ELEMENTS OF REAL PROPERTY

Real property consists of:

- **Land**: including the soil on the surface of the earth, all of the water, minerals, oil, and gas contained on or below the surface, and most of the airspace above the surface;

- **Fixtures**: Buildings and other improvements that are attached to real property in such a way that they take on the characteristics of the real property and become part of that real property; and

- **Plant Life and Vegetation**: both natural and cultivated, as well as the produce of said plant life and other vegetation.
OWNERSHIP OF REAL PROPERTY

- **Fee Simple Absolute:** An ownership interest in real property that affords the owner the greatest possible aggregation of rights, privileges, and power. Only an individual and his or her heirs can hold a fee simple absolute.

- **Fee Simple Defeasible:** An ownership interest in real property that can revert to the grantor of the interest (or his or her heirs or assigns) upon the occurrence or nonoccurrence of a specified event.

- **Life Estate:** An interest in real property that affords the holder all rights of possession and use of land but exists only for the duration of the life of some person, usually the holder of the life estate.
FUTURE INTERESTS

- **Future Interest:** An interest in real property that may or will become possessory in the future, depending on whether it follows a fee simple defeasible or a life estate, respectively.

- **Reversionary Interest:** Future interest retained by the original owner.

- **Remainder:** A future interest held by a person other than the original owner.

- **Executory Interest:** A future interest, held by a person other than the grantor, which begins after the termination of the preceding possessory interest.
NON-POSSESSORY INTERESTS

- **Easement:** A non-possessory right to use another’s property in a manner established by express or implied agreement.

- **Easement/Profit Appurtenant:** This type of easement or profit arises when the owner of one piece of land has a right to go onto an adjacent piece of land.

- **Easement/Profit in Gross:** This type of easement or profit arises when one’s right is to use or take things from another’s piece of land that is not an adjacent tract of land.

- **Profit:** The right to enter upon and remove things (e.g., trees, oil, and topsoil) from the property of another.

- **License:** A revocable right or privilege to come onto the land of another.
TRANSFER BY DEED

- **Deed:** A document by which legal title to real property is conveyed.

- A valid deed must contain:

  1. the **names** of the buyer (*grantee*) and seller (*grantor*);
  2. words evidencing an **intent to convey** the property;
  3. a legally sufficient **description** of the land; and
  4. the grantor’s **signature**.

- **Warranty Deed:** A deed in which the grantor guarantees to the grantee that the grantor has valid, clear title to the property conveyed in the deed.

- **Quitclaim Deed:** A deed intended to pass any titles, interest, or claim that the grantor may have in the property but not warranting that such title is valid and/or clear of any encumbrances.
ADVERSE POSSESSION AND EMINENT DOMAIN

- **Adverse Possession:** Acquiring title to real property by occupying it openly, without the consent of the owner, for a period of time specified by the applicable state statute. The occupation must be:

  1. **Actual and Exclusive:** The possessor must take sole physical occupancy of the property;
  2. **Open, Visible, and Notorious:** The possessor must occupy the property for the entire world to see;
  3. **Continuous and Peaceable:** The possessor must occupy the property without abandoning for any period of time and without being interrupted by the true owner and/or the courts; and
  4. **Hostile and Adverse:** The possessor must claim the property against the entire world, and cannot occupy it with the permission of the true owner.

- **Eminent Domain:** The power of a sovereign government to take land from private citizens (i) for **public use** and (ii) with **just compensation**.
LEASEHOLD ESTATES

- **Lease**: A contract by which the owner of real property (the *landlord* or *lessor*) grants to a person (the *tenant* or *lessee*) an exclusive right to use and possess the property, usually for a specified period of time, in return for rent or some other form of consideration.

- **Leasehold Estate**: An estate in real property held by a tenant under a lease, giving the tenant a qualified right to possess and/or use the land.

- **Tenancy for Years**: A leasehold estate for a specified period of time.

- **Periodic Tenancy**: A leasehold estate for an indefinite period conditioned upon the receipt of rent at fixed intervals.

- **Tenancy at Will**: A leasehold estate, which permits either the lessor or lessee to terminate the tenancy, without cause and without notice.

- **Tenancy at Sufferance**: A situation, which arises when a tenant continues to occupy the real property after his or her leasehold estate expires. It is not a true tenancy.

THE LEASE AGREEMENT
Requisites of Lease: A lease agreement should:

1. be in **writing** (not required in some states, but always advisable);

2. express intent to establish a landlord-tenant relationship;

3. provide for **transfer of possession** of the property to the tenant at the beginning of the lease;

4. provide for the **reversion of possession** of the property to the landlord at the end of the lease’s term;

5. **describe** the property; and

6. clearly indicate the length of the lease **term**, the amount of **rent** due, and how and when rent is to be paid.
LANDLORD-TENANT: RIGHTS AND DUTIES

- **Possession:** The landlord is obligated to deliver possession of the leased property at the inception of the lease, during the term of which the tenant is entitled to take and retain possession until the lease expires. The landlord is also obligated to ensure that no one claiming superior title disturbs the tenant’s possession and use of the property during the lease term.

- **Use and Maintenance:** Unless the lease agreement specifies otherwise, the tenant may use the leased property for any legal purpose that does not injure the landlord’s reversionary interest. The tenant is responsible for all damages to the premises caused by the tenant and/or his or her guests and invitees. However, unless the parties have agreed otherwise, the tenant is not responsible for ordinary wear and tear.

- **Habitability:** The landlord impliedly promises that rented residential premises are fit for human habitation -- i.e., they are safe and suitable for people to live in.
LANDLORD-TENANT: TRANSFER

- **Transfer of the Landlord’s Interest:** As with any other real property owner, a landlord may sell, give away, or otherwise transfer his or her property. However, the existing lease agreement continues in force with the new owner assuming the landlord’s rights (e.g., to collect rent) and duties (e.g., maintaining habitability).

- **Transfer of the Tenant’s Interest:** Assuming that such transfers are not forbidden by the lease agreement, a tenant may transfer his or her interest in leased property as follows:

  - **Assignment:** An agreement by the tenant (the *assignor*) to transfer all of his or her rights, title, and interest in the lease to another person (the *assignee*).

    While an assignment divests the assignor of his or her rights in the leased property, unless the landlord consents to the assignment, the assignor remains liable to the landlord for rent and any other obligations set forth in the lease agreement.

  - **Sublease:** A lease executed by the tenant to a third person (the *sublessee*) which conveys less than the tenant’s full interest in the lease.