Dual Sovereignty

- Both the national and state governments have power and capacity to make laws.
Primary Sources of Law

- Constitutions
- Statutes
- Court Decisions (Common Law)
- Administrative Regulations
Law of Real Property...

....is primarily controlled by state law.

- The law of the state where the property at issue is located usually controls.
Real Property vs. Personalty

- Real Property: Land and those things that are permanently attached to land.

- Personal Property (chattels, personalty): Movable property not affixed to the land.
Tangible vs. Intangible
Personal Property

- **Tangible**: Things that have physical substance.

- **Intangible**: Symbolically represent value or a set of rights.
Fixtures

Items of personal property that become real property because of their attachment to land or a building attached to the land.
Example Judicial Analysis: Fixture vs. Personalty

(Don’t write this down)

- Actual annexation to the realty?
- Adaptation to the use of that part of realty
- *Intention* of the party making the annexation

Why are we studying fixtures?

If an item is a fixture, it should transfer with the realty upon sale and conveyance or should stay with the landlord’s realty when the tenant moves out.
Physical Elements of Real Property

- Airspace
- Mineral Rights
- Water Rights & Riparian Rights
Rights of Real Prop. Ownership

- Right to Possess
- Right to Use
- Right to Dispose

(Right to transfer ownership)
INHERITANCE

Property received from a deceased person either by devise or bequest under a will or by the effect of kinship under the laws of intestate succession

Person who dies *with* will = testate
Person who dies *without* will = intestate
Methods of Acquiring Ownership to Real Property

- Inheritance – devise
- and intestate succession
- Gift
- Contract and sale
- Adverse possession
Adverse Possession

A person without legal title takes possession of land without permission and occupies it openly and hostilely for a certain period of years defined by state law after which title passes to the adverse possessor.
Fee Simple

- The maximum or highest form of land ownership in the U.S.
Reversion

A reversion interest means the seller or grantor retains a potential right to have title return to him/her.
- Fee Simple Determinable: Ownership is subject to a condition, the breach of which will cause an automatic reversion.

- Fee Simple on Condition Subsequent: Ownership is subject to a condition, the breach of which will permit the grantor a right to demand reversion.
Life Estate

Estate of property with a duration which is measured by the life or lives of one or more people
Reversion vs. Remainder

- With a *reversion* interest, the title will or may come back to grantor.

- With a *remainder* interest, the title will or may go to a 3rd party.
Estate for Years: An estate in real property for a term of years, a definite period of time.

Estate at Will: An estate in real property that exists at the will and pleasure of the parties; can be terminated by either party with notice.
ETHICS CODES

- For lawyers, most states have adopted rules of professional responsibility based on the ABA Model Rules or a Model Code.

- For paralegals, a few states have adopted ethics “guidelines.”

- In Maryland, informal code by MD Assoc. of Paralegals – www.mdparalegals.org
Joint Tenancy

- Key Feature: Right of survivorship
- Each tenant has an equal and undivided interest in the whole
- Created by a single instrument – deed or will
Tenancy in Common

- No right of survivorship
- Each tenant has a separate, undivided interest in the whole
- Tenants may have unequal shares
- Rights, duties may be modified by contract
Rights, Duties and Liabilities of Tenants in Common

- Controlled by common law principles in state law
- Common law principles may be modified through agreement among all the tenants
PARTITION

- Dividing land owned concurrently by two or more people into separate parcels with individual ownership

- May be accomplished by voluntary agreement or through a partition action (lawsuit)
Tenancy by the Entirety

- Husband and Wife – Only
- Abolished in a majority of states – survives in Maryland & Pennsylvania
- Property is not subject to severance
- Right of survivorship
Community Property

- 9 States

- Generally, all real property acquired during marriage belongs jointly to husband and wife

- No right of survivorship – Upon divorce or death, property is treated as belonging ½ to each spouse.
Dower & Curtesy

- Dower protects female wives
- Curtesy protects male husbands
- Interest varies among the states – consists of a life estate in some undivided fractional share in the lands owned by the spouse during the marriage
Dower and Curtesy Abolished in Nearby States

- Maryland
  Md. Code, Estates & Trusts, § 3-202
- Pennsylvania
  20 Pa. C.S.A. § 2105
- West Virginia
  W.Va. Code § 43-1-1
Elective Share Statutes

- Allow surviving spouse to reject will of deceased spouse and claim a statutory percentage of decedent’s property
- Prevent a spouse from disinheriting the other spouse
Other Legal Entities

- Corporations
- General Partnerships
- Limited Partnerships
- Limited Liability Companies
Corporations

- Chartered by states
- Owned by shareholders (or members)
- Corporate resolution required for real property transactions
General Partnerships

- Association of 2 or more people to conduct business for profit.
- Usually based on a written agreement, but not required. State approval not required.
- Signature of every partner required for real property transactions.
Limited Partnerships

- Two classes of partners – Limited and General
- Certified by states having enacted the Uniform Limited Partnership Act
- Signatures of all general partners required for real property transactions
Limited Liability Companies

- Chartered by states
- Generally, any member can bind the LLC, but documents of organization should be consulted to determine signatures required for real estate transactions
Legal Entities Taking Title

A corporation, partnership, limited partnership, or limited liability company buying real property should take title to property in the name of the entity.
Legal Description

Written statement that describes a piece of land without ambiguity and leaving no possibility of confusion with other lands
Land Survey

- Visual presentation of the physical boundaries of real property

- Compare:
  - Boundary survey
  - “As-Built” survey
Types of Legal Description

- Government Rectangular Survey Description
- Platted Description
- Metes and Bounds Description
Platted Legal Description

- Description of a parcel of land by reference to a recorded plat
- Plats commonly prepared and recorded for residential subdivisions, condominiums, and industrial parks. Some parts of cities have been platted.
“All that parcel of real estate on the West side of Hickory Drive, part of Hillcrest Subdivision (formerly Mountainaire Village, Section 3) and in Frankfort District, Mineral County, West Virginia, a plat of the subdivision having been duly recorded in the Plat files of the Office of the Clerk...in Plat Book 6, at Page 125, Plat Cabinet File 44A, and being Lot No. 409 Hillcrest Estates.”