

■ A

**ABATEMENT OF NUISANCE:** Extinction or termination of a nuisance.

**ABSTRACT OF TITLE:** A condensed history or summary of all transactions affecting a particular tract of land. A complication in orderly arrangement of the documents of record affecting the title to a specific piece of land, issued under an abstractor's certificate certifying to the matters contained therein. A history book of the subject property. Does not guarantee title.

**ACCELERATION CLAUSE:** A clause in a contract by which the time for payment of a debt is advanced, usually making the obligation immediately due and payable, because of the breach of some condition, such as failure to pay an installment when due.

**ACCEPTANCE:** The indication or manifestation by the party receiving an offer he is willing to be bound by the terms of the offer.

**ACCESS:** The right to enter and leave a tract of land from a public way. Oftentimes the right to enter and leave over the lands of another.

**ACCRETION:** An addition to land from natural causes. The slow buildup of lands caused by natural forces such as the ocean, rivers, wind or flow of water.

**ACCRUED DEPRECIATION:** The difference between the cost of replacement new as of the date of the appraisal and the present appraised value.

**ACCRUED ITEMS OF EXPENSE:** Those incurred expenses, which are not yet payable. The seller's accrued expenses are credited to the purchaser on a closing statement. Example: taxes for that portion of the year during which the seller owned the property which are payable by the seller but not due yet.

**ACKNOWLEDGEMENT:** A declaration made by a person to a notary public, or other public official authorized to take acknowledgements, that the instrument was executed by them and that it is their free and voluntary act.

**ACRE:** A measure of land equaling 160 square rods, or 4,840 square yards, or 43,560 square feet, or a tract about 208.71 feet square.

**ACRE FOOT:** A term used in measuring the volume of water, equal to the quantity of water required to cover one acre one foot in depth, or 43,560 cubic feet.

**ACTUAL NOTICE:** Knowledge of a fact or occurrence acquired directly through information received or personal experience. See also, "notice" and "constructive notice".

**ADDITIONAL ADVANCE:** An instrument evidencing an increase in the amount of a loan from what appears on the original Deed of Trust or Mortgage.

**ADMINISTRATOR:** A person appointed by the Court to settle the estate of a person who dies without a will.

**AD VALOREM:** According to valuation. Ad Valorem taxes on real property are based on the assessed value of the property. Latin meaning "according to value".

**ADVERSE POSSESSION:** Possession of real property which is actual, hostile, open, notorious, exclusive, uninterrupted and continuous for the prescriptive period stipulated by state law. Possessor usually has some claim or color of title, but does not have good record title.

**AFFIDAVIT:** A statement or declaration reduced to writing and sworn to or affirmed before some officer who has authority to administer an oath or affirmation.

**AFFIRM:** To confirm, to ratify and to verify.

**AFTER-ACQUIRED TITLE:** Real property rights, which are acquired by the seller of the property after title to the property has been conveyed. Example: A defect in the chain of title may impair the title held by the apparent owner of a parcel. Subsequent to that owner's conveyance by deed to another, a corrective instrument may be recorded which cures the defect, thereby conveying after acquired title to the former owner (and to the present owner, unless title was acquired by quit claim deed). NOTE: A Quit Claim Deed does not convey after-acquired title, but a Warranty Deed or Special Warranty Deed does.

**AGENCY:** A legal relationship resulting from an agreement or contract, either, expressed or implied, written or oral, whereby one person, called the agent, is employed by another called the principal, to do certain acts in dealing with a third party on behalf of the principal.

**AGENT:** Any person, partnership, association, or corporation authorized or employed by another, called the principal, to act for, on behalf of, and subject to the control of the latter.

**AIR RIGHTS:** The rights of an owner of a real property to use the air space above the physical surface of the land.

**AKA:** "Also known as" - if a person has some interest in real property by one name, but also uses another name - i.e.; MARY JONES aka MARY HARDING JONES.

**ALTA:** American Land Title Association. An Association of title insurance companies, abstractors, and attorneys specializing in real property law, which speaks for the title insurance and abstracting industry and established standard title policies and procedures, with headquarters in Washington, D.C. (alta.org)

**ALIENATION:** The transferring of property to another; the transfer of property and possession of lands, or other things, from one person to another.

**ALLODIAL TENURE:** A real property ownership system where ownership may be complete except for those rights held by government. Allodial is in contrast to feudal tenure.

**ALLUVION (ALLUVIUM):** Soil deposited by accretion. Increase of earth on a shore or bank of a river.

**ALTA/TITLE POLICY (AMERICAN LAND TITLE ASSOCIATION):** A type of title insurance policy issued by title insurance companies which expands the risks normally insured against under the standard type policy to include unrecorded mechanic's liens; unrecorded physical easements; facts a physical survey would show; water and mineral rights; and rights of parties in possession, such as tenants and buyers under unrecorded instruments.

**AMENITIES:** In real estate, amenities refer to such circumstances, in regard to location, outlook or access to a park, lake, highway, view, etc., which enhance the pleasantness or desirability of real estate, and which contribute to the pleasantness or desirability of real estate, and which contribute to the pleasure and enjoyment of the occupants.

**AMORTIZATION:** The liquidation or gradual retirement of a financial obligation by means of systematic payments over a specific period of time. Also, recovery, over a period of time, of cost or value. The principal paydown of a loan over time.

**AMORTIZED LOAN:** A loan that is completely paid off, interest and principal, by a series of regular payments that are equal or nearly equal. Also called a Level Payments Loan.

**AMORTIZATION SCHEDULE:** A chart or table, which sets out the amount of the payments, interest and principal, and the balance on the loan after the payment has been made.

**ANNUAL PERCENTAGE RATE (APR):** All finance charges, interest, points, and other fees computed over the term of the loan. APR must be disclosed to the borrower as a result of the Federal Government's "Truth In Lending" Laws. "Regulation Z" requires that when a real estate loan is made to a natural person and not for business purposes, the APR must be disclosed.

**ANNUITY:** A series of assured equal or nearly equal payments to be made over a period of time or it may be a lump sum payment to be made in the future. The installment payments due to the landlord under a lease are an annuity. So are the installment payments due to a lender. In real estate finance, we are most concerned with the first definition.

**APPRAISAL:** An estimate of the quality or value of property; the process by which conclusions on the value of property are obtained; also refers to the report setting forth the estimate of value together with the basis for such conclusions.

**APPURTENANCE:** property, but which are normally conveyed with the real property, i.e., buildings, rights of way, easements.

**ARBS:** Arbitrarily assigned numbering systems to quickly identify parcels or tracts of land, which have no other easy means of identification. (i.e., metes and bounds parcels subdivided out of a large tract of land.)

**ARREARS:** Items paid after the end of the period for which they are due, such as taxes for last year are paid this year; interest is paid on the loan payment for the month past.

**ASSESSED VALUE:** The value of real property estimated for the purpose of computing real property taxes.

**ASSESSMENT:** The imposition of a tax, charge or levy, usually according to established rates. Special Assessment: A charge against real property made by a unit of government to cover the proportionate cost of an improvement, such as a street or sewer.

**ASSESSOR:** A public official who evaluates property for the purpose of taxation.

**ASSIGNMENT:** A transfer of some right, title or interest by one person or entity (assignor) to another (assignee). Assignments of Deed of Trust, leases, options, contracts, and other items are seen in a chain of title.

**ASSIGNOR:** One who assigns or transfers property, real or personal.

**ASSIGNEE:** One who receives and assignment or transfer of rights to property, real or personal

**ASSIGNS: ASSIGNEES:** Those to whom property rights title or interests shall have been transferred.

**ASSIGNMENT OF RENTS:** Additional security taken usually in connection with a mortgage or deed of trust which pledges any income from rent or leases in addition to the actual property.

**ASSUMPTION AGREEMENT:** An agreement by one party to assume liability for payment of a debt or obligation primarily resting upon another person. Example: A buyer of real property may assume the existing mortgage previously given by the seller.

**ASSUMPTION FEE:** A lender's charge for changing over and processing new records for a new owner who is assuming an existing loan.

**ASSUMPTION OF MORTGAGE:** The taking of title to property by a grantee, wherein he/she assumes liability for payment of an existing note secured by a mortgage or deed of trust against the property; becoming a co-guarantor for the payment of a mortgage or deed of trust note.

**ATTACHMENT:** A type of lien, permitted only under special circumstances, which is placed against the real estate of a defendant in a pending law suit for money damages. Legal seizure of property to force payment of a debt.

**ATTEST:** To affirm that a fact of document is true or genuine; an official act establishing authenticity.

**ATTORNEY IN FACT:** One who holds a Power of Attorney from another allowing them to execute legal documents such as deeds, mortgages, etc., on behalf of the grantor of the power. Power of Attorney may be limited to a specific act or acts, or it may be a general Power of Attorney. Decisions made by the Attorney in Fact are binding on the principal.

