

Glossary of Real Estate, Mortgage & Legal Terms

Abstract of Title

A compilation of the recorded documents relating to a parcel of land, from which an attorney may give an opinion as to the condition of title. Also known in some states as a "preliminary title report."

Acknowledgment

A declaration made by a person signing a document before a notary public or other officer.

Adverse Possession

Most states have laws which permit someone to claim ownership of property which is occupied by him for a number of years. This is common where a fence is erected over a boundary line (called an "encroachment") without the objection of the rightful owner. After a number of years, the person who erected the fence may be able to commence a court proceeding to declare that the property belongs to him.

All-Inclusive Deed of Trust

See "wraparound mortgage"

ALTA

American Land Title Association.

Amortize

To reduce a debt by regular payments of both principal and interest.

Appraised Value

The value of a property at a given time, based on facts regarding the location, improvements, etc., of the property and surroundings.

ARM

An adjustable rate mortgage, that is, a loan whose interest rate may adjust over time depending on certain factors or a pre-determined formula.

Arrears

Payment made after its due is in arrears. Interest is said to be paid in arrears since it is paid to the date of payment rather than in advance.

Assignment of Contract

A process by which a person sells, transfers and/or assigns his rights under an agreement. Often used in the context of the assignment of a purchase contract by a buyer or the assignment of a lease by a tenant.

Assumable Loan

A loan secured by a mortgage or deed of trust containing no "due-on-sale" provision. Most pre-1989 FHA loans and pre-1988 VA loans are assumable without qualification. Some newer loans may be assumed with the express permission of the note holder.

Assumption of Mortgage

Agreement by a buyer to assume the liability under an existing note secured by a mortgage or deed of trust.

Balloon Mortgage

A note calling for periodic payments which are insufficient to fully amortize the face amount of the note prior to maturity, so that a principal sum known as a "Balloon" is due at maturity.

Basis

The financial interest one has in a property for tax purposes. Basis is adjusted down by depreciation and up by capital improvements.

Binder

A report issued by a title insurance company setting forth the condition of title and setting forth conditions, which, if satisfied, will cause a policy of title insurance to be issued. Also known as a "title commitment."

Buyer's Agent

A real estate broker or agent who represents the buyer's interests, although typically his fee is a split of the listing broker's commission. Also known as the "selling agent."

Capital Gain

Profit from the sale of a "capital" asset, such as real property. A long-term capital gain is a gain derived from property held more than 12 months. Long-term gains can be taxed at lower rates than short-term gains.

Chain of Title

The chronological order of conveyance of a parcel of land, from the original owner to the present owner.

Closing

The passing of a deed or mortgage, signifying the end of a sale or mortgage of real property. Also known in some areas as "passing papers" or "closing of escrow."

Cloud on Title

An uncertainty, doubt or claim against the rights of the owner of a property, such as a recorded purchase contract or option.

Commitment

A written promise to make or insure a loan for a specified amount and on specified items. Also used in the context of title insurance ("title commitment").

Community Property

In community property states (CA, LA, TX, WI, ID, AZ, NV, NM, WA), all property of husband and wife acquired after the marriage is presumed to belong to both, regardless of how it is titled.

Comparables

Properties used as comparisons to determine the value of a specified property.

Condominium

A structure of two or more units, the interior space of which are individually owned. The common areas are owned as tenants in common by the condominium owners, and ownership is restricted by an association.

Contingency

The dependence upon a stated event which must occur before a contract is binding. Used both in the context of a loan and a contract of sale.

Contract of Sale

A bilateral (two way) agreement wherein the seller agrees to sell and buyer agrees to buy a certain parcel of land, usually with improvements. Also used to reference to an installment land contract (see below).

Contract for Deed

See "installment land contract"

Closing Cost

Expenses incurred in the closing of a real estate or mortgage transaction. Most fees are associated with the buyer or borrower's loan.

Conventional Mortgage

A loan neither insured by the FHA nor guaranteed by the VA.

Cooperative Apartment

A cooperative is a corporation which holds title to the land and building. Each coop owner has shares of stock in the corporation which corresponds to an equivalent proprietary lease

of his apartment space. Coops were very popular in New York City at one time, but are less common because of their lack of marketability due to high association fees.

Deficiency

The difference between the amount owed to a note holder and the proceeds received from a foreclosure sale. The lender may, in some states, obtain a "deficiency judgment" against the borrower for the difference.

