



Part 1. Property Ownership and Land Use Controls and Regulations (15% of the Exam)

Hello!

I am Chi Young Ji

I hope everyone can effectively learn
and prepare for the exam using this
curriculum

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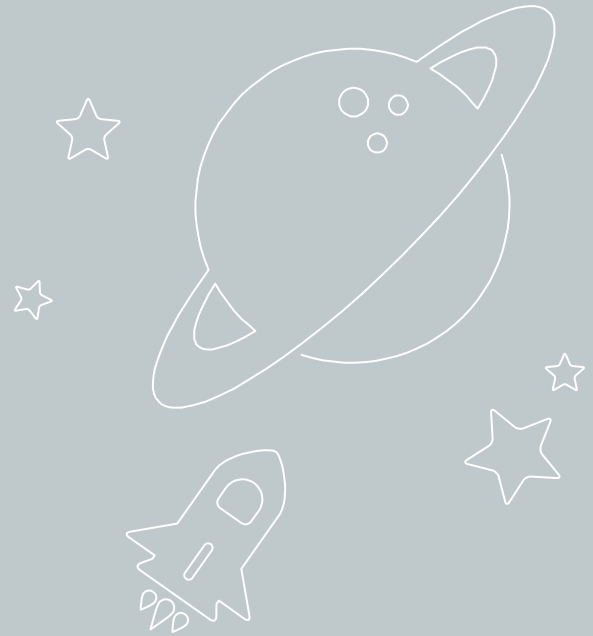


Classes of Property & Property Characteristics



1

When you buy a house, you are not buying it in a physical sense, but the rights called, **the Bundle of Rights!**



Bundle of Rights

- 1) **Possession**: the right to occupy, rent, or keep others out
- 2) **Enjoyment**: the right to “peace and quiet” without interference



Bundle of Rights

3) **Control**: the right to physically change or keep the property the way you like it

4) **Disposition**: the right to transfer all or a part of the property as you see fit



Real Property vs. Personal Property



Real
Property?

Personal
Property?



Real Property

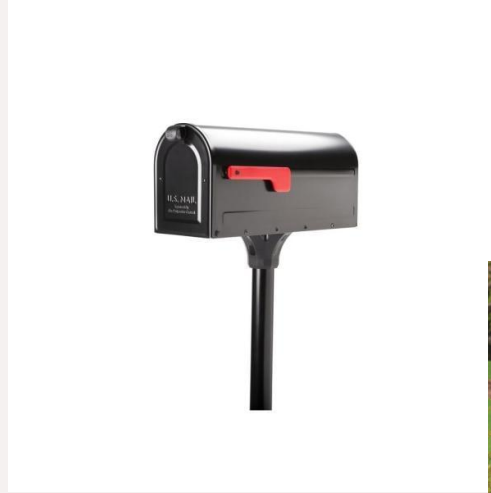
Land, permanently fixed,
appurtenant to the land,
immovable by law

Personal Property

Everything else than real
properties.

Movable, Crops sold under
contracts, trade fixtures,
chattels

The moment you
fix it to the
ground, it
becomes a real
property



MARIA Test (Is it a real or personal property?)



Method of attachment

Can simply be unplugged?

Adaptability

Specifically adapted for the property?

Relationship of the parties

Seller vs. Buyer
Landlord vs. Tenant

Intention

Do not permanently attach your personal property, if you want it to be personal property

Agreement

Good idea to put agreement in writing

A type of question you might see will look like: “which of the following is not a part of the MARIA test?”
ex) cost, time of attachment

Vocabulary



Try to guess
if real or
personal
property

- **Fixture:** items of personal property that are incorporated into, or affixed to, the land, thus considered as **real property**
- **Improvement:** anything attached to the land
ex) building, fences, walls, etc. (**real property**)

Vocabulary



Try to guess
if real or
personal
property

- **Appurtenant**: Belonging to. Ownership transfers with the land automatically (**real property**)
 - ex) Easement, covenant, mutual water company stocks
 - **Mutual water company**: organized by water users in a given district to supply ample water at a reasonable rate