**ATTORNEY'S OPINION:** In real estate, the written opinion of an attorney at law regarding the marketability of title to real property based upon an examination of the abstract of title or the records in the county recorder's office.

## ■ B

**BACKFILL:** The replacement of excavated earth into a hole or against a structure.

**BACKUP CONTRACT:** An Agreement of Purchase and Sale for a particular property which is conditional (becomes binding) upon the failure of another Agreement for the same property.

**BALLOON PAYMENT:** When credit is advanced by note or contract and payment is required in regular equal installments and the note or contract will mature before the note is paid in full, a payment, which may be larger than the regular payment, will fall due. This larger payment is called a "balloon payment".

**BANKRUPT:** A person who, through a court proceeding, is relieved for the payment of all his debts after surrender of all assets to a court appointed trustee.

**BARGAIN AND SALE DEED:** Any deed that recites a consideration and purports to convey the real estate; a deed, which contains no warranties of title but does convey after acquired title.

**BAR STANDARDS (Title Standards):** Rules or standards promulgated by the state bar association to resolve problems of title examination for which there is no statutory solution.

**BASE AND MERIDIAN:** Imaginary lines used by surveyors to find and describe the location of private or public lands.

**BASELINE:** Imaginary east-west lines that intersect meridians to form a starting point for the measurement of land.

**BASIS:** The original cost of a property, plus capital expenditures for improvements, minus depreciation. Basis is the means by which the Internal Revenue Service determines taxable gains, losses and annual depreciation.

**BEARING WALL OR PARTITION:** A wall or partition supporting any vertical load in addition to its own weight.

**BENCH MARK:** A mark on a permanent object indicating elevation and serving as a reference in land surveys.

**BENEFICIARY:** The person who receives or is to receive the benefits resulting from certain acts; one receiving benefits, profits or advantage; one for whose benefit a trust is created, the title of which is vested in a trustee. The lender on the security of a note and deed of trust.

**BEQUEATH:** To leave personal property to another by will, as a bequest. To give or hand down by will.

**BEQUEST:** That which is given by the terms of a will.

**BETTERMENT:** An improvement upon property which increases the property value and is considered as a capital asset as distinguished from repairs or replacements where the original character or cost is unchanged.

**BILL OF SALE:** A written instrument by which one person transfers or conveys right, title or interest in personal property to another.

**BINDER:** A title binder is a title commitment. An insurance binder for hazard insurance gives immediate hazard insurance protection until a policy can be issued. Also, an agreement to consider a down payment for the purchase of real estate as evidence of good faith on the part of the purchaser.

**BLIGHTED AREA:** A declining area in which real property values are seriously affected by destructive economic forces, such as encroaching inharmonious property usages, infiltration of lower social and economic classes of inhabitants, and/or rapidly depreciating buildings.

**BONA FIDE:** In good faith, without fraud.

**BOND:** An obligation under seal. (A real estate bond is a written obligation issued on security of a mortgage or deed of trust).

**BREACH:** The breaking of a law, or failure not clear to perform a duty owed to another, either by omission or commission.

**BROKER:** A person employed by another for a fee to carry on any of the activities listed in the license law definition of a broker, including selling, buying, leasing or negotiating the sale of real property.

**BUILDING CODE:** A systematic regulation of construction of buildings within a municipality established by ordinance of law.

**BUILDING LINE:** A line set by law a certain distance from a street line in front of which an owner cannot build on his lot. (A setback line).

**BUILDING, MARKET VALUE OF:** The sum of money, which the presence of that structure adds to or subtracts from the value of the land it occupies. Land valued on the basis of highest and best use.

**BUNDLE OF RIGHTS:** The legal rights or interests that an owner holds in a property. The right to control, use, possess, enjoy and dispose of real or personal property.

**BUREAU OF LAND MANAGEMENT (BLM):** The government agency in charge of surveying and administering public lands.

**BUYER AGENCY AGREEMENT:** An agreement between a person who wishes to purchase real estate and a broker who will represent the interests of that person.

**BUYER BROKER:** A real estate broker who contracts to represent the interests of a person wishing to purchase real estate.

## ■ C

**CAPITAL GAIN:** Income from a sale of an asset rather than from the general business activity. Capital gains are generally taxed at a lower rate than ordinary income.

**CASH FLOW:** The net income generated by a property before depreciation and other non-cash expenses.

**CAVEAT EMPTOR:** Let the buyer beware. The buyer must examine the goods or property and buy at his own risk.

**CENTER OF INFLUENCE:** One, who, by the nature of his relationships, is in a position to sway others.

**CERTIFICATE OF REASONABLE VALUE:** Commonly referred as a "CRV". Veteran's Administration's certified appraisal of value of real property.

**CCR'S:** Abbreviation for covenants, conditions and restrictions.

**CERTIFICATE OF SATISFACTION:** A certificate issued by a clerk of the court office certifying that a judgment has been satisfied.

**CERTIFICATE OF TITLE:** A written opinion by an attorney setting forth the status of title to the property. Certificates of title are no longer in common use.

**CHAIN:** A unit of measurement used by surveyors. A chain consists of 100 links equal to 66 feet.

**CHAIN OF TITLE:** A term applied to the past series of transactions and documents affecting the title to a particular parcel of land. A history of conveyances and encumbrances affecting the title from the time the original patent was granted, or as far back as records are available.

**CHATTEL:** Any item of property other than real estate, usually referred to as personal property; an item of movable property.

**CHATTEL MORTGAGE:** A claim on personal property (instead of real property) used to secure or guarantee a promissory note.

**CHATTEL REAL:** An estate related to real estate, such as a lease on real property.

**CHECK:** A tract of land in the U.S. Government Survey System measuring 24 miles on each side of the square. See "QUADRANGLE".

**CINCINNATI AREA BOARD OF REALTORS (CABR):** A local association of real estate professionals whose goal is the professional advancement of the real estate industry and protection of private property rights.

**CLEAR TITLE:** A title that is not encumbered or burdened with defects.

**CLOSING STATEMENT:** An accounting of funds made to the buyer and seller separately. Required by law to be made at the completion of every real estate transaction. Itemizes all funds received from or credited to and all payments made or debited to the party for whom the statement is prepared.

**CLOUD IN TITLE:** An outstanding claim or encumbrance, which, if valid, would affect or impair the title of the owner of the real property.

**COGNOVIT NOTE:** Note containing a confession of judgment by the borrower.

**COLLATERAL SECURITY:** Often called simply "collateral". In banking parlance, it means some security given in addition to the personal obligation of the borrower, as a chattel mortgage or deed of trust.

**COLLUSION:** An agreement between two or more persons to defraud another of his rights by the use of lawful means, or to obtain an object forbidden by law.

**COLOR OF TITLE:** That which appears to be good title but which is not title in fact. Example: A deed from a party, which was not entitled to convey the property.

**COMMERCIAL ACRE:** A term applied to the remainder of an acre of newly subdivided land after the area devoted to streets, sidewalks and curbs, etc. has been deducted from the acre.

**COMMINGLING:** Mixing money belonging to others with personal or business funds.

**COMMITMENT TO INSURE:** A report issued by a title insurance company, or its agent, showing the condition or the title and committing the title insurance company to issue a form policy as designated in the commitment, upon compliance with and satisfaction of requirements set forth in the commitment.

**COMMON LAW:** The principles and rules of law, originating from usage and custom, sanctioned by the courts, which are not dependent upon legislative expression or enactment for their authority; also that body of law, based on custom and usage, developed and formulated by the old English courts.

**CONDITIONAL SALE CONTRACT:** A contract for the sale of property stating that delivery is to be made to the buyer, title to remain vested in the seller until the conditions of the contract have been fulfilled.

**CONDOMINIUM:** A system of individual fee ownership of units in a multi-unit structure, combined with joint ownership of common areas of the structure and the land.

**CONDOMINIUM DECLARATION:** A declaration describes condominium ownership. It commits the property to condominium development, defines the complex and the air spaces, the general common elements and limited common elements and establishes the basic rights and obligations of the owners. In addition, it provides for the creation of a management association with the authority to collect common expenses and otherwise act for the benefit of all owners. It makes it possible for the assessor to tax each unit separately.

**CONFIRMATION OF SALE:** A court approval of the sale of property by a Personal Representative, Guardian or Conservator.

**CONFISCATION:** The seizing of property without compensation.

**CONSERVATION:** The process of utilizing resources in such a manner as to minimize depletion.

**CONSERVATOR:** A person appointed by the court to protect and preserve the lands and property of an individual physically incapacitated or otherwise not able to handle his own affairs.

**CONSIDERATION:** One of the essential elements of a contract; a promise or an act of legal value bargained for and received in return for a promise.

