

HomeCompanion Pro™ Library

REAL ESTATE TERMS GLOSSARY

Abstract of Title: A summary of the public records relating to the title to a particular piece of land. An attorney or a title insurance company reviews an abstract of title to determine whether there are any title defects which must be cleared before a buyer can purchase clear, marketable title.

Acceleration Clause: Condition in a mortgage that may require the balance of the loan to become due immediately if regular mortgage payments are not made or for breach of other conditions of mortgage.

Agency: In real estate, an agency is created by the contract between a Real Estate Broker and an owner of real property whereby the broker agrees to act as the owner's agent in representing and negotiating for sale of the property under contract. The contract is known as a listing agreement.

Agency Listing: In some states, this describes a listing whereby a broker's commission is protected against a sale by other agents, but not by a sale by the property owner or the principal in the agreement. This allows the property owner to sell on their own as well and not have to pay commission. Called a "non-exclusive listing" in some states. For other types of listing agreements, see Exclusive Listing and Open Listing.

Agreement of Sale: Known by various names such as contract to purchase, purchase agreement, or sales agreement, according to location. A contract in which a seller agrees to buy, under certain specific terms and conditions spelled out in writing and signed by both parties.

Amortization: A payment plan which enables the borrower to reduce his debt gradually through monthly payments of principal.

Appraisal: An expert judgment or estimate of the quality or value of real estate as of a given date.

Assumption of Mortgage: An obligation undertaken by the purchaser of property to be personally liable for payment of an existing mortgage. In an assumption, the purchaser is substituted for the original mortgagor in the mortgage instrument and the original mortgagor is released from further liability under the mortgage. Since the mortgagor is to be released from further liability in the assumption, the mortgagee's consent is usually required. The original mortgagor should always obtain a written release from further liability if he desires to be fully released under the assumption. Failure to obtain such a release renders the original mortgagor liable if the person assuming the mortgage fails to make the monthly payments.

Binder or Offer to Purchase: A preliminary agreement, secured by the payment of earnest money, between a buyer and a seller as an offer to purchase real estate. A binder secures the right to purchase real estate upon agreed terms for a limited period of time. If the buyer changes his mind or is unable to purchase, the earnest money is forfeited unless the binder or offer expressly provides that it is to be refunded.

Broker: See Real Estate Broker

Building Line or Setback: Distances from the ends and/or sides of the lot beyond which construction may not extend. The building line may be established by a filed plat of subdivision, or by restrictive covenants in deeds or leases, by building codes, or by zoning ordinances.

Certificate of Title: A certificate issued by the title company or a written opinion rendered by an attorney that the seller has good marketable and insurable title to the property which he is offering for sale. A certificate of title offers no protection against any hidden defects in the title which an examination of the records could not reveal. The issuer of a certificate of title is liable only for damages due to negligence. The protection offered a homeowner under a certificate of title is not as great as that offered in a title insurance policy.

Closing Costs: The numerous expenses which buyers and sellers normally incur to complete a transaction in the transfer of ownership of real estate. These costs are in addition to price of property and are items prepaid at dosing. This is a typical list:

BUYER'S EXPENSES

Documentary Stamps on Notes
Recording Deed and Mortgage
Escrow & Attorney Fees
Title Insurance & Survey Charge
Appraisal & Inspection

SELLER'S EXPENSES

Cost of Abstract
Documentary Stamps on Deed
Escrow & Attorney Fees
Recording Mortgage & Survey Charge
Real Estate Commission

The agreement of sale negotiated previously between the buyer and the seller may state in writing who will pay each of the above costs.

Closing Day: The day on which the formalities of the real estate sale are concluded the certificate of title abstract & deed are generally prepared for the dosing by an attorney and this cost is charged to the buyer. The buyer signs the mortgage, and dosing costs are paid. The final closing merely confirms the original agreement reached in the agreement of sale.

Cloud (on the title): An outstanding claim or encumbrance, which adversely affects the marketability of the title.

Commission: Money paid to the real estate broker by the seller as compensation for finding a buyer and completing the sale. Usually a percentage of sales price.

Condominium: Individual ownership of a dwelling unit and an individual interest in the common areas and facilities which serve the multi-unit project.

Contract of Purchase: See Agreement of Sale

Conventional Mortgage: A mortgage loan not insured by HUD or guaranteed by the Veteran's Administration. It is subject to conditions established by the lending institution and State statutes. The mortgage rates may vary with different lender and between different States. (States have various interest limits.)

