

Real Estate Terms

A

ABANDONMENT – The voluntary surrender or relinquishment of possession of real property with the intention of terminating one’s possession or interest, but without vesting this interest in any other person.

ABATEMENT – A reduction or decrease in amount, degree, intensity or worth.

ABSORPTION RATE – An estimate of the rate at which a particular classification of space – such as new office space, new housing, new condominium units and the like – will be sold or occupied each year.

ABSTRACT OF TITLE – A concise, summarized history of the title to a specific parcel of real property, together with a statement of all liens and encumbrances affecting the property. The abstract of title does not guarantee or assure the validity of the title of the property. It merely discloses those items about the property which are of public record, and thus does not reveal such things as encroachments, forgeries, and the like.

ACCELERATED DEPRECIATION – A method of calculating the depreciation of certain property (that property which is used in a trade or business, or which is held for the production of income) at a faster rate than would be achieved from using the straight line method of depreciation.

ACCELERATION CLAUSE – A clause in a promissory note, agreement of sale, or mortgage which gives the lender the right to call all sums due and payable in advance of the fixed payment date upon the occurrence of a specified event, such as a sale, default, assignment or further encumbrance of the property.

ACCEPTANCE – The expression of the intention of the person receiving an offer (offeree, usually the seller) to be bound by the terms of the offer.

ACCESS – A general or specific right of ingress and egress to a particular property.

ACCRETION – The gradual and imperceptible addition to land by alluvial deposits of soil through natural causes, such as shoreline movement caused by streams or rivers.

ACCRUED – That which has accumulated over a period of time such as accrued depreciation, accrued interest or accrued expenses.

ACKNOWLEDGEMENT – A formal declaration made before a duly authorized officer, usually a Notary Public, by a person who has signed a document.

ACRE – A measure of land equaling 43,560 square feet; 4,840 square yards; 160 square rods.

ADHESION CONTRACT – A contract which is very one-sided and favors the party who drafted the document.

AD VALOREM – Latin for “according to valuation,” usually referring to a type of tax or assessment.

ADVERSE POSSESSION – The acquiring of title to real property owned by someone else, by means of open, notorious and continuous possession for the statutory period of time (20 years in Hawaii).

AFFIDAVIT – A sworn statement reduced to writing and made under oath before a Notary Public or other official authorized by law to administer an oath.

AGENCY – A relationship created when one person, the “principal,” delegates to another, the “agent,” the right to act on the principal’s behalf in business transactions and to exercise some degree of discretion while so acting. An agency gives rise to a fiduciary relationship and imposes on the agent, as the fiduciary of the principal, certain duties, obligations and high standards of good faith and loyalty.

AGENT – One who is authorized to represent and to act on behalf of another person (called the principal). A real estate broker is the agent of his client, be it the seller or buyer, to whom he

owes a fiduciary obligation. A salesman is the agent of his broker and does not have a direct personal contractual relationship with either the seller or buyer.

AGREEMENT OF SALE – An agreement between the seller (vendor) and buyer (vendee) for the purchase of real property.

AIR RIGHTS – The rights to the use of the open space or vertical plane above a property. Ownership of the land includes the right to all air above the property.

ALIENATION CLAUSE – A clause in a promissory note or mortgage which provides that the balance of the secured debt becomes immediately due and payable at the option of the mortgagee upon the alienation of the property by the mortgagor.

ALLODIAL SYSTEM – The free ownership of land by individuals.

AMENITIES – Features, both tangible and intangible, which enhance and add to the desirability of real estate.

AMORTIZATION – The gradual repayment of a debt by means of systematic payments of principal and interest over a set period, where at the end of the period there is a zero balance.

ANCHOR TENANT – Major department or chain stores which are strategically located at shopping centers so as to give maximum exposure to smaller satellite stores.

ANNUAL PERCENTAGE RATE – The relationship of the total Finance Charge to the total amount to be financed as required under the Federal Truth-in-Lending Law.

APPRAISAL – The process of estimating, fixing, or setting the market value of real property. An appraisal may take the form of a lengthy report, a completed form, a simple letter, or even an oral report.

APPRECIATION – An increase in the worth or value of property due to economic or related causes, which may prove to be either temporary or permanent.

APPURTENANT – Belonging to; adjunct; appended or annexed.

ARBITRATION – The non-judicial submission of a controversy to selected third parties for their determination in the manner provided by agreement or by law.

ASSESSED VALUATION – The value of real property as established by the state government for purposes of computing real property taxes.

ASSESSMENT – A specific levy for a definite purpose, such as adding curbs or sewers in a neighborhood. Individual condominium owners are subject to special assessments benefiting the project as a whole and not funded through regular maintenance charges.

ASSIGNMENT – The transfer of the right, title and interest in the property of one person, the assignor, to another, the assignee. In real estate, there are assignments of mortgages, contracts, agreements of sale, leases, and options, among others.

ASSUMPTION OF MORTGAGE – The act of acquiring title to property which has an existing mortgage on it and agreeing to be personally liable for the terms and conditions of the mortgage, including payments.

ATTACHMENT – The legal process of seizing the real or personal property of a defendant in a lawsuit, by levy or judicial order, and holding it in the custody of the courts as security for satisfaction of the judgment which the plaintiff may recover in any action upon a contract, express or implied.

ATTORNEY-IN-FACT – One who is authorized by another to act in his place under a power of attorney.

ATTORNMENT – The act of a tenant formally agreeing to become the tenant of a successor landlord; as in attorning to a mortgagee who has foreclosed on the leased premises.

B

BALLOON PAYMENT – The final payment of a note or obligation, which is substantially larger than the previous installment payments, and which repays the debt in full; the remaining balance which is due at the maturity of a note or obligation.

BARGAIN AND SALE DEED – A deed which recites a consideration and conveys all of the grantor's interest in the property to the grantee.

BASE LINE AND MERIDIAN – An imaginary set of lines used by surveyors to locate and describe land under the Rectangular Survey Method of property description used in most mainland states.

BASIS – The financial interest which IRS attributes to the owner of an asset for purposes of determining annual depreciation and gain or loss on sale of the asset.

BENCH MARK – A mark affixed to a permanent reference or monument, such as an iron post or a brass marker (usually embedded in a cement sidewalk), used to establish elevations and altitudes over a surveyed area.

BENEFICIARY – A person who receives the benefits from the gifts or acts of another, such as one who is designated to receive the proceeds from a will, insurance policy or trust.

BILATERAL CONTRACT – A contract in which each party promises to perform an act in exchange for the other party's promise to perform.

BILL OF SALE – A written agreement by which one person sells, assigns or transfers his right to, or interest in, personal property to another.

BLANKET MORTGAGE – A mortgage which is secured by several structures or a number of lots. A blanket mortgage is often used to finance proposed subdivisions or development projects, especially cooperatives.

BLUE SKY LAWS – State securities laws designed to protect the public from fraudulent practices in the promotion and sale of securities, e.g., through limited partnerships, syndications, bonds.

BOOT – Money or other property given to make up any difference in value or equity between two exchanged properties.

BOUNDARIES – The perimeters or limits of a parcel of land as fixed by legal description which is usually a metes and bounds description.

BREACH OF CONTRACT – Violation of any of the terms or conditions of a contract without legal excuse; default, non-performance, such as failure to make payment when due.

BROKER – One who acts as an intermediary between parties to a transaction. A real estate broker is a properly licensed person who, for a valuable consideration, serves as an agent to others to facilitate the sale or lease of real property.

BROKERAGE – That aspect of the real estate business which is concerned with bringing together the parties and completing a real estate transaction. Brokerage involves exchanges, rentals, trade-ins and management of property, as well as sales.

BUDGET MORTGAGE – A mortgage with payments set up to cover more than interest and principal reductions.

BUFFER ZONE – A strip of land separating one parcel from another.

BUILDING PERMIT – A written permission granted by the County Building Department and required prior to beginning the construction of a new building or other improvement (including fences, fence walls, retaining walls and swimming pools).

BUILDING RESIDUAL TECHNIQUE – A method of determining the value of an improvement normally used in appraising income property.

BULK TRANSFERS – Any transfer in bulk, and not in the ordinary course of the seller's business, of a major part of the materials, inventory or supplies of an enterprise.

BUNDLE OF RIGHTS – An ownership concept describing all those legal rights which attach to the ownership of real property, including the right to sell, lease, encumber, use, enjoy, exclude, will, etc.

BUSINESS DAYS – Days of the week excluding Saturdays, Sundays, and holidays; normal working days.

BUSINESS OPPORTUNITIES – Any type of business which is for sale.

C

CANTILEVER – A projecting beam or overhanging portion supported at one end only.

CAPITAL GAIN – The taxable profit derived from the sale of a capital asset.

CAPITAL IMPROVEMENT – Any structure which is erected as a permanent improvement to real property; any improvement which is made to extend the useful life of a property, or to add to the value of the property.

CAPITALIZATION – A mathematical process for converting net income into an indication of value, commonly used in the income approach to appraisal.