**CONSTANT:** The percentage which, when applied directly to the face value of a debt, develops the annual amount of money necessary to pay a specified net rate of interest on the reducing balance and to liquidate the debt in a specified time period. For example, a 6% loan with a 20- year amortization has a constant of approximately 8½%. Thus, a \$10,000.00 loan amortized over 20 years requires an annual payment of approximately \$850.00.

**CONTRACT:** An agreement, enforceable at law, between two or more competent persons, having for its object a legal purpose, wherein the parties agree to act in a certain manner.

**CONTRACT FOR DEED:** An agreement to sell and purchase, under which title is withheld for the purchaser until such time as the required payments to the seller have been completed. Commonly referred to as an Installment Land Contract.

**CONSTRUCTION LOANS:** Loans made for the construction of homes or commercial buildings. Usually funds are disbursed to the contractor-builder during construction and after periodic inspections. Disbursements are based on an agreement between borrower and lender.

**CONSTRUCTIVE EVICTION:** Breach of a covenant of warranty or quiet enjoyment, i.e., the inability of a lessee to obtain possession because of a paramount defect in title, or a condition making occupancy hazardous.

**CONSTRUCTION MORTGAGE OR DEED OF TRUST:** A short-term mortgage or deed of trust used to finance the building of a structure.

**CONSTRUCTIVE NOTICE:** Often called "legal notice"; the conclusive presumption that all persons have knowledge of the contents of an instrument recorded in the office of the county clerk and recorder.

**CONTOUR:** The surface configuration of land.

**CONVENTIONAL MORTGAGE OR DEED OF TRUST:** A mortgage or deed of trust securing a loan made by investors without governmental underwriting, i.e., which is not FHA insured or VA guaranteed.

**CONVERSION:** Change from one character or use to another. Example: Apartment house converted to Condominiums.

**CONVEY:** The act of deeding or transferring title to another.

**CONVEYANCE:** An instrument in writing by which some estate, interest or title in real estate is transferred for one person to another such as a deed or mortgage or deed of trust.



**COOPERATIVE OWNERSHIP:** A form of apartment ownership. Ownership of shares in a cooperative venture, which entitles the owner to use, rent or sell a specific apartment. Each owner has exclusive right to use his individual unit and must pay his portion of the debt encumbering the entire building. The corporation usually reserves the right to approve certain actions such as a sale or improvement (compare condominium ownership).

**COORDIANATE SYSTEM:** A method of land description using measurements from an intersection of a defined north-south axis and a defined east-west axis.

**CORPORATION:** A group or body of persons established and treated by law as an individual or unit with rights and liabilities or both, distinct and apart from those of the persons composing it. A corporation is an entity having certain powers and duties of a natural person. Being created by law, it may continue for any length of time the law prescribes.

**CORPOREAL RIGHTS:** Possessory rights in real property.

**CORRECTION LINES:** A system of compensating for inaccuracies in the Government Rectangular Survey System due to the curvature of the earth. Every fourth township line, 24 mile intervals, is used as a correction line on which the intervals between the north and south range lines are re-measured and corrected to a full six miles.

**COST:** A historical record of past expenditures, or an amount, which would be given in exchange for other things.

**COTENANCY:** - Ownership in the same land by more than one person. See, Tenancy in Common, Joint Tenants, Tenancy by the Entireties.

**COTERMINUS:** Adjacent; adjoining; having a common boundary.

**COURSES AND DISTANCES:** A method of describing or locating real property. This description gives a starting point and the direction and length of lines to be run, practically indistinguishable for metes and bounds description.

**COVENANTS:** An agreement written into deeds and other instruments promising performance or non-performance of certain acts, or stipulating certain uses or non-uses of the property.

**CUBIC FOOT PER SECOND:** A unit of discharge for measurement of flowing liquid, equal to a flow of one cubic foot per second past a given section.

**CUL DE SAC:** The terminus of a street or alley. Usually laid out by modern engineers to provide a circular turn around for vehicles.

## ■ D

**DAMAGES:** The amount of compensation recoverable by a person who has sustained an injury, either in his person, property or relative rights, through the act or default of another.

**DBA:** "Doing Business As". John Doe dba "Joe's Sporting Goods". Note:

**DEBENTURE:** Bonds issued without security.

**DEBTOR:** This is the party who "owns" the property, which is subject to the Security Interest. Previously he/she was known as the mortgagor or the pledgor, etc...

**DECREE OF FORECLOSURE:** Decree by a court in the completion of foreclosure of a mortgage, contract, deed of trust or other liens.

**DEDICATION:** An appropriation of land to some public use, made by the owner, and accepted for such use by or on behalf of the public, such as streets in a platted subdivision. A designation by the owner that property is deemed to be public property.

**DEED:** A legal instrument in writing, duly executed, and delivered, whereby the owner of real property (grantor) conveys to another (grantee) some right, title or interest in or to real estate. A written document by which the ownership of land is transferred for one person to another.

**DEED IN LIEU OF FORECLOSURE:** A deed for a debtor to a lender conveying title to real property given by the debtor as collateral to secure a mortgage or deed of trust for the benefit of the lender, on which obligation the debtor is in default. The deed is given in consideration of the lender's cancellation of the debtor's obligation in lieu of statutory or judicial foreclosure proceedings.

**DEED RESTRICTION:** A provision in a deed controlling or limiting the use of the land.

**DEED OF TRUST:** The recorded document, which secures a loan to the owner of the property. Given to the Public Trustee (second party) of the county in which the property is located for the benefit of the lender (secured party). Similar to a mortgage.

**DEFAULT:** The non-performance of a duty; the omission or failure to perform a legal duty; failure to meet an obligation when due.

**DEFEASANCE CLAUSE:** The clause in a mortgage that gives the mortgagor the right to redeem his property upon the payment of his obligations to the mortgagee.

**DEFEASIBLE FEE:** Sometimes called a base fee or qualified fee; a fee simple absolute interest in land that is capable of being defeated or terminated upon the happening of a specified event.

**DEFERRED MAINTENANCE:** Existing but unfulfilled requirements for repairs and rehabilitation.

**DEFERRED PAYMENT OPTIONS:** The privilege of deferring income payments to take advantage of the tax statutes.

**DEFICIENCY JUDGEMENT:** A judgment given when the value of security pledged for a loan does not satisfy the debt upon its default.

**DELIVERY:** The final and absolute transfer of a deed from seller to buyer in such a manner that the seller cannot recall it. A necessary requisite to the transfer of title.

**DEPRECIATION:** Loss of value in real property brought about by age, physical deterioration or functional or economic obsolescence. Broadly, a loss in value from any cause.

**DEVISE:** A gift of real property by the last will and testament of the donor. The disposition of land by will. A term used for land alone and never for personal property.

**DEVISEE:** One who receives a bequest made by will.

**DEVISOR:** One who bequeaths by will.

**DISCOUNT:** An amount deducted in advance from the principal before the borrower is given the use of the principal.

**DISPOSSESS:** To deprive one of the uses of real estate.

**DOWER:** An interest in the lands of a spouse allowed to the other spouse by force of law.

**DURABLE POWER OF ATTORNEY:** A power of attorney, which is not affected by the disability of the person giving the power to his attorney in fact (must be specifically recited in the power of attorney).

**DURESS:** Unlawful constraint exercised upon a person whereby he is forced to do some act against his will.

## ■ E

**EARNEST MONEY:** Advance payment of part of the purchase price for the sale and purchase of property. It is an evidence of good faith on the part of the purchaser.

**EASEMENT:** An interest in land owned by another that entitles its holder to a specific limited use, such as laying a sewer, putting up electric power lines, or underground utilities, or crossing the property. The right to use another's land for a specific purpose such as a right of way. Created by grant or agreement for a specific purpose.

**EAVES:** The lower part of a roof projecting over the wall.

**ECONOMIC LIFE:** The period over which a property will yield a return on the investment, over and above the economic or ground rent (due to land).

**ECONOMIC OBSOLESCENCE:** A loss in value due to factors away from the subject property but adversely affecting the value of the subject property.

**EFFECTIVE INTEREST RATE:** The percentage of interest that is actually being paid by the borrower for the use of the money.

**EGRESS:** The right to leave a tract of land. Often used interchangeable with access (see access).

**EMINENT DOMAIN:** The power of the state to take private property for public use upon payment of just compensation. The right of a governmental entity or other agency authorized by law to take private property for public use upon the payment of just compensation.

**ENCROACHMENT:** The intrusion of a structure, part of a building, or obstruction over or upon a highway, sidewalk, easement or the property of another.

**ENCUMBER:** To burden a parcel of land with a lien or charge such as a mortgage or deed of trust.

**ENCUMBRANCE:** A claim, lien, charge or liability attached to and binding upon real property, such as a judgment, mortgage, deed of trust, mechanics lien, lien for unpaid taxes, right-of-way.

