

1 GLOSSARY

The following materials represent a glossary of commonly used real estate terms reprinted, in part, from the First American Title Insurance Company Underwriting Library (with permission). This originally appeared in the first edition of "*Principles of Title Insurance – Tennessee*" and is reposted via a link in the second edition of that publication.

A.L.T.A.

American Land Title Association. Organization composed of title insurance firms which sets standards for the industry, including title insurance forms used on a national basis.

ABATEMENT

A reduction, a decrease, or a diminution. The suspension or cessation, in whole or in part, of a continuing charge, such as rent.

ABSTRACT

A brief summary of the important points of a given instrument.

ABSTRACT CONTINUATION

(Also known as abstract extension and also as supplemental abstract.) A partial abstract beginning at the terminal date of an existing abstract and showing instruments recorded between such terminal date and a subsequent date.

ABSTRACT OF TITLE

A summary of transactions affecting the title to a piece of land.

ABUT

To touch or border upon. A piece of land bordering on a street or an adjoining piece of property is said to abut such street or property.

ACCELERATION CLAUSE

A note, bond or other credit agreement clause advancing the date of maturity of a Deed of Trust or mortgage upon the happening of a certain event.

ACCESS RIGHT

Landowner's right to have ingress and egress from landowner's property to a public street.

ACCOMMODATION

An obligation assumed without consideration.

ACCOMMODATION RECORDING

The recordation of an instrument without an assumption of responsibility for the correctness or validity of the instrument.

ACCRETION

An increase of land on a shore or riverbank by the gradual deposit of sand or soil by action of the water. (Also, see "Avulsion.")

ACKNOWLEDGMENT

A formal declaration before a duly authorized officer, by a person who has executed an instrument, that such execution is his act and deed.

ACRE

An area of land containing 43,560 square feet or 4,840 square yards.

ACTION IN PERSONAM

A court action that seeks a judgment against a person as distinguished from a judgment against property.

ACTION IN REM

A court action that seeks a judgment against property to determine its status.

ACTUAL NOTICE

Notice a party receives in fact or in reality.

ADDENDUM

Something which is to be added. An addition or supplement to an agreement.

ADJOINING OWNERS

Owners of two or more parcels of real property where the parcels being contiguous to each other.

ADJUDICATION

Judicial determination of a case or controversy.

ADVERSE POSSESSION

The unauthorized occupation of land belonging to another, by a person who does not have the consent of the owner. The occupier is said to hold possession adversely to the rights and interests of the owner. In most states, by operation of law, title to the land becomes vested in such occupier after a fixed number of years of actual, open, notorious, exclusive, peaceful and adverse occupancy.

AFFIANT

A person who has made an affidavit.

AFFIDAVIT

A written statement made under oath before a notary public or other judicial officer.

AFFIDAVIT OF CONSIDERATION

Pursuant to Tennessee Code Annotated Section 67-4-409 et seq., any instrument of conveyance must contain an affidavit stating the consideration paid for the transfer of the subject property.

AFTER-ACQUIRED TITLE

Title acquired by a grantor who conveyed land before he owned it.

AGENCY

An individual or corporation authorized to act for another person or corporation. The scope of an agency depends upon the authority given to the agent.

AGENT

One who, having received authority from another, acts in the other person's behalf within the scope of the authority given.

AGREEMENT

A legally binding compact made between two or more persons.

AKA

Also known as.

ALIENATE

To transfer title to real property from one person to another.

ALIENATION

Transfer of title to land from one person to another. It is voluntary alienation if freely made; involuntary alienation when contrary to the owner's desire.

ALL-INCLUSIVE RATE

Rate which includes charges for title insurance, searching or abstract fees and examination fees.

ALLODIAL TENURE

The absolute ownership of real estate which is subject to inheritance by the owner's heirs or to disposition by the owner as he sees fit, as contrasted with the feudal system of ownership. Allodial tenure is characteristic of ownership in the United States.

AMORTIZED LOAN

A loan that is completely paid off, both as to principal and interest, by a series of regular payments that are equal or nearly equal.

ANCILLARY

In addition to.

ANCILLARY ADMINISTRATOR

Administrator of an estate appointed in a state other than the decedent's domicile.

ANNUM

Year.

ANTENUPTIAL AGREEMENT

Contract by a man and woman regarding their property, made in contemplation of their marriage. Also called prenuptial agreement.

APPRAISAL

Opinion as to value of property; a conclusion resulting from an analysis of facts affecting fair market value.

APPROVED ATTORNEY

An attorney whose opinion is acceptable to a title company as a basis for issuance of a title insurance policy by the Insurer. The Insurer, rather than the attorney, executes the policy.

APPURTENANCE

Anything incidental or belonging to land that is intended to be permanently connected to and is used with the land for its benefit. (Runs with the land).

APPURTENANT

Belonging to.

ARBITRATION

The process by which parties who cannot agree among themselves submit the dispute to the judgment of an impartial third party.

ASSESSED VALUATION

The estimated value of property for tax purposes, usually fixed by the tax assessor.

ASSESSMENT

(1) The act of fixing the amount of taxes or special improvement charges. (2) The amount of taxes or special improvement charges. Special improvement charges are usually for the costs of streets, sidewalks, sewers, etc.

ASSIGNEE

For example, the person who receives (is assigned) ownership of a contract or a mortgage by transfer from another.

ASSIGNMENT

(1) The act of transferring ownership of something from one person to another. (2) The instrument or paper by which one person transfers ownership of a right or an object to another.

ASSIGNOR

For example, the person who transfers ownership of a contract or mortgage to another.

ASSUMPTION AGREEMENT

Undertaking or adoption of a debt or obligation primarily resting on another person.

ASSUMPTION FEE

Lender's charge for changing over and processing new records for a buyer who is assuming an existing loan.

ASSUMPTION OF MORTGAGE (or DEED OF TRUST)

Agreement by a buyer in which he assumes liability for payment of an existing note secured by a mortgage or Deed of Trust against the property.

ATTACH

The act of a sheriff or other court officer in taking possession of a person or property under the authority and direction of a writ or order issued by a court.

ATTACHMENT

A legal remedy to aid collection of a debt, usually incidental to a lawsuit against the debtor wherein the court issues a writ of attachment under the authority and direction of which the sheriff seizes property of the debtor and holds same pending the outcome of the lawsuit, keeping the property available for sale to pay any money judgment entered in the lawsuit.

ATTESTATION CLAUSE

The clause in a deed or other instrument denoting that certain signatures are those of witnesses to the instrument.

ATTORN

To accept and acknowledge a new landlord.

ATTORNEY'S OPINION OR CERTIFICATE

The written statement of an attorney setting forth what she or he believes to be the condition of a real estate title.

ATTORNEY-IN-FACT

A person who is appointed to act as an agent for another, pursuant to a Power of Attorney.

AVIATION EASEMENT

An easement over private property which abuts and extends out from the end of airport runways, the easement restricting the graduated height of agricultural crops, bushes, trees and other objects in the take-off and landing path of aircraft.

AVULSION

A sudden and perceptible loss or addition to land by the action of water, or a sudden change in the bed or course of a stream. Black's Law Dictionary -5th Edition (Also, see" Accretion.")

BACK TITLE LETTER OR CERTIFICATE

(See "Starter.")

BALLOON PAYMENT

Installment note final payment that is greater than preceding payments and that pays the note in full.

BANKRUPTCY

A proceeding in U.S. Bankruptcy Court wherein assets of a debtor unable or unwilling to pay his debts are applied by an officer of the court in satisfaction of creditor claims.

BAR

(1) The attorneys at law, taken collectively in a municipality, county, state or the nation. (2) To defeat or to prevent.

BENEFICIARY

A person who is entitled to receive funds or property under the terms and provisions of a will or trust or insurance policy.

BENEVOLENT ASSOCIATION

Voluntary nonprofit organization organized for the benefit of its members.

BEQUEST

A gift of personal property in a will.

BILL OF SALE

The instrument by which title to personal property is transferred or conveyed.

BINDER

Memorandum of an agreement to issue insurance giving temporary coverage until such time as a formal policy is issued.

BLANKET MORTGAGE OR TRUST DEED

Mortgage or trust deed that covers more than one lot or parcel of real property; often covers an entire subdivision. As individual lots are sold, a partial release or reconveyance from the blanket mortgage is ordinarily obtained.

BONA FIDE PURCHASER

One who buys property in good faith, for fair value, and without notice of any adverse claim or right of third parties.

BOND

(1) A written promise to pay to the bearer or owner a stated sum of money at a specified time, with interest usually represented by interest coupons attached to the bond, which coupons may be clipped as they mature and presented for payment. Bonds are sometimes in the form of certificates of indebtedness. Bonds are often secured by real estate mortgages. (See "Promissory Note.") (2) A written Commitment assuring the payment of a stipulated sum of money or the amount of damages in the event of an adverse happening. (3) A certificate of debt

issued by a government or corporation guaranteeing payment to bearer of a specified sum of money, plus interest, on a specified future date.