CAP RATE (CAPITALIZATION RATE) – The percentage selected for use in the income approach to valuation of improved property. The cap rate is designed to reflect the recapture of the original investment over the economic life of the improvement, to give the investor an acceptable rate of return (yield) on the original investment, and to provide for the return on borrowed capital.

CERTIFICATE OF REASONABLE VALUE (CRV) – A certificate issued by the Veterans Administration setting forth a property's current market value estimate, based upon a VA approved appraisal.

CERTIFIED CHECK – A check which the bank guarantees to be good, and against which a stop payment is ineffective.

CERTIFIED PROPERTY MANAGER – A professional property manager who has qualified for membership in and is a member of the Institute of Real Estate Management, and is designated a CPM.

CHAIN OF TITLE – The recorded history of matters which affect the title to a specific parcel of real property, such as ownership, encumbrances and liens, usually beginning with the original recorded source of the title.

CHATTEL – Personal property which is tangible and moveable.

CLEAR TITLE – Title to property that is free from liens, defects or other encumbrances, except those which the buyer has agreed to accept, such as mortgage to be assumed, the ground lease of record, and the like; established title; title without clouds.

CLIENT TRUST ACCOUNT – An account set up by a broker to keep client's monies segregated from the broker's general funds.

CLOSING – The final stage of consummating a real estate transaction when the seller delivers title to the buyer, in exchange for the purchase price.

CLOSING COSTS – Expenses of the sale which must be paid in addition to the purchase price (in the case of the buyer's expenses), or be deducted from the proceeds of the sale (in the case of the seller's expenses).

CLOSING STATEMENT – A detailed cash accounting of a real estate transaction prepared by an escrow officer or other person designated to process the mechanics of the sale, showing all cash that was received, all charges and credits which were made, and all cash that was paid out in the transaction; also called a settlement statement.

CLOUD ON TITLE – Any document, claim, unreleased lien or encumbrance which may impair or injure the title to property or make the title doubtful because of its apparent or possible validity.

CLUSTER DEVELOPMENT – The grouping of housing units on less than normal size homesites, with the remaining land being devoted to common areas.

CODE OF ETHICS – A written system of standards of ethical conduct. The Code of Ethics of the National Association of Realtors, first written in 1913, establishes the high standards of conduct for members of the Realtor community.

COLLATERAL – Something of value given or pledged as security for a debt or obligation. The collateral for a real estate mortgage loan is the mortgaged property itself, which has been hypothecated.

COLOR OF TITLE – A condition which has the appearance of good title, but which in fact is not valid title, as where title is founded on some written document which on its face appears valid and effective, but which is actually invalid.

COMMERCIAL PROPERTY – A classification of real estate which includes income producing property such as office buildings, gasoline stations, restaurants, shopping centers, hotels and motels, parking lots and stores, and other similar uses.

COMMINGLING – To mingle or mix; for example, to deposit client funds in the broker's personal or general account. A licensee found guilty of commingling can have the license suspended or revoked by the Real Estate Commission.

COMMISSION – The compensation paid to a real estate broker(usually by the seller) for services rendered in connection with the sale or exchange of real property.

COMMITMENT – A pledge or promise to do a certain act, such as the promise of a lending institution to loan a certain amount of money at a fixed rate of interest to a qualified buyer, provided the loan is obtained on or before a certain date.

COMMON AREAS – Land or improvements designated for the use and benefit of all residents, property owners and tenants.

COMMON ELEMENTS – Parts of the property which are necessary or convenient to the existence, maintenance and safety of the condominium, or are normally in common use by all of the condominium residents.

COMMON LAW – That body of law which is based on usage, general acceptance, and custom, as manifested in decrees and judgments of the courts; judge-made law, as opposed to codified or statutory law.

COMMON WALL – A wall separating two living units.

COMMUNITY PROPERTY – A system of property ownership based on the theory that each spouse has an equal interest in property acquired by the efforts of either spouse during marriage.

COMPARABLES – Recently sold properties which are similar to a particular property being evaluated, and which are used to indicate a reasonable fair market value for the subject property.

COMPOUND INTEREST – Interest which is computed upon the principal sum plus accrued interest.

CONCESSIONS – Discounts given by landlords to prospective tenants to induce them to sign a lease.

CONDEMNATION – Either a judicial or administrative proceeding to exercise the power of eminent domain, i.e., the power of the government to take private property for public use.

CONDOMINIUM OWNERSHIP – An estate in real property consisting of an individual interest in an apartment or commercial unit, and an undivided common interest in the common areas such as the land, parking areas, elevators, stairways, and the like.

CONSIDERATION – An act or forbearance, or the promise thereof, which is offered by one party to induce another to enter into a contract; that which is given in exchange for something from another.

CONSTRUCTIVE EVICTION – Acts done by a landlord which so materially disturb or impair the tenant's enjoyment of the leased premises that a tenant is effectively forced to move out and terminate the lease without liability for any further rent.

CONSTRUCTIVE NOTICE – Notice of certain facts which are implied by law to a person because he could have discovered the fact by reasonable diligence or by inquiry into public records.

CONTINGENCY – A provision placed in contract which requires the completion of a certain act or the happening of a particular event before a contract is binding.

CONTRACT – A legal agreement between competent parties who agree to perform or refrain from performing certain acts for a consideration. In real estate, there are many different types of contracts, including listings, contracts of sale, options, mortgages, assignments, leases, deeds, escrow agreements, and loan commitments, among others.

CONVEYANCE – The transfer of title to real property by means of a written instrument such as a deed or an assignment of lease.

COOPERATING BROKER – A broker who joins with another broker in the sale of real property.

COOPERATIVE OWNERSHIP – Cooperative ownership of an apartment unit means that the apartment owner has purchased shares in a corporation which holds title to the entire apartment building.

CO-TENANCY – A form of concurrent property ownership in which two or more persons own an undivided interest in the same property.

COUNTER-OFFER – A new offer made as a reply to an offer received from another; this has the effect of rejecting the original offer, which cannot thereafter be accepted unless revived by the offeror's repeating it.

COURTESY TO BROKERS – The practice of sharing commissions with cooperating brokers.

COVENANT – A written agreement or promise of two or more parties by which either pledges to perform or not to perform specified acts on a property, or which specifies certain uses or non-uses of the property.

COVENANTS AND CONDITIONS – Covenants are promises contained in contracts, the breach of which would entitle a person to damages. Conditions, on the other hand, are contingencies, qualifications or occurrences upon which an estate or property right would be gained or lost.

COVENANTS RUNNING WITH THE LAND – Covenants which become part of the property and benefit or bind successive owners of the property.

CUL DE SAC – A street which is open at one end only, and which usually has a circular turnaround; a blind alley.

CUSTOMER TRUST FUND (CTF) – An impound account maintained for the purpose of setting up a reserve to pay certain periodic obligations such as real property taxes, insurance premiums, lease rent, and maintenance fees.

D

DEALER – An IRS designation for a person who regularly buys and sells real property.

DEBT SERVICE – The amount of money needed to meet the periodic payments of principal and interest when a debt is amortized.

DECLARATION OF RESTRICTIONS – A statement of all the covenants, conditions and restrictions (“CC&R’s”) which affect a parcel of land.

DEDICATION – The application of privately owned land to the public for no consideration, with the intent that the land will be accepted and used for public purposes.

DEED – A written instrument by which a property owner “grantor” transfers to a “grantee” an ownership in real property.

DEED OF TRUST – A legal document in which title to property is transferred to a third party trustee as security for an obligation owed by the trustor (borrower) to the beneficiary(lender).

DEFAULT – Failure to fulfill a duty or promise or failure to perform any obligation or required act. The most common occurrence of default on the part of a buyer or lessee is non-payment of money.

DEFERRED COMMISSIONS – Commissions which are earned but not yet fully paid.

DEFICIENCY JUDGEMENT – A judgment against a borrower, endorser, or guarantor for the balance of the debt issued when the security for a loan is insufficient to satisfy the debt.

DENSITY – A term, frequently used in connection with zoning requirements, which means the maximum number of building units per acre or the number of occupants or families per unit of land area (acre, square mile, etc.); usually the ratio of land area to improvement area.

DEPOSIT – Money offered by a prospective buyer as an indication of good faith in entering into a contract to purchase; earnest money; security for the buyer's performance of a contract.

DEPRECIATION (APPRAISAL) – A loss in value due to any cause; any condition which adversely affects the value of an improvement.

DEPRECIATION (TAX) – For tax purposes, depreciation is an expense deduction taken for an investment in depreciable property.

DEPTH TABLE – Tables of percentage designed to provide a uniform system of measuring the additional value to lots which accrues because of added depth, with the extra depth valued according to the added utility which it creates.

DESCENT – The acquisition of an estate by inheritance, where an heir succeeds to the property by operation of law. Descent literally means the hereditary succession of an heir to property of an ancestor who dies intestate.