**ENDORSEMENT:** A written change or modification of a commitment or policy. Also, writing one's name, either with or without additional words, on a negotiable instrument or on an attachment thereto.

**EQUITY:** The interest or value, which an owner has in real estate over and above the liens against it.

**EQUITY OF REDEMPTION:** The right to redeem property during the foreclosure period such as a mortgagor's right to redeem prior to foreclosure.

**EQUITY SHARING:** A form of joint ownership between an owner/occupant and an owner/investor. The investor takes depreciation deductions for his share of the ownership. The occupant receives a portion of the tax write-offs for interest and taxes and a part of his monthly payment is treated as rent. The co-owners divide the profit upon sale of the property.

**EROSION:** The wearing away of land by the action of water, wind or glacial ice.

**ESCALATION:** The right reserved by the lender to increase the amount of the payments and/or interest upon the happening of a certain event, i.e. due on sale etc...

**ESCALATION CLAUSE:** A clause in a contract providing for the upward or downward adjustment of certain items to cover specified contingencies.

**ESCHEAT:** A reversion of property to the state in those cases where an individual dies without heirs or devisees and without heirs or devisees and without a will.

**ESCROW:** A procedure whereby a disinterested third party handles legal documents and funds on behalf of a seller and buyer. In real estate, a deed, monies, or other documents which are conditionally held by a third party, called the escrow agent, pending the performance or fulfillment of some act of condition. Generally upon written instructions called "an escrow agreement". A disinterested third party holds funds or documents on behalf of others and subject to their instructions.

**ESCROW AGREEMENT:** A written agreement between two or more parties whereby the grantor, promisor or obligor delivers certain instruments into the hands of a third party until the happening of a contingency or performance of a condition, and then to be delivered to the grantee, promises or obligee. When everything is deposited to enable carrying out the instructions, it is called a complete or perfect escrow.

**ESTATE:** A person's possessions. In real estate, it refers to the degree, quantity, nature and extent of interest, which a person has in real property; such as a fee simple absolute estate, or an estate for years.

**ESTATE OF INHERITANCE:** An estate, which may descend to one's heirs. All freehold estates are estates of inheritance except life estates, which are not "autre vie" (for the life of another).

**ESTATE OF LIFE:** A freehold estate, but which is held by the tenant for his own life or lives of one or more other persons, or for an indefinite period which may endure for the life or lives or persons in being.

**ESTIMATE:** To form a preliminary opinion of value.

**ESTOPPEL:** A doctrine, which bars one from asserting rights, which are inconsistent with a previous position or representation.

**ET. AL.:** An abbreviation for et alius, meaning "and another" or "and others".

**ET. UX.:** Abbreviation meaning "and wife".

**ET. VIR.:** Abbreviation meaning "and husband".

**EVICTION:** Dispossession by process of law; the act of depriving a person of the possession of lands, pursuant to the judgment of a court.

**EXCEPTIONS:** A list of flaws, clouds, encumbrances or uncertainties, or other interests that title insurance will not guarantee that our insured has a priority over.

**EXCLUSIVE AGENCY LISTING:** A listing whereby the owner appoints one real estate broker as his sole agent for a specified period of time. The owner may sell the property to a buyer, which he himself finds without paying the broker's commission.

**EXCLUSIVE RIGHT TO SELL LISTING:** A listing whereby the owner appoints one real estate broker as his sole and exclusive agent for a specified period of time. No matter who sells the property, including the owner himself, the broker is entitled to a commission.

**EXECUTE:** To complete, to make, to perform, to do, to follow out; to execute a deed, to make a deed, including especially signing, sealing and delivery. To execute a contract is to perform the contract, to follow out to the end, to complete.

**EXECUTION:** A writ issued by a court to the sheriff directing him to seize and sell property to satisfy a debt.

**EXECUTOR:** A person named in a will to carry out its terms and administer the estate. See "Personal Representative".

## ■ F

**FEE:** An estate of inheritance in real property.

**FEE SIMPLE ABSOLUTE:** Often called a fee or fee simple; the most comprehensive ownership of real property known to the law; the largest bundle of ownership rights possible in real estate. In modern estates, the terms "Fee" and "Fee Simple" are substantially synonymous. "Fee Simple Absolute" is an estate in real property, by which the owner has the greatest power over the title, which it is possible to have, being an absolute estate. In modern use, it expressly establishes the title of real property in the owner, without limitation or end. He may dispose of it by sale, or trade or will, as he/she chooses. It is also defined as the most complete ownership in land or as the most complete bundle of rights one can have in land.

**FARMERS HOME ADMINISTRATION:** An agency of the Department of Agriculture. Primary responsibility is to provide financial assistance for farmers and others living in rural areas where financing is not available on reasonable terms from private sources.

**FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC):** Agency of the federal government, which insures deposits at commercial banks and savings banks.

**FEDERAL HOME LOAN BANK (FHLB):** A district bank of Federal Home Loan Bank system that lends only to member savings and loan association.

**FEDERAL HOME LOAN BANK BOARD (FHLBB):** The administrative agency that charters federal savings and loan associations and exercises regulatory authority over the FHLB system.

**FEDERAL HOUSING ADMINISTRATION (FHA):** An agency of the federal government that insures mortgage loans.

**FIXTURES:** An item attached to real property so that it cannot be removed without damage to the real property. It then becomes apart of the real property.

**FOOTING:** The base or bottom of a foundation wall, pier or column.

**FORECLOSURE:** The act of selling by legal proceeding real property to satisfy the obligations of the landowner to a third party. Procedure whereby property pledged as security for a debt is sold to pay the debt in event of default in payments or terms.

**FORECLOSURE CERTIFICATE:** A list of the instruments affecting any interest in property subsequent to the recording of the encumbrance being foreclosed. Usually used to determine who must be notified before foreclosure can be completed.

**FORECLOSURE GUARANTEE:** Guarantees the accuracy, a report listing all interests in real property, which are subordinate to the encumbrance to be foreclosed for purposes of a foreclosure.

**FOREIGN:** Not of the state; in or of another state, e.g. foreign estate proceedings.

**FORFEITURE:** Loss of money or anything of value, due to failure to perform a contractual obligation.

**FOUNDATION:** The supporting portion of a structure below the first floor construction or below grade, including the footings.

**FRONTAGE:** Land bordering a street.

**FRONT MONEY:** The minimum amount of money necessary to initiate a real estate venture.

## ■ G

**GUARDIAN:** One appointed by the court to administer the affairs of an individual not capable of administering his own affairs, e.g. a minor

**GENERAL LIEN:** A lien on all the property of a debtor.

**GENERAL WARRANTY DEED:** The Grantor warrants title against all claims.

**GIFT DEED:** A deed which the consideration is love and affection and where there is not material consideration.

**GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA):** Often called Ginny Mae.

**GRADUATED LEASE:** Lease which provides for a varying rental rate, often based upon future determination; sometimes rent is based upon result of periodical appraisals; used largely in long-term lease.

**GROUND LEASE:** The owner grants a long-term lease of the land and allows the lessee to build and use the land as agreed. At the end of the term, the land and all improvements revert to the owner.

**GUARDIAN:** One appointed by the Court to administer the affairs of a minor. A guardian ad litem is appointed to protect one's interest in a particular legal action.



**HABENDUM CLAUSE:** The "to have and to hold" clause in a deed.

**HEIRS AND ASSIGNS:** Terminology used in deed and wills to provide that the recipient receives a "fee simple estate" in lands, rather than a lesser interest.

**HIATUS:** A gap or space unintentionally left between, when attempting to describe adjacent parcels of land.

**HOLDOVER TENANT:** Tenant who remains in possession of leased property after the expiration of the lease term.



**INDEMNIFY:** To secure; to secure against loss.

**INDENTURE:** A formal agreement between a group of bondholders and a debtor as to the terms of the debt.

**INDORSEMENT:** The act of endorsing something (ie., signing one's name on the back of a check or note), with or without further qualifications.

**INGRESS:** The right to enter a tract of land. Often used interchangeably with "access" (see access).

**INJUNCTION:** A writ or order issued under the seal of a court to restrain one or more parties to a suit or proceeding for doing an act which is deemed to be inequitable or unjust or which may cause irreparable harm to the rights of some other party or parties in the suit or proceeding.

**INPUT:** Data, information, etc., that is fed into a computer or other system.

**IN LIEU OF:** In place of, instead of.

**INSTALLMENT LAND CONTRACT:** Often called land contract or an installment contract; an agreement for the purchase of real estate upon an installment basis. The deed to the property is not given to the purchaser until all or a specified portion of the purchaser price is paid. This type of contract is also known as a Contract for Deed or a Conditional Sales Contract.