BROKER

One who acts as an agent for another in negotiating sales or purchases in return for a fee or commission.

BROKERAGE FEE

A fee or commission paid to a broker.

BUILDING CODE

Laws specifying the type, kind, area and manner of construction of buildings, and prohibiting construction or repair of buildings in violation of such specifications. (Also, see "Zoning Ordinances.")

BUILDING LINE

Also called set-back line, a line inside the boundary lines of a piece of real estate beyond which no building may be constructed. Building lines may be established by municipal ordinances, restrictions, and subdivision plats.

BULK TRANSFER

Any transfer in bulk not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory of the business.

BUNDLE OF RIGHTS

Beneficial interests or rights an owner has in his property, including the rights of use and transfer, and the right to exclude others.

BY-LAWS

Rules adopted by the members of the board of directors of a corporation that govern the internal management of the corporation. Also called the corporate constitution.

CASHIER'S CHECK

A bill of exchange drawn by the cashier of a bank, for the bank, upon any bank. After the check is delivered or issued to the payee or holder, the drawer bank cannot put a "stop order" against itself. By delivery of the check, the drawer bank has accepted the check, and thus becomes the primary obligor. (Also, see "Draft.")

CAVEAT

Literally, this means "let him beware." It is used generally to mean a warning.

CAVEAT EMPTOR

Let the buyer beware. Places a duty on a buyer to examine goods or property before purchasing when he buys at his own risk.

CAVEAT VENDITOR

Let the seller beware. Unless the seller by express language disclaims any responsibility, he shall be liable to the buyer if the goods delivered are different in kind, quality, use, and purpose from those described in the contract of sale.

CEDER

The insurance company issuing a policy which will then be reinsured. Most of the larger title insurers will not issue policies for more than \$25,000,000 without obtaining reinsurance.

CERTIFICATE OF TITLE

Certified statement regarding ownership of land, based on examination of the record title.

CERTIFIED CHECK

A check, guaranteed payment by the bank drawn on, due to the bank freezing the amount of the check in the payor's account for payment.

CHAIN

As regards land measure, a chain equals 66 feet, 100 links, or 4 rods.

CHAIN OF TITLE

Beginning with a conveyance out of an original source of title such as a government, each succeeding deed, will or other medium which conveys and transfers the title to succeeding owners constitutes a link in the chain of title. The chain of title is the composite of all such links.

CHATTEL

Another name for personal property as distinguished from real estate. An article of movable property.

CHATTEL MORTGAGE

Obsolete name for mortgage of personal property.

CIVIL LAW

Law of the Roman Empire, based on the code of the Emperor Justinian. It is the basis of the law in many European countries today. In England, however, the common law applies.

CLAIM

A right to assert, or the assertion of a demand for payment of money due, or the surrender or delivery of possession of property or the recognition of some right. A demand for something as one's rightful due.

CLASS ACTION

Representative lawsuit in which plaintiff files an action to recover money or to redress a wrong not only on his own behalf but also on behalf of all other persons similarly situated.

CLOSING

In some areas a closing is called a "settlement." The process of completing a real estate transaction during which deeds, mortgages, leases and other required instruments are signed and/or delivered, an accounting between the parties is made, the money is disbursed. The documents are recorded, and all other details such as payment of outstanding liens and transfer of hazard insurance policies are attended to. In some areas this procedure is known as the closing of escrow. (See also, "Settlement.")

CLOSING STATEMENT

A summation, in the form of a balance sheet, made at a closing, showing the amounts of debts and credits, to which each party to a real estate transaction is entitled.

CLOUD ON TITLE

An irregularity, possible claim, or encumbrance which, if valid, would adversely affect or impair the title.

CO-INSURANCE

When the term "co-insurance" is used in connection with title insurance, as well as in other forms of insurance, it signifies that two or more insurance companies are insuring the same risk. Depending on the type of co-insurance utilized, the insurance may be identical for each company. That is, each company may have and be responsible for the same risks and liability. This is called "joint and several co-insurance," with each company's liability starting at the first dollar and continuing for the full amount of insurance as stated by the policy. This does not mean that the insured could be paid twice the amount of a loss, but does mean that all of the loss could be paid by one company rather than shared by both. The paying company would undoubtedly seek a partial recovery from its co-insurer. (Also, see "Reinsurance.")

CO-OPERATIVES

Co-operatives, usually referred to as "co-ops," are typically residential real estate projects which are owned by an entity, an interest in which is, in turn, owned by the "owner." The owner, as a concomitant to owning the interest in the entity, is also entitled to the use of a designated apartment in the building. This possessory interest is commonly evidenced by a proprietary lease.

CODE

A collection of laws.

CODICIL

An amendment, revision, supplementation, or cancellation of a will.

COLOR OF TITLE

That which gives the appearance of title, but is not title in fact.

COMMISSION

The amount due an issuing title agent. Or in other contexts, a real estate broker or mortgage loan broker, for services performed in their respective capacities. The term also applies to regulatory tribunals such as real estate commissioners.

COMMITMENT

A pledge, promise, or firm agreement; also, a form of title evidence issued by a title company establishing a title insurer's contractual obligation to insure title to real property, subject to satisfaction of the requirements set forth therein. (Also known as binder).

COMMON AREA

When used in reference to condominiums or planned unit developments, the common area is that portion of land that is owned in common by all unit or lot owners and which each has an equal right to use. In a condominium the common area includes the buildings surrounding the units but not the unit of air space.

COMMON LAW

The system of laws originated and developed in England which was the source of customs, usages and arbitrary court decisions as distinguished from written laws enacted by legislative bodies.

COMPETENT

Legally qualified; capable of contracting.

CONDEMN

(1) The legal declaration of a government that something is unfit for further use or existence, or constitutes a peril to life, health, safety, or well-being of the public, and ordering its removal or destruction, such as declaring a building unfit for use and a menace to health and public safety and ordering its destruction, or to order the slaughter of diseased animals. (2) The selection of private property by a government or public service corporation for acquisition for public or quasi-public use.

CONDEMNATION

(1) The taking of private property for public or quasi-public use, with compensation to the owner, under the right of eminent domain. All governments and so-called public service corporations, such as railroads and electric companies, have the right to condemn and take private property. (2) The destruction by government of private property which imperils the life, health or safety of the public.

CONDITIONS

This term is related to restrictions and reservations. It refers to provisions in deeds and other real estate instruments which provisions make particular right contingent upon the occurrence of some future event.

CONDOMINIUM

An estate in real property consisting of an undivided interest in common in a portion of a parcel or real property together with a separate interest in space in a residential, industrial or commercial building. It may include a separate interest in another portion of real property. The estate may be either 1) an estate of inheritance or perpetual estate, 2) an estate for life, or 3) an estate for years including either a leasehold or sub-leasehold estate.

CONDOMINIUM UNIT

A residential unit in a condominium complex.

CONFIRMATION OF SALE

Court approval of the sale of property by an Executor, administrator, guardian or conservator.

CONSIDERATION

Anything of value used to induce another person to enter into a contract. It may be money, services, or a promise, and consists of either a benefit to the promisor, or a loss or detriment to the promisee.

CONSTRUCTIVE

Inferred or implied.

CONSTRUCTIVE NOTICE

Notice given by public records.

CONTIGUOUS

In actual or close contact; adjoining or touching, e.g., parcels of land next to each other.

CONTINGENT

Dependent on an uncertain future event.

CONTRACT

Same as "Agreement", but usually more formal.

CONVEYANCE

The transfer of title to property from one person to another.

CORPORATION

A collection of individuals created by statutes as a legal person, vested with powers and capacity to contract, own, control, convey property, and transact business within the limits of the powers granted.

CORPOREAL

Of a material, tangible nature.

COTENANCY

Ownership of property by two or more persons.

COVENANT

(1) A formal agreement or contract between two parties in which one party gives the other certain promises and assurances, such as covenants of warranty in a warranty deed. (2) Agreements or promises contained in deeds and other instruments for performance or nonperformance of certain acts, or use or nonuse of property in a certain manner.

DBA

Acronym for "doing business as."

DECEDENT

A deceased person.

DECREE

A judgment by a court.

DEDICATION

The setting aside of certain land by the owner and declaring it to be for some public use, accompanied by acceptance of such use by the public. Example: streets, sidewalks, parks.

DEED

A conveyance of realty; a writing signed by grantor, whereby title to realty is transferred from one to another. National Fire Insurance Company vs. Patterson, 170 Okl. 593, 41 P.2d 645, 647.

DEED BOOK

A book among the public records in which deeds are recorded.

DEED OF TRUST

An instrument used in many states in place of a mortgage. Property is transferred to a Trustee by the borrower (Trustor) in favor of the lender (Beneficiary) as security for a loan. The Deed of Trust is reconveyed upon payment in full.

DEED RESTRICTION

A restriction contained in a deed which limits the use or occupancy of the real estate or the type, size, purpose and location of improvements to be constructed on it.

DEFAULT

Failure to perform a promised task or to pay an obligation when due.

