, allowing different types of land use in different areas. Zoning and other laws restricting land usage (e.g., building codes) are passed to protect the health, safety, and welfare of the community. Land use controls have an impact on real estate since they may limit development, thus affecting property values. Land may be more valuable with an office building instead of a house, but zoning laws may not permit that land use. Other zoning ordinances may also restrict how and where the building may be constructed on the property, minimum lot size, building height limits, setback and side yard rules, permitted building density, off-street parking requirements, and other things that a local government may feel are necessary. Exceptions to zoning laws are possible, but often not easily obtained.
- **Building Codes.** Building codes set construction standards, requiring builders to use particular methods and materials. A local government usually has many building codes including fire, plumbing, electrical, etc. In most states, minimum building standards are set by state law, but a local government can require additional, stricter standards. The lender must consider whether the proposed highest and best use for the property can be achieved economically, given the applicable building code regulations that must be followed. For example, putting a large commercial building on a property located in a flood plain may require additional foundation support or superstructure reinforcement to keep the building in compliance with state and local building codes. This will add to development costs.

- **Environmental Protection Laws.** Land use controls at state and federal levels are increasing as a means of protecting the environment. Regulations can involve blocking or restricting land use where environmental concerns exist. Sometimes, this conflicts with landowners' usage. For example, land can't be used for a hazardous waste site (or some industrial uses) without government approval. The government also controls land use in protecting wildlife, endangered species, and wetlands. Federal agencies may deem land a safe haven or protected area that can't be developed.

Eminent Domain

Eminent domain is *the government's constitutional power (right) to take (or appropriate or condemn) private property for public use, as long as the owner is paid just compensation.* Eminent domain affects real estate because of government involvement in fair market pricing, and by making adjacent land more or less valuable, depending on a proposed use (e.g., freeway interchange, landfill). Remember, eminent domain is the *right*; **condemnation** is the *action*.

Taxation

Taxation is *the process of government levying a charge on people or items.* Here we are specifically talking about **property taxes** (called *ad valorem* taxes). Low taxes might encourage real estate activity in a certain area, whereas high taxes could have the opposite effect. Similar to the authority to tax, **special assessments** are *charges that may be levied by a government entity only against specific properties that benefit from a public improvement* (e.g., new sewer line, street lights). Although the property benefits, the extra charge could cause buyers to favor other properties that do not have to pay the charge. All of these have the potential to affect the value of real estate in the marketplace.

Escheat

Escheat is *when property reverts to the state after a person dies without leaving a valid will and without heirs or creditors.* (Property also reverts to the state after abandonment.) The reasoning behind this is that since the rights of property ownership are derived from the government, those rights should revert to the state if they aren't assigned to someone else by the owner, or if there are no heirs. The value of real estate in an area can be affected by the actions of the government in disposing of the land or utilizing it in ways that are either beneficial or detrimental to other properties in the area.

Private Restrictions

Private restrictions on land can be imposed by a former owner or developer. These restrictions may or may not have an impact on land value, depending on their purpose and severity. The two main types of private restrictions that we will focus on are deed restrictions and easements.

Deed Restrictions

Deed restrictions are *limitations on real property use, imposed by a former owner through language included in the deed.* These may also be called **restrictive covenants**, especially if they are recorded in a later document. Deed restrictions and restrictive covenants that are recorded **run with the land** and are thus *enforceable against future property owners.* Note, however, that deed restrictions and restrictive covenants must touch and concern the land to be legal and binding on future transfers.

Usually these restrictions make a new owner promise not to use property in a particular way. For example, suppose a fast food restaurant decides to build a new location a few doors down from its current location instead of remodeling the existing restaurant. When the land is sold, the company might include a deed restriction prohibiting another fast food restaurant from using that location in a competitive manner. This type of restriction may or may not have a negative impact on value, depending on the dynamics of the marketplace.

CC&Rs

A **declaration of covenants, conditions, and restrictions** (CC&Rs) is often placed in the deed by the original subdivider of land or condominium developer, although it can also be added later. The purpose of CC&Rs is to *keep the subdivision attractive and protect the market value of properties.* Examples include deed restrictions setting a minimum or maximum house size that can be built on the land or prohibitions against certain types of fences. These types of deed restrictions can have a positive impact on value because they promote conformity in the neighborhood. Severe restrictions, on the other hand, can hurt property value, although this is usually not the case with subdivision CC&Rs.