DESCRIPTION – The portion of a conveyance document which defines the property being transferred.

DEVELOPER – One who attempts to put land to its most profitable use by the construction of improvements.

DEVISE – A transfer of real property under a will.

DISCLAIMER – A statement denying legal responsibility, frequently found in the form of, “There are no promises, representations, oral understandings or agreements except as contained herein.”

DISCOUNT POINTS – An added loan fee charged by a lender to make the yield on a lower-than-market interest VA or FHA loan competitive with higher interest conventional loans.

DISCRIMINATION – The act of making a distinction against or in favor of a person on the basis of the group or class to which the person belongs; the failure to treat people equally.

DISTRAINT – The right of a landlord, pursuant to a court order, to seize a tenants belongings for rents in arrears.

DOMICILE – The state where an individual has his true, fixed, permanent home and principal business establishment and to which place he has the intention of returning whenever he is absent.

DOUBLE ESCROW – An escrow set up to handle the concurrent sale of one property and purchase of another property by same party.

DOWER – The legal right or interest a wife acquires in property her husband held or acquired anytime during marriage.

DUAL AGENCY – Representing both principals (buyer and seller) to a transaction.

DUE ON SALE CLAUSE – A form of acceleration clause found in some mortgages, especially savings and loan mortgages, requiring the mortgagor to pay off the mortgage debt when selling the secured property, thus resulting in automatic maturity of the note at the lender's option.

DUPLEX – A structure that provides housing accommodations for two families by having separate entrances, kitchens, bedrooms, lanais, living rooms and bathrooms. A two-family dwelling.

DURESS – Unlawful constraint or action exercised upon a person whereby he is forced to perform some act against his will. A contract entered into under duress is void.

E

EASEMENT – A property interest which one person has in land owned by another entitling the holder of the interest to limited use or enjoyment of the other's land.

EASEMENT IN GROSS – The limited right of one person to use another's land (servient estate), which right is not created for the benefit of any land owned by the owner of the easement; that is, there is no dominant estate, as the easement attaches personally to the owner, not to the land.

EMBLEMENTS – Growing crops (called "fructus industriales"), such as rice and taro, which are produced annually through labor and industry.

EMINENT DOMAIN – The right of government, both state and federal, to take private property for a necessary public use, with just compensation paid to the owner.

ENCROACHMENT – An unauthorized invasion or intrusion of a fixture or other real property wholly or partly upon another's property, thus reducing the size and value of the invaded property.

ENCUMBRANCE – Any claim, lien, charge or liability attached to and binding upon real property which may lessen the value of the property but will not necessarily prevent transfer of title.

ENTIRETY, TENANCY BY – A form of joint ownership of property between husband and wife with the right of survivorship.

ENVIRONMENTAL IMPACT STATEMENT – A report which includes a detailed description of a proposed development project with emphasis on the existing environment setting, viewed from both a local and regional perspective, and a discussion of the probable impact of the project on the environment during all phases.

EQUITY – That interest or value remaining in property after payment of all liens or other charges on the property. A owner's equity is normally the monetary interest over and above the mortgage indebtedness.

ERRORS AND OMISSIONS INSURANCE – A form of insurance which covers liabilities for errors, mistakes and negligence in the usual listing and selling activities of a real estate office or escrow company.

ESCHEAT – The reversion of property to the state when a decedent dies intestate and there are no heirs capable of inheriting, or when the property is abandoned.

ESCROW – The process by which money and/or documents are held by a disinterested third person (a “stakeholder”) until the satisfaction of the terms and conditions of the escrow instructions (as prepared by the parties to the escrow).

ESTOPPEL – A legal doctrine by which a person is prevented from asserting rights or facts which are inconsistent with a previous position or representation he had made by his act, conduct or silence.

ETHICS – A system of moral principles, rules and standards of conduct.

EVICTION – The legal process of removing a tenant from possession of the premises for some breach of the lease contract.

EXCHANGE – A transaction in which all or part of the consideration for the purchase of real property is the transfer of property of a like kind.

EXCLUSIVE AGENCY – A written listing agreement giving one agent the right to sell property for a specified time, but reserving to the owner the right to sell the property himself without payment of any commission.

EXCLUSIVE LISTING – A written listing of real property in which the seller agrees to appoint only one broker to sell the property for a specified period of time. The two types of exclusive listings are the exclusive agency and the exclusive right to sell.

EXECUTIVE – The act of making a document legally valid, such as formalizing a contract by signing, or acknowledging and delivering a deed.

EXECUTOR – A person appointed by a testator to carry out the directions and requests in the last will and testament, and to dispose of property according to the provisions of the will.

EXECUTORY CONTRACT – A contract in which one or both of the parties has not yet performed.

EXTENDER CLAUSE – A “carry over” clause (referred to as a safety clause) contained in a listing which provides that a broker is still entitled to a commission for a set of period of time after the listing has expired if the property is sold to a former prospect of the broker.

EXTENSION – An agreement to continue the period of performance beyond the specified period.

F

FAIR MARKET VALUE – The highest monetary price which a property would bring, if offered for sale for a reasonable period of time in a competitive market, to a seller who is willing but not compelled to sell, from a buyer, willing but not compelled to buy, both parties being fully informed of all the purposes to which the property is best adapted and is capable of being used.

FARM AREA – A selected geographical area or one specific building to which a real estate salesperson devotes special attention and study.

FEASIBILITY STUDY – An analysis of a proposed project with emphasis on the attainable income, probable expenses, and most advantageous use and design.

FEDERAL HOUSING ADMINISTRATION (FHA) – The FHA was set up in 1934 under the National Housing Act to encourage improvement in housing standards and conditions, to provide an adequate home financing system by insurance of housing mortgages and credit, and to exert a stabilizing influence on the mortgage market.

FEDERAL TAX LIEN – A federal lien which attaches to real property, either if the federal estate tax is not paid, or if the taxpayer has violated the federal income tax or payroll tax laws.

FEDERAL TRADE COMMISSION (FTC) – A federal agency created to investigate and eliminate unfair and deceptive trade practices in business.

FEE SIMPLE – The largest estate one can possess in real property. A fee simple estate is the least limited interest and the most complete and absolute ownership in land: it is of indefinite duration, freely transferable and inheritable. Fee simple title is sometimes referred to as “the fee.

FIDUCIARY – A relationship which implies a position of trust or confidence wherein one is usually entrusted to hold or manage property or money for another. Among the obligations a fiduciary owes to the principal are duties of loyalty; obedience; full disclosure; the duty to use skill, care and diligence; and the duty to account for all monies.

FILLED LAND – An area where the grade has been raised by depositing or dumping dirt, gravel or lava rock.

FINANCE CHARGE – The total of all costs imposed directly or indirectly by the creditor and payable either directly or indirectly by the customer, as defined under the federal Truth-in-Lending Law.

FINANCE FEE – A mortgage brokerage fee to cover the expenses incurred in placing the mortgage with a lending institution; a mortgage service charge or origination fee.

FINANCIAL STATEMENT – A formal statement of the financial status and net worth of a person or company, setting forth and classifying assets and liabilities as of a specified date.

FINDER'S FEE – A fee paid to someone for producing a buyer to purchase or a seller to list property; also called a referral fee.

FIRM COMMITMENT – A definite undertaking by a lender to loan a set amount of money at a specified interest rate for a certain term.

FIRST REFUSAL, RIGHT OF – The right of a person to have the first opportunity either to purchase or lease real property.

FISCAL YEAR – A business year used for tax, corporate or accounting purposes, as opposed to a calendar year.

FIXTURE – An article which was once personal property but has been so affixed to the real estate that it has become real property (e.g. stoves, bookcases, plumbing, etc.). If determined to be a fixture, then the article passes with the property even though it is not mentioned in the deed.

FLAG LOT – A land parcel having the configuration of an extended flag and pole. The pole represents access to the site which is usually located to the rear of another lot fronting a main street.

FLOOR AREA RATIO – The ratio of floor area to land area expressed as a percent or decimal, which is determined by dividing the total floor area on a zoning lot by the lot area.

FLOOR DUTY – A frequent practice in real estate brokerage offices of assigning one sales agent the responsibility for handling all telephone calls and office visitors for a specified period of time.

FORECLOSURE – A legal procedure whereby property used as security for debt is sold to satisfy the debt in the event of default in payment of the mortgage note or default of other terms in the mortgage document.

FRAUD – Any form of deceit, trickery, breach of confidence or misrepresentation by which one party attempts to gain some unfair or dishonest advantage over another.

FREE AND CLEAR TITLE – Title to real property which is absolute and unencumbered by any liens, mortgages, clouds or other encumbrances.

FRONTAGE – The length of a property abutting a street or body of water; that is, the number of feet that “front” the street or water.

FUNCTIONAL OBSOLESCENCE – A loss in value of an improvement due to functional inadequacies, often caused by age or poor design.

G

GARNISHMENT – A legal process designed to provide a means for creditors to safeguard for themselves the personal property of a debtor which is in the hands of a third party (“garnishee”).