Vocabulary



Try to guess
if real or
personal
property

- **Trade Fixtures**: used for personal business
 - **Always personal property** (Even if fixed)
- **Natural Attachment**
 - **Fructus Naturales**: naturally occurring plants (**real property**)
 - **Fructus Industriales (emblems)**: annual crops produced by human labor (**personal property**)

Question



- Which of the following is considered to be personal property?
 - a) Pool
 - b) Bathtub
 - c) Wood-burning fireplace
 - d) Emblems

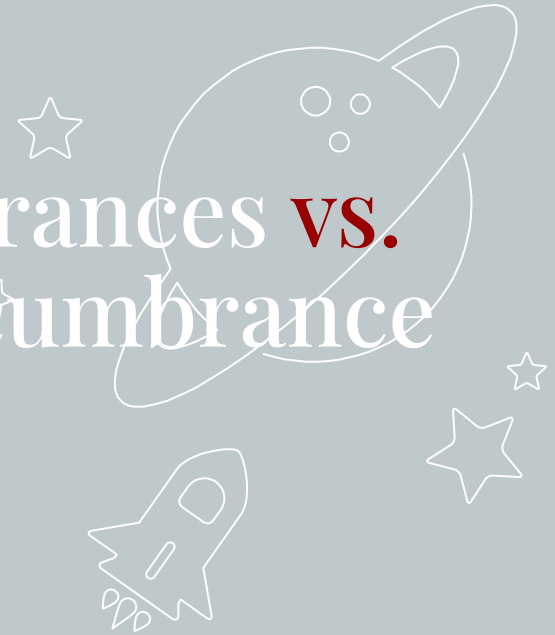
Encumbrances:

a right or interest in real property other than an ownership or tenancy interest



2

Money related Encumbrances **vs.**
Non-money related encumbrance



Money-related Encumbrances (= lien)

1. Trust Deed (or Deed of Trust)
2. Mortgage
3. Mechanic's Lien
4. Taxes, Etc..

1. Trust Deed

- **Trust Deed**: a written instrument using real estate as **collateral** for a loan
- It requires a promissory note
 - **Promissory note**: A written promise by the maker that the person will pay back certain amount of money by certain date



1. Trust Deed

- Trust deed is considered a lien because as you [hypothesize](#) the property for the loan, others will have certain rights and interests on your property



2. Mortgage

- The core idea is the same as that of trust deed with some major differences, which are to be discussed in later sessions.
- Therefore, **mortgage also is a lien** against your property



3. Mechanic's Lien

- “I did the work for your place. You did not give me enough compensation for it. Pay me now or I am placing **mechanic's lien** against your property.”



3. Mechanic's Lien

- Has **priority over other liens** except property tax, special assessment, and trust deed, etc.
- Must be filed and **recorded to be valid**



Acknowledgement & Recording



- Acknowledgement -> Recording
- Acknowledgement (notary): acknowledges that the signatures they put are theirs and of their free will
 - Notary officer: given permission by the **secretary of state** to be a witness to this acknowledgement

Acknowledge & Recording



- **Recording**: a legal process of making an instrument an official part of the records of a county
- Once recorded, the document provides **constructive notice**
 - **Constructive notice**: notice given by the public records
 - **Recording -> Constructive notice**

3a. Mechanic's Lien Timeline

1. **Preliminary Notice**: to be provided within **20 days** of the first service or providing materials
 - **Provided by the worker**. Tells the owner that if he/she does not pay, then the lien will be placed
2. Work completed



3a. Mechanic's Lien Timeline

3. Notice of completion recorded

- The **owner** can record the notice of completion within **10 days** after the project was finished



3a. Mechanic's Lien Timeline



4. Mechanic's Lien

- If the notice of completion is filed:
 - 1) Original contractor has **60 days**,
 - 2) All other contractors **30 days** to record the mechanic's lien from the date notice of completion was recorded
- If not filed, mechanic's lien can be placed within **90 days** from the day work has finished

Mechanic's Lien Timeline

Preliminary Notice (사전통보문)	Work Done (일 완료)	Notice of Completion (완료통보문)	Placing Lien (lien 등록)
<p>Within 20 days Mechanic -> Owner</p> <p>(20일 이내에 기술자가 부동산 주인에게 전달)</p>	<p>=)</p>	<p>Within 10 days By the owner</p> <p>(10일 이내에 부동산 주인이 신청)</p>	<p>If notice of completion, within 30/60 days (완료통보문 record 시 30/60일)</p> <p>If no notice of completion, within 90 days (완료통보문 미 record 시 모두 90일)</p>

Types of Lien

Voluntary?