**INSURABLE TITLE:** Title subject to a defect or claim that a title insurance company is willing to insure against.

**INSURANCE OF TITLE:** Insurance that title to a designated parcel of real property is vested as shown in the policy, subject to those items shown therein as exceptions to coverage, such as taxes, easements, prior encumbrances or reservations of rights by others.

**INTER ALIA:** (Latin) Meaning "among other things".

**INTEREST:** The charge in dollars for the use of money for a period of time.

**INTEREST RATE:** The percentage of a sum of money charged for its use.

**INTERIM LOAN:** A short-term loan until long-term financing is available.

**INTESTATE:** A person who dies having made no will, or one that is defective in for in which case his estate descends to his heirs at law or next of kin.

**INTERSTATE:** Between two or more different states.

**INVOLUNTARY LIEN:** A lien against property without the consent of an owner. Examples: Taxes, special assessments, federal income tax liens, judgments, mechanics liens.

**IRREVOCABLE:** Incapable of being recalled or revoked; unchangeable.

**IRRIGATION DISTRICTS:** Districts, created under special laws to provide for water services to property owners in the district; an operation governed to a great extent by law.

## ■ J

**JOINT AND SEVERAL LIABILITIES:** Liability by two or more persons for the same obligation. Each person is legally liable for the entire obligation.

**JOINT NOTE:** A note signed by two or more persons who have equal liability for payment.

**JOINT OWNERSHIP AGREEMENT:** An Agreement between owners defining their rights and responsibilities. The agreement could be between an investor and an occupant or among occupants.

**JOINT TENANCY:** Co-ownership of real property by two or more persons who share equally the right to use, possess and enjoy all the property, and the right of survivorship. Upon the death of any joint tenant, the right of survivorship operates to vest title to that tenant's interest equally in any remaining joint tenants and wholly in the sole surviving joint tenant. Joint tenancy must be specifically designated in an instrument of conveyance and is never presumed without such a designation.

**JOINT VENTURE:** Two or more individual or firms joining together on a single project. Similar to a partnership, with some variations.

**JUDGEMENT:** A decree of a court. Upon recording, the judgment becomes a lien or charge upon the property of the judgment debtor.

**JUDGMENT LIEN:** The charge upon the lands of a debtor resulting from the recoding of a decree of a court properly entered in the judgment docket. A legal claim on all of the property of a judgment debtor that enables the judgment creditor to have the property sold for payment of the amount of the judgment.

**JUNIOR MORTGAGE/DEED OF TRUST:** A mortgage/deed of trust lower in priority to previous mortgage/deed of trust, i.e. a mortgage/deed of trust recorded after another mortgage/deed of trust is recorded.





**LAND:** Real property; the surface of the earth and that which is affixed to it permanently, that which is below it, and the space above it; synonyms with "real property", "realty", and "real estate". Sometimes used to mean only the unimproved surface on the earth.

**LAND CONTRACT:** A method of financing where title remains in the Seller's name until the Buyer has paid the full purchase price.

**LANDMINIUM:** A system of individual ownership of units, and the land they sit on, in a structured community, combined with joint ownership of common areas of the land.

**LATENT DEFECTS:** Problems with a property or building which are not visible to the casual observer but which may surface later. A seller must disclose to a purchaser any serious latent defects of which he has knowledge.

**LEASE WITH OPTION TO PURCHASE:** A rental contract which allows the tenant to purchase the property during the period of the lease. Payments under the lease may be credited (in whole or in part) against the purchase price.

**LEASEHOLD ESTATE:** A tenant's right to occupy real estate during the term of the lease. This is a personal property interest.

**LEGAL DESCRIPTION:** A description recognized by law, which is sufficient to locate and identify the property without oral testimony. Often called the "Legal." A description recognized by law; a description by which property can be definitely located.

**LEGAL ENTITY:** A person or group of people whom the law recognizes as having the power, to own, sell, or encumber real property. Common examples are corporations, joint ventures and partnerships.

**LESSEE:** The party who holds an estate by virtue of a lease; the tenant of a landlord.

**LENDER'S TITLE INSURANCE:** A Title Insurance policy covering the lender in the amount of the loan. The coverage declines as the loan is paid down and ceases when the loan is paid off.

**LIEN:** A claim against a property.

**LIFE ESTATE:** The right to use, occupy and own for the life of an individual.

**LISTING BROKER:** A real estate broker who contracts to represent the interests of a person wishing to sell real estate.

**LOAN APPLICATION:** The loan application is a source of information on which the lender bases his decision to make the loan.

**LOAN CLOSING:** When all conditions have been met, the loan officer authorizes the recording of the Deed of Trust or Mortgage. The disbursement procedure of funds is similar to the closing as a real estate sales escrow. The borrower can expect to receive less than the amount of the loan, as title, recording, service and other fees may be withheld, or he/she can expect to deposit the cost of the items into the loan escrow. This process is sometimes called "funding" the loan.

**LOST INSTRUMENT BOND:** Surety Bond issued to the Public Trustee by an insurance company as a substitute for the lost original note.

## ■ M

**MARKET VALUE:** The price at which a willing seller would sell and a willing buyer would buy, neither being under abnormal pressure. As defined by the courts, it is the highest price estimated in terms of money which a property will bring if expected in terms of money which property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser with the knowledge of the property's use and capabilities for use.

**MAJORITY:** The age at which a person is entitled to handle his or her own affairs. In the State of Ohio, the age of majority is 18 years.

**MARKETABLE TITLE:** Title free and clear of objectionable liens or encumbrances; a title which is free from reasonable doubt of defect, which can be readily sold or mortgaged to a reasonable prudent purchaser or mortgagee; a title free from material defects and reasonably free from possible litigation. A good title about which there is no reasonable doubt.

**MECHANICS LIEN:** A lien created by statute which exists against real property in favor of persons who have performed work or furnished materials for the improvement of the real estate. A lien allowed by statute to contractors, laborers, and material on buildings, or other structures upon which work has been performed or material supplied.

**MERIDIANS:** Imaginary north-south lines, which intersect base lines to form a starting point for the measurement of land.

**METES AND BONDS:** A method of describing or locating real property; metes are measures of length and bonds are boundaries. This description starts with a well-marked point of beginning and follows the boundaries of the land until it returns once more to the point of beginning.

**MILL:** One-tenth of one cent; a tax rate of one mill on the dollar is the same as a rate on one-tenth of one percent of the assessed value of the property.

**MILL LEVY:** The amount of tax per \$1,000.00 imposed on real property by taxing authorities.

**MINOR:** A person under 18 years of age.

**MODIFICATION AGREEMENT:** An instrument, which changes or modifies a mortgage or deed of trust from the original document as to terms.

**MONETARY CONTROLS:** Federal Reserve tools for regulating the availability of money and credit to influence the travel of economic activity.

**MONUMENT OF SURVEY:** A fixed object and point established by surveys to establish land locations. Visible marks or indications left on natural or other objects, indicating the lines and boundaries of a survey. May be posts, pillars, stones, cairns and other such objects, but may also be fixed natural objects, blazed trees, roads or even a watercourse.

**MORATORIUM:** The temporary suspension, usually by statute, of the enforcement of liability for debt.

**MORTGAGE:** A conditional conveyance of property as security for the payment of a debt or the fulfillment of some obligation. Upon payment of the debt or performance of the obligation the mortgage becomes void. An instrument recognized by law by which, property is hypothecated to secure the payment of a debt or obligation. The procedure for foreclosure of a mortgage in event of default is

established by statute. A lien upon real property similar to a Deed of Trust; but upon final payment of the debt, the mortgage (secure party) releases the mortgage with a "satisfaction of mortgage." An instrument used to encumber land as security for a debt.

**MORTGAGEE:** The party to whom the property is conveyed under a mortgage as security for the repayment of a loan or fulfillment of some obligation. One to whom a mortgagor gives a mortgage to secure a loan or performance of an obligation; a lender.

**MORTGAGOR:** the party who, by mortgage, conveys his interest in the property as security for the obligation to repay a loan or fulfill some obligation. A designation for the mortgage borrower on lands. One who gives a mortgage on his or her property to secure a loan or assure performance of an obligation; a borrower.

**MORTGAGE POLICY:** A title insurance policy containing a written guaranteed statement of facts showing the mortgagee, the priority of its loan, and the status of all other interests in the property.

**MULTIPLE LISTING SERVICE (MLS):** A service created for real estate professionals which gathers information on property listings into a single source so that its members may review all available properties from one source. The MLS also provides a venue through which member real estate brokers offer compensation to other member cooperative brokers in a listed real estate transaction.

**MUTUAL ASSENT:** One of the essential elements of a contract. Often called "Meeting of the Minds;" the agreement of the parties to the contract, mutually consenting to be bound by the exact terms thereof.

## ■ N

**NATIONAL ASSOCIATION OF REALTORS (NAR):** The national association of real estate professionals whose goal is the professional advancement of the real estate industry and protection of private property rights and whose membership is comprised of members of state and local real estate boards.