DEFAULT JUDGMENT

Judgment taken against a defendant who fails to appear in court.

DEFEASANCE

An instrument which defeats the force or operation of some other deed or estate. A collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be defeated or totally undone. Black's Law Dictionary -5th Ed.

DEFEASANCE CLAUSE

Clause in a mortgage that gives the mortgagor (borrower) the right to redeem his property on payment of his obligation to the mortgagee (lender).

DEFECT

A blemish, imperfection or deficiency. A defective title is one that is irregular and faulty.

DEFENDANT

The party who is being sued in a court of law.

DEFICIENCY JUDGMENT

When property at a mortgage foreclosure sale does not bring enough money to pay the mortgage debt plus costs of foreclosure, the court will enter a deficiency judgment against the mortgage debtor for the difference between the sale price and the mortgage debt plus costs.

DEMISE

(1) Death. (2) To transfer title to property or an interest in property by will or lease.

DERIVATION CLAUSE

The clause in an instrument of conveyance setting out the method, from whom, and the recording information as to how the current grantor took title.

DESCRIPTION

The exact location of a piece of property stated in terms of lot, block, tract, part lot, metes and bounds, or U.S. Government survey (sectionalized). This is also referred to as a legal description of property.

DEVISE

A gift of real estate made by a will.

DEVISEE

One who is given real estate under a will.

DISPOSSESS

To deprive one of the possession and use of real estate.

DOMINANT ESTATE

The property for the benefit of which a right-of-way easement exists across another's adjoining piece of land is said to be the dominant estate. The land across which the easement runs is said to be the servient estate.

DOWER

A right which a wife has in her husband's property effective at the time of his death.

DRAFT

The common term for a bill of exchange. A written order from one person to another, directing that person to pay to a third person a set sum of money. A draft is distinguishable from a cashier's check in that a draft is payable on demand against money on deposit, while a cashier's check is a primary obligation of the bank that issues it.

DRAW

A partial advance of the proceeds of a construction loan mortgage, to which the borrower is entitled when construction reaches a certain specified stage.

DRESSER DRAWER TITLE

When an owner neglects to record his deeds and other real estate papers and places them instead in dresser drawers, or in a shoe box in a closet, or under the mattress, and there is nothing of record which shows any title in the supposed owner, his title is often referred to as a dresser drawer title.

DUE-ON-SALE CLAUSE

A provision in a trust deed or mortgage calling for automatic maturity at the lender's option in the event of sale or transfer of the real property to a third party; also called an alienation clause.

EARNEST MONEY

The advance, by a purchaser, of a small part of the purchase price as evidence of good faith.

EASEMENT

A right held by a person to enjoy or make limited use of another's real property.

EASEMENT APPURTENANT

Easement created for the benefit of a parcel of land.

EASEMENT IN GROSS

Easement created for the benefit of an individual, rather than for a parcel of land, e.g., a public utility easement.

EASEMENT OF NECESSITY

An easement which is indispensable to the enjoyment of the dominant estate. An easement by necessity arises by operation of law when land conveyed is completely shut off from access to any road by land retained by grantor or by land of grantor and that of a stranger.

EGRESS

The right to a path or right-of-way over which a person may leave his own real estate.

EJECTMENT

Legal action by a landowner for return of his property and for damages when, for example, a defaulting buyer under a land sales contract refuses to relinquish possession.

EMINENT DOMAIN

The right of a government to take privately owned property for public purposes under condemnation proceedings upon payment of its reasonable value. (See "Condemnation.")

ENCROACHMENT

The extension of a structure from the real estate to which it belongs across a boundary line and onto adjoining property.

ENCUMBER

To burden the title to real property with a claim, right or lien held by someone other than the owner.

ENCUMBRANCE

A claim, right, or lien upon the title to real estate, held by someone other than the real estate owner.

ENDORSEMENT

The act of signing one's name on the back of a check or promissory note to transfer it to a third party. Also, a rider attached to an insurance policy to expand or limit coverage. Also spelled "Indorsement."

EQUITABLE RIGHTS

Rights established primarily by court decisions based upon principles of fairness, honesty, justness and morality and not upon enacted law or common law.

EQUITY

A system of jurisprudence supplementing the common law and enacted law under which justice, impartiality, and fairness is applied in circumstances not covered by enacted or common law.

EQUITY IN PROPERTY

Amount of value of a person's interest above the total of liens or charges; the difference between the market value of the property and the amount of liens against it.

EQUITY OF REDEMPTION

The right of one who has mortgaged his property to redeem that property upon payment of the mortgage debt, and especially the right to redeem within a reasonable time after the due date.

EROSION

The wearing away of land surfaces by forces of nature such as winds and water.

ESCHEAT

The reversion of property to the state when an owner dies leaving no legal heirs, devisees or claimants.

ESCROW

A writing, deed, money, stock, or other property delivered by the grantor, promisor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee. A system of document transfer in which a deed, bond, or funds is delivered to a third person to hold until all conditions in a contract are fulfilled; e.g. delivery of deed to escrow agent under installment land sale contract until full payment for land is made. Black's Law Dictionary-5th Ed.

ESCROW AGREEMENT

A written agreement usually made between buyer, seller and escrow agent, but sometimes only between one person and the escrow agent. It sets forth the conditions to be performed incident to the object deposited in escrow, and gives the escrow agent instructions with respect to the disposition of the object so deposited.

ESCROW HOLDER

The person who holds the papers and/or money during an escrow transaction.

ESTATE

(1) A sizable piece of rural land usually with a large house and other pretentious improvements. (2) The whole of one's possessions, especially all of the property, assets, debts, and liabilities left by a deceased or bankrupt person. (3) The nature and extent of an owner's rights in real estate.

ESTATE AT WILL

Occupation of lands and tenements by a tenant for an indefinite period, terminable by either party at any time.

ESTATE BY ENTIRETIES

An estate or interest in real estate predicated upon the legal fiction that a husband and wife are one person. A conveyance or devise to them (unless contrary intent is expressed) vests title in them as one person. Upon the death of either husband or wife, full title passes to the survivor.

ESTATE FOR LIFE

Estate held by a person to continue during his life or for the life of any other designated person.

ESTATE FOR YEARS

Interest in land based on a contract for possession of the land by a tenant or lessee for a definite or fixed period of time. (See "Lease.")

ESTOPPEL

A legal restraint which stops or prevents a person from contradicting or reneging on his previous position or previous assertions or commitments.

ET AL

A Latin term meaning "and others."

ET UX

Abbreviation of Latin "et uxor" meaning "and wife." Joe Doaks et ux. means Joe Doaks and wife.

ET VIR

A Latin term meaning "and husband." Jane Allen et vir means Jane Allen and husband.

EVICTION

To expel or oust a person, by legal process, from possession of real estate.

EXAMINATION

In title industry parlance, to peruse and study the instruments and muniments incident to a chain of title and to determine their effect and condition in order to reach a conclusion as to the status of the title.

EXAMINER

Usually referred to, in title industry parlance, as title examiner. One who examines and determines the condition and status of real estate titles.

EXCEPTION

In title industry parlance, a provision in a title insurance binder or policy which excludes liability regarding a specified title defect or an outstanding lien or encumbrance.

EXECUTE

To create and make valid a real estate instrument. A deed is said to be executed when it is signed, sealed, witnessed and delivered. (2) To perform or do whatever is required.

EXECUTION

The act of executing. (See "Execute.") (See "Writ of Execution.")

EXECUTOR (Also known as Personal Representative)

A person named in a will to carry out its provisions.

EXECUTORY

A contract or agreement not yet performed.

EXECUTRIX

Feminine of Executor.

EXEMPTION

Immunity from a burden or obligation.

FALSE PERSONATION

The act of a person who falsely and fraudulently claims to be another person.

FALSIFICATION

The forging, altering, or counterfeiting of a document, or knowingly making untruthful statements or misrepresentations.

FEE SIMPLE ABSOLUTE

(Commonly called fee simple) A term describing the total interest a person may have in land. Such an estate is not qualified by any other interest and passes upon the death of the owners to the heirs free from any conditions.

FEE SIMPLE DEFEASIBLE

A fee simple estate that can be lost or defeated by the happening of some event which occurs after the initial grant, e.g., a breach of a condition as contained in a deed restriction.

FEOFFMENT

The granting of a fee.

FEUDAL SYSTEM

A political and economic system which prevailed in Europe based upon the relation of overlord to vassal. The feudal lord held paramount title to the land. The interest in land acquired by vassals was impermanent, and title always reverted to the lord upon the vassal's death.

FICTITIOUS NAME

A name used for business purposes that differs from the true name of the owner of the business.

FIDUCIARY

A person who bears a special relationship of trust, confidence, and responsibility to others, such as a Trustee or agent.

FILE AND USE

In most states, title insurers file rate schedules, title insurance policy forms and endorsement forms with the State Insurance Department or other state agency and then may use such items or rates within a specified period of time after filing. Rates so filed usually are mandatory.

FILING

In the title industry, this term relates to the delivery of real estate instruments to a recorder for recording.