Involuntary?

General?

Specific?



General Lien

Liens on all the properties of the owner, not just one

Ex. federal or state income taxes and judgement liens

Specific Lien

Liens against just one property

Ex. Property taxes, mechanic's lien, trust deed, etc

Question



- Mortgage or Trust deed?
 - a) Voluntary general
 - b) Voluntary specific
 - c) Involuntary general
 - d) Involuntary specific

Question



- Judgement lien?
 - a) Voluntary general
 - b) Voluntary specific
 - c) Involuntary general
 - d) Involuntary specific

4a. Taxes

- **Special Assessment**: the voter approved improvements in a given district (**seller to disclose**)
ex) sewers, street lighting, etc.
ex) **Mello-Roos** in Irvine
- **Lis Pendens**: the recording done through the county office warning that certain lawsuit is pending concerning the property



4b. Judgement

- **Judgment**: a court decision determining the rights of the parties involved and the amount of compensation
- Judgment from the court could be **considered a lien** against your property



In Summary..

- The following are considered money related encumbrances or liens:
 - Mortgage
 - Trust Deed
 - Mechanic's Lien
 - Unpaid taxes including special assessments
 - Judgement



Non-money Related Encumbrances

1. Easement
2. Public and Private Restrictions
3. Encroachment

1. **Easement:** created by grant or agreement for a specific purpose. An easement is the right, privilege or interest to use the land of another



1. Easement

- a) Easement Appurtenant
- b) Easement in Gross
- c) Easement by Prescription
- d) License



1a. Easement Appurtenant

Easement for the benefit of another parcel of land. This type of easement right automatically transfers with the sale of the property.



1a. Easement Appurtenant



- **Servient Tenement:** Land that permits the use
- **Dominant tenement:** land that benefits from the easement appurtenance
- **Only dominant tenement can terminate the easement**
- **Ingress:** right to enter the property
- **Egress:** right to exit the property

1b. Easement in Gross

Easement for the benefit of a person or a company

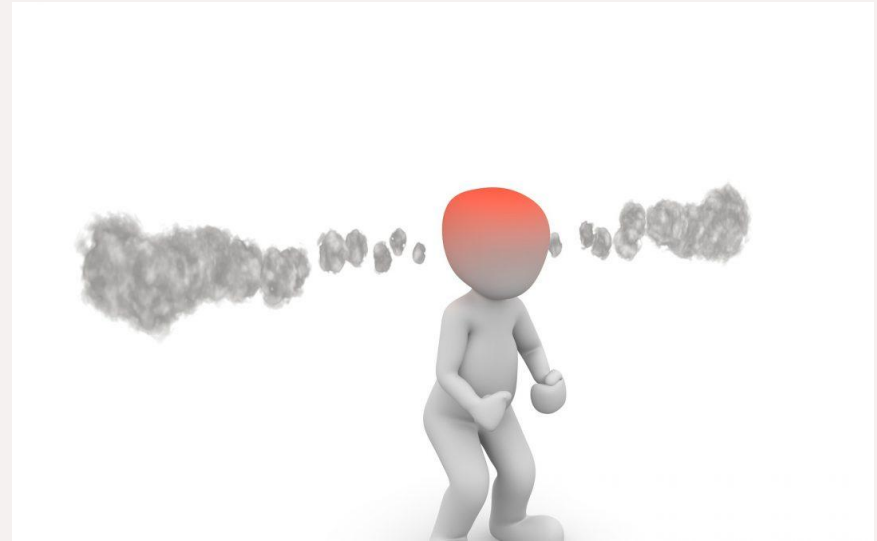
ex) Electricity pole needs to be set up and standing in your property



1c. Easement by Prescription

Easement by prescription can be created by **continuous and uninterrupted** use for a period of **five years**.

