

COMMON TERMS

ACCESS:

The right to enter and leave a tract of land to or from a public right of way, often necessitating the right to cross lands privately owned by others.

ACKNOWLEDGMENT:

The act by which a party executing a legal document goes before an authorized officer of notary public and declares the same to be his voluntary act or deed.

ADMINISTRATOR:

A person appointed by a probate court to settle the affairs of a deceased person who had no will. See "personal representative".

AFFIDAVIT:

A written or printed declaration or statement of facts, made voluntarily and confirmed by the oath of the party making it. The purpose of the affidavit is to establish or prove a fact.

APPURTENANCE:

Anything that is transferred with the land - includes improvements and rights.

ASSESSMENT:

The imposition of a governmental tax, charge or levy, usually according to established rates. May include or be referred to as special, levied or pending.

ASSESSOR:

A public official that evaluates property for taxation purposes.

ASSIGNEE:

One to whom a transfer of interest is made. For example, the assignee of a mortgage or contract may not be the original person that signed the documents, but is now receiving the benefit of those documents. Mortgage Co. A originated the loan, assigned it to Mortgage Co. B (the assignee), so Co. B receives the payments.

ATTORNEY IN FACT:

A person to whom a power of attorney to execute a legal document, such as a deed, mortgage, etc. is given in writing by the holder of that power.

AUDITOR'S PLAT:

A plat ordered by the auditor because the property owners cannot agree. It is usually made pursuant to requests of owners for the purpose of simplifying descriptions and making boundaries clear.

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.

CLEAR TITLE:

Another way of describing marketable title.

CLOSING:

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 papers are recorded, and all other details such as payment of outstanding liens and transfer of hazard insurance policies are attended to.

CLOSING STATEMENT:

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

CONDEMNATION:

(in real property law) The process by which property of a private owner is taken for public use, without his consent, but upon the award and payment of just compensation, being in the nature of a forced sale.

CONTRACT FOR DEED:

An agreement to sell and purchase under which the title is held by the seller (vendor) until such time as all payments to the seller by the buyer (vendee) have been made.

CONTROLLED ACCESS:

Controls entries to and from State highways.

CONVEY:

The act of "deeding" or transferring title to another.

CONVEYANCE:

An instrument by which title to a property is transferred; a deed.

COVENANT:

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.

DEED OF TRUST:

An instrument by which legal title to real estate is conveyed to a third party (to be held in trust) for a lender until the debt secured by the instrument is paid. It is in effect, a mortgage with three parties, the borrower, the lender and the trustee.

DEDICATION:

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

DEED:

A written instrument by which title to land is transferred to another.

EASEMENT:

An interest in land owned by another that entitles its holder to a specific limited use, such as laying a sewer, installing power or telephone lines, or crossing property.

EGRESS:

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

ENCROACHMENT:

An improvement appurtenant to one property, such as a house or fence, that protrudes or intrudes onto an adjoining property.

ENCUMBER:

A burden on a parcel of land, e.g. a restriction or a lien or charge such as a mortgage.

ESCROW:

A procedure whereby a disinterested third party handles legal documents and funds on behalf of the parties to a sale or loan.

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 for 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.

ESTATE:

A person's possessions and liabilities at death. One's interest in land.

EXAMINATION OF TITLE:

The interpretation of the record title to real property based on a title search.

EXECUTOR:

A person who is appointed by a testator to execute or carry out his will.

FEE SIMPLE ESTATE:

The highest estate of ownership in land. Usually called simply "fee".

FILING:

This term relates to the delivery of real estate instruments to a recorder for recordings.

FINANCING STATEMENT:

An instrument securing personal property or fixtures that are encumbered with debt.

FORECLOSURE:

A process by which mortgaged property is sold to obtain satisfaction of the debt secured by the mortgage from the proceeds of sale either pursuant to a decree of court or the power of sale contained in the mortgage.

FORFEITURE:

Procedure authorized by statute or by agreement for surrendering of the rights of a contract purchaser and restoring the legal title to the real estate to the contract seller.

GOVERNMENT SURVEY:

A system of land description set up by Congress dividing land by sections, townships and ranges, so as to be able to locate any given parcel on the ground.

GRANTEE:

The transferee of an interest in land by a written instrument.