FINANCING STATEMENT

Evidence of a personal property security agreement that may be filed with the Secretary of State or recorded with the county or city recorder under prescribed conditions. The financing statement has replaced the chattel mortgage and will affect real property if it relates to crops or timber.

FIRST MORTGAGE

A mortgage having priority as a lien over any other mortgage or lien on the same property.

FIXTURE

Personal property which is permanently attached to real estate such as plumbing, heating equipment, etc., and thereby is usually regarded as part of the real estate.

FORECLOSURE

A legal proceeding for the collection of real estate mortgages and other types of liens on real estate, which results in cutting off the right to redeem the mortgaged property and often involves a judicial sale of the property to pay the mortgage debt.

FORECLOSURE SALE

Sale of property pledged as security for a debt. The property is sold to pay the debt after a default occurs.

FORE SHORE

Land between the low water mark and high water mark, covered and uncovered by the ebb and flow of the tide.

FORFEIT

(1) Money or a right which a person loses upon failure to perform an agreement, obligation, or duty. (2) The act of losing money or a right as described.

FORGED

Fraudulently executed; counterfeited.

FORGERY

The fraudulent signing of another's name to an instrument such as a deed or mortgage or check.

FRANCHISE

(1) A right or privilege conferred by law, e.g., Right to operate a railroad or a bus service. (2) A contractual right to engage in a particular business using a trade name or designation owned by another person.

FRAUD

A deception deliberately practiced in order to obtain an unfair or unlawful gain.

FRAUDULENT

Obtained, performed, or characterized by deceit or fraud.

FRONT FOOT

A unit of measurement, one foot in length, along the front boundary line of a piece of property which measurement, when assigned a dollar value, is a factor in determining the total value or sale price of a tract.

FUTURE ADVANCE CLAUSE

Clause in a Deed of Trust permitting the lender to make additional advances in the future that will also be secured by the Deed of Trust. (See "Open-end Mortgage.")

FUTURE INTEREST

An estate in real property entitling the owner to possession and enjoyment at a future date.

GARNISHMENT

Statutory proceeding whereby a debtor's personal property or funds, in possession of a third party, is seized and applied to payment of the debt.

GENERAL PLAN RESTRICTIONS

Restrictions on use of real property imposed for the benefit of all lots in a subdivision.

GENERAL WARRANTY

A warranty provision in a deed or mortgage or other real estate instrument containing all of the common law items of warranty. Also known as a full warranty. In a general warranty deed the grantor covenants that he or she will warrant forever the property to the grantee against every lawful claim and demand (i.e. all claims and defects of the grantor and all of his or her predecessors in title).

GORE

A sliver of land usually of triangular shape between two tracts, resulting from failure of land descriptions to adjoin.

GRANT

A transfer of real estate between individuals, by deed. A transfer of real estate from a sovereign by patent or royal decree.

GRANT DEED

One of many types of deeds used to transfer real property. A grant deed contains warranties against prior conveyances or encumbrances.

GRANTEE

One to whom a grant is made. Typically your purchaser in a deed.

GRANTOR

One who makes a grant. Typically a seller in a deed. Typically the titleholder in a Deed of Trust.

GROUND LEASE

Lease covering land only and not improvements which are to be installed by the lessee.

GUARANTY

An agreement in which a guarantee or assurance of a state of facts or the performance of an objective or obligation is given.

GUARDIAN

A parent or court appointed person who is legally responsible for the care and management of the person or property of one who is legally incompetent to manage his own affairs.

HABENDUM CLAUSE

That provision in deeds which begins with the words "to have and to hold" and which, in effect, defines the quality of the estate or interest which is being conveyed to the grantee. A habendum clause in a deed is not mandatory.

HAZARD

A danger, peril or risk. Incident to title insurance, it relates to the risk assumed under a title insurance policy.

HEIR

A person who inherits or who is entitled to inherit real estate by provisions of law when no will exists.

HEREDITAMENTS

Any and all kinds of estates, interests, and rights in real estate which can be inherited.

HIATUS

In title industry parlance, a separation, gap or unaccounted for area. Usually a strip of land between two tracts where the two tracts do not adjoin because of faulty descriptions. (See "Gore.")

HOLDER IN DUE COURSE

One who takes a negotiable instrument before maturity, for value, and without knowledge of any defect therein.

HOMESTEAD

(1) Property designated by the head of a family as his home, which is protected by law from forced sale to pay his debts. (2) Land claimed by a settler under the national Homestead Act. (3) Under some state laws, the real estate upon which one's home is situated.

HYPOTHECATE

To give a thing as security without parting with possession.

IDEM SONANS

The doctrine that, if any two names may be sounded alike, any variance in spelling is immaterial.

IMPROVEMENT LIENS

Liens imposed by municipalities on real estate which has been directly benefited by municipal improvements such as the construction of streets, sidewalks and sewer lines. Such liens secure payment of the proportionate costs of such improvements.

IN GROSS EASEMENT

A right in another's land not created for the benefit of any land owned by the easement holder. It is a personal right attached to the person of the easement holder.

IN PERSONAM

Against the person.

IN RE

In the matter of.

IN REM

Against a thing (property) and not against a person.

INCHOATE

Immature; not fully developed; an early stage; incomplete; only partially existing. An inchoate right of dower held by a wife matures and becomes exercisable only upon the death of her husband.

INCOMPETENT

Person who is incapable of managing his own affairs because of a disability.

INCORPOREAL

Having no material substance or form, but existing in the eyes of the law.

INDEMNITY

Insurance against or promise supported by consideration to pay for possible loss or damage. A title insurance policy is a contract of indemnity.

INDENTURE

A deed or other real estate contract executed between two or more parties.

INDEX

(1) An alphabetical or geographical listing in the public records of the names of parties to recorded real estate instruments together with the book and page number of the record. (2) The listing in abstract and title plants of recorded real estate instruments in groups according to land descriptions, known as a geographic index. (3) The alphabetical listing in abstract and title plants, by names of the parties, of all recorded instruments which affect but do not describe particular real estate, such as judgments, powers of attorney, wills and probate proceedings. These indexes are known by various names such as general index, judgment index, and name index.

INDORSEMENT

See "Endorsement."

INGRESS

The right or permission to enter; also the means or place of entry such as a right-of-way across adjoining land.

INSTALLMENT CONTRACT

A real estate purchase agreement providing for the payment of the purchase price in several successive payments such as monthly payments. A land contract is an installment contract.

INSTRUMENT

Any written document by which something is done regarding rights or interests in real estate.

INSURABLE INTEREST

Interest in property of such a nature that the occurrence of the event insured against would cause financial loss to the insured. The interest may be that of an owner, mortgagee, lessee, Trustee, etc.

INSURER

One that insures, sometimes called an underwriter, such as a title insurance company.

INTANGIBLE

Incorporeal; something that does not have material or physical existence. An example is an asset such as the goodwill of a business as compared with the stock-in-trade.

INTERESTS

Estates, rights, or legal claims in and to real estate.

INTERIM LOAN

Short-term loan usually made during construction of a building. After completion of the structure, a permanent loan (takeout loan) is customarily arranged.

INTESTATE

Dying without leaving a legal will. The intestate laws are the laws of distribution of the estate of a deceased person who dies without a will.

INTRA

Within.

INURE

To serve to the use or benefit of.

INVOLUNTARY LIEN

Those liens in which a parcel of land is encumbered, by operation of law, as security for the payment of a debt. Owner of property does not consent to lien (i.e. Mechanic's' lien).

IPSO FACTO

Of itself; by the very fact.

JOINT TENANTS

Two or more persons who hold title to real estate jointly, with equal rights to share in its enjoyment during their respective lives with the provision that upon the death of a joint tenant, his share in property passes to the surviving tenants, and so on, until the full title is vested in the last survivor. A joint tenant cannot legally sell or encumber his interest without the consent or joinder of all of the other Joint Tenants.

JOINT VENTURE

Business undertaking by two or more persons to conduct a single enterprise for profit. Joint venture has characteristics of a partnership, but relates to a single venture.

JUDGMENT

A conclusion or determination by a court of law usually awarding the payment of money or relief of some kind to one of the parties to a lawsuit.

JUDICIAL

Of or pertaining to courts of law or the administration of justice.

JUNIOR MORTGAGE

A mortgage lower in lien priority than a first mortgage.

JURAT

Certificate evidencing that an affidavit was properly made before an authorized officer, an acknowledgment.

JURISDICTION

(1) The right and power of courts to interpret and apply the law. (2) The legal power of control over persons and property. (3) A geographical area in which a court has power and authority to act.

JURISPRUDENCE

A system of laws. The science or philosophy of the law.

KAPUT

Destroyed, incapacitated, useless, terminated.

KICKBACK

A return of a part of a fee given back because of a confidential agreement or coercion.

KITE CHECKS

To execute and deliver a check in payment of a debt at a time when the drawer has insufficient money in the bank, but with the intention of making a deposit to cover the shortage before the check is presented for payment.

