

Understanding Real Property

This is the first “Understanding The Law For Land Surveyors” article. I hope many more like it will follow. These articles will explain legal concepts or topics related to Land Surveying and the determination of real property boundaries. They will be written with the beginner in mind, but experts may find them useful as a reminder or review. They may also introduce topics that would be suitable for further research. They are not summaries or briefs of court cases and legal decisions, although they may cite or reference these.

This particular article will attempt to answer these questions:

What is real property?

How is it different from personal property?

Why is the definition of real property important to Land Surveyors?

Why is the definition of real property important to our society?

What is real property?

It can be difficult to define real property in an exact sense. In fact, the definition can change depending on the jurisdiction and/or the context in which the term is used. We will present a basic definition in this section.

Before we look at the legal definition of the term “real property”, let’s examine the two words that make up the term, “real” and “property”.

The first term “real” is of Spanish origins, and comes from the Latin word “regalis”, which means “royal”. |R1| (You can see the relationship between the Latin word “regalis” and the English word “regal”, which pertains to royalty.) This makes sense when you consider that under the Feudal system of Medieval Times, the king, or sovereign ruler owned all the land of a nation. (At least, this is how it worked in theory.) In that sense all land was “royal” property. |FN1|

The second term “property” is more common in the English language. The dictionary defines it as “something owned; a possession.” |R2| In this sense, property can be something tangible or intangible that can be owned or controlled by an entity. Property is therefore closely tied to ownership. This makes sense, when you consider that the rules governing ownership of real property have their own name, “property rights”. We will hopefully discuss the ownership of real property in greater detail in a future “Understanding...The Law For Land

Surveyors" article.

Now that we have a better understanding of those two terms, let's consider for a moment the basic legal definition of real property.

Real property: Property that is immovable and permanent. In most cases it is applied to land and all of the things permanently attached to that land. Land is the solid material of the Earth. Real property can also include structures and vegetation, and subterranean features of the land like aquifers and mineral rights. |R3| |R4|

How is real property different from personal property?

A key part of understanding the definition of real property is to understand how it is different from personal property. There are 5 important distinctions:

[1] Real property is permanent and immovable. Personal property can be consumed, destroyed or moved. (You can technically move a house or other structures attached to land that would be considered real property, but this is not typically done. Soil and other material can also be separated and sold or transferred from a piece of real property. At some point the separated material ceases being a part of the real property and becomes personal property.)

[2] In most cases today, title to real property, or claim of ownership over real property, passes from the owner to his designated heir at the time of the owner's death. This was not always the case with real property, as it was with personal property. In the Feudal system, ownership of all real property would pass back to the sovereign ruler, not to the heirs of the deceased person in possession of the property. In this way the sovereign owned all of the land in the kingdom, and had the ultimate power to decide who would possess and benefit from that land.

[3] The owner of real property has an estate, or ownership rights over the real property for as long as they are alive. (If a person was given rights to real property for a designated period of time, this would be considered a lease. There are exceptions to this rule, such as the life estate.)

[4] In most cases, title, or the claim to ownership of real property must be transferred by written means, such as in a deed.

[5] In the United States Of America, the laws governing real property are covered in the Statute of Frauds, while the laws governing personal property are covered in the Uniform Commercial Code.

|R5|

Why is the definition of real property important to Land Surveyors?

Although the definition of real property is important to Land Surveyors, the dimensions, description, or location of real property is even more important. |FN2| Because of its high value, most modern societies have recognized the need for qualified professionals that specialize in the description and physical location of real property. In most cases, these qualified professionals are known as Land Surveyors. |FN3|

It is the Land Surveyors ability as an expert measurer that makes him, or her, an excellent choice in this regard. However, more than precise measurements are needed to locate and describe real property. A love of history, a thorough understanding of the laws pertaining to real property, and a dedication to the greater good are all desirable and required qualities of those given the privilege of locating and describing real property. These functions regarding real property are some of the major responsibilities of Land Surveyors. For this reason, Land Surveyors have an intimate relationship with real property.

In the course of their duties, a Land Surveyor may be required to not only locate or describe real property on a horizontal plane, but also in three dimensions. The Fourth Edition of Brown's Boundary Control and Legal Principles does an excellent job of summarizing this "three-dimensional" aspect of real property. I will quote the book here:

"In its broadest description, real property is four-dimensional. The average surveyor visualizes real property or land in only two dimensions, length and width. Yet visionary surveyors are able to see that land or real property is also composed of depth (including height) and time. The third element, depth, in addition to surface rights, has been interpreted by courts to include subsurface rights in minerals, waters, and passage, as well as aerial rights and the space above the land itself. English common law and the courts in the United States also recognize a fourth dimension, time. Time can describe or indicate the duration of the legal rights in real property that the vendor has to convey."