The use **must be against the owner's wishes**.





Easement by Prescription:
Fishing to a pond example

1d. License

- **License**: a permission granted to enter the property for a defined period of time for a specific purpose
- Unlike easement, license can be **given and taken away much more easily**.



Question



- Chi sold his property which had an easement appurtenant. The deed which buyer received had no mention of the easement. The buyer:
 - a) Loses the easement to the servient tenement
 - b) Takes title to property which is landlocked
 - c) Has the same right to the easement as the seller did
 - d) Has a clouded title

Question



- Chi and Emily live right next door. Emily needed an extra parking lot, so Chi granted his extra lot until his new van arrived. Chi did not charge any rent for the parking lot. In this case:
 - a) Chi gave easement by necessity
 - b) Chi granted license
 - c) Chi gave easement appurtenant
 - d) Chi gave estate in land

2. Public and Private Restrictions

a) Public Restriction

b) Private Restriction



2a. Public Restriction

- **Zoning**: restriction on the use of private property by the local government agency.
- The division of a city or county by legislative regulations into areas (zones), specifying the uses allowable for the real property in the area
ex) R-3: a lot designated for multiple residential area



2a. Public Restriction related terminology



- **Non-conforming (grandfather clause)**: allows an owner to continue to use structures which are now non-conforming with the new zoning law
- **Variance**: currently prohibited by the zoning law, but apply for an exception and get approved
- **Injunction**: a court order forcing a person to do or not do an act



Soot-Bull-Jeep BBQ
An example of non-conforming use 49

2b. Private Restriction



- Created in the deed at the time of sale by developers or grantors
- CC&R (Covenants, conditions, & restrictions)
 - **Covenant**: promise to do or not do certain things. Penalty could be money damage or injunction
 - **Condition**: condition that must be met in the future. Penalty is more severe than covenant.
 - **Restriction**: the most restrictive

3. **Encroachment**: unauthorized intrusion on the adjoining land (act within 3 years or you lose your right! - **statute of limitation**)





Homestead



3

Homestead

- Homestead is not an encumbrance.
- It is the California law that allows homeowners to protect their homes from forced sale to satisfy their debts, within certain limits



Homestead

- Homestead **must be recorded** to be valid, along with the mechanic's lien. They are the only documents that require recording.
- The first **\$75,000** of a home's value (**\$100,000** for couples) may not be used to satisfy a judgement



Requirements

- In order for the homestead declaration to be valid:
 1. Claimant must be the head of a family
 2. **Must be the primary residence**
- etc...



Break!



Estate and Types of Ownership



4

Estate: an interest, share, right, or equity in real estate that varies from minimal right of a renter to max right of a full owner

Freehold vs. Less-than-f reehold



Freehold Estate vs. Less-than-freehold Estate

Freehold Estate
(Real Property)

Less-than-freehold Estate
(Personal Property)

Freehold: permanent
(Owning a property)

Less-than-freehold Estate:
not permanent
(Lease, rent)

Freehold Estate (Real Property)

Estate in Fee or “Estate of Inheritance” (Completely yours)		Life Estates (Conditional upon a life)	
<p>Fee Simple Absolute: all rights of the property is transferred. It is all yours.</p> <p>Greatest interest a person can hold</p>	<p>Fee Simple Defeasible Estate (or Qualified Fee Estate): a fee estate that is subject to particular limitations imposed by the grantor of the estate ex) No alcohol</p>	<p>Estate in Reversion: “the property is yours as long as you live. But once you die, it comes back to me.”</p>	<p>Estate in Remainder: “the property is yours as long as you live. But once you die, it will be passed onto a specific, designated person.</p>

Less-than-freehold Estate Types



1. **Estate for years**: lease for a fixed term, agreed in advance
 - * Agreed lease for 3 months is also “Estate for years”
2. **Estate from period to period**: a renewable agreement to rent or lease for a period of time
 - 30 days notice to vacate
3. **Estate at will**: lease that can be terminated at any time
4. **Estate at sufferance**: remaining in the lease after the term against the owner’s will