**NATIONAL FOREST:** A forest or watershed reservation, which is administered by the Forest Service, United States Department of Agriculture.

**NATURAL PARTIES OR NATURAL PERSONS:** Real people, as opposed to legal entities.

**NEGOTIABLE:** Capable of being negotiated; assignable or transferable in the ordinary course of business.

**NEGOTIABLE INSTRUMENT:** A written instrument signed by a maker or drawer, containing an unconditional promise to another.

**NOTE "Promissory Note":** A written instrument acknowledging a debt and promising payment.

**NOTICE:** Knowledge of a factor or occurrence. Acquired directly through information received or personal experience (actual knowledge) or constructively through publication of the information in the public record (constructive notice).

**NOTARY PUBLIC:** An official authorized by law to attest and certify certain documents by his hand and official seal.

**NOTICE OF ELECTION AND DEMAND:** The document filed in the public record, which demands that the real property given as security for a loan be sold by the Public Trustee to satisfy the delinquent debt.

**NOTICE OF NONRESPONSIBILITY:** A notice provided by law designed to relieve a property owner for responsibility for the cost of work done on the property or materials furnished thereof. Notice must be verified, recorded and posted.



**OBSOLESCENCE:** Impairment of desirability and usefulness of the property resulting from economic, functional, physical, fashion, or other changes.

**OFFER:** A promise by one party to act in certain manner provided the other party would act in the manner requested.

**OHIO ASSOCIATION OF REALTORS (OAR):** The state association of real estate professionals whose goal is the professional advancement of the real estate industry and protection of private property rights and whose membership is comprised of members of local real estate boards located in Ohio.

**OHIO DIVISION OF REAL ESTATE AND PROFESSIONAL LICENSING:** The state licensing entity of real estate professionals.

**OPEN-END MORTGAGE:** A mortgage containing a clause, which permits the mortgagor to borrow additional money after the loan has been reduced, without rewriting to mortgage.

**OPEN HOUSING LAW:** A law passed by Congress in April 1968, which prohibits discrimination in the sale of real estate because of race, color, or religion of buyers.

**OPINION OF TITLE:** An attorney's evaluation of the condition of the title to a parcel of land after his examination of the abstract of title to the land.

**OPTION:** A right given for consideration to purchase or lease a property upon specified terms within a specified time.

**OPTIONEE:** One to whom an option has been granted.

**OPTIONOR:** One who has granted an option to another.

**ORAL CONTRACT:** A verbal agreement; one, which is not reduced to writing. Note: Some types of oral contracts are not enforceable in the state of Ohio under the Statute of Frauds.

**OVERHANG:** The part of the roof extending beyond the wall to shade buildings and cover walks.

**OWNER:** One who holds legal fee simple title to real property; including right to possess use and deal with the property to the exclusion of others.

**OWNER'S TITLE INSURANCE:** A policy of Title Insurance for the purchaser insuring the full purchase price of the property. The coverage does not cease upon payment of the mortgage.

**PARTITION ACTION:** Court proceedings by which co-owners seek to sever their joint ownership.

**PARTNERSHIP:** An association of two or more persons to carry on, as co-owners, a business for profit. Each partner is responsible for liabilities of the partnership, which is a separate entity from the individual interests of each partner.

**PARTICIPATION MORTGAGE:** A mortgage where the borrower not only amortizes the loan, but also pays a portion of the gross income to the lender.

**PARTY WALL:** A wall erected on the line between two adjoining properties, which are under different ownership, for the use of both properties. A common wall dividing two properties and shared by both.

**PATENT:** A document issued for the purpose of granting public lands to an individual. An exclusive right and title to property granted by the United States of America. Conveyance of title to government land.

**PATIO HOME:** Homes that are detached, with traditional lot ownership (whereby the homeowner owns the home site and the home.) However, yard maintenance and snow removal are provided through the HOA, as in a Condominium, but the exterior home maintenance remains the homeowner's responsibility.

**PENALTY:** An extra payment or charge required of the borrower for deviating from the terms of the original loan agreement. Usually levied for being late in making a regular payment or for paying off the loan before it is due.

**PERCOLATION TEST:** A soil test to determine if soil will take sufficient water seepage to permit use of a septic tank.

**PERSONAL PROPERTY:** Any property, which is not real property. Generally, all things that are not real property; things of a temporary or movable nature.

**PERSONAL REPRESENTATIVE:** One appointed by a probate court to administer the estate of a deceased person.

**PIPESTEM LOT:** A lot connected to a public street by a narrow strip of land. Usually several adjacent pipestems are combined to form one driveway with each owner having a mutual- reciprocal easement to use and maintain the driveway to the street.

**POWER OF ATTORNEY:** A written document authorizing another to act on his behalf as an Attorney in Fact. One does not need to be a licensed attorney to act as an attorney in fact but, power of attorney forms are legal documents and should only be prepared by a licensed attorney.

**PREPAYMENT PENALTY:** An additional charge imposed by the lender for paying off a loan before the due date.

**PLANNED UNIT DEVELOPMENT (PUD):** A system of individual fee owned units developed in accordance with a uniform set of standards that reflect the specific circumstances of the site.

**PLAT:** A map showing the division of a piece of land with lots, streets and common areas (if applicable).

**PROMISSORY NOTE:** A written instrument acknowledging a debt and promising payment. Following a loan commitment from the lender, the borrower signs a note, promising to repay the loan under stipulated terms. The promissory note establishes personal liability for its repayment.

**PROPERTY:** The rights of ownership. The right to use, possess, enjoy and dispose of a thing in every legal way and to exclude everyone else from interfering with these rights. Property is generally classified into two groups, personal property and real property.

**PRORATE:** To allocate between seller and buyer their proportionate share of an obligation paid or due. For example, real property taxes.

**PRORATION:** Adjustments of interest, taxes and insurance, etc...on a prorate basis as of the closing date.

**PUBLIC TRUSTEE:** The public official in each county whose office has been created by statute, to whom title to real property is conveyed by Deed of Trust for the use and benefit of the beneficiary, who usually is the lender.

**PURCHASE MONEY MORTGAGE:** A mortgage given by the purchaser to secure a loan for part or all of the purchase price. Such a mortgage becomes a lien on the property simultaneously with the passing of title, and if promptly recorded becomes prior to any lien against the purchaser.

## ■ Q

**QUADRANGLE:** A tract of land in the U.S. Government Survey System measuring 24 miles on each side of the square. Sometimes referred to as a "check".

**QUIET TITLE:** A court action brought to establish title; to remove a cloud on the title. An action in court to remove a defect, cloud or suspicion regarding the legal rights of the owner to the parcel of real estate.

**QUIT CLAIM DEED:** A deed in which the grantor warrants nothing. It conveys only the grantor's present interest in the real estate, if any. It is often used to correct technical defects in a title. A deed by which the grantor conveys whatever interest the grantor has at that moment in a particular piece of real property. It does not convey after acquired title and contains no warranties.

## ■ R

**RANGE:** A component of the U.S. Government survey system for determining the location of real property, being a strip of land 6 miles wide numbered east or west of the principle meridian.

**RATE LOCK:** A commitment from a lender to guarantee a certain interest rate or other loan feature for a set period of time.

**RATIFICATION:** The adoption or approval of an act performed without previous authorization on behalf of a person or legal entity.

**REAL ESTATE BOARD:** An organization whose members consist primarily of real estate brokers and sales agents.

**REAL ESTATE TRUST:** A special arrangement under Federal law whereby investors may pool funds for investments in real estate and mortgages and yet escape corporation taxes.

**RE-ISSUE RATE:** A discounted rate for title insurance when the title was previously insured with an owner's title insurance policy issued within the last ten years.

**REALTOR:** A real estate licensee holding active membership in a real estate board affiliated with the National Association of Realtors.

**REAL PROPERTY:** Land and that which is affixed to it. Land; the surface of the earth and whatever is erected, growing upon, or affixed to the land; including that which is below it and the space above it; synonyms with "land", "realty", and "real estate".

**REALTY:** A brief term for real property.

**RECAPTURE:** The rate of interest necessary to provide for the return of an investment. Not to be confused with interest rate, which is a rate of interest on an investment.

**RECEIVER:** A court appointed custodian who holds property for the court, pending final disposition of the matter before the court.

**RECONVEYANCE:** The transfer of the title of land from one person to the immediate preceding owner. This particular instrument of transfer is commonly used when the performance or debt is satisfied under the terms of a deed of trust, when the trustee conveys the title he has held on condition back to the owner.

**RECORDING:** Filing a document with a designated public official who is authorized to receive such documents for the purpose of establishing a public record. This public official is usually a county officer known as the Clerk or Recorder. The recorder places a stamp upon each document-received indicating the time of day and the date when it was officially filed. Documents filed with the Clerk or Recorder are considered to provide open notice to the general public of that county. Claims against property usually are accorded priority on the basis of the time and the date they are recorded with the highest priority assigned.