I found 4 California Court Cases that demonstrate this aspect of real property location. I will summarize them briefly, as I believe they will help the reader understand the importance of the "extra" dimensions when thinking about real property. The first two cases have to do with the subterranean or the below ground dimensions of real property. The last two have to do with the air space, or above ground dimensions.

Melina Mancino v. Santa Clara Flood Control and Water District (272 Cal.App.2d 678): In this case the Santa Clara Flood Control and Water District installed a concrete control box that serviced a 66 inch pipeline on the Mancino property. It was installed in front of the house, but in the right-of-way of Emory Street, between the curb and the sidewalk. All but a small portion of the 35 X 25 X 20 foot structure was installed underground. The court found, that even in a case when fee ownership of a property extends to the centerline of a road, the owner of the property does not need to be compensated for the public taking of property "under" a public right-of-way. In other words, Melina Mancino owned the "property" underneath the surface of Emory Street, but the public right-of-way granted for that street included the right to place utilities below the surface of that right-of-way even though this was not specifically stated in the written terms of the conveyance of the right-of-way. When a right-of-way for a street is granted to a government entity, the right to place underground utilities is implied unless otherwise specifically stated in the document that transfers the right-of-way.

Niles Sand & Gravel Company Inc., et al, v. Alameda County Water District (37 Cal.App.3d 924): In 1974 Alameda County Water District maintained a program in which it regularly recharged ground water in the Niles Cone Ground Water Basin. Niles Sand & Gravel Inc. mined gravel, sand and other material from a property within the ground water basin by means of deep, open pits. They pumped water from their pits, which were below the natural level of the ground water table, and below the sea level of the adjacent San Francisco Bay. The two entities involved in this case were working at complete cross-purposes. One was forcing water into the ground water table, the other was pumping it out. The underground "dimension" of the real property mined by Niles Sand & Gravel, Inc. became very important in determining if the District had to compensate them for a "public taking" of the rights to mine their property. In other words, the surface rights of the fee owner weren't in question, the subterranean rights were. For reasons I will not discuss in detail here, the court ruled in favor of the District.

Zantop Air Transport, Inc. v. County Of San Bernardino (246+ Cal.App.2d 435): This is a very interesting case in which the County of San Bernardino placed a tax on the value of planes used by an air transportation company that was based out-of-state, but maintained an in state repair and maintenance facility. (The tax disputed was not on the facility, but on the aircraft.) The tax assessed was a proportion based on the value of each aircraft and the time it spent in the county. You might be asking yourself what this has to do with real property. A statement in the majority decision highlights this. It found that although the United States and federal statutes regulate air commerce in navigable air space, that sovereignty in air space, which includes the power to tax, remained with the states. It found that "states and local agencies must contend with numerous problems stemming from the use of air space for interstate air commerce, particularly as this affects the use of subjacent lands." |FN 4| This included dealing "with problems of noise, air crashes, and use regulations of lands under take-off and approach patterns." The court found that the tax was appropriate considering these facts, among others. This demonstrates that the "air space" of real properties in the County of San Bernardino were important in this case.

PG&E Company v Petereson (270 Cal.App.2d 434): In this case PG&E acquired an easement over the Peterson property and neighboring lands for the installation and maintenance of Electric Transmission Lines. The Petersons grow rice on their property and use aircraft to seed, fertilize, and spray the crops. They claimed that the erection of the electrical lines over the property and the adjoining properties would interfere with their ability to use their land. They also claimed to have obtained a "avigation" easement by prescription. |FN5| When this claim was rejected by the court they claimed to have an irrevocable license to fly within the air space that would be blocked by the transmission lines. For reasons not discussed here the court rejected the Peterson's claims for damages. This case does however demonstrate the value of the air space over the Peterson property, and even over adjoining properties. In this case, the "three dimensional" aspect of real property was very important.

Why is the definition of real property important to our society?

The answer to this question is simple. It is one of the most valuable types of property that you can own today. In the United States, for instance, the ownership of real property and the rights related to that ownership are a key element of the economy. The definition of real property in different contexts can have significant and serious

monetary consequences. I have selected 2 California Court Cases that demonstrate this.