GENERAL AGENT – One who is authorized to perform any and all acts associated with the continued operation of a particular job or a certain business.

GENERAL CONTRACTOR – A construction specialist who enters into a formal construction contract with a land owner or master lessee to construct a real estate building or project.

GENERAL PARTNER – A co-owner of a partnership who is empowered to enter into contracts on behalf of the partnership and who is fully liable for all partnership debts.

GIFT TAX – A graduated federal tax paid by a donor upon making a gift.

GOOD FAITH – Bona fide. An act is done in good faith if it is in fact done honestly, whether it be done negligently or not.

GOOD WILL – An intangible, salable asset arising from the reputation of a business.

GOVERNMENT SURVEY – A system of land description in which large blocks of land are divided into tracts bounded by imaginary lines conforming to the true meridian.

GRADUATED RENTAL LEASE – A lease in which the rent payments commence at a fixed, often low rate, but “step up” or increase at set intervals as the lease term matures.

GRANDFATHER CLAUSE – Common expression used to convey the idea that something which was once permissible continues to be permissible despite changes in the controlling law.

GRANTEE – The person who receives from the grantor a grant of real property.

GRANTOR – The person transferring title to, or an interest in, real property. A grantor must be competent to convey; thus, for example, an insane person cannot convey title to real property.

GROSS AREA – The total floor area of a building measured from the exterior of the walls (excluding those unenclosed).

GROSS INCOME MULTIPLIER – A useful rule of thumb to estimate market value of income producing residential property. The multiplier is derived by using comparable sales divided by the actual or estimated monthly rentals and arriving at an acceptable average.

GROSS LEASE – A lease of property under which the lessee pays a fixed rent, and the lessor pays the taxes, insurance, and other charges regularly incurred through ownership.

GUARDIAN – One who is given the lawful custody and care of another (called a ward).

H

HABENDUM CLAUSE – That part of the deed beginning with the words “to have and to hold,” following the granting clause and reaffirming the extent of ownership that the grantor is transferring.

HABITABLE – Being fit to live in. The residential landlord has an obligation to keep the leased premises in a habitable condition.

HEIR – A person who inherits under a will or a person who succeeds to property by the laws of descent if the decedent dies without a will (intestate).

HIGHEST AND BEST USE – That use which, at the time of appraising the property, is most likely to produce the greatest net return to the land and/or the building over a given period of time.

HIGH RISE – A popular expression for a condominium or apartment building generally higher than six stories.

HOLD HARMLESS CLAUSE – A clause inserted in a contract whereby one party agrees to indemnify and protect the other party from any injuries or lawsuits arising out of the particular transaction.

HOLDOVER TENANT – One who stays on the leased premises after his lease has expired. The landlord normally has the choice of evicting the holdover tenant or permitting him to remain and continue to pay rent.

HOMEOWNER'S ASSOCIATION – A non-profit association of homeowners organized pursuant to a declaration of restrictions or protective covenants for a subdivision, a PUD, or a condominium.

HOMESTEAD – A home which is used as a personal residence.

HOTEL – A building or group of attached or detached buildings containing dwelling or lodging units in which 50 percent or more of the units are lodging units, usually distinguished by a front desk, dining and other common facilities.

HOUSE RULES – Rules of conduct adopted by a board of directors of a condominium and designed to promote harmonious living among the owners and occupants.

HUD – A federal cabinet department officially known as the Department of Housing and Urban Development.

HYPOTHECATE – To pledge specific real or personal property as security for an obligation, without surrendering possession of it.

I

IMPLIED WARRANTY OF HABITABILITY – A legal doctrine imposing on the landlord a duty to make the leased premises acceptable to live in and ready for occupancy and to continue to maintain them in a state of repair throughout the entire term of the lease.

IMPOUND ACCOUNT – A trust account established to set aside funds for future needs.

IMPROVED LAND – Real property whose value has been enhanced by the addition of on-site and off-site improvements such as roads, sewers, utilities, buildings, etc.; as distinguished from raw land.

IMPROVEMENTS – Valuable additions made to property, amounting to more than repairs, costing labor and capital and intended to enhance the value of the property. Improvements of land would include grading, sidewalks, sewers, streets, utilities, etc. Improvements on land would include buildings, fences, and the like.

IMPUTED INTEREST – Interest implied by the federal tax law.

INCOME APPROACH – An approach to the valuation or appraisal of real property as determined by the amount of net income the property will produce over its remaining economic life.

INCOME PROPERTY – Property purchased primarily for the income to be derived plus certain tax benefits, such as accelerated depreciation. Income property can be commercial, industrial or residential.

INCORPOREAL RIGHTS – Intangible or non-possessory rights in real property such as easements, licenses, profits and the like.

INDEPENDENT CONTRACTOR – One who is retained to perform a certain act, but who is subject to the control and direction of another only as to the end result and not as how he performs the act. The critical feature, and what distinguishes an independent contractor and an employee or agent, is the right to control.

INDUSTRIAL PARK – An area zoned industrial and containing sites for many separate industries and developed and managed as a unit, usually with provisions for common services for the users.

INJUNCTION – A legal action which forbids a party defendant from doing some act; it requires a person to whom it is directed to refrain from doing a particular thing.

INNOCENT PURCHASER FOR VALUE – One who purchases real property without notice, actual or constructive, of any superior rights or interests in the real property.

INSPECTION – A visit to and review of the premises. A prudent purchaser of property always inspects the premises before closing.

INSTITUTIONAL LENDER – Financial institutions such as banks, insurance companies, savings and loans or any lending institution whose loans are regulated by law.

INTEREST – The sum paid or accrued in return for the use of money.

INTERIM FINANCING – A short-term loan usually made during the construction phase of a building project; often referred to as the “construction loan.”

INTESTATE – To die without a valid will.

INVENTORY – An itemized list of property. Many brokers recommend that their clients attach to the sales contract an inventory of property to be included in the sale of a residential property, including a condominium dwelling.

INVERSE CONDEMNATION – An action for “just compensation” brought by one whose property has been effectively “taken” or substantially interfered with or taken without just compensation

J

JOINT AND SEVERAL LIABILITY – A situation in which more than one party is liable to repay a debt or obligation and a creditor can obtain compensation from one or more parties, either individually or jointly, whichever he chooses.

JOINT TENANCY – A form of property ownership by two or more persons in which the joint tenants have one and the same interest, arising by one and the same conveyance, commencing at one and the same time and held by one and the same possession (the concept of “four unities”).

JOINT VENTURE – The joining of two or more people in a specific business enterprise such as the development of a condominium project or a shopping center.

JUDGMENT LIEN – A lien binding on all the real estate of a judgment-debtor and giving the holder of the judgment a right to levy (i.e. to seize) the land for satisfaction of the judgment.

JUDICIAL FORECLOSURE – A method of foreclosing upon real property by means of a court supervised sale. After an appraisal, the court determines an upset price below which no bids to purchase will be accepted.

JUNIOR MORTGAGE – A mortgage which is subordinate in right or lien priority to an existing mortgage on the same realty, such as a second mortgage.

JURISDICTION – The authority or power to act, such as the authority of a court to hear and render a decision that binds both parties.

JUST COMPENSATION – An amount of compensation to be received by a party for the taking of property under the power of eminent domain.

L

LAND – The surface of the earth extending down to the center and upward to the sky, including all natural things thereon such as trees, crops, or water; plus the minerals below the surface and the air rights above.

LAND CONTRACT – Another name for an installment purchase contract, by which the buyer obtains equitable title (the right to use the property) while the seller retains legal title (recorded title) as security for payment of the balance of the purchase price.

LAND DESCRIPTION – A description of a particular piece of real property.

LAND LEASEBACK – A creative financing device often used with raw land which a developer wants to improve, in which the developer sells the land to an investor who leases the land back to the developer under a long-term net lease and subordinates his fee ownership to the lender providing development financing.

LAND, TENEMENTS AND HEREDITAMENTS – A feudal phrase used to describe all types of immovable realty including the land, buildings and all appurtenant rights thereto.

LAND TRUST – An association organized by common owners of real property, which holds title to the real property in the name of one or more trustees for the benefit of the owners, whose beneficial interests may be represented by trust certificates.

LANDLOCKED – Real property having no access to a public road or way.

LANDLORD – The lessor or the owner of leased premises. The landlord retains a reversion interest in the property so that when the lease ends the property will revert to the landlord.

LANDMARK – A stake, stream, cliff, monument or other object or feature which is used to fix or define land boundaries; also a prominent feature of a landscape or property that is the symbol for the place.

LANDSCAPING – Shrubs, bushes, trees and the like, on the grounds surrounding a structure.

LATERAL AND SUBJACENT SUPPORT – The support received by a parcel of real property from the land adjoining it is called lateral support. Subjacent support is that support which the surface of the earth receives from its underlying strata.

LAW DAY – The date an obligation becomes due; sometimes refers to the closing date.