Depreciation

Decrease in value to real property improvements caused by deterioration or obsolescence.

Documentary Tax Stamps

Stamps, affixed to a deed, showing the amount of transfer tax. Some states simply charge the transfer tax without affixing stamps. Also known as "doc stamps."

Double Closing

A closing wherein a property is bought and then sold simultaneously. Also called "double escrow" and "flipping."

Due-on-Sale Clause

A provision in a mortgage or deed of trust that gives the lender the option to require payment in full of the indebtedness upon transfer of title to the property (or any interest therein).

Easement

An interest which one has in the land of another. May be created by grant, reservation, agreement, prescription, or necessary implication.

Eminent Domain

A Constitutional right for a Governmental authority to acquire private property for public use by condemnation, and the payment of just compensation.

Encroachment

Construction or imposition of a structure onto the property of another.

Encumbrance

A claim, lien or charge against real property.

Equity

The difference between the market value of the property and the homeowners mortgage debt.

Equitable Title

The interest of the purchase under an installment land contract (see below).

Escrow

Delivery of a deed by a grantor to a third party for delivery to the grantee upon the happening of a contingent event.

Escrow Payment

That portion of a borrower's monthly payment held in trust by the lender to pay for taxes mortgage insurance, hazard insurance, lease payments, and other items as they become due. Also known as "impounds."

Estate

From the English feudal system, this defines the extent of one's ownership in a property.

Estate for Years

An estate limited to a term of years. An estate for years is commonly called a "lease." Upon the expiration of the estate for years, the property reverts back to the former owner.

Fee Simple

The highest form of ownership. An estate under which the owner is entitled to unrestricted powers to dispose of the property, and which can be left by will or inherited. Also known as "Fee" or "Fee Simple Absolute."

Federal Housing Administration (FHA)

A federal Agency which insures first mortgages, enabling lenders to loan a very high percentage of the sale price.

Freddie Mac (FHLMC)

Federal Home Loan Mortgage Corporation. A federal agency purchasing first mortgages, both conventional and federally insured, from members of the Federal Reserve System, and the Federal Home Loan Bank System.

Foreclosure

A proceeding to extinguish all rights, title, and interest, of the owner(s) of property in order to sell the property to satisfy a lien against it. About half of the states use a "mortgage foreclosure," which is a lawsuit in court. About half use a "power of sale" proceeding which is dictated by a deed of trust and is usually less time-consuming.

Ginnie Mac (GNMA)

Government National Mortgage Association. A federal association working with FHA which offers special assistance in obtaining mortgages, and purchases mortgages in a secondary capacity.

Good Faith Estimate

A lender's estimate of closing costs and monthly payment required by R.E.S.P.A.

Grant Deed

A deed commonly used in California to convey title. By law, a grant deed gives certain warranties of title.

Grantor/Grantee Index

The most common document recording indexing system is by grantor (the person conveying an interest, usually the seller or mortgagor) and grantee (the person receiving an interest, usually the buyer or mortgagee). All documents conveying property or an interest therein (deed, mortgage, lease, easement, etc.) are recorded by the grantor's last name in the grantor index. The same transaction is cross-indexed by the grantee's last name in the grantee index.

Heirs and Assigns

Words usually found in a contract or deed which indicate that the obligations assumed or interest granted or binding upon or insure to benefit of the heirs or assigns of the party.

Homeowner's Association

An association of people who own homes in a given area for the purpose of improving or maintaining the quality of the area. Also used in the context of a condominium association.

Impound Account

Account held by a lender for payment of taxes, insurance, or other payments. Also known as an "escrow" account.

Index

The measure of interest rate changes that the lender uses to decide how the interest rate on an ARM (adjustable rate mortgage) will change over time.

Installment Land Contract

The ILC is an agreement wherein the buyer makes payments in a manner similar to a mortgage. The buyer has "equitable title." However, the seller holds legal title to the property until the contract is paid off. The buyer has equitable title, and, for all intents and purposes, is the owner of the property. Also known as a "contract for deed" or "contract of sale."

Installment Sale

A sale which involves the seller receiving payments over time. The Internal Revenue Code contains specific definitions and promulgates specific rules concerning installment sales and tax treatment of them. Also known as an "owner carry" sale.

Insured Mortgage

A mortgage insured against loss to the mortgagee in the event of default and failure of the mortgaged property to satisfy the balance owing plus costs of foreclosure.