Easements

An **easement** is *a right to use another person's real property for a particular purpose.* Easements can be public (e.g., for a sidewalk) or private (e.g., for access to a landlocked parcel). It's important to understand that easements restrict how a parcel of land may be used because, usually, a structure cannot be put on an easement. The easement creates limited rights for the easement holder.

Easements can be put into a deed before a transfer of property occurs or created separately as an agreement between the parties. A recorded easement (either in a deed or as a separate document) gives notice to third parties and usually causes the easement to transfer with the property. When put into a deed, the easement becomes a restriction, often granting the previous owner or other parties an easement for access across the piece of land being transferred. An easement that *grants access* is referred to as a **right of way** (ROW). Often, an easement across the front of land is held by the government for future road widening or by utility companies for access to power lines. In either case, easements may have a negative impact on value if they severely limit buildable site area.

Interference with Property Rights

Certain activities interfere with a property owner's bundle of rights. To the extent that they are unlawful, the owner may take steps to stop their occurrence. In extreme cases, the lender may also step in to prevent abuse to preserve the property value when it serves as collateral for a mortgage loan.

Trespass

Trespass is defined as *a physical invasion of the land by another person who has no lawful right to enter the land.* Trespass interferes with the owner's possessory interest in the land, diminishing the owner's rights of use and enjoyment, since during the trespass, the landowner has less than full possession of it. For an action in trespass to ensue, however, the act of trespass must cause direct, rather than consequential, damage.

Encroachment

Encroachment occurs *when a physical object intrudes onto neighboring property,* often due to a mistake regarding the boundary. Encroachment is a legal synonym for trespass, but the term is only used in reference to objects, such as buildings, whereas trespass refers to people. Thus, if a neighbor's building is built over your property line, that neighbor's building encroaches on your land. Legal steps can be taken to either force the encroaching landowner to remove the encroachment by tearing down the building, or buy the land on which the encroachment sits.

Real Success

One way that lenders try to preempt trouble created by encroachments is to find out about them before the loan is made. A **location survey** simply *determines whether the property's buildings encroach onto adjoining property, or any adjoining property's buildings encroach on the subject property*. The exact boundaries of the property aren't certified by a location survey, but this type of survey is often required for the secondary mortgage market. If an encroachment is found, then the lender might request a written easement be executed and filed as a condition of granting the mortgage loan. (A location survey is different from a traditional survey or pin survey, which is a much more expensive process of physically determining the size and/or boundaries of property.)

Nuisance

Nuisance involves *interference with the quiet enjoyment of the land from the outside, so it does not interfere with possessory rights.* This, by definition, requires that the nuisance originate from another person's property. You cannot be a nuisance to yourself, only to neighbors. And *a nuisance that is more or less permanent* is referred to as **external obsolescence**, and can affect property values in the entire neighborhood, such as noise from an airport or the stench from a factory or farm. Both would tend to hurt property values by making property less desirable, less valuable, and contribute to the decline of a neighborhood. Further, implicit in the definition of a nuisance is that it cannot contribute to a neighborhood or property values in a positive way.

To be actionable, a nuisance must be more than a single occurrence. It must be a condition that constitutes an unreasonable use of the land by the offending landowner over a period of time. Should the complaining landowner prevail in court, he or she may collect damages as well as enjoin (stop) the unreasonable use of the land through an injunction.

Normally, courts take a dim view of actions in nuisance where the offended landowner moved into the area with knowledge of the nuisance. Thus, a landowner offended by the smells of the stockyards situated a few blocks away will find it hard to sustain an action in nuisance. Furthermore, where the common good would be served better by not disturbing the offending use, the offended landowner may not win in court. A factory built in an area of high unemployment would probably be protected against landowners claiming that the smoke is a nuisance.

Waste

Waste is *use or abuse of property in any way that would permanently damage or reduce its market value.* Typically, the property owner is contractually obligated in the mortgage to take steps to preserve the property and prevent waste. The mortgage clause that explicitly states this contains many other provisions, such as a promise to maintain adequate insurance coverage for the property. There are similar legal obligations in place to preserve property when more than one person or entity has an interest in the property.