LEASE – A lease is both a contract between lessor (landlord) and lessee (tenant) and a conveyance or demise of the premises by the lessor to the lessee. A lease is a contract in that it embodies the agreement between the parties.

LEASEHOLD – A less-than-freehold estate which a tenant possesses in real property.

LEGAL DESCRIPTION – A description which is complete enough that an independent surveyor could locate and identify a specific piece of real property.

LEGAL NOTICE – That notice which is either implied or required by law. Constructive notice under the recording laws is also referred to as legal notice.

LEGAL RATE OF INTEREST – The maximum interest rate permitted by law, with anything above that rate being usury.

LESSEE – The person to whom property is rented or leased; called a “tenant” in most residential leases.

LESSOR – The person who rents or leases property to another. In residential leasing, the lessor is often referred to as a landlord.

LESS-THAN-FREEHOLD ESTATE – An estate held by one who rents or leases property. This classification includes an estate for years, periodic tenancy, estate at will, and estate at sufferance.

LETTER OF CREDIT – An agreement or commitment by a bank (“issuer”) made at the request of a customer (“account party”) that the bank will honor drafts or other demands of payment from third parties (“beneficiaries”) upon compliance with the conditions specified in the letter of credit.

LETTER OF INTENT – An expression of intent to invest, develop or purchase without creating any firm legal obligation to do so.

LEVEL PAYMENT MORTGAGE – A mortgage which is scheduled to be repaid in equal periodic payments which include both principal and interest.

LEVERAGE – The use of borrowed funds to purchase investment property with the anticipation that the property acquired will increase in return so that the investor will realize a profit not only on his own investment, but also on the borrowed funds; the employment of a smaller investment to generate a larger rate of return through borrowing.

LICENSEE – A person who has a valid license. A real estate licensee can be a salesperson or a broker, active or inactive, an individual, a corporation, or a partnership.

LIEN – A charge or claim which one person (lienor) has upon the property of another (lienee) as security for a debt or obligation. Liens can be created by agreement of the parties (mortgage) or by operation of law (tax liens).

LIFE ESTATE – Any estate in real or personal property which is limited in duration to the life of its owner or the life of some other designated person.

LIMITED COMMON ELEMENTS – That special class of common elements in a condominium reserved for the use of a certain apartment(s) to the exclusion of other apartments.

LIMITED PARTNERSHIP – A partnership formed by two or more persons having as members one or more general partners and one or more limited partners.

LINE OF CREDIT – A maximum amount of money a bank will lend one of its more reliable and credit worthy customers without need for any formal loan submission.

LIQUIDATED DAMAGES – An amount predetermined by the parties to an agreement as the total amount of compensation an injured party should receive in the event the other party breaches a specified part of the contract.

LIQUIDITY – The ability to sell an asset and convert it into cash at a price close to its true value.

LIS PENDENS – A legal document recorded in the Bureau of Conveyances, which gives constructive notice that an action has been filed in either a state or federal court affecting a particular piece of property. “Lis Pendens” is a Latin term which means “action pending” and is in the nature of a quasi-lien.

LISTING – A written employment agreement between a property owner and a broker authorizing the broker to find a buyer or a tenant for a certain real property.

LITTORAL LAND – Land bordering on the shore of a sea or ocean and thus affected by the tide currents.

LOAN COMMITMENT – A commitment by a lender of the amount he will loan to a qualified borrower on a particular piece of real estate for a specified amount of time under specific terms.

LOAN-TO-VALUE RATIO – The ratio that the amount of the loan bears to the appraised value of the property or the sales price, whichever is lower.

LOCUS SIGILLI – Latin for “under seal”, used in the abbreviated form, “L.S.,” at the end of signature line in some formal legal documents; used instead of the actual seal.

LOSS PAYEE – The person designated on an insurance policy to be paid in case the insured property is damaged or destroyed.

M

MAINTENANCE – The care and work put into a building to keep it in operation and productive use; the general repair and upkeep of a building. If maintenance is deferred, the building will suffer a loss in value.

MALL – A landscaped public area set aside for pedestrian traffic.

MARGINAL LAND – Land which is of little value because of some deficiency, such as poor access, lack of adequate rainfall, or steep terrain.

MARKETABLE TITLE – Good or clear title reasonably free from risk of litigation over possible defects; also referred to as merchantable title. Marketable title need not, however, be perfect title.

MARKET VALUE – The highest price, estimated in terms of money, which a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which the property is adapted and for which it is capable of being used.

MASTER PLAN – A comprehensive plan to guide the long-term physical development of a particular area.

MEANDER LINE – An artificial line used by the surveyors to measure the natural, uneven, winding property line formed by rivers, streams and other watercourses bordering a property.

MECHANIC'S LIEN – A statutory lien created in favor of materialmen and mechanics to secure payment for materials supplied and services rendered in the improvement, repair or maintenance of real property.

METES AND BOUNDS – A common method of land description that identifies a property by specifying the shape and boundary dimensions of the parcel, using terminal points and angles.

MILITARY CLAUSE – A clause inserted in some residential leases to allow the military tenant to terminate the lease in case of transfer, discharge or other circumstances making termination appropriate.

MINERAL RIGHTS – Rights to subsurface land and profits. Normally, when real property is conveyed, the grantee receives all right and title to the land including everything above and below the surface, unless excepted by the grantor.

MISREPRESENTATION – A false statement or concealment of a material fact made with the intent to induce some action by another party.

MONEY – The cash deposit (including initial and additional deposits) paid by the prospective buyer of real property as evidence of his good faith intention to complete the transaction; called hand money or a binder in some states.

MONTH-TO-MONTH TENANCY – A periodic tenancy where the tenant rents for one month at a time. In the absence of rental agreement (oral or written), a tenancy is deemed to be month-to-month, or in the case of boarders, week-to-week.

MONUMENTS – Visible markers, both natural and artificial objects, which are used to establish the lines and boundaries of a survey.

MORTGAGE – A legal document used to secure the performance of an obligation. In effect, the mortgage states that the lender can look to the property in the event the borrower defaults in payment of the note.

MORTGAGE BANKER – A corporation or firm which normally provides its own funds for mortgage financing.

MORTGAGE BROKER – A person or firm which acts as an intermediary between borrower and lender; one who, for compensation or gain, negotiates, sells or arranges loans and sometimes continues to service the loans.

MORTGAGEE – The one who receives and holds a mortgage as security for a debt; the lender; a lender or creditor who holds a mortgage as security for payment of an obligation.

MORTGAGOR – The one who gives a mortgage as security for a debt; the borrower; usually the landowner; the borrower or debtor who hypothecates or puts up his property as security for an obligation.

MULTIPLE LISTING SERVICE (MLS) – An organization created by Realtors to facilitate the sharing of listings among member brokers.

N

NATIONAL ASSOCIATION OF REALTORS – Formerly known as the National Association of Real Estate Boards (NAREB), it is the largest and most prestigious real estate organization in the world.

NEGATIVE CASH FLOW – The investment situation where cash expenditures to maintain an investment (taxes, mortgage payments, maintenance, etc.) exceed the cash income received from the investment.

NEGOTIABLE INSTRUMENT – Any written instrument which may be transferred by endorsement or delivery so as to vest legal title in the transferee.

NEGOTIATION – The transaction of business aimed at reaching a meeting of minds among the parties; bargaining.

NET INCOME – The sum arrived at after deducting from gross income the expenses of a business or investment, including taxes and insurance, and allowances for vacancy and bad debts; what the property will earn in a given year's operation.

NET LEASE – A lease, usually commercial, whereby the lessee pays not only the rent for occupancy, but also pays maintenance and operating expenses such as tax, insurance, utilities and repairs. Thus the rent paid is “net” to the lessor.

NET WORTH – The value remaining after deducting liabilities from assets.

NOMINAL CONSIDERATION – A consideration bearing no relation to the real value of the contract. A deed often recites a nominal consideration, such as “ten dollars and other valuable consideration.”

NON-COMPETITION CLAUSE – A provision in a contract or lease prohibiting a person from operating or controlling a nearby business which would compete with one of the parties to the contract.

NONCONFORMING USE – A permitted use which was lawfully established and maintained but which no longer conforms to the current use regulations because of a change in the zoning.

NONDISTURBANCE CLAUSE – A clause inserted in a mortgage whereby the mortgagee agrees not to terminate the tenancies of lessees who pay their rent if the mortgagee forecloses on the mortgagor-lessor's building.

NORMAL WEAR AND TEAR – That physical deterioration which occurs in the normal course of the use for which a property is intended, without negligence, carelessness, accident or abuse of the premises (or equipment or chattels) by the occupant, members of household, or their invitees or guests.

NOTE – A document signed by the borrower of a loan, stating the loan amount, the interest rate, the time and method of repayment and the obligation to repay. The note is the evidence of the debt. When secured by a mortgage, it is called a mortgage note.