**REDEEM:** Literally, to buy back. The act of buying back lands after a mortgage of Deed of Trust foreclosure, tax foreclosure or other execution sale.

**REDEMPTION:** The right of an owner to redeem or reclaim the real estate by paying the debt or charge (such as a Deed of Trust or tax lien) after default, together with interest and costs. More correctly, equity of redemption refers to the right to redeem the property after default but before foreclosure; the statutory right of redemption refers to the right to redeem the property after foreclosure, or other enforcement action, during a certain period of time specified by statute..

**REFERENCE TO PLAT:** A method of describing or locating real property by means of referring to a map of a subdivision, usually recorded in the office of the county clerk and recorder.

**REFINANCE:** To pay off an existing obligation and assume a new obligation in its place.

**REINSURANCE:** To insure again by transferring to another insurance company all or part of an assumed liability, thus spreading the loss risk any one company has to carry.

**RELEASE:** The relinquishment or surrender of a right, claim or interest.

**RELEASE CLAUSE:** This is a stipulation upon the payment of a specific sum of money to the holder of a Deed of Trust or mortgage, the lien of the instrument as to a specific described lot or area shall be removed for the blanket lien on the whole area involved.

**RELEASE OF DEED:** An instrument executed by the mortgagee or the trustee re-conveying to the mortgagor the real estate which secured the mortgage loan after the debt has been paid in full. Upon recording, it cancels the mortgage lien created when the mortgage was recorded.

**RELEASE OF LIEN:** The discharge or release of specific property from the charge or lien of a mortgage, note or mechanics liens.

**REMAINDER:** An estate, which takes effect after the termination of the prior estate.

**RECISSION OF CONTRACT:** The abrogation or annulling of a contract; the revocation or repealing of a contract by mutual consent of the parties to the contract.

**REQUIREMENTS:** Conditions, which must be satisfied before a title insurance policy will be issued insuring marketable title to a parcel of real property.

**RESPA:** Real Estate Settlement Procedures Act. Federal Law first enacted in 1974 to standardize real estate settlement procedures in the United States.

**RESTRICTION:** A limitation on or prohibition of certain uses of real property. Restrictions may be found in public documents such as zoning ordinances or in private instruments such as deeds or declarations of covenants. They may apply to individual parcels (as in deed restrictions), to whole subdivisions (as in declarations of covenants appearing on or accompanying plats), or to entire by restrictions include such things as type of use permitted (e.g., residential, commercial or industrial), type of development permitted (e.g., quality, design and location of improvements), and privileges and duties of property owners (e.g., property maintenance, landscaping or keeping of animals).

**RESTRICTIVE COVENANT:** A clause in a deed or other instrument limiting the use to which the property may be put.

**REVERSION:** The right to future possession or enjoyment by the person who created the present estate, or by his heirs.

**REVERSIONARY INTEREST:** The interest, which a person has in lands or other property, upon the termination of the preceding estate.

**RIGHT OF FIRST REFUSAL:** The right to have the first opportunity either to purchase or lease real property. The holder of a right of first refusal cannot exercise the right until the owner actually offers the property for sale.

**RIGHT OF SURVIVORSHIP:** Right to acquire the interest of a deceased joint owner; distinguished feature of a joint tenancy. A characteristic of a joint tenancy; upon the death of one of the joint tenants, his rights in the property pass automatically to the surviving tenant or tenants.

**RIGHT OF WAY:** An easement or right of passage over another's land; the strip of land used as a road bed by a railroad or used for a public purpose by other public utilities. The right or privilege to pass over a designated portion of the property of another. A privilege operating as an easement upon land, whereby the owner, by grant, or by agreement, gives to another the right to pass over his land, to construct a roadway, or use as a roadway a specific part of his land, or the right to construct through and over his land, telephone, telegraph or electric power lines, or the right to place underground water mains, gas mains, or sewer mains.

**RIPARIAN RIGHTS:** The rights of a landowner to the water, on, under or adjacent to his land. Literally "river-bank." That body of the law, which has to do with real property, located adjacent to rivers or other bodies of water.

**RISK ANALYSIS:** A study, usually made by the lender, of the various factors that might affect the repayment of a loan.



## ■ S

**SALES CONTRACT:** A contract by which buyer and seller agree to the terms of a sale.

**SALE-LEASEBACK:** A sale of real property where the seller retains occupancy by leasing the property from the buyer.

**SATISFACTION:** Payment of a debt or other obligation.

**SEAL:** An impression made to attest the execution of an instrument, e.g., Notary Seal, Corporate Seal.

**SECONDARY FINANCING:** A loan secured by Mortgage of Deed of Trust, which is recorded after the first Mortgage or Deed of Trust.

**SECONDARY MORTGAGE MARKET:** Financial institutions which purchase promissory notes secured by mortgages or deeds of trust from the original lenders.

**SECURED PARTY:** The party holding a security interest. Thus, the mortgagee, the conditional seller, the pledgee, etc... are all now referred to as the secured party.

**SECURITY AGREEMENT:** An agreement between a secured party and a debtor, which creates a security interest.

**SECURITY INTEREST:** A term designating the interest of the creditor in the property of the debtor in all types of credit transactions. It thus replaces such terms as the following; Chattel mortgage; pledge; trust receipt; chattel trust; equipment trust; conditional sale; inventory sale; inventory lien; etc.....

**SECTION:** A parcel of land approximately one mile square, containing 640 acres, which is located within a township, as established by U.S. Government Survey.

**SEPARATE PROPERTY:** property which is owned by a husband or wife but which is not community property; property acquired by either spouse prior to marriage or by gift or devise after marriage.

**SEPTIC TANK:** An underground tank in which sewage from the house is reduced to liquid by bacterial action and drained off.

**SERVICING:** Supervising and administering a loan after it has been made. This involves such things as collecting the payments, keeping accounting records, computing the interest and principal, foreclosing on defaulting loans, etc.....

**SETBACK LINES:** Lines, which identify the required distances for the location of improvements for the perimeter of the property.

**SETBACK ORDINANCE:** An ordinance prohibiting the erection of a building or structure between the curb and the setback line.

**SEVERALTY OWNERSHIP:** Owned by one person only. Sole ownership.

**SHERIFF'S DEED:** Deed given by court order in connection with sale of property to satisfy a judgment.

**SPECIAL ASSESSMENT:** Legal charge against real property by a public authority to pay the cost of public improvements such as street lights, sidewalks, streets improvements, etc.....

**SPECIAL PROTECTION:** Extended coverage provided to the insured party under a title insurance policy in the form of a written endorsement for which there is an extra charge. An endorsement increases the risk assumed by the company by "insuring over" existing or potential defects in title. Examples: Form 100, mechanics lien protection, mineral protection or deletion of printed exceptions.

**SPECIAL WARRANTY DEED:** A deed in which the grantor warrants or guarantees the title only against defects arising during his ownership of the property and not against defects existing before the time of his ownership. A deed wherein the grantor warrants that he is conveying the title to the property in as good as condition as it was conveyed to him.

**SPECIFIC LIENS:** Liens, which attach to only a certain specific parcel of land or piece of property.

**SPECIFIC PERFORMANCE:** An action to compel performance of an agreement, e.g., for the sale of land. A remedy which the court will grant, in certain cases, compelling the defendant to perform or carry out the terms of a valid, existing agreement or contract.

**STATUTE OF FRAUDS:** State law, which provides that certain contracts must be in writing in order to be enforceable at law.

**STATUTE OF LIMITATIONS:** The time period to file a lawsuit to enforce a claim.

**STATUTORY WARRANTY DEED:** A short form warranty deed authorized by statute, which warrants by inference that the seller is the undisputed owner and has the right to convey the property and that will defend the title if necessary. This type of deed protects the purchaser in that the conveyer covenants to defend all claims against the property. If he fails to do so, the new owner can defend claims and sue the former owner.

**SUBDIVISION:** Dividing land into lots and streets. The owner signs a Plat and Deed of Re-subdivision that is recorded among the land records.

**SUBJECT TO MORTGAGE:** One who takes title to real property subject to a mortgage is not responsible to the holder of the promissory note for the payment of any portion of the amount due. The original maker of the note is not released from his responsibility make the payments thereon.

**SUBLEASE:** A secondary lease of property given by the lessee under a prior lease to a sublease.

**SUBORDINATE:** To make subject to, or junior to. For example, a prior deed of trust may by written agreement be subordinated in priority to a subsequent junior deed of trust.

**SUBORDINATION CLAUSE:** Clause in a junior or a second lien permitting retention of priority for prior liens. A subordination clause may also be used in a first deed of trust permitting it to be subordinated to subsequent liens as, for example, the liens of future construction loans.