Interest Rate

The percentage of an amount of money which is paid for its use for a specified time.

Joint and Several Liability

A liability which allows a creditor to collect against any one of the debtors for the entire amount of the debt, regardless of fault or culpability. Most mortgage notes that are signed by husband and wife create joint and several liability.

Joint Tenancy

An undivided interest in property, taken by two or more joint tenants. The interests must equal, accruing under the same conveyance, and beginning at the same time. Upon death of a joint tenant the interest passes to the surviving joint tenants, rather than to the heirs of the deceased.

Judgment

The decision of a court of law. Money judgments, when recorded, become a lien on real property of the defendant.

Land Lease

Owners of property will sometimes give long-term leases of land up to 99 years. A lease of more than 99 years is considered a transfer of fee simple. Land leases are commonly used to build banks, car lots and shopping malls upon.

Land Trust

A revocable, living trust primarily used to hold title to real estate for privacy and anonymity. Also known as an "Illinois Land Trust" or "Nominee Trust." The land trustee is a nominal title holder, with the beneficiaries having the exclusive right to direct and control the actions of the trustee.

Lease/Option

An agreement by which the lessee (tenant) has the unilateral option to purchase the leased premises from the lessor (landlord). Some lease/option agreements provide for a portion of the rent to be applied towards the purchase price. The price may be fixed at the beginning of the agreement or be determined by another formula, such as an appraisal at a later time. Also referred to as a "lease/purchase."

Lease/Purchase

Often used interchangeably with the expression "lease/option," but technically means a lease in conjunction with a bilateral purchase agreement. Often used by real estate agents to mean a purchase agreement whereby the tenant takes possession prior to close of escrow.

Lien

An encumbrance against property for money, either voluntary (e.g., mortgage) involuntary (e.g. judgment) or by operation of law (e.g. property tax lien).

Life Estate

An estate in real property for the life of a living person. The estate then reverts back to the grantor or to a third party.

Lis Pendens

A legal notice recorded to show pending litigation relating to real property and giving notice that anyone acquiring an interest in said property subsequent to the date of the notice may be bound by the outcome of the litigation. Often filed prior to a mortgage foreclosure proceeding.

License

An authority to do a particular act or series of acts upon the land of another without possessing any estate or interest therein. (E.g., a ski lift ticket). A license is similar to an easement in that it gives someone permission to go across your property for a specific purpose. An easement is a property interest, whereas a license is a contractual right.

Liquidated Damages

A contract clause which limits a party to a sum certain in lieu of actual damages. In the case of a real estate purchase and sale contract, the seller's legal remedy is limited to the buyer's earnest money deposit.

Loan-to-Value Ratio

The ratio of the mortgage loan amount to the properties appraised value (or the selling price whichever is less).

Market Analysis

A report estimating the resale value of a property. Usually prepared by a real estate agent showing comparable sales of properties in the vicinity based on tax records and information from the Multiple Listing Service.

Marketable Title

Title which can be readily marketed to a reasonably prudent purchaser aware of the facts and their legal meaning concerning liens and encumbrances.

Mechanics Lien

A lien created by state law for the purpose of securing priority of payment for the price of value of work performed and materials furnished in construction of repair of improvements to land, and which attached to the land as well as the improvements.

Mortgage Broker

One who for a fee, brings together a borrower and lender, and handles the necessary applications for the borrower to obtain a loan against real property by giving a mortgage or deed of trust as security.

Mortgage Guaranty Insurance Corporation (MGIC)

A private corporation which, for a fee, insures mortgage loans similar to FHA and VA insurance, although not insuring as great a percentage of the loan.

Mortgage

A security instrument given by a borrower to secure performance of payment under a note. The document is recorded in county land records, creating a lien (encumbrance) on the property. Also known as a "deed of trust" in some state. The borrower is also called a "mortgagor."

Mortgage Insurance

Insurance required for loans with a loan-to-value ratio above 80%. Also called "PMI," "MIP."

Note

A written promise to repay a certain sum of money on specified terms. Also known as a "promissory note."

Option

The unilateral right to do something. For example, the right to renew a lease or purchase a property. The *optionee* is the holder of the option. The *optionor* is the grantor of the option. The optionor is bound by the option, but the optionee is not.

Origination Fee

A fee or charge for work involved in the evaluation, preparation and submission of a proposed mortgage loan. Usually about 1% of the loan amount.