LACHES

Material delay or negligence in the timely assertion of one's rights. Laches is a legal principle under which one is barred from asserting or claiming a right.

LAND

The solid ground of the earth as distinguished from the sea.

LAND CONTRACT

A contract between buyer and seller for the purchase and sale of land, the purchase price usually being payable in installments over a considerable period. The seller (vendor) holds legal title and the buyer (vendee) holds the equitable title until the sales price is paid in full.

LANDLORD

1) A person from whom a tenant leases land or buildings. (2) One who runs a rooming house or inn.

LANDOWNER'S ROYALTY

Fractional interest in production of oil and gas created by the owner of the land, either by reservation when an oil and gas lease is entered into or by a direct grant to a third person.

LATENT

Existing, but lying hidden or concealed. (See, also "Patent.")

LATERAL SUPPORT

Support that soil of an adjoining owner gives to the neighbor's land.

LEASE

An agreement granting the use or occupancy of land during a specified period in exchange for rent.

LEASEHOLD

(1) Property held by lease. (2) The estate or interest in real estate created by a lease.

LEGACY

A gift of personal property by will.

LEGAL

(1) Relating to or concerned with the law. (2) The conformity with or permitted by law.

LEGAL DESCRIPTION

Description by which property can be definitely located on the ground by reference to government surveys or approved recorded maps; sometimes referred to simply as the legal.

LEGAL TITLE

Title which is enforceable in a court of law, or title which is perfect in its right of ownership and possession, but carries no beneficial interest in the property.

LEGATEE

Person to whom personal property is given by will. (Also known as devisee).

LESSEE

A tenant holding a lease.

LESSOR

One who gives a lease to a lessee.

LETTERS OF ADMINISTRATION

Formal written evidence of court appointment of a Personal Representative of the estate of a decedent

LETTERS OF GUARDIANSHIP

Formal written evidence of court appointment of a guardian for the person, estate, or person and estate of a minor or of an incompetent.

LETTERS TESTAMENTARY

Formal written evidence of court appointment of a Personal Representative of the estate of a testate decedent.

LEVY

A seizure of property by judicial process.

LIABILITY

A legal obligation or responsibility for the payment of a loss or damages or a debt.

LICENSE

In title industry parlance, permission to go upon or use the land of another, the permission being a personal privilege and not constituting an interest in the land.

LIEN

The liability of real estate as security for payment of a debt. Such liability may be created by contract, such as a mortgage (voluntary), or by operation of law, such as a Mechanic's lien (involuntary).

LIFE ESTATE

An estate of ownership in real estate which exists only during the term of a certain person's life.

LIFE TENANCY

An estate in real property in which the tenant has a freehold interest for his life or for the life of another (pur autre vie). Black's Law Dictionary -5th Ed.

LIFE TENANT

One who holds an estate in lands for the period of his own life or that of another certain person. Black's Law Dictionary -5th Ed.

LINEAL

(1) Being in the direct line of descent and inheritance from an ancestor. (2) A direct line as related to a measurement.

LIS PENDENS

A pending lawsuit. A lis pendens notice is legal notice to the world that a lawsuit is pending, particularly as relates to real estate.

LISTING

(1) Placing real estate with a broker for sale or lease. (2) A conditional agreement to pay a commission to the broker if and when he finds a qualified buyer or tenant.

LITIGATION

Legal proceedings, a lawsuit in which a dispute is submitted to a court for determination.

LOAN POLICY

A policy of title insurance intended to protect the party providing a loan.

LOCK BOX DEED

Deed placed in a safe deposit box which is not opened until after death. It raises the legal issue of delivery.

LOSS

(1) In the title industry, damage suffered by a person resulting from defects in or liens upon his title to real estate.
(2) Money paid by a title insurance company in settlement of policy claims.

LOT SPLIT

Sale of part of a pre-existing parcel of land. Lot splitting is generally regulated by local zoning ordinances.

MARKET VALUE

An average between the highest price which a buyer, willing but not compelled to buy, would pay and the lowest price a seller, willing, but not compelled to sell, would accept.

MARKETABLE TITLE

A title which is free from encumbrances and any reasonable doubt as to its validity, and such as a reasonably intelligent person, who is well informed as to facts and their legal bearings, and ready and willing to perform his contract, would be willing to accept in exercise of ordinary business prudence. *Sinclair v. Weber*, 204 Md. 324, 104 A.2d 561, 565.

MARSHALING

Arranging, ranking, or disposing in order; particularly, in the case of a group or series of conflicting claims or interests, arranging them in such an order of sequence, or so directing the manner of their satisfaction, as shall secure justice to all persons concerned and the largest possible measure of satisfaction to each. Equitable doctrine of "marshaling" rests upon principle that creditor having two funds to satisfy his debt may not, by his application of them to his demand, defeat another creditor, who may resort to only one of the funds. *Columbia Bank for Cooperatives v. Lee*, C.A.N.C., 368 f2d 934, 939.

MEANDER

To follow a winding course.

MECHANIC'S LIEN

A lien on real estate, created by operation of law, which secures the payment of debts due to persons who perform labor or services or furnish materials incident to the construction of buildings and improvements on the real estate. (Involuntary lien).

MEETING OF MINDS

The state that exists when all parties to a contract agree to the exact terms thereof.

MERGER OF TITLE

Absorption of one estate into another, a uniting of different interests in a parcel of property into one ownership.

MERIDIANS

Imaginary north-south lines that intersect base lines to form a starting point for measurement of land.

METES AND BOUNDS

A land description in which boundaries are described by courses, directions, distances, and monuments.

MONUMENT

Object or mark used by a surveyor to fix or to establish boundaries or land location.

MORTGAGE

(From the Latin term "mors" or "mort" meaning death or dead.) A temporary and conditional pledge of property to a creditor as security for the payment of a debt which may be satisfied or canceled by payment.

MORTGAGE BOOK

A book in the public records in which mortgages are recorded.

MORTGAGE LOAN INSPECTION

A survey required by a lender to determine the placement of the improvements on a property.

MORTGAGEE

The holder of a mortgage. The party to whom a mortgage is made.

MORTGAGEE POLICY

(Sometimes called a mortgage policy/loan policy/lender's policy.) A policy of title insurance insuring the holder of a mortgage against loss occasioned by the impairment or invalidity of the lien of the mortgage or because of defects in, superior liens upon, or unmarketability of the title.

MORTGAGOR

A person who mortgages property. A person who executes a mortgage.

MULTIPLE LISTING

The pooling, in a central bureau, of listings of properties for sale, which listings are held individually by members of a group of real estate brokers, with the agreement that any member of the group may sell the properties and in case of a sale, the commission will be divided among the broker making the sale, the broker who filed the listing, and the bureau.

MUNIMENT OF TITLE

(1) Documentary evidence of title. The instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which he is enabled to defend the title of his estate. (2) The records of title transactions in the chain of title of a person purporting to create the interest in land claimed by such person and upon which he relies as a basis for the marketability of his title commencing with the root of title and including all subsequent transactions. Black's Law Dictionary -5th Edition

MUTUAL INDEMNIFICATION TREATY

An agreement executed by several major title insurance underwriters doing business in the state of Tennessee which sets out situations whereby the current underwriter will indemnify the new insuring underwriter without the necessary for issuance of an indemnification letter.

NEGLIGENCE

The omission or neglect of reasonable precaution, care or action.

NEGOTIABLE

Capable of being legally transferred by endorsement from one person to another, such endorsement carrying with it, without written provisions, implications of certain contractual obligations.

NEGOTIABLE INSTRUMENT

Instrument, e.g., a promissory note or check meeting certain legal requirements that allows it to circulate freely in commerce.

NET LISTING

The listing, with a broker, of real estate for sale for a specified price, net to the seller, exclusive of commission and closing costs.

NOMINEE

Party designated to act in place of the original buyer in a real estate transaction. Does not act on own behalf, but as Trustee for real party.

NOTARIZE

To prove execution of a document by means of a notary public's certificate of acknowledgment.

NOTARY PUBLIC

A person authorized by law to take acknowledgments and to administer oaths.

NOTARY AFFIDAVIT

An affidavit executed by a notary public generally stating an error in a previously notarized instrument, the reason for the error, and the correction of said error.

NOTE

An instrument containing an express and absolute promise of signer (i.e. maker) to pay to a specified person or order, or bearer, a definite sum of money at a specified time. Two party instrument made by the maker and payable to payee which is negotiable if signed by the maker and contains an unconditional promise to pay sum certain in money, on demand or at a definite time, to order or bearer. U.C.C. Sec. 3-104(1). A note not meeting these requirements may be assignable but not negotiable. Black's Law Dictionary -5th Ed. (See "Promissory Note.")

NUISANCE

Anything that is offensive and works an injury or harm to a person or property. May be either a public nuisance (offends the general public) or a private nuisance (offends one property owner.)

NUNC PRO TUNC

"Now for then"; a tardy act made retroactive to take effect as of the time it should have been done.

OBLIGATION

That which a person is bound by a promise, contract or by law to do.