NOTICE – (1) Legal notice is notice which is required to be made by law, or notice which is imparted by operation of law as a result of the possession of property or the recording of documents. (2) Notice which is required by contract, for example, when the parties agree to terminate a contract by the written notice of either party 30 days prior to termination.

NOTICE OF COMPLETION – Document filed to give public notice that a construction job has been completed and that mechanics' liens must be filed within ,say, 45 days to be valid.

NOTICE OF DEFAULT – A notice to a defaulting party that there has been a default, usually providing a grace period in which to cure the default.

NOTICE OF NONRESPONSIBILITY – A legal notice designed to relieve a property owner from responsibility for the cost of improvements ordered by another person.

NOTICE TO QUIT – A written notice given by a landlord to his tenant, stating that the landlord intends to regain possession of the leased premises and that the tenant is required to quit and remove himself from the premises either at the end of the lease term or immediately if there is a breach of lease or if the tenancy is at will or by sufferance; sometimes refers to the notice given by the tenant to the landlord that he intends to give up possession on a stated day.

NOVATION – The substitution of a new obligation for an old one; substitution of new parties to an existing obligation, as where the parties to an agreement accept a new debtor in place of an old one.

NUISANCE – Conduct or activity which results in an actual physical interference with another person's reasonable use or enjoyment of his property for any lawful purpose.

NULL & VOID – Having no legal force or effect; of no worth; unenforceable; not binding.

O

OBSOLESCENCE – A type of depreciation of property.

OFFER – A promise by one party to act or perform in a specified manner provided the other party will act or perform in the manner requested.

OFFER AND ACCEPTANCE – The two components of a valid contract; a “meeting of the minds.”

OFFICE EXCLUSIVE – A listing in which the seller refuses to submit the listing to Multiple Listing Service, even after being informed of the advantages of MLS, and signs a certification to that effect.

OFFSITE COSTS – Costs such as for sewers, streets, utilities, etc., which are incurred in the development of raw land, but are not connected with the actual construction of the buildings(onsite costs).

OPEN-END MORTGAGE – A mortgage in which the borrower is given a limit up to which he may borrow, with any incremental advances of money up to but not exceeding the original borrowing limit to be secured by the same mortgage.

OPEN HOUSE – The common real estate practice of showing a listed home to the public during established hours, frequently on Sunday afternoons.

OPEN LISTING – A listing given to any number of brokers. The first broker who secures a buyer ready, willing and able to purchase at the terms of the listing is the one who earns the commission.

OPEN SPACE – Certain portion of the landscape which has not been built upon and which is sought either to be reserved in its natural state or used for agricultural or recreational purposes(such as parks, squares, and the like).

OPERATING EXPENSES – Those periodic and necessary expenses which are essential to the continuous operation and maintenance of a property.

OPINION OF TITLE – An opinion by a person competent in examining titles, usually a title attorney, as to the status of the title of a property.

OPTION – An agreement to keep open, over a set period, an offer to sell or purchase property.

ORIGINATION FEE – The finance fee charged by a lender for placing a mortgage, which covers initial costs such as preparation of documents and credit, inspection and appraisal fees.

OVERIMPROVEMENT – An improvement which by reason of excess size or cost is not the highest and best use for the site on which it is placed.

OVERRIDE – A commission paid to managerial personnel (e.g. principal broker) on sales made by their subordinates, usually calculated as a percentage of the gross sales commissions earned by the salesperson.

P

PACKAGE MORTGAGE – A method of financing in which the loan that finances the purchase of a home also finances the purchase of personal items such as a washer and dryer, refrigerator, stove and other specified appliances.

PARCEL – A specific portion of a larger tract; a lot.

PARTIAL RELEASE – A clause found in a mortgage which directs the mortgagee to release certain parcels from the lien of the blanket mortgage upon the payment of a certain sum of money.

PARTICIPATION MORTGAGE – A mortgage in which the lender participates in the income of the mortgaged venture beyond a fixed return, or receives a yield on the loan in addition to the straight interest rate.

PARTITION – The dividing of common interests in real property owned jointly by two or more persons.

PARTNERSHIP – “An association of two or more persons to carry on as co-owners a business for profit,” as defined in the Uniform Partnership Act, which is in force in a majority of the states.

PARTY WALL – A wall which is located on or at a boundary line between two adjoining parcels and is used or is intended to be used by the owners of both properties in the construction or maintenance of improvements on their respective lots.

PENTHOUSE – An apartment located on the roof of a building, or more commonly, an apartment on the top floor of a building.

PERCENTAGE LEASE – A lease whose rental is based on a percentage of the monthly or annual gross sales made on the premises.

PERCOLATION TEST – A hydraulic engineer’s test of soil to determine the ability of the ground to absorb and drain water.

PERFORMANCE BOND – A bond, usually posted by one who is to perform work for another, which assures that a project or undertaking will be completed as per agreement or contract.

PERIODIC TENANCY – A leasehold estate which continues from period to period, such as month to month, year to year. All conditions and terms of the tenancy are carried over from period to period, and continue for an uncertain time until proper notice of termination is given.

PERMANENT FINANCING – A long-term loan, as opposed to an interim loan.

PERSONAL PROPERTY – Things which are tangible and moveable; property which is not classified as real property; chattels; personalty.

PIGGYBACK LOAN – A joint loan with two lenders sharing a single mortgage.

PLANNED UNIT DEVELOPMENT (PUD) – A modern concept in housing designed to produce a high density of dwellings and maximum utilization of open spaces.

PLAT – A map or a town, section, or subdivision indicating the location and boundaries of individual properties.

PLOTTAGE – The merging or consolidating of adjacent lots into one larger lot, with the consequent result of improved usability and increased value; also called assemblage.

POCKET LISTING – A listing which is retained by the listing broker or salesperson, who does not make it available to other brokers in the office or to other Multiple Listing Service members.

POINT OF BEGINNING – The starting point in a metes and bounds description of property, which is usually a street intersection or a specific monument.

POINTS – A generic term for a percentage of the principal loan amount which the lender charges for making the loan; each point is equal to one percent of the loan amount.

POLICE POWER – The constitutional authority and inherent power of a state to adopt and enforce laws and regulations to promote and support the public health, safety, morals and general welfare.

PORTE COCHERE – A roofed structure extending from the entrance of a building over an adjacent driveway to shelter those getting into or out of vehicles.

POSSESSION – The act of either actually or constructively possessing or occupying property.

POWER OF ATTORNEY – A written instrument authorizing a person(the attorney-in-fact) to act as the agent on behalf of another to the extent indicated in the instrument.

POWER OF SALE – A clause written into a mortgage authorizing the mortgagee to sell the property in the event of default.

PREMISES – The subject property, such as the property which is deeded or the unit that is leased.

PREPAID INTEREST – The paying of interest before it is due.

PREPAYMENT PENALTY – The amount set by the creditor as a penalty to the debtor for paying off the debt prior to its maturity. The prepayment penalty is charged by the lender to recoup a portion of interest that he had planned to earn when he made the loan.

PREPAYMENT PRIVILEGE – The right of the debtor to pay off part or all of the debt without penalty prior to maturity, such as in a mortgage or agreement of sale.

PRE-SALE – A pre-construction sale program by a condominium developer who is required to sell a certain percentage of units before a lender will commit to finance construction of the project.

PRESCRIPTION – The acquiring of a right in property, usually in the form of an intangible property right such as an easement or right-of-way, by means of adverse use of property that is continuous and uninterrupted for the prescriptive period.

PRESENT VALUE OF ONE DOLLAR – A doctrine which is based on the fact that money has a time value. The present worth of a payment to be received at some time in the future is the amount of the payment less the loss of interest.

PRIME RATE – The minimum interest rate charged by a commercial bank on short-term loans to its largest and strongest clients(those with the highest credit standings).

PRINCIPAL – The capital sum; interest is paid on the principal. NOT spelled principle.

PRINCIPAL BROKER – The licensed broker directly in charge of and responsible for the real estate operations conducted by a brokerage company.

PRIVATE MORTGAGE INSURANCE – A special form of insurance designed to permit lenders to increase their loan-to-market-value ratio, often up to 95 percent of the market value of the property.

PROBATE – The formal judicial proceeding to prove or confirm the validity of a will. The will is presented to the probate court, and creditors and interested parties are notified to present their claims or to show cause why the provisions of the will should not be enforced by the court.

PROCURING CAUSE – That effort which brings about the desired result, as in producing the buyer for the listed property.

PRO FORMA STATEMENT – A projection of future income and expenses.

PROMISSORY NOTE – An unconditional written promise of one person to pay a certain sum of money to another, or order, or bearer, at a future specified time.

PROPERTY – The rights or interests a person has in the thing owned; not, in the technical sense, the thing itself. These rights include the right to possess, to use, to encumber, to transfer and to exclude, commonly called the “bundle of rights.”

PROPERTY MANAGEMENT – That aspect of real estate devoted to the leasing, managing, marketing and overall maintenance of the property of others.