GRANTOR:

The transferor of an interest in land by a written instrument.

HEIR:

One who might inherit or succeed to an interest in lands under the rules of law that apply where an individual dies that has a recorded interest in said land.

HEREDITAMENTS:

Inheritable rights.

HOMESTEAD:

Property tax classification for personal residence.

HUD 1:

Settlement statement showing costs and receipts of both buyers and sellers.

IMPROVEMENTS:

Those additions to raw lands tending to increase value such as buildings, streets, sewers, etc.

INDEMNIFY:

To agree to compensate another for specified losses.

INDEMNITY:

Insurance against possible loss or damage. A title insurance policy is a contract of indemnity.

INGRESS:

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

JOINT TENANCY:

Two or more people hold title to real estate jointly for life; the survivors take the interest of the other owner(s) upon death.

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.

LIEN:

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

LIFE ESTATE:

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

LIS PENDENS:

A pending lawsuit. A lis pendens notice is legal notice to the world that a lawsuit is pending.

MARKETABLE TITLE:

A title which a court of equity considers to be so free of material defects and liens that it will force the title's acceptance by questioning purchaser.

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.

METES AND BOUNDS:

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

MORTGAGE:

A temporary conditional pledge of property to a creditor as security for the payment of a debt which may be cancelled by payment.

MORTGAGEE:

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

MORTGAGOR:

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

NOTARY OR NOTARY PUBLIC:

A person authorized by the state to attest or certify signatures and acknowledgements.

OWNERSHIP:

The right to possess and use property to the exclusion of others.

PATENT:

The instrument by which a state or government grants public lands to an individual.

P.O.A.:

Abbreviation for "power of attorney", a power conferred in writing authorizing one person to act on another's behalf as agent or attorney. The written instrument is often referred to as a power of attorney and is used primarily in situations where the person conferring the power will be absent, out of the country, etc.

REAL PROPERTY:

The land, appurtenances, and any man made improvement attached to it.

PERSONAL PROPERTY:

Chattels, all property that is not real estate including monies, contracts, automobiles, etc.

PERSONAL REPRESENTATIVE:

A person appointed by probate court to carry out the terms of a will or an intestate estate.

PLAT:

A recorded map representing the subdivision of land into lots, with streets and easements, etc. shown thereon.

PROBATE:

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

QUIET TITLE:

An action in District Court to remove title defects and to confirm title.

REAL PROPERTY:

Land, improvements to the land, and the rights, title and interests that go with the land.

RECORDING:

The filing of documents affecting real property and making them public record, giving notice to all future purchasers, creditors, or any other interested parties.

RESTRICTIONS:

Provisions in a deed or other instrument whereby an owner of land prohibits or restricts certain use, occupation, and improvement of the land.

RIGHT-OF-WAY:

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

RIPARIAN OWNER:

One who owns the upland bordering on a stream or other 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.

SATISFACTION:

The payment of a debt or fulfillment of an obligation; an instrument executed by the holder of a lien, debt or obligation which acknowledges payment of fulfillment.

SPECIAL WARRANTY DEED:

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

SUBORDINATION:

Giving a lien or interest an inferior status.

SURVEY:

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; The map or plat drawn by a surveyor which represents the property surveyed and shows the results of a survey.

TAX LIEN:

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

TENANCY IN COMMON:

An estate or interest in land held by two or more persons, each having equal rights of possession and enjoyment, but no right of survivorship.

TESTAMENT:

Another term for will, referred to as "last will and testament".

TITLE:

The evidence of right to the ownership and possession of land.

TITLE DEFECT:

- (1) Title to a negotiable instrument obtained by fraud.
- (2) Title to real property which lacks some of the necessary elements to transfer good title.

TITLE SEARCH:

An examination of public record, laws and court decisions to disclose the current facts regarding ownership of real property.

TRACT:

An area of land.

TRUST:

A property interest held by one person for the benefit of another.

TRUSTEE:

A person who holds title to property in trust for another.

VENDEE:

A purchaser of real property.

VENDOR:

A seller of real property.

WARRANTY OF TITLE:

An agreement and assurance by the grantor of real property for himself and his heirs, to the effect that he is the owner, has the right to sell, or encumber, etc.

WILL:

A written instrument that provides for the administration and distribution of the estate of a decedent.