OFFICIAL RECORD BOOK

One of a set of books in the public records in which is recorded all papers filed for record. Such books supplant deed books and mortgage books.

OPEN-END MORTGAGE

A mortgage (or Deed of Trust) that, in addition to the original obligation, secures additional advances made by the lender after the date of execution of the mortgage. Additional advances may be either optional or obligatory. (See, also "Future Advance Clause.")

OPINION

In the title industry referred to as title opinion. The conclusion and judgment of a skilled person as to the status of a title, based upon a title examination.

OPTION

A right, given for consideration, to purchase or lease a parcel of property within a specified time and on specified terms.

ORDER CONFIRMING SALE

A court order confirming sale of estate property.

ORDINANCE

A legislative enactment by a city or county.

OVERRIDING ROYALTY

An interest in oil and gas to be produced that a lessee may retain when executing an assignment of an oil and gas lease.

OWNER'S POLICY

A policy of title insurance usually insuring an owner of real estate against loss occasioned by defects in, liens against, or unmarketability of the owner's title.

PARCEL

Any area of land contained within a single description.

PAROL

Orally, by word of mouth. For example, if a landowner gives another verbal permission to gather firewood from his land, or permission to hunt game thereon, that verbal permission would be called a parol license. Also, a witness who testifies by word of mouth in court is said to give parol testimony as contrasted to written evidence which may be introduced in the case, such as original deeds, wills, correspondence, or other documents.

PAROL GIFT

A gift made orally, by word of mouth as contrasted to one made in writing.

PARTITION

In the title industry, a lawsuit between joint owners of real estate in which the court either divides the property between them or orders the property sold and divides the proceeds between them.

PARTNERSHIP

A voluntary association of two or more persons to carry on as co-owners of a business for profit. May be either a general partnership or a limited partnership.

PARTY WALL

A wall built along the boundary line of adjoining properties and shared by the respective property owners or tenants.

PATENT

1) (noun) A conveyance, by the federal government, of title to a portion of the public land. (2) (adjective) Apparent, obvious, open to view. (See, also "Latent.")

PERIMETER

(1) The boundary lines enclosing a tract of land. (2) The length of the boundary lines enclosing a tract of land.

PERPETUITY

The taking of property out of the channel of commerce by limiting its capacity to be sold for a period of time longer than that of a life in being plus 21 years and a period of gestation. It is the condition of an estate limited so that it will not take effect or vest within a period fixed by law. Also called the "Rule Against Remoteness of Vesting."

PERSONAL PROPERTY

Temporary or movable property as distinguished from real estate.

PERSONALTY

Personal property. (Also known as chattels).

PLAINTIFF

The party initiating an action.

PLANNED UNIT DEVELOPMENT

A planned unit development ("PUD") is a project in which, typically, the buildings are built in styles that are sometimes referred to as "cluster housing." PUD is a concept according to which housing, typically a group of town homes, patio houses, or row houses, is built with minimal ground space or yards surrounding each dwelling. The ground which would normally constitute the yard for each dwelling is consolidated into a larger recreational or greenbelt area. This area usually also includes all walks, drives, and parking areas. The individual dwellings and, possibly, a small patio, flower bed, or similar minimal ancillary personal use site, which may be owned with the residence, are individually owned. All of the ancillary land, such as recreation areas, greenbelts, walkways and others ("common area") are owned as an undivided interest, usually indirectly, with others. Because of the typical land ownership divisions, the unit owners are granted easements appurtenant (running with the land) for ingress, egress, parking, and recreational use over the common area; otherwise the units would be landlocked.

PLAT

A map of a town, section, or subdivision showing the location and boundaries of individual parcels of land subdivided into lots, with streets, alleys, easements, etc., Usually drawn to a scale. Black's Law Dictionary -5th Ed.

PLAT BOOK

One in a set of books in the public records in which maps, plats, and copies of surveys are recorded.

POLICE POWER

The inherent authority of a government to impose restrictions upon private property or private rights for the sake of public welfare, order, and security.

POLICY

(See "Owner's Policy", "Mortgagee Policy", and "Loan Policy.")

POWER OF ATTORNEY

A legal instrument authorizing one to act as another's agent or attorney.

PRECEDENT

A previously decided case that can serve as authority to help decide a present controversy.

PRELIMINARY REPORT

A written report issued by a title company prior to issuing title insurance, showing the matters discovered in their title search which would appear as exceptions in a title policy if the policy were issued as of the date of the report.

PREMIUM

(1) The amount payable for an insurance policy. (2) A sum of money or bonus paid in addition to the regular price.

PREPAYMENT CLAUSE

A provision in a loan agreement permitting the debtor, for consideration, to pay part or all of the balance of the debt before its due date, thus saving interest.

PREPAYMENT PENALTY

Charge imposed by a lender on a borrower who wants to pay all or part of the loan balance before its due date.

PRESCRIPTION

In the broad sense of modern times, the gaining of some right or interest in real estate through long and continuous adverse use, usually for a period prescribed by statute, such as the acquisition of an easement by the unlicensed and adverse use of a path, roadway, or utility lines across another property.

PRESCRIPTIVE EASEMENT

A right to use another's property which is not inconsistent with the owner's rights and which is acquired by a use, open and notorious, adverse and continuous for the statutory period (e.g. Twenty years). To a certain extent, it resembles title by adverse possession but differs to the extent that the adverse user acquires only an easement and not title. To create an easement by "prescription," the use must have been open, continuous, exclusive, and under claim of right for statutory period. (See, also "Adverse Possession.") Black's Law Dictionary -5th Bd.

PRESUMPTION

That which may be assumed without proof.

PRETERMIT

To omit; to pass by. For example, a child who is not mentioned in his parent's will is referred to as a pretermitted heir.

PRIMA FACIE

Assumed correct until overcome by further proof.

PRIMARY RETENTION or PRIMARY LIABILITY

These terms refer to a level of reinsurance liability. It is the amount of liability retained by the ceding company for which it has the sole liability in the event of a loss. When reinsurance is involved, fees paid under a title policy obligation to defend are not deducted from the primary retention; that is, primary retention includes these fees. If the primary is, for instance, \$5,000,000, then the total liability for the retention includes defense costs as well as damages up to that amount. When reinsurance is obtained by a ceding company, the primary retention will vary depending upon the size of the company. Unless restricted, the primary retention is usually set at \$5,000,000, and any remaining amounts above the primary retention that the ceder wants to take become secondary reinsurance or are placed on another level, such as tertiary.

PRINCIPAL

(1) A sum of money owed as debt upon which interest is payable. (2) A person who empowers another to act as his representative or agent. (3) The person having prime responsibility for an obligation as distinguished from one who acts as a surety or endorser.

PRIORITY

The relative superiority of competing liens or encumbrances.

PROBATE

A legal procedure in which the validity and probity of a document, such as a will, is proven.

PROMISSORY NOTE

A written promise to pay or repay a specified sum of money at a stated time, or on demand, to a named person. In addition to the payment of principal, a promissory note usually provides for the payment of interest.

PROPERTY

(1) Something tangible or intangible capable of being owned and controlled. (2) Lands or chattels in which a person owns some right, title or interest to the exclusion of all others.

PROPERTY INFORMATION GUARANTEE (PIG)

And insurance product which is similar in nature to an attorney title opinion letter in that it states only matters of record at the time of the effective date of the guarantee. However, being an insurance product, claims on the guarantee are made in the same manner as would a title insurance policy. Not all Insurers offer this product.

PUBLIC DOMAIN

Land of which title still vests in the United States of America.

PUBLIC RECORDS

The transcriptions in a recorder's office of instruments which have been recorded, including the indexes pertaining to them.

PURCHASE MONEY MORTGAGE

A mortgage given by a purchaser to a seller on the subject property to secure payment of all or a part of the purchase price.

QUASI

To some degree, almost, partially, somewhat. Also resembling but not quite being the thing in question.

QUIET ENJOYMENT

(1) One of the common law warranties. (2) Assurance that one's title, possession, or use of real estate will not be disturbed or disrupted by a legitimate cause or adverse right.

QUIET TITLE SUIT

A lawsuit brought by an owner of real estate for the purpose of canceling, wiping out, and putting a quietus upon supposedly immaterial, inconsequential, and unenforceable claims and interests which cloud his title.

QUIETUS

Final disposition, settlement or elimination of a claim or debt.

QUIT CLAIM DEED

A deed which does not imply that the grantor holds title, but which surrenders and gives to the grantee any possible interest or rights which the grantor may have in the property. No warranties are made by grantor.

RATE

This term, when used in the title industry, usually refers to the rate for title insurance. In this sense it means the cost per dollar unit of title insurance. For example, the rate for ten thousand dollar title insurance policy is (so many) dollars.

RATE SCHEDULE

The respective costs of dollar units of title insurance listed on an ascending scale.

REAL ESTATE

Land, including all inherent natural attributes and any man-made improvements of a permanent nature placed thereon.

REALTOR

A copyrighted trade name which can be legally used only by those persons belonging to the national association of real estate boards.

REALTY

Another name for real estate.