Question



- Chi rented his apartment from January 5, 2007 to June 5, 2007. Which describes Chi's type of tenancy?
 - a) A periodic tenancy
 - b) A fee simple estate
 - c) An estate for years
 - d) Month-to-month tenancy

Title: the right to
ownership of land and the
evidence of that
ownership

Types of Ownership (Methods of Holding Title)

- a) **Severalty**
- b) **Community Property**
- c) **Tenancy in Common**
- d) **Joint Tenancy**



Severalty (Sole Ownership)

- **Severalty**: the sole ownership of property by one **individual** or by a corporation
 - Title held by a single entity



Community Property



- **Community property** refers to all the property acquired by a husband or wife during their marriage other than separate property
 - **Separate property**: any property obtained prior to marriage
- Property acquired through gift or inheritance during marriage is not considered a community property

Tenancy in Common



- **Tenancy in Common:** when two or more people own property together with the right to will or sell it.
- **Undivided interest:** each owner has certain interest (not necessarily the same interest), but has the right to use the whole property
- **No Right of Survivorship**
 - **Right of Survivorship:** if one of the owners die, the interest of the deceased automatically transfers to the other owners

Joint Tenancy



- **Joint Tenancy**: two or more people have identical interests in the whole property with the same right of possession and the right of survivorship
- **Yes, Right of Survivorship**
- **Because of the right of survivorship**, joint tenants cannot will their interests

Joint Tenancy

- The **four unities of joint tenancy**
 1. **Title**: granted by the same instrument
 2. **Time**: obtained title at the same time
 3. **Interest**: equal in interest
 4. **Possession**: all have equal right to possess the property



Tenancy in Common vs. Joint Tenancy



Tenancy in Common vs. Joint Tenancy	
Tenancy in Common	Joint Tenancy
NO Right of survivorship (x) If dies, the interest of the property goes to their heirs	Right of survivorship (o) If dies, the interest of the property gets distributed to the other owners.
Amount of interest each owner holds can be different	Amount of interest each owner holds must be the same
No Four Unities (x)	Four Unities required(o)

Question



Extraneous Things to Remember..

- Surviving joint tenant owns property - free of unsecured debt

Question



- If several people hold title to real property as tenants in common, they
 - a) Must own exactly the same amount of interest
 - b) Would have the right of survivorship
 - c) Would be unable to determine which portion of the property belongs to whom
 - d) Could not transfer their interest without consent of the others

Question



- In order to create a joint tenancy relationship, there must be unities of:
 - a) Ownership, possession, heirs, and title
 - b) Title, interest, encumbrance, and survivorship
 - c) Grantees, ownership, claim of right, and possession
 - d) Possession, time, interest, and title

Question **



- Stephen, his nephew, and his niece are joint tenants. Stephen sells his interest to his sister, and then his nephew dies. As a result, which of these statements is TRUE?
 - a. Stephen's niece and sister are joint tenants
 - b. The nephew's heirs are joint tenants with Stephen and his sister
 - c. The nephew's heirs and Stephen are joint tenants, but the sister is a tenant in common
 - d. Stephen's niece and sister are tenants in common

Government Rights in Land and Public Controls



5

Government Rights in Land

- a) Police Power
- b) Eminent Domain
- c) Escheat



a) **Police Power:** Right of the public officials to control the use of private property for the health, safety, and general welfare of the public

b) Eminent Domain

- **Eminent Domain (Condemnation):** the right of the federal or state government to take private property from a landowner for the “public good”
 - Involuntary process
 - Just compensation required
 - Must be necessary for the public use



b) Eminent Domain

- **Inverse Condemnation:** a legal concept that entitles property owners to just compensation if their property is damaged by a public use
 - In this case, **owner can sue the city** for just compensation



c) Escheat

- **Escheat**: a reversion of the property to the state in case the owner died intestate without any heir
- Vocabulary
 - Died **testate**: died with a will
 - Died **intestate**: died without a will