East Bay Municipal Utility District v Richmond Redevelopment Agency (93 Cal.App.3d 346): In this case the Richmond Redevelopment Agency sought to vacate public streets as part of a redevelopment project. The question presented in the case asked if a utility company had to bear the cost of relocating underground facilities when the relocation was made necessary by a redevelopment project. In a New York case a utility company had sought compensation for the relocation of utilities lying within relocated streets on the basis that these were "real property", and that owners of real property affected by the abandonment of the public streets were entitled to compensation. East Bay Municipal Utility District made the same claim in this case. The definition of real property, and whether or not underground utilities fit within that definition in this context, became a fundamental issue. In summary, the court found that a broad definition of real property that would include the utilities under the streets was not what the legislature intended in writing the laws that gave the redevelopment agency its powers, and that East Bay Municipal Utility District was not entitled to compensation on that basis. This demonstrates to us the financial importance of the definition of real property, and what is included or excluded in that definition.

Jameson Petroleum Company v State of California (11 Cal.App.2d 677): In this case Jameson Petroleum Company sought to recover a portion of the taxes it paid on its assets, including mineral rights and oil leases. In 1931 the State of California used different formulas to calculate the value of personal property owned by a corporation and to calculate the value of real property owned by a corporation. This resulted in a significant difference in the amount of taxes owed to the state depending on how assets of a company were placed in those two categories. In the case of Jameson Petroleum, the State of California asserted that oil leases and mineral rights were not personal property, but real property as defined in the section of law that determined the taxes owed by the company. |FN6| In the courts final decision it held that a leasehold on mineral or oil rights was correctly classified as real property in this context. This case provides another example of how the definition of real property can carry significant financial consequences.

I hope this article has helped my readers a better understanding of the definition of real property. This would include:

How real property is different from personal property.
That real property is three-dimensional.
That the definition of real property can change depending on the legal context.
That the definition of real property has an important affect, financial and otherwise, on the society that is governed by those definitions.

I hope to explore these topics in more detail in future articles on the Law4LandSurveyors blog.

The Sunburned Surveyor

|R1| This information was taken from the Wikipedia entry on "Real property" as the article was written on January 5, 2006. You can read the entire entry at this URL:
http://en.wikipedia.org/wiki/Real_property

|R2| This definition was taken from the Third Edition of the American Heritage College Dictionary, at page 1097, under the term "property".

|R3| A portion of this definition was taken from the Fourth Edition of Browns Boundary Control And Legal Principles. The information can be found on page 15 under the subheading "Real And Personal Property", and on page 16, under the subheading "What Constitutes Real Property". The book has an excellent discussion of real property from the Surveyor's perspective, and I highly recommend reading it.

|R4| A portion of this definition was taken from The 'Lectric Law Library's Lexicon, under the web page that presents the definition of real property. On January 5, 2006 that information could be found at this URL: <http://www.lectlaw.com/def2/q013.htm>

|R5| These 5 points were based on information taken from The 'Lectric Law Library's Lexicon, under the web page that presents the definition of real property. On January 5, 2006 that information could be found at this URL: <http://www.lectlaw.com/def2/q013.htm>

|R6| This quote was taken from the Fourth Edition of Browns Boundary Control And Legal Principles. The information can be found on page 16, under the subheading "What Constitutes Real Property".

|FN1| I was unable to find a published reference to back up this

observation of mine. If you are aware of one, please let me know by dropping an e-mail to law4landsurveyors@gmail.com so I can add the reference to this article. In the meantime, my readers should treat it with a measure of skepticism.

|FN2| In the Third Edition of Browns Boundary Control and Legal Principles, the author mentions situations in which a Surveyor's failure to make a distinction between real property and personal property resulted in there being liable for losses involved in the transfer of the real property surveyed. I was unable to find court cases that were an example of this situation. If you are aware of such a case, or can provide me a reference to material that deals with this subject, please drop me an e-mail at law4landsurveyors@gmail.com so I can investigate further and present the information to my readers.

|FN3| In the State of California, writing new descriptions of real property is covered in the definition of the practice of land surveying. (California Code – Section 8276 – [I]) Are other professionals allowed to do so? What are the laws in your state or jurisdiction? If you know the answer, drop me an e-mail at law4landsurveyors@gmail.com and let me know. I am curious who else is given the authority to do so in other places.

|FN4| This definition was set out in Section 16 – Article 8 of the California State Constitution, also known as the Bank and Corporation Franchise Tax Act, and Sections 3617 and 3820 of the Political Code, as they existed in 1931.

|FN5| Avigation is a relatively new term, which in this context means the ability to "navigate or move through the air." There is an interesting article on avigation easements at this link:
http://www.saveourheritage.com/Library_Docs/Avigation_easements.htm

|FN6| The law involved in this case was Section 13 of the California State Constitution, the Bank and Corporation Franchise Tax Act, and Sections 3617 and 3820 of the Political Code as they existed in 1936.