Cooperative Housing: An apartment building or a group of dwellings owned by a corporation, the stockholders of which are the residents of the dwellings. It is operated for their benefit by their elected board of directors. In a cooperative, the corporation or the association owns title to the real estate. A resident purchases stock in the corporation, which entitles him to occupy a unit in the building or property owned by the cooperative. While the resident does not own his unit, he has an absolute right to occupy his unit as long as he owns the stock. A formal written instrument by which title to real property is transferred from one owner to another. The deed should contain an accurate description of the property being conveyed, should be delivered to the purchaser at dosing day. There are two parties to the deed: the grantor and the grantee.

Deed of Trust: A security instrument whereby real property is given as security for a debt. However, in a deed of trust there are three parties to the instrument: the borrower, the trustee, and the lender. In such a transaction, the borrower transfers the legal title for the property to the trustee who holds the property in

trust as security for the payment of the debt to the lender.

Default: Generally, thirty days after the due date if payment is not received, the mortgage is in default. It is the mortgagor's responsibility to remember the due date and send the payment prior to the due date, not after. In the event of default, the mortgage may give the lender the right to accelerate payments, take possession and receive rents, and start foreclosure. Defaults may also come about by the failure to observe other conditions in the mortgage or deed of trust.

Depreciation: Decline in the value of a house due to wear and tear; adverse changes in the neighborhood, or any other reason.

Documentary Stamps: A State tax, in the form of stamps, required on deeds and mortgages when real estate title passes from one owner to another. The amount of stamps varies with each State.

Down payment: Down payment is the difference between the sales price and the mortgage amount. The agreement of sale will refer to the down payment amount and will acknowledge receipt of the down payment. The down payment may not be refundable if the purchaser fails to buy the property without good cause. If the purchaser wants the down payment to be refundable, he should insert a clause in the agreement of sale specifying the conditions under which the deposit will be refunded, if the agreement does not already contain such a clause. If the seller cannot deliver good title; the agreement of sale usually requires the seller to return the down payment and to pay interest and expenses incurred by the purchaser.

Earnest Money: The deposit given to the seller or his agent by the potential buyer upon the signing of the agreement of sale to show that he is serious about buying the house. If the sale goes through, the earnest money is applied against the down payment. If the sale does not go through, the earnest money will be forfeited or lost unless the binder or offer to purchase expressly provides that it is refundable.

Easement Rights: A right of way granted to a person or company authorizing access to or over the owner's land. An electric company obtaining a right-of-way across private property is a common example. These usually "run with the land", meaning the easement is permanently granted no matter who owns it or how often it is sold.

Encroachment: An obstruction, building, or part of a building that intrudes beyond a legal boundary onto a neighboring private or public land, or a building extending beyond the building line.

Encumbrance: A legal right or interest in land that affects a good or clear title, and diminishes the land's value. It can take numerous forms, such as zoning ordinances, easement rights, claims, mortgages, liens, charges, a pending legal action, unpaid taxes, or restrictive covenants. An encumbrance does not legally prevent transfer of the property to another. A title search is all that is usually done to reveal the existence of such encumbrances, and it is up to the buyer to determine whether he wants to purchase with the encumbrance, or what can be done to remove it.

Equity: The value of a homeowner's unencumbered interest in real estate. Equity is computed by subtracting from the property's fair market value the total of the unpaid mortgage balance and any outstanding liens or other debts against the property. A homeowner's equity increases as he pays off his mortgage or as the property appreciates in value. When the mortgage and all other debts against the property are paid in full the homeowner has 100% equity in his property.

Escrow: Funds paid by one party to another (the escrow agent) to hold until the occurrence of a specified event, after which the funds are released to a designated individual. In FHA mortgage transactions an escrow account usually refers to the funds a mortgagor pays the lender. The money is held in a trust fund, provided by the lender for the buyer. Such funds should be adequate to cover yearly anticipated expenditures for mortgage insurance premiums, taxes, hazard insurance premiums, and special assessments.

Exclusive Listing: A listing contract whereby a property owner agrees to pay a fee or commission to the listing broker if the property under contract is sold during the stated period, regardless of whether the broker or their sales agents were or were not the cause of the sale. Also known as Exclusive Right to Sell. For other types of listing agreements, see Agency Listing and Open Listing.

Foreclosure: A legal term applied to various methods of enforcing payment of the debt secured by a mortgage, or deed of trust, by taking and selling the mortgage property, and depriving the mortgagor of possession.

General Warranty Deed: A deed which conveys all the grantor's interests in and title to the property of the grantee. It also warrants that if the title is defective or has a "cloud" on it; such as mortgage claims, tax liens, title claims, judgments, or mechanic's liens against it; the grantee may hold the grantor liable.

Grantee: The party in the deed who is the buyer or the recipient.

Grantor: The party in the deed who is the seller or the giver.

Hazard Insurance: Protects against damages caused to property by fire, windstorms, and other common hazards.

HUD: U.S. department of Housing and Urban Development. Office of Housing / Federal Housing Administration within HUD insures home mortgage loans made by lenders and sets minimum standards for such homes.