RECORD TITLE

The aspects of a title which appear in the public records as distinguished from unrecorded title aspects and interests.

RECORDING

The act of a recorder receiving and transcribing in a book or on a film of the public records, instruments affecting the title to real estate.

RECORDS

(See "Public Records.")

REDEFINITION OF MARKETABILITY

This concept involves the redefining the portion of the policy that is triggered whenever title to the insured property could be deemed "unmarketable". Normally this concept arises when some level of affirmative coverage is granted, but the grant of that coverage would allow someone to allege that the title is now unmarketable. As such, the Insurer may recommend that the definition of marketability be redefined to essentially state that so long as the current Insurer is willing to insure the property in the future, on the same terms, the property shall still be deemed marketable. This is normally accomplished by a Schedule B exception.

REDEMPTION

A buyback or the ability to buy back. (See "Equity of Redemption. ")

REFORMATION ACTION

Court action to correct a mistake in a deed or other document.

REINSTATEMENT

Cure of a default by a borrower and restoration of the loan to current status through payment of past-due amounts.

REINSURANCE

Insurance insuring an insurer. When an insurance company has issued a policy and does not want to be fully exposed to loss for the full amount of the policy, the company may purchase reinsurance from another insurance company to insure the first company against a part or all of the loss which the first company may have to pay under its policy.

REINSURER

An insurance company that agrees to sell insurance to a ceder and thereby assumes a portion of the ceder's liability in the event a loss occurs. (See Ceder.)

RELEASE

(1) To relieve from debt or security or abandon a right, such as the release of a mortgage lien from a part or all of the land mortgaged. (2) The instrument affecting a release.

RELEASE OF DOWER

(1) The deed or other instrument by which a wife releases her inchoate dower rights in land. (2) The act of releasing dower.

RELEASE OF LIEN

(1) The instrument by which a lien is released from the real estate which it encumbers. (2) The act of releasing a lien.

REMAINDER

An estate or interest in land which comes into being upon the termination of an existing estate or interest. When a grantor conveys a life estate to "a" with remainder to "b," it means that "a" has a part of the absolute title and "b" has the remainder. Also, that "a" will hold title to the property during his natural life, but at his death, instead of the property going to "a's" heirs or devisees, it goes to "b", who now hold complete title..

REMAINDERMAN

The person who owns an estate in remainder.

REMISE

To discharge or release.

RENT

The consideration paid for the use of property.

RESCISSION

(1) Court action brought to cancel or annul the effect of executing a contract or other document. (2) The act of canceling or annulling the effect of a document.

RESERVATION

A right or interest retained by a grantor in conveying property

RESIDUARY CLAUSE

The "catch all" or omnibus clause of a will directing distribution of any property not specifically bequeathed or devised.

RESIDUE

That part of a decedent's estate remaining after payment of debts and taxes and distribution of specific bequests and devises.

RESTRICTIONS

Often called restrictive covenants. Provisions in a deed or other instrument whereby a grantor/owner of land prohibits or restricts certain use, occupation, and improvement of the land.

RESTRICTIVE COVENANTS

(See "Restrictions.")

REVERSION

(1) The return of an estate or interest to a grantor or lessor after the grant or lease has expired. (2) The interest retained by a fee simple owner of real estate after granting a terminable estate or interest in such property to another. For example, when a fee simple owner gives a lease to a tenant, the interest which the owner has left is known as the reversion. (3) A provision accompanying restrictive covenants in a deed, which provision stipulates that in the event the restrictions are violated, title to the property shall revert to the grantor.

REVERTER CLAUSE

(See "Reversion" (3).)

RIDER

Addition, amendment or endorsement to a document, e.g. an insurance contract.

RIGHT

A power, privilege, prerogative, estate, or interest incident to real estate.

RIGHT OF WAY

(1) The right to pass over property owned by another, usually based upon an easement. (2) A path or thoroughfare over which passage is made. (3) A strip of land over which facilities such as highways, railroads, or power lines are built.

RIPARIAN OWNER

One who owns land bordering on a body of water.

RIPARIAN RIGHTS

The many rights of a person in, to and over the banks, bed, shallows, shore and water of a stream or body of water upon which his land borders.

RISK

Exposure to loss. A title insurance company assumes the risk incident to a possible title loss when it insures the owner of the title.

RISK RATE

The title insurance rate that includes only the premium for the title insurance and not the search fee, title examination fee

SALE AGREEMENT

A contract entered into between a buyer and seller, setting forth the terms, provisions, and conditions of a sale of real estate.

SALE AND LEASEBACK

A situation in which the grantor in a deed to a parcel of property sells it and retains possession by simultaneously leasing it from the grantee.

SALES CONTRACT

(See "Sale Agreement.")

SATISFACTION

(1) The payment of a debt or fulfillment of an obligation. (2) An instrument executed by the holder of a lien, debt or obligation which acknowledges payment or fulfillment. For example, a satisfaction of a mortgage sometimes is referred to as a satisfaction piece.

SCRIVENER'S AFFIDAVIT

An affidavit executed by the individual who prepared a document usually stating an error in the original document, the reason for the error, and the correction of the error.

SEAL

Impression on a document that lends authenticity to its execution, such as affixing the corporate seal to a document executed by a corporation.

SEARCH

In title industry parlance, a careful exploration for and perusal of the public records in an effort to find all recorded instruments relating to a particular chain of title.

SECOND MORTGAGE

A mortgage ranking in priority immediately below a first mortgage. (See "Junior Mortgage.")

SECONDARY RETENTION

When reinsurance is obtained by the ceding company from a reinsurer, the reinsurer's liability is secondary to the primary liability of the ceding company. This is termed secondary retention. The primary retention must first be expended before the second company pays. All companies that sell reinsurance on the secondary level are joined together and share losses on a pro-rata basis based on their amount of reinsurance in relation to the total amount of reinsurance purchased. If four companies agree to be secondary reinsurers, and each has \$5,000,000, then each would have liability for 25 percent of any loss that exceeds the primary, up to the full amount agreed upon. (See Primary Retention or Primary Liability.)

SECTION

Measure of land; one of the divisions employed in a government survey. It measures one mile on each side and contains 640 acres of land (if regular in shape.)

SECURITY

Assurance against the default or non-payment of a debt or obligation which makes the enforcement of a promise or an obligation more certain than the personal commitment of the debtor or obligator. Usually the pledge of property.

SEISIN

(Also spelled "Seizin") An old English term meaning legal possession or the right to legal possession of real estate under a freehold title.

SERVIENT ESTATE

Incident to an easement, the property upon or across which an easement exists. (See "Dominant Estate.")

SERVITUDE

A right or interest in a piece of real estate, which right or interest serves or benefits another unrelated property. For example, an easement across one piece of property serves another piece of property is said to constitute a servitude regarding the property upon which it is located.

SET ASIDE

To declare invalid or void; to annul. For example, a court may set aside an erroneous judgment or decree.

SETBACK LINE

(See "Building Line.")

SETTLEMENT

Act or process of adjusting or determining; an adjusting; an adjustment between persons concerning their dealings or difficulties; an agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other; arrangement of difficulties; composure of doubts or differences; determination by agreement; and liquidation. *Sowers v. Robertson*, 144 Kan. 173, 58 P.2d 1105, 1107. Payment or satisfaction. *Ledbetter v. Hall*, 191 Ark. 791, 87 S.W.2d 996,999. Black's Law Dictionary -5th Ed. (See "Closing.")

SKY LEASE

A lease of air space above a piece of land. The ownership of land extends down to the center of the earth and up to the sky. Space above the land can, therefore, be leased or sold. Cantilever or bridge type buildings which do not depend on the lessor's land for support may be built in such air space.

SLANDER OF TITLE

False, unjustified, statements regarding another person's title to property.

SPECIAL ASSESSMENT

(See "Improvement Liens.")

SPECIAL WARRANTY DEED

A deed which warrants the title only with respect to acts of the grantor and the interests of anyone claiming by, through, or under him.

SPECIFIC PERFORMANCE

A lawsuit in which the court compels one of the parties to perform or carry out the provisions of a contract into which he has entered.

SPLIT CLOSING

A closing in which the buyer side is facilitated by one title agency and the seller side is facilitated by another title agency.

SQUATTER

One who settles upon unoccupied land without legal claim or authority. (See "Adverse Possession.")

STARE DECISIS

The legal doctrine that past decisions of the courts stand as precedents for future decisions.

STARTER

A copy of a prior policy or report issued by a title insurer which describes the title to land upon which a new search is to be made. In some states, this is called a base, back title letter or back title certificate.

STATUTE OF FRAUDS

A state law that requires that certain contracts, such as a contract for the sale of land, must be in writing to be enforceable.

STATUTE OF LIMITATIONS

A statute setting a time limit on the enforcement of right or on the collection of a debt in certain cases.

SUBDIVISION

An area of land laid out and divided into lots, blocks and building sites, and in which public facilities are laid out, such as streets, alleys, parks, and easements for public utilities. Usually, a plat is recorded showing the metes and bounds descriptions of each lot, easement and right of way within the subdivision.