Chapter 9 Summary

1. **Civil law** is the body of law concerned with the rights and liabilities of one individual in relation to another. Contracts, torts, and property are the fundamental concepts of civil law. A contract is an agreement between two or more parties to do, or not do, a certain thing. **Contract** law concerns voluntarily assumed duties. A **tort** is a breach of the standards of reasonable conduct imposed by law that causes harm to another person. Tort law concerns the duties of reasonable conduct imposed by law. **Property** is something that is owned, real or personal, and includes the rights of ownership in that thing. The rights of ownership allow the owner to use, possess, transfer, or encumber the property owned. Property law concerns the rights and duties inherent in ownership.
2. **Real property** is land and everything attached or appurtenant to it. Real property rights are defined in terms of a bundle of rights that are conferred by ownership. These rights are the right of use, the right of enjoyment, the right of disposal, and the right of exclusion. If one secures the entire bundle of rights from another, that person is said to be the owner.
3. **Attachments** to real property are part of the real property. The two types of attachments are natural attachments, such as plants and trees, and man-made attachments, such as fences or buildings. Man-made attachments are called **fixtures**. A major fixture, such as a building, is called an **improvement**. Unless otherwise agreed, attachments are transferred along with the land; personal property is not. Difficulties can arise over what is considered real property and what is considered personal property.
4. A **fixture** is an item of personal property that has been attached to or closely associated with real property in such a way that it has legally become part of the real property. In deciding whether an item is a fixture, a court tries to determine the intention of the annexer, the nature of the item, the manner of annexation, the purpose for which it was annexed, the relationship of the parties, and any written agreement. Written agreements always take precedence. **Trade fixtures** are an exception to the general fixture rules. Since they are installed by a tenant for use in business, trade fixtures generally may be removed when the lease period is over.
5. Public and private restrictions on land can affect value. Public restrictions include four powers of government: **Police power, eminent domain, taxation**, and **escheat** (P E T E). Government restrictions via police power that can impact land value include zoning, building codes, and environmental laws. Private restrictions on ownership are deed restrictions (restrictive covenants, CC&Rs) and easements. They are often used by the original subdivider, but can also be added later.
6. An **appurtenance** is a right that goes along with or relates to real property, including air, water, mineral, and support rights. These rights are ordinarily transferred with the land, but they may be severed from it and sold separately. Trespass, encroachment, and nuisance are three kinds of interference with these rights. **Waste** is use or abuse of property in any way that would permanently damage it or reduce its market value. This will likely be limited by the lender in the mortgage documents.

Chapter 9 Quiz

1. ***Which is NOT a primary focus of civil law?***
   A. compensating a tort victim
   B. determining ownership rights
   C. enforcing a contract
   D. punishing a criminal

2. ***In determining whether an item is a fixture, the most important test is the***
   A. intention of the annexer.
   B. physical attachment to realty.
   C. relationship of the parties.
   D. size of the item.

3. ***Trade fixtures***
   A. are considered the landlord's personal property.
   B. are considered real property and can't be removed by the tenant.
   C. can be removed by the tenant before the lease expires.
   D. can't be removed unless the lease specifically states they are personal property.

4. ***Which is NOT included in the bundle of real property rights?***
   A. disposal
   B. enjoyment.
   C. escheat
   D. exclusion

5. ***Which is NOT a police power of government?***
   A. building codes
   B. environmental laws
   C. restrictive covenants
   D. zoning laws

6. ***The government's constitutional power to take private property for public use, so long as the owner is paid just compensation, is called***
   A. condemnation.
   B. confiscation.
   C. eminent domain.
   D. immediate possession.

7. ***Private restrictions on land can include all of the following EXCEPT***
   A. deed restrictions.
   B. easements.
   C. property tax liens.
   D. restrictive covenants.

8. ***An easement granting access to property may be referred to as a***
   A. DHA.
   B. FHA.
   C. POW.
   D. ROW.

9. ***In looking for encroachments, a lender is most likely to order a(n)***
   A. appraisal.
   B. location survey.
   C. survey.
   D. title search.

10. ***A(n) ______________ is something that occurs outside of the property.***
    A. encroachment
    B. nuisance
    C. trespass
    D. waste