Public Control

- a) Subdivision
- b) Public Report
- c) Zoning
- d) Planning & Development



Residential Subdivision Laws

	Subdivision Map Act	Subdivided Lands Law
Purpose	Gives local government entities control over the physical design of a subdivision (physical design authority)	Regulating conditions surrounding the sale or lease of subdivided real property to protect the purchasers in new subdivision from fraud, misrepresentation, or deceit (Protective policy)
Authority	Local city or county	Department of Real Estate
Applies	To 2 or more parcels or lots	To 5 or more lots

b) Public Report



- **Public Report:** a formal disclosure report of the important facts regarding a subdivision
 - Contains factual, permanent information only (ex. no information on the price)
 - It is like a nutritional fact on food
 - **Does not include reasonable price**
 - Purchaser must receive it / **Anyone can get it upon request**

c) Zoning

- **Zoning**: municipal or local laws or regulations that govern how real property can and cannot be used in certain geographic areas
 - ex) R-3: a lot for multiple residential area
 - **Non-conforming (grandfather clause), variance**



d) Planning and Development



- **Planning Commission:** a group who prepares and adopts comprehensive, long-term general plans for the physical development of its area of jurisdiction
- **Master plan:** a zoning plan for an entire governmental subdivision such as a city.

d) Planning and Development

- **Building Code**: the basic minimum construction standard for a structure
- **Minimum property requirements**: for government financing, certain construction requirements must be met
- If there is a conflict between building codes, say state vs. district, **higher standard wins**



e) Extraneous Stuffs to Remember

- Three phases of building residential subdivision: **acquisition, approval, development**
- **Desist & refrain order** is needed to rescind approval of new subdivision
- **California Coastal Commission:** responsible for regulating the use of land and water within coastal zone. Approves projects within coastal zones.



e) Extraneous Stuffs to Remember

- [William Act of 1965](#): it enables local governments to enter into contracts with private landowners for the purpose of [restricting](#) specific parcels of open space or land into [farming or ranching](#)



Water Rights

A decorative graphic on the right side of the page. It features a dark, semi-transparent rectangular area containing a photograph of several reeds with their feathery heads. Overlaid on this image is a large, white, serif numeral '6'.

6

Riparian Right vs. Littoral Right



Riparian
right?

Littoral
right?



Riparian Right

The right of landowner to the reasonable use of moving, free flowing, water on, under, and adjacent to his/her land

Riparian = River
(flowing)

Littoral Right

The right of a landowner to the reasonable usage of a non-flowing body of water abutting his/her land

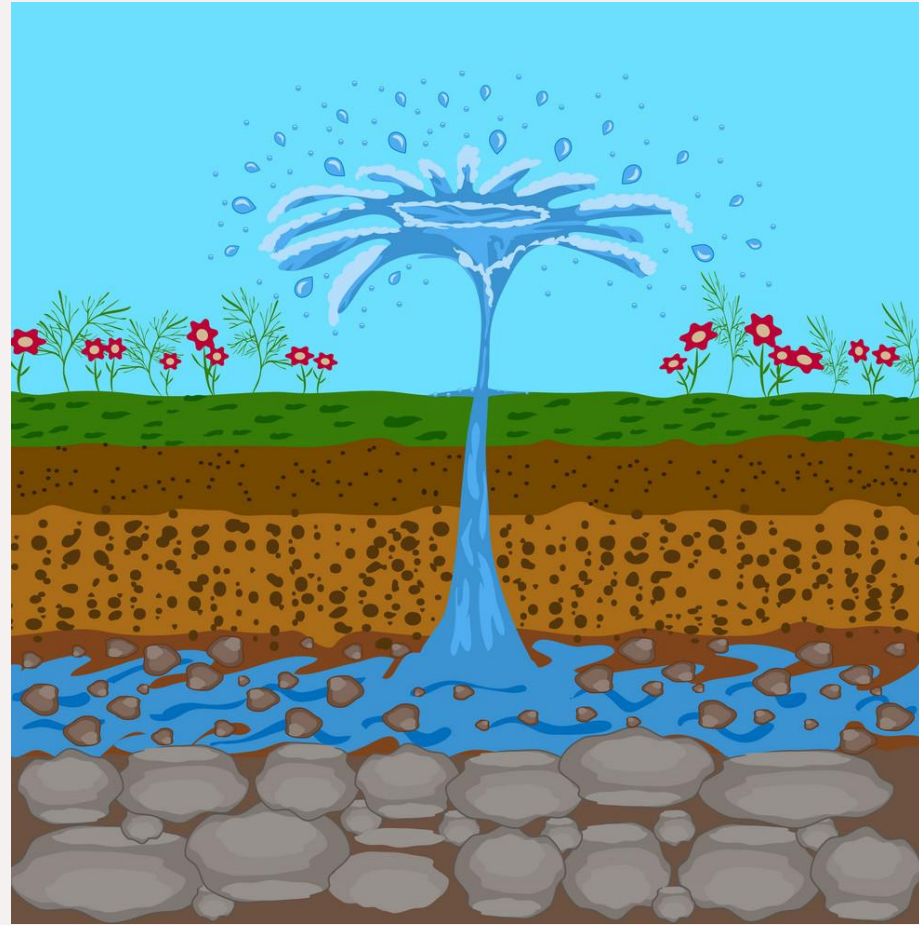
Littoral = Lake
(non-flowing)