Performance Mortgage

A mortgage or deed of trust given to secure performance of an obligation other than a promissory note.

Periodic Tenancy

An estate from week-to-week, month-to-month, etc. In the absence of a written agreement (or upon the expiration of a lease once payments are accepted), a periodic tenancy is created. Either party can terminate this type of arrangement by giving notice, usually equal to the amount of the period or as prescribed by state law.

Points

Fee paid by a borrower to obtain a loan. A point is one percent of the principal amount of the loan. The borrower may usually pay more points to reduce the interest rate of the loan.

Prorate

To divide in proportionate shares. Used in the context of a closing, at which such as property taxes, interest, rents and other items are adjusted in favor of the seller, buyer or lender.

Purchase Money Mortgage

A loan obtained in conjunction with the purchase of real estate.

Quiet Title Proceeding

A court action to establish or clear up uncertainty as to ownership to real property. Often required if a lien or cloud appears on title that cannot be resolved.

Quit Claim Deed

A deed by which the grantor gives up any claim he may have in the property. Often used to clear up a cloud on title.

Real Estate

Land and anything permanently affixed to the land, and those things attached to the buildings.

Recording

The act of publicly filing documents, such as a deed or mortgage.

Recourse Note

A note under which the holder can look personally to the borrower for payment.

Redemption

The right, in some states, for an owner of lien holder to satisfy the indebtedness due on a mortgage in foreclosure after sale.

Refinancing

The repayment of a loan from the proceeds of a new loan using the same property as collateral.

Re-issue Rate

A discounted charge for a title insurance policy if a previous policy on the same property was issued within a specified period (usually three to five years).

Release

An instrument releasing a lien or or encumbrance (e.g., mortgage) from a property.

RESPA (Real Estate Settlement Procedures Act)

A federal law requiring disclosure of certain costs in the sale of residential property which is to be financed by a federally insured lender. Also requires that the lender provide a "good faith estimate" of closing costs prior to closing of the loan.

Second Mortgage

A loan secured by a mortgage or trust deed, which lien is junior to a first mortgage or deed of trust.

Secondary Mortgage Market

The buying and selling of first mortgages and deeds of trust deeds by banks, insurance companies, government agencies, and other mortgagees.

Security Instrument

A document under which collateral is pledged (e.g. mortgage)

Settlement Statement

A statement prepared by a closing agent (usually a title or escrow company) giving a complete breakdown of costs and charges involved in a real estate transaction. Required by RESPA on a form HUD-1.

Specific Performance

An action to compel the performance of a contract.

Sublet

To let part of one's estate in a lease. A subtenant is not in privity of contract with the landlord and neither can look to each for performance of a lease agreement.

Subject-To

When transferring title to a property encumbered by a mortgage lien without paying off the debt or assuming the note, the buyer is taking title "subject to."

Subordination

The process by which a lien holder agrees to permit his lien to become junior or "subordinate" to another lien.

Tenancy in Common

With tenancy in common, each owner (called a "tenant") has an undivided interest in the possession of the property. Each tenant's interest is salable and transferable. Each tenant can convey his interest by deed, mortgage or by a will. Joint ownership is presumed tenants in common if nothing further is stated on the deed.

Tenancy by the Entirety

A form of ownership recognized in some states by which husband and wife each owns the entire property. As with joint tenancy, in event of death of one, the survivor owns the property without probate. In some states, tenancy by entirety protects the property from obligations of one spouse.

Title

Title is the *evidence* of ownership. In essence, title is more important than ownership because having proper title is *proof* of ownership. If you have a problem with your title, you will have trouble proving your ownership and thus selling or mortgaging your property.

Title Insurance

An insurance policy which protects the insured (purchaser and/or lender) against loss arising from defects in title. A policy protecting the lender is called a "Loan Policy," whereas a policy protecting the purchaser is called a "Owner's Policy." Virtually all transactions involving a loan require title insurance.

Truth in Lending

Federal law requiring, among other things, a disclosure of interest rates charges and other information about a loan.

Warranty Deed

A deed under which the seller makes a guarantee or warranty that title is marketable and will defend all claims against it.

Wraparound Mortgage

A mortgage that is subordinate to and incorporates the terms of an underlying mortgage. The mortgagor (borrower) makes payments to the mortgagee (lender) who then makes payments on an underlying mortgage. Also referred to as an "all inclusive deed of trust" in some states.