PROPERTY REPORT – A disclosure document required under the federal interstate land sales act where applicable to the interstate sale of subdivided lots.

PROPRIETARY LEASE – A written lease in a cooperative apartment building, between the owner-corporation and the tenant-stockholder, in which the tenant is given the right to occupy a particular unit.

PRORATE – To divide or distribute proportionately.

PROSPECT – A person or corporation who may be interested in buying or selling real property. The prospect does not become a client until the parties establish a fiduciary relationship, such as upon signing a listing contract or upon executing a DROA.

PROSPECTUS – A printed statement distributed to describe, advertise and give advance information on a business, venture, project or stock issue.

PUFFING – Exaggerated or superlative comments or opinions not made as representations of fact and thus not a grounds for misrepresentation. A statement such as “the apartment has a fantastic view,” is puffing because the prospective buyer can clearly assess the view in each case.

PUNCH LIST – A discrepancy list showing defects in construction which need some corrective work to bring the building up to standards set by the plans and specifications.

PURCHASE MONEY MORTGAGE – A mortgage given to the seller as part of the buyer’s consideration for the purchase of real property, and delivered at the same time that the real property is transferred as a simultaneous part of the transaction.

Q

QUALIFIED FEE – An estate in fee which is subject to certain limitations imposed by the owner.

QUANTITY SURVEY – A method of estimating construction cost or reproduction cost; a highly technical process used in arriving at the cost estimate of new construction and sometimes referred to in the building trade as the price take-off method.

QUIET ENJOYMENT – The right of a new owner or a lessee legally in possession to uninterrupted use of the property without interference from the former owner, lessor or any third party claiming superior title.

QUIET TITLE ACTION – A circuit court action intended to establish or settle the title to a particular property, especially where there is a cloud on the title.

QUITCLAIM DEED – A deed of conveyance which operates, in effect, as a release of whatever interest the grantor has in the property; sometimes called a release deed.

R

RANGE – A measurement, used in the government survey system, consisting of a strip of land six miles wide, running in a north-south direction.

RATE OF RETURN – The relationship (expressed as a percentage) between the annual net income generated by a business and the invested capital, or the appraised value, or the gross income, etc., of the business.

RAW LAND – Unimproved land; land in its unused natural state prior to the construction of improvements such as streets, lighting, sewers, and the like.

REAL ESTATE – The physical land and appurtenances, including any structures; for all practical purposes synonymous with real property.

REAL PROPERTY – All land and appurtenances to land, including buildings, structures, fixtures, fences, and improvements erected upon or affixed to the same; excluding, however, growing crops.

REALTOR – A registered word which may only be used by an active real estate broker who is a member of the state and local real estate board affiliated with the National Association of Realtors. The use of the name REALTOR and the distinctive seal in advertising is strictly governed by the rules and regulations of the National Association.

REALTY – Land and everything permanently affixed thereto.

REBATE – A reduction or kickback of a stipulated charge.

RECAPTURE CLAUSE – A clause usually found in percentage leases, especially in shopping center leases, giving the landlord the right to terminate the lease (and thus “recapture” the premises) if the tenant does not maintain a specified minimum amount of business.

RECEIVER – An independent party appointed by a court to impartially receive, preserve and manage property which is involved in litigation, pending final disposition of the matter before the court.

RECORDING – The act of entering into the book of public records the written instruments affecting the title to real property, such as deeds, mortgages, contracts of sale, options, assignments, and the like. Proper recordation imparts constructive notice to all the world of the existence of the recorded document and its contents.

REDEMPTION, EQUITABLE RIGHT OF – The right of a mortgagor who has defaulted on the mortgage note to redeem or get back his title to the property by paying off the entire mortgage note prior to the foreclosure sale.

REDUCTION CERTIFICATE – An instrument which shows the amount of the unpaid balance of a mortgage, the rate of interest and the date of maturity.

REFINANCE – The act of obtaining a new loan to pay off an existing loan; the process of paying off one loan with the proceeds from another.

REFORMATION – A legal action to correct or modify a contract or deed which has not accurately reflected the intentions of the parties due to some mechanical error, such as a typographical error in the legal description.

RELEASE – The discharge or relinquishment of a right, claim or privilege. Releases involving real property transactions should be acknowledged and recorded.

RELEASE CLAUSE – A provision found in many blanket mortgages enabling the mortgagor to obtain partial releases of specific parcels from the mortgage upon the payment of, typically, a larger-than-pro-rata portion of the loan.

REMAINDER ESTATE – A future interest in real estate created at the same time and by the same instrument as another estate, and limited to arise immediately upon the termination of the prior estate.

RENEWAL OPTION – A covenant in some leases which gives the lessee the right to extend the lease term for a certain period, on specified terms.

RENT – Fixed periodic payment made by a tenant or occupant of property to the owner for the possession and use thereof, usually by prior agreement of the parties.

RENT CONTROL – Regulation by state or local governmental agencies restricting the amount of rent landlords can charge their tenants; such regulation is a valid exercise of the state's police power.

RENTAL AGREEMENT – An agreement, written or oral, which establishes or modifies the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit and premises; a lease on residential property.

RENTAL POOL – A rental arrangement whereby participating owners of rental apartments agree to have their apartment units available for rental as determined by the rental agent, and then share in the profits and losses of all the rental apartments in the pool according to an agreed formula.

REPRODUCTION COST – The cost, on the basis of current prices, of reproducing a new replica property with the same or fairly similar material.

RESCISSION – The legal remedy of canceling, terminating or annulling a contract and restoring the parties to their original positions; a return to the status quo.

RESERVE FUND – Monies set aside as a cushion of capital for future payment of items such as taxes, insurance, furniture replacement, deferred maintenance, etc.; sometimes referred to as an impound account.

RESIDUAL PROCESS – An appraisal process used in the income approach to estimate the value of the land and/or the building, as indicated by the capitalization of the residual net income attributable to it.

RESTRICTIONS – Limitations on the use of property. Private restrictions are created by means of restrictive covenants written into real property instruments, such as deeds and leases.

RESTRICTIVE COVENANT – A private agreement, usually contained in a deed, which restricts the use and occupancy of real property.

RETALIATORY EVICTION – An act whereby a landlord evicts the tenant in response to some complaint made by the tenant.

REVERSION – A future estate in real property created by operation of law when a grantor conveys a lesser estate than he has. The residue left in the grantor is called a reversion which commences in possession in the future upon the end of a particular estate granted or devised, whether it be freehold or less-than-freehold.

RIGHT OF SURVIVORSHIP – The distinctive characteristic of a joint tenancy (also tenancy by entirety) by which the surviving joint tenant(s) succeeds to all right, title and interest of the deceased joint tenant without the need for probate proceedings.

RIGHT-OF-WAY – The right or privilege, acquired through accepted usage or by contract, to pass over a designated portion of the property of another.

RIPARIAN – Those rights and obligations which are incidental to ownership of land adjacent to or abutting on watercourses such as streams and lakes.

RISK OF LOSS – Responsibility for damages caused to improvements. The risk of loss passes to the vendee when either title or possession passes, and he should protect himself by securing proper insurance.

RUNNING WITH THE LAND – Rights or covenants which bind or benefit successive owners of a property are said to run with the land, such as restrictive building covenants in a recorded deed which would affect all future owners of the property.

S

SALE AND LEASEBACK – A transaction in which, typically, an owner sells his improved property and as part of the same transaction signs a long-term lease and remains in possession.

SCHEMATICS – Preliminary architectural drawings and sketches; basic layouts not containing the final details of design.

SECOND MORTGAGE – A mortgage which is junior or subordinate to a first mortgage; typically, an additional loan imposed on top of the first mortgage, which is taken out when the borrower needs more money.

SECONDARY MORTGAGE MARKET – A market for the purchase and sale of existing mortgages, designed to provide greater liquidity for mortgages; also called secondary money market.

SECURITY AGREEMENT – A security document which creates a lien upon chattels, including chattels intended to be affixed to land as fixtures; known as a chattel mortgage prior to the adoption of the Uniform Commercial Code.

SECURITY DEPOSIT – Money deposited by or for the tenant with the landlord, to be held by the landlord for the following purposes: to remedy tenant defaults for damage to the premises (be it accidental or intentional), for failure to pay rent due, or for failure to return all keys at the end of the tenancy.

SEPTIC TANK – A sewage settling tank in which part of the sewage is converted into gas and liquids before the remaining waste is discharged by gravity into a leaching bed underground.

SETBACK – Zoning restrictions on the amount of land required surrounding improvements; the amount of space required between the lot line and the building line.

SETTLEMENT – The act of adjusting and prorating the various credits, charges and settlement costs to conclude a real estate transaction.

SEVERALTY – Sole ownership of real property.

SHELL LEASE – A lease wherein a tenant leases the unfinished shell of a building, as in a new shopping center, and agrees to complete construction himself by installing ceilings, plumbing, heating and air conditioning systems, and electrical wiring.