Percolating Water

Percolating water:

Underground water not found
in a defined channel

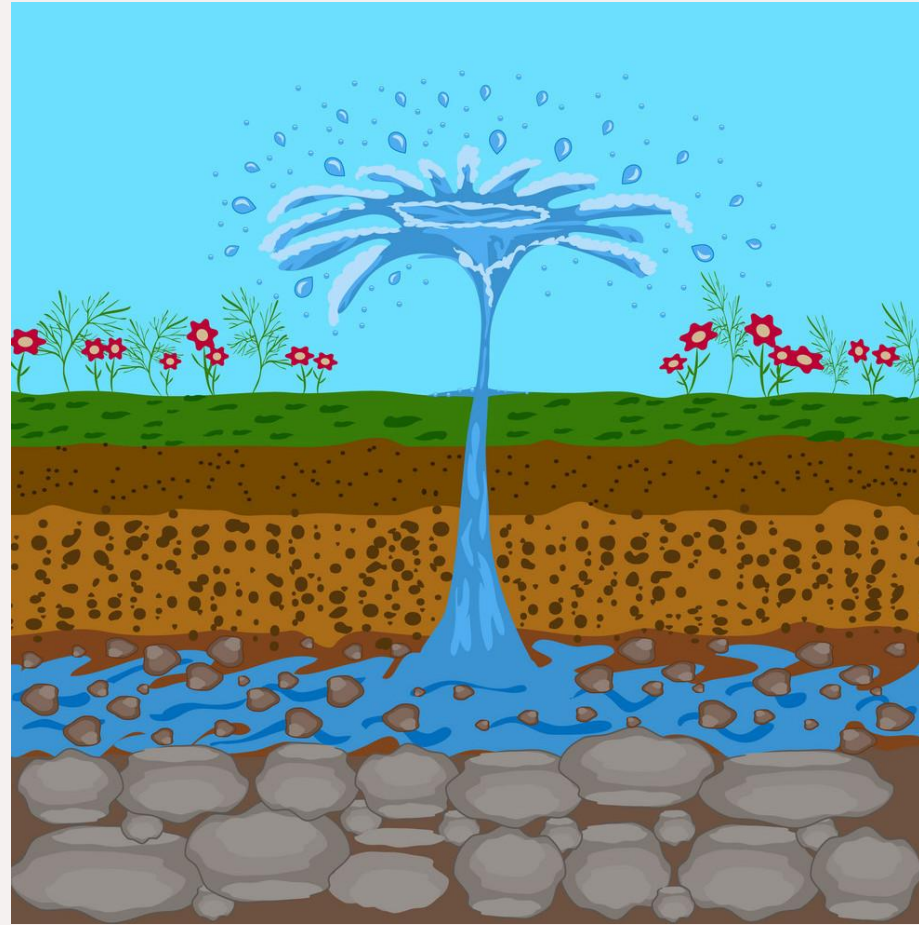
- Percolation test conducted
by [the Department of
Health](#)



Terminologies

Allocation (Appropriation):
taking by the state of surplus,
public underground water for
beneficial use of non-owners

Potable water: Also known as
drinking water, comes from
surface and ground sources



Extraneous Things to Remember..