**SUBORDINATE AGREEMENT:** An instrument or agreement that makes a loan or mortgage inferior or subordinate to one that was recorded after it.

**SUBDIVISION:** Any number of lots or plots broken down out of a large piece that has an organized map plan or plat to define it.

**SUBPOENA:** A process to cause a witness to appear and give testimony legal or quasi-legal in a proceeding.

**SUBROGATION:** The substitution of another person in place of the creditor, to whose rights he succeeds in relation to the debt. The doctrine is used very often where one person agrees to stand as surety for the performance of a contract by another person.

**SUB-SURFACE RIGHT:** The ownership or right of use of some portion of the ground underlying the surface of a parcel of land.

**SURETY:** One who guarantees the performance of another; guarantor.

**SURRENDER:** In leases, it is the cancellation of a lease by mutual consent of lessor or lessee. In bankruptcy, it is an informal term for relinquishment of property by the debtor to the control of the bankruptcy trustee.

**SURVEY:** The process by which a parcel of land is measured and its area ascertained. The process of measuring land to determine its size, location, and physical description. An improvement Survey is the drawing done by a registered land surveyor showing the dimensions of a particular piece or real property, which shows the improvements, located on the property in relationship to the property itself.

**SYNDICATE:** A partnership organized for participation in a real estate venture. Partners may be limited or unlimited in their liability.

## ■ T

**TAKE-OUT LOAN:** The loan arranged by the owner or builder/developer for a buyer. The construction loan made for construction of the improvements is usually paid off from the proceeds of this loan.

**TAX CERTIFICATE:** A written statement by the county of the taxes due on a particular property.

**TAX DEED (TREASURER'S DEED):** A conveyance by the county of property for which the taxes were not paid by the owner, and which was sold at tax sale at least three years previously.

**TAX-FREE EXCHANGE:** An exchange of one income property for another, thereby avoiding, at time of the exchange, capital gains liability to the extent that the values of the properties exchanged are equivalent.

**TAX SALE:** Sale of property by the county for the nonpayment of general or special property taxes.

**TENANCY IN COMMON:** Ownership by two or more persons who hold undivided interests, without right of survivorship; interests need not be equal. A type of co-ownership of real property; a holding of an estate in land by two or more persons, each being entitled to possession of the property according to his proportionate share; distinct from a joint tenancy in that there is no right of survivorship in a tenancy in common.

**TENANT:** Any person in possession of real property with the owner's permission.

**TENANT BY THE ENTIRETIES:** Under certain state laws ownership of property acquired by husband and wife during marriage which is jointly owned. Upon death of one spouse, it becomes the property of the survivor.

**TENTATIVE MAP:** The Subdivision Map Act requires sub dividers to submit initially a tentative map of their tract to the local planning commission for study. The approval or disapproval of the planning commission is noted on the map. Thereafter, a final map of the tract embodying any changes requested by the planning commission is required to be filed with the planning commission.

**TENURE IN LAND:** The mode or manner by which an estate in lands is held.

**TESTAMENT:** Another term for a will. Commonly referred to as "last will and testament."

**TESTATE:** When a person dies leaving a will. The estate or condition of leaving a will at death; "To die testate."

**TESTATOR:** One who makes or has made a testament or will. One who leaves a will in force at his death.

**TIME IS OF THE ESSENCE:** A statement in a binding contract that contemplates a punctual performance.

**TITLE:** The evidence of rights, which a person has to the ownership and possession of land. Commonly considered as a bundle or history of rights. Evidence that owner of land is in lawful possession thereof, and instrument evidencing such ownership.

**TITLE DEFECT:** Any legal or asserted right held by others to claim property or to make demands upon the owner.

**TITLE INSURANCE:** A policy of insurance, which indemnifies the holder against loss sustained by reason of a defect in the title, provided the loss does not result from a defect excluded by the policy provisions. Insurance against loss or damage resulting from defects or failure of title to a particular parcel of real property. Title insurance may cover mistakes made during a title search, matters that could not be found or discovered in public records, missing heirs, etc.

**TITLE REPORT:** A report, which discloses the condition of the title to a parcel of real property, made by a title company preliminary to issuance of title insurance.

**TITLE SEARCH:** An examination of public records to disclose the current facts regarding ownership of real estate.

**TOPOGRAPHY:** nature of the surface of land; topography may be level, rolling, or mountainous.

**TORT:** A negligent or intentional wrong doing for which the law will grant money damages to the damaged party in a civil action.

**TOWN HOUSE:** A type of dwelling which shares at least one common wall with neighboring dwellings.

**TOWNSHIP:** A division of territory 36 square miles, containing 36 sections or 36 square miles.

**TRACT:** An area of land.

**TREASURER'S DEED (TAX DEED):** A deed for property sold at public sale by the county for nonpayment of taxes by the owner.

**TRUST:** A property right held by one for the benefit of another. The concept of transferring title to a fiduciary or entrusted person to administer property for the benefit of another.

**TRUST ACCOUNT:** An account separate and apart and physically segregated from a broker's own funds, into which the broker is required by law to deposit all funds collected for clients.

**TRUSTEE:** Public Official or private party who holds a Deed of Trust as security for payment of the note secured, and thereby for redelivery of title to the debtor upon payment in full of the obligation. One who holds property in trust for another to secure the performance of an obligation.

**TRUSTOR:** One who conveys title to a trustee to be held as security until the trustor has performed his obligation to a lender under the terms of a deed of trust.

## ■ U

**UNDUE INFLUENCE:** Any fraudulent or unfair advantage taken of another's weakness of mind, distress or necessity.

**UNIFORM COMMERCIAL CODE:** Effective January 1, 1965, this statutory code establishes a unified and comprehensive scheme for regulation of security transactions in personal property, superseding the existing statutes on chattel mortgages, conditional sales, trust receipts, assignment of accounts receivable and others in this field.

**UNITED STATES GOVERNMENTAL SURVEY SYSTEM:** Often called the Rectangular Survey System. A method of describing or locating real property by reference to the Governmental Survey.

**USURY:** Clamming a rate of interest on a loan, which is higher than that permitted by law.

**UTILITIES:** Refers to services rendered by public utility companies such as water, gas, electricity and telephone.

## ■ V

**VA LOAN:** A loan on below market terms guaranteed by the Department of Veterans Affairs, given to former members of the armed forces.

**VALID:** Having force or binding effect; legally sufficient and authorized by law.

**VALUATION:** Estimated worth or price. The act of valuing by appraisal.

**VENDEE:** A purchaser.

**VENDOR:** A seller.

**VERIFICATION:** Sworn statement before a duly qualified officer as to the correctness of the contents of an instrument.

**VEST:** To own or indicate ownership in lands. "Title may be said to "vest" in John Brown."

**VESTED:** Bestowed upon someone; rights to which one is entitled.

**VOID:** To have no force or effects; that which is legally unenforceable. Invalid; or no legal effect.

**VOIDABLE:** Not void, but may be set-aside at a later time.

**VOLUNTARY LIEN:** Any lien placed on property with the consent of, or as a result of, the voluntary act of the owner. **EXAMPLES:** Mortgages and Deeds of Trust.

## ■ W

**WAIVE:** To relinquish, or abandon; to forego a right to enforce or require performance by another.

**WARRANTY:** An agreement and assurance by the grantor of real property which is binding upon himself and his heirs, to the effect that he is the owner and will defend the title granted to another.

**WARRANTY DEED:** A deed used to convey real property, which contains warranties of title and quiet possession, by which the grantor agrees to defend the premises against the lawful claims of third persons. Often called a general warranty deed; a deed in which the grantor warrants or guarantees the title to real property against defects existing before the grantor acquired title or arising during the grantor's ownership.

**WATER TABLE:** Distance from the surface of land to the depth at which natural groundwater is found.

**WILL:** A written document properly witnessed, providing for the distribution of property upon the death of the owner. The written statement of a person's wishes concerning the disposal of his after death.

**WRAP AROUND MORTGAGE:** A second mortgage, for an amount larger than the remaining balance on the existing first mortgage, usually payable to the debtor under the first mortgage who is also the seller of the property which secures the mortgage. The buyer makes payments to the seller, who is obligated under the law of the wrap around mortgage to make payments on the first mortgage. A wrap around mortgage may be used where the interest rate on the existing first mortgage is much lower than the current interest rates available on new loans, for which the buyer may be unable or unwilling to qualify. "Also known as All-Inclusive Deed of Trust."

**WRIT OF EXECUTION:** A writ or court order, authorizing and directing an officer of the court, usually the sheriff, to carry into effect the judgment or decree of the court.

## ■ Z

**ZONE:** The area set off by the proper authorities for specific use; subject to certain restriction or restraints.

**ZONING:** Act of city or county authorities specifying type of use to which property may be put in specific areas.