SHOPPING CENTER – A modern classification of retail stores, characterized by off-street parking and clusters of stores, subject to a uniform development plan, and usually with careful analysis given to the proper merchant mix.

SHORELINE – The dividing line between private land and public beach on beachfront property.

SIMPLE INTEREST – Interest computed on the principal balance only.

SPECIAL ASSESSMENT – A tax or levy customarily imposed against only those specific parcels of realty which will benefit from a proposed public improvement, as opposed to a general tax on the entire community.

SPECIAL WARRANTY DEED – A deed in which the grantor warrants or guarantees the title only against defects arising during the period of his tenure and ownership of the property and not against defects existing before the time of his ownership.

SPECIFIC PERFORMANCE – A legal action brought in a court of equity to compel a party to carry out the terms of a contract.

SPOT LOAN – A loan on a particular property, usually a condominium unit, by a lender who has not previously financed that particular condominium building.

STANDING LOAN – A commitment by the interim or construction lender to keep the money already funded in the project for a specified period of time after the expiration of the interim loan, usually until permanent take-out financing is secured.

STATUTE OF FRAUDS – That law which requires certain contracts to be in writing and signed by the party to be charged therewith in order to be legally enforceable.

STATUTE OF LIMITATIONS – That law pertaining to the period of time within which certain actions must be brought to court.

STEP-UP LEASE – A lease with fixed rent for an initial term and provision for pre-determined rent increases at specified intervals and/or increases based upon periodic appraisals; sometimes called a graduated lease.

STRAIGHT NOTE – A promissory note evidencing a loan in which “interest only” payments are made periodically during the term of the note, with the principal payment due in one lump sum upon maturity.

SUBJECT TO MORTGAGE – A grantee taking title to real property “subject to mortgage” is not personally liable to the mortgagee for payment of the mortgage note. In the event the grantor-mortgagor defaults in paying the note, the grantee could, however, lose property, and thus his equity, in a foreclosure sale.

SUBORDINATION AGREEMENT – An agreement whereby a prior mortgagee agrees to subordinate or give up their priority position to an existing or anticipated future lien.

SUMMARY POSSESSION – A legal process used by a landlord to regain possession of the leased premises if the tenant has breached the lease or is holding over after the termination of tenancy.

SURRENDER – A premature conveyance of a possessory estate to a person having a future interest, as when a lessee surrenders the leasehold interest to the owner of the reversion interest, the lessor, before the normal expiration of the lease.

SURVEY – The process by which boundaries are measured and land areas are determined; the on-site measurement of lot lines, dimensions, and position of houses in a lot including the determination of any existing encroachments or easements.

SURVIVORSHIP – The right of survivorship is that special feature of a joint tenancy whereby all title, right and interest of a decedent joint tenant in certain property passes to the surviving joint tenants by operation of law, free from claims of heirs and creditors of the decedent.

T

TAKE-OUT FINANCING – Long-term permanent financing.

TAX LIEN – A general statutory lien imposed against real property for failure to pay taxes. There are federal tax liens and state tax liens.

TAX SHELTER – A phrase often used to describe some of the tax advantages of real estate investment, such as deductions for depreciation, interest, taxes, etc., which may offset the investor's other ordinary income to reduce the investor's overall tax payment.

TENANCY AT SUFFERANCE – A tenancy which exists when a tenant wrongfully holds over after the expiration of a lease, without the landlord's consent, as where the tenant fails to surrender possession after termination of the lease.

TENANCY AT WILL – A tenancy in which a person is in possession of real estate with the permission of the owner, for a term of unspecified or uncertain duration, as when an owner permits a tenant to occupy a property until it is sold.

TENANCY BY THE ENTIRETY – A special joint tenancy between a lawfully married husband and wife, which places all title to the property into the marital unit, with both spouses having an equal, undivided interest in the whole property.

TENANCY FOR YEARS – A less-than-freehold estate in which the property is leased for a definite, fixed period of time, be it for 60 days or any fraction of a year, a year, ten years, etc.

TENANCY IN COMMON – A form of concurrent ownership of property between two or more persons, in which each has an undivided interest in the whole property; frequently found when the parties acquire title by descent or by will.

TENANCY IN SEVERALTY – Ownership of property vested in one person alone, and not held jointly with another; also called Several Tenancy or Sole Tenancy.

TENANT – In general, one who holds or possesses property, such as a life tenant or a tenant for years; commonly used to refer to a lessee under a lease.

TIME IS OF THE ESSENCE – The clause in a contract which emphasizes that punctual performance is an essential requirement of the contract.

TIME SHARING – A modern approach to communal ownership and use of real estate which permits multiple purchasers to buy undivided interests in real property (which is usually in a resort condominium or hotel) with a right to use the facility for a fixed or variable time period.

TITLE INSURANCE – A comprehensive contract of indemnity under which the title company agrees to reimburse the insured for any loss if title is not as represented in the policy.

TITLE SEARCH – An examination of the public records to determine what, if any, defects there are in the chain of title.

TOWNHOUSE – A type of dwelling unit normally having two floors, with the living area and kitchen on the base floor and the bedrooms located on the second floor.

TOWNSHIP – A piece of property, used in the government survey system of land description, which is 36 miles square, and contains 36 sections, each 1 mile square; and consists of 12,960 acres.

TRADE FIXTURES – Articles of personal property annexed to leased premises by the tenant, as a necessary part of the tenant's trade or business.

TRIPLE NET LEASE – A net, net, net lease, where in addition to the stipulated rent, the lessee assumes payment of all expenses associated with the operation of the property.

TRUST DEED – A real property security device (also called a deed of trust) very similar to a mortgage, except that there are three parties, the trustor, the trustee, and the beneficiary (the lender).

TRUST FUND ACCOUNT – An account set up by a broker at a bank or other recognized depository, into which the broker deposits all funds entrusted to him by his principal or others.

TURNKEY PROJECT – A development term meaning the complete construction package from ground breaking to the completion of the building. All that is left undone is to turn over the keys to the buyer.

U

UNILATERAL CONTRACT – A contract in which one party makes an obligation to perform without receiving in return any express promise of performance from the other party, such as an open listing contract, where the seller agrees to pay a commission to the first broker who brings in a ready, willing and able buyer.

UPSET PRICE – A minimum price set by a court in a judicial foreclosure, below which the property may not be sold by a court appointed commissioner at public auction; the minimum price which can be accepted for the property after the court has had the property appraised.

USEFUL LIFE – That period of time over which an asset, such as a building, is expected to remain economically feasible to the owner.

USURY – Charging a rate of interest in excess of that permitted by law.

V

VACANCY FACTOR – An allowance or discount for estimated vacancies(unrented units) in a rental project. The vacancy rate is the ratio between the number of vacant units and the total number of units in a specified project or area.

VALUE – The power of a good or service to command other goods in exchange for the present worth of future rights to income or amenities; the present worth to typical users and investors of future benefits arising out of ownership of a property.

VARIANCE – Permission obtained from governmental zoning authorities to build a structure or conduct a use which is expressly prohibited by the current zoning laws; an exception from the zoning laws.

VENDEE – The purchaser of realty; the buyer. The buyer under an agreement of sale.

VENDOR – The seller of realty. The seller under an agreement of sale.

VOID – Having no legal force or binding effect; a nullity; not enforceable. A contract for an illegal purpose (i.e. gambling) is void.

VOIDABLE – A contract which appears valid and enforceable on its face, but is subject to rescission by one of the parties who acted under a disability, such as being a minor or being under duress or undue influence; that which may be avoided or adjudged void but which is not, in itself, void.

W

WAIVER – To voluntarily give up or surrender a right.

WAREHOUSE – A building used to store merchandise and other materials or equipment.

WAREHOUSING – A term used in financing to describe the process which loan correspondents employ, assembling into one package a number of mortgage loans which the correspondent has originated and selling them in the secondary mortgage market.

WARRANTY – A guaranty by the seller, covering the title as well as the physical condition of the property.

WARRANTY DEED – A deed in which the grantor fully warrants good clear title to the premises. Also called a general warranty deed.

WASTE – An improper use or abuse of property by one in possession of land, who holds less than the fee ownership, such as a tenant, life tenant, mortgagor, or vendee.

WEAR AND TEAR – The gradual physical deterioration of property, resulting from use, passage of time and weather. Only property subject to wear and tear is depreciable.

WRAP-AROUND MORTGAGE – A method of refinancing in which the new mortgage is placed in a secondary or subordinate position. In essence, it is an additional mortgage in which another lender refinances a borrower by lending an amount over the existing first mortgage amount, without cashing out or distributing the existence of the first mortgage.

X

Y

YEAR-TO-YEAR TENANCY – A periodic tenancy in which the rent is reserved from year to year.

YIELD – The return on an investment or the amount of profit, stated as a percentage of the amount invested.

Z

ZONING – The regulation of structures and uses of property within designated districts or zones. Zoning regulates and affects such things as use of the land, types of structure permitted, building heights, setbacks, and density (the ratio of land area to improvement area).