SUBJACENT

A term applied to land or property lying contiguous to, but at a lower level than, another piece of property

SUBLET

To rent property which one holds by lease, to another.

SUBORDINATION

Giving a lien or interest an inferior status. For example, an existing mortgage may be subordinated to the lien of a new construction loan mortgage in which case the construction loan mortgage becomes the lien with priority.

SUBROGATION

The legal doctrine under which the law substitutes one creditor or claimant for another. When a title insurance company pays a claim under a title insurance policy, it is entitled to step into the shoes of the insured with respect to any rights the insured may have against parties who warranted the title to him.

SUBSTITUTION RATE

A special rate available in some areas for title insurance policies covering substitution loans.

SUIT

Usually meaning a lawsuit.

SUMMONS

A court process that directs a defendant to make an appearance in an action filed against him.

SURETY

(1) A person who agrees to be responsible for a debt or obligation of another. (2) The pledge or agreement by which one undertakes responsibility for the debt or obligation of another.

SURVEY

(1) To determine the location, boundaries, area, or the elevations of land and structures upon the earth's surface by means of courses in relation to the north star, and the measuring of angles and distances by using the techniques of geometry and trigonometry. (2) The map or plat drawn by a surveyor which represents the property surveyed and shows the results of a survey.

TACKING ON

Beginning a title examination, in point of time, at the end of a previous title examination.

TAX LIEN

The lien which is imposed upon real estate by operation of law which secures the payment of real estate taxes.

TAX SALE

A sale of property by a governmental agency, for nonpayment of taxes.

TENANCY BY THE ENTIRETY

Modification of a joint tenancy between husband and wife. Has the quality of survivorship, but neither spouse can convey his or her interest to break the joint tenancy. Recognized in many states. (See "Estate By Entireties.")

TENANT

(1) Usually one who holds possession of real estate under a lease. (2) In a broader sense, one who holds or possesses lands and tenements by any kind of title.

TENANT AT SUFFERANCE

One who continues to hold possession of real estate after his authorized term of occupancy has expired.

TENANT AT WILL

A tenant whose occupancy of real estate is subject to the will of the owner.

TENANTS IN COMMON

Two or more persons in whom title to a single piece of real estate is vested in such a manner that they have a common right to possession and enjoyment of the property, but each holds a separate individual, but not always equal, interest or estate in the property. Each owner may sell or encumber his respective interest or dispose of it

by will, and if he dies without leaving a will, his heirs inherit his undivided interest. The deceased tenant in common's interest does not pass to the surviving tenant in common.

TENEMENT

(1) A building or complex of buildings containing residential rental units. (2) A run-down, low- rental apartment or flat building or rooming house. (3) Real property held by a person under a right or authority conferred by an owner.

TESTAMENT

Commonly used in the phrase "last will and testament" and generally considered synonymous with "will." Technically speaking, it is a document providing for the disposition of one's personal property upon his death.

TESTATE

Having made a legally valid will and leaving it at death.

THIRD PARTY

A term usually applied to persons who are not principal parties to a contract or other instrument, but who have some right, interest or duty which such contract or instrument affects. For example, where a sale contract between buyer and seller of real estate provides that the money and documents involved in the transaction will be deposited with a title company pending the closing of the deal, the title company becomes a third party to the transaction.

TITLE

(1) A combination of all the elements that constitute the highest legal right to own, possess, use, control, enjoy, and dispose of real estate or an inheritable right or interest therein. (2) The rights of ownership recognized and protected by the law.

TITLE ASSURANCE

Assurance of title through abstracts, attorneys' opinions, title insurance, and surveys.

TITLE COVENANTS

Covenants ordinarily inserted in conveyances and in transfers of title to real estate for the purpose of giving protection to the purchaser against possible insufficiency of the title received. A group of such covenants known as "common law covenants" includes (a) covenants against encumbrances, (b) covenant for further assurance (in other words, to do whatever is necessary to rectify title deficiencies), (c) covenant of good right and authority to convey, (d) covenant of quiet enjoyment, (See "Quiet Enjoyment."), (e) covenant of seisin, (f) covenant of warranty. (See "Warranty", also see "Covenant.")

TITLE DEFECT

(1) Any possible or patent claim or right outstanding in a chain of title which is adverse to the claim of ownership. (2) Any material irregularity in the execution or effect of an instrument in the chain of title.

TITLE INSURANCE

Indemnity against loss resulting from defects in or liens upon a title.

TITLE INSURER

A company which insures the title to real estate.

TITLE INSURER PRODUCER

Any person or company who for compensation solicits, procures or negotiates title insurance contracts and/or provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract. Individuals employed by title insurance producers for the performance of clerical duties are not considered to be title insurance producers. A title insurance producer must obtain a title insurance producer's license from the

Maryland Insurance Administration and must be appointed as a title insurance producer by a title insurance underwriter.

TITLE PLANT

(1) In many areas, synonymous with abstract plant. (2) A geographically filed assemblage of title information which is to help in expediting title examinations, such as copies of previous attorneys' opinions, abstracts, tax searches, and copies or take-offs of the public records.

TITLE REPORT

(See "Preliminary Report.")

TITLE SEARCH

The collection and review of recorded documents affecting a specific parcel of land. An experienced title officer or attorney reviews and analyzes all material relating to the search, then determines the sufficiency and status of title for issuance of a title insurance policy.

TITLE UNDERWRITER

Synonymous with title insurer.

TORRENS REGISTRATION SYSTEM

System of registration of land ownership wherein a court action is brought in order to obtain a torrens certificate which evidences an ownership interest, a change thereof, or an encumbrance thereon.

TRADE NAME

The name or any other designation under which a firm does business.

TRANSFER TAX

The tax payable on the conveyance of real property, measured by the amount of consideration paid.

TRESPASS

Invasion of an owner's rights in his property; wrongful entry onto the land of another.

TRUST

Fiduciary relationship in which one party (Trustee) holds title to property for the benefit of another party (beneficiary).

TRUSTEE

Person who holds title in trust for the benefit of another person.

UNDERLYING FEE

A title concept in which ownership of all interests or estates in real property are less than or inferior to the most absolute interest one can have - that of fee ownership. It lies beneath all the other interests; it is basic, fundamental and implicit.

UNDERWRITER

An insurance company which issues insurance policies either to the public or to or through another insurer.

UNDIVIDED INTERESTS

Unsegregated interest of co-owners in the entire property owned in common.

UNIT

When used with reference to a condominium, a unit is that part of a condominium which is not common area.

WAREHOUSING

In title industry parlance, the temporary funding and holding by a lending institution of mortgages originated by a mortgage broker, until such time as the mortgage market improves or until the mortgage broker accumulates a sufficient amount of mortgages to sell to a permanent mortgage purchaser.

WARRANTY

In a broad sense, it is an agreement or undertaking by a seller to be responsible for present or future losses of the purchaser occasioned by deficiency or defect in quality, condition, or quantity of the thing sold. In a stricter sense, it is the provision or provisions in a deed, lease, or other instrument conveying or transferring an estate or interest in real estate under which the seller becomes liable to the purchaser for defects in or encumbrances on the title. (See "Title Covenants.")

WARRANTY DEED

A deed containing one or more title covenants. (See "Title Covenants.")

WASTE

(1) The destruction or injury to premises by a tenant. (2) The impairment in value by a life tenant or by a mortgagor.

WAY OF NECESSITY

Generally, an easement for a roadway which the owner of a landlocked tract is entitled to acquire across adjoining land in order to provide a means of ingress and egress with respect to the landlocked property.

WILL

(1) An instrument executed by a competent person, in the manner prescribed by law, whereby he makes disposition of his property to take effect on and after his death. (2) A holographic will is a will entirely written and signed by the testator in his own handwriting. In some states some of the legal requirements regarding the execution of wills do not apply in the case of holographic wills. (3) A nuncupative will is one made orally before witnesses, usually during the testator's last hours of life. Under English law, sailors and soldiers may make nuncupative wills any time during their military service.

WRAP-AROUND MORTGAGE

A method of financing in which a second lender assumes payment of the present mortgage and accepts a larger second mortgage at a higher interest rate.

WRIT

A formal legal document issued by a court ordering or prohibiting the performance of some action. There are at least a hundred different kinds of writs each covering a different action or subject. In most writs an officer of the court, such as the sheriff is directed to serve the writ or carry out its directions.

WRIT OF EXECUTION

A direct command from the court to the sheriff to carry out the action required in the writ. It may be to hang a convicted criminal, or to seize property and sell it to pay a money judgment.

ZONING ORDINANCES

Laws passed by local governments regulating the size, type, structure, nature and use of buildings. Zoning ordinances, often referred to as zoning laws and zoning regulations, are divided into two classes: (1) those which regulate the height or bulk of buildings within certain designated zones or districts - in other words, those which relate to structural and architectural design, and (2) those which prescribe the type of buildings which may be constructed, and the use to which buildings within certain designated zones or districts may be put.