- **Overlying rights:** All property owners above a common aquifer possess a **mutual right to pump and use underground waters**

Question



- Chi has a small pond right next to his property. What is the name of the right that grants him to use reasonable amount of water?
 - a) Riparian right
 - b) Littoral right
 - c) The California Water Code
 - d) Usage right

Environmental Hazards and Regulations & Special Categories of Land



7

Environmental Hazards and Regulations



Environmental Laws



- **Environmental Impact Report (EIR):** study of how a subdivision will affect the ecology of a subdivision's surroundings
- **Negative Declaration:** a statement by an expert affirming that a new subdivision will have no negative impact on the environment
- Burning trash in California is strictly prohibited by the local **Air Quality Management Districts**

Lead-Based Paint Disclosure

- Lead is toxic to humans
- The seller or lessor must provide the “Protect Your Family from Lead in Your Home” pamphlet from the EPA
- Applies to homes built prior to 1978



**Protect
Your
Family
From
Lead in
Your
Home**



Geological Hazard Zones

- Earthquake fault zone is dangerous
- When buying, buyer must be notified of the fact either by seller or licensee
- [Alquist-Priolo Special Studies Zones Act](#): no development within $\frac{1}{4}$ mile of the fault zone



Extraneous Things to Remember..



- **Brownfield Economic Development Initiative:**
assist cities with the redevelopment of abandoned and underused industrial and commercial facilities where expansion and redevelopment was burdened by real or potential environmental contamination
 - Led by **HUD (U.S. Department of Housing and Urban Development)**

Extraneous Things to Remember..



- **Infill development:** it is about building within **unused and underutilized lands** to accommodate growth and redesign cities
- **Smart growth:** its purpose is to **help protect our health and natural environment**
- **EPA Superfund Sites:** sites that require cleaning because it is considered some of the nation's most contaminated land with toxic waste

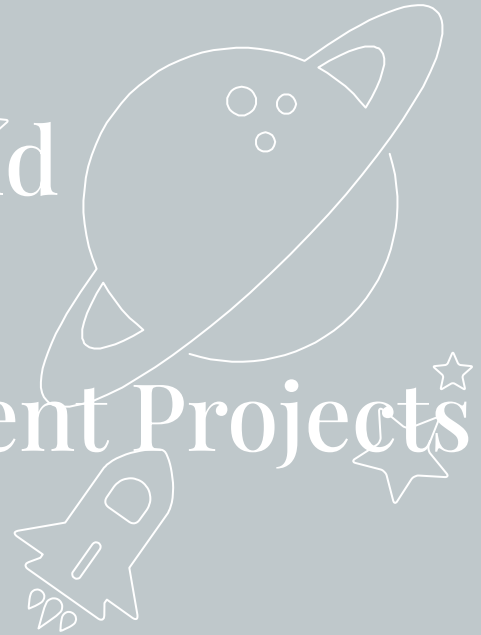
Question



- Chi is selling his old house built in 1975. Which of these must Chi convey to the potential buyers?
 - a) Abstract of Title
 - b) Environmental Protection Agency pamphlet
 - c) Affidavit
 - d) Death that took place 4 years ago

Special Categories of Land

1. Condominium 
2. Community Apartment Projects 
3. Timeshare



1. Condo

- **Condominium**: the individual ownership of specific air spaces for the unit. No individual land ownership
 - **Undivided interest in common areas**, but **separate interest to their own air space**
- In case the ownership transfers, the seller must provide buyer with **bylaws, CC&R's, and financial statements**



2. Community Apartment Project



- **Community Apartment Projects:** two or more apartments where the operation, maintenance, and control is usually exercised by a governing board elected by the owners of the fractional interests
 - An owner receives an undivided interest in the land together with an exclusive leasehold right to occupy a unit

3. Timeshare

- **Timeshare:** a form of ownership where each investor holds a share in a specific unit or home and possesses the right to occupy that home for a specified period each year.



Thanks!