Interest: A charge paid for borrowing money. **Len:** A claim by one person on the property of another as security for money owed. Such claims may include obligations not met or satisfied, judgments, unpaid taxes, materials, or labor.

Listing Agreement: Contract between a Real Estate Broker and an owner of real property whereby it is agreed that the broker will perform as the seller's agent for the express purpose of selling the property under contract. This agreement sets the listing price and terms in return for a fee or commission. It usually is made for a set length of time after which it expires. There are three basic types of listing agreements; Agency Listing, Exclusive Listing and Open Listing.

Marketable Title: A title that is free and clear of objectionable liens, clouds, or other title defects. A title which enables an owner to sell his property freely to others and which others will accept without objection.

Mortgage: A lien or claim against real property given by the buyer to the lender as security for money borrowed. Under government-insured or loan-guarantee provisions, the payments may include escrow amounts covering taxes, hazard insurance, water charges, and special assessments. Mortgages generally run from 10 to 30 years, during which the loan is to be paid off.

Mortgage Commitment: A written notice from the bank or other lending institution saying it will advance mortgage funds in a specified amount to enable a buyer to purchase a house.

Mortgage Insurance Premium: The payment made by a borrower to the lender for transmittal to HUD to help defray the cost of the FHA mortgage insurance program and to provide a reserve fund to protect lenders against loss in insured mortgage transactions. In FHA insured mortgages this represents an annual rate of one-half of one percent paid by the mortgagor on a monthly basis.

Mortgage Note: A written agreement to repay a loan. The agreement is secured by a mortgage, serves as proof of an indebtedness, and states the manner in which it shall be paid. The note states the actual amount of the debt that the mortgage secures, the interest rate, and renders the mortgagor personally

responsible for repayment.

Mortgagee: The lender in a mortgage agreement.

Mortgagor: The borrower in a mortgage agreement.

Open Listing: A listing contract whereby a property owner agrees to pay a fee or commission to the listing broker if the broker or their sales agent presents the seller with a bona fide offer that meets the specified price and terms. There is no Exclusive Right to Sell and the offer must be brought before any other offer is presented or accepted. It is not required that the offer be accepted by the owner for the commission to have been earned. For other types of listing agreements, see Agency Listing and Exclusive Listing.

Plat: A map or chart of a lot, subdivision or community drawn by a surveyor showing boundary lines, buildings, improvements on the land and easements.

Points: Sometimes called "discount points." A point is one percent of the amount of the mortgage loan. For example, if a loan is for \$100,000, one point is \$1000. Points are charged by a lender to raise the yield on his loan. On a conventional mortgage, points may be paid by either the buyer or the seller. Sellers must pay points on a VA loan.

Prepayment: Payment of mortgage loan, or part of it, before due date. Mortgage agreements often restrict the right of prepayment either by limiting the amount that can be prepaid in any one year or charging a penalty for prepayment. FHA loans may be prepaid.

Principal: The basic element of the loan as distinguished from the interest, mortgage insurance premium, hazard insurance or real estate taxes. Principal is the amount upon which interest is paid.

Quitclaim Deed: Such a deed makes no warranties as to the title, but simply transfers to the buyer whatever interest the grantor has. A deed which transfers whatever interest the maker of the deed may have in the particular parcel of land. A quitclaim deed is often given to clear the title when the grantor's interest in a property is questionable. By accepting such a deed the buyer assumes all the risks.

Real Estate Agent: A licensed sales agent working under the authority of a Real Estate Broker. In some states, agent is required to have a broker's license, in others, only a sales agent license is required. Check with a state's Board of Realtors for their requirements.

Real Estate Broker: A middleman or agent who buys and sells real estate for a company, firm or individual on a commission basis. The broker does not have title to the property, but generally represents the owner. Required to have a license and be registered in the state where practicing. Is legally responsible for complete disclosure and ultimately works for the seller, not the buyer. In many states, broker is manager over sales agents and has more training in state and federal law.

Refinancing: The process of the same mortgagor paying off one loan with the proceeds from another loan.

Restrictive Covenants: Private restrictions limiting the use of real property. Restrictive covenants are created by deed and may "run with the land," binding all subsequent purchasers of the land, or may be "personal" and binding only between the original seller and buyer. The determination whether the covenant runs with the land or is personal is governed by the language of the covenant, the intent of the parties, and the law in the State where the land is situated. Restrictive covenants that run with the land are encumbrances and may affect the value and marketability of title.

Sales Agreement: See agreement of sale.

Special Assessments: A tax imposed on property, individual lots or all property in the immediate area for road construction, sidewalks, sewers, street lights, etc.

Special Liens: A lien that binds a specified piece of property, unlike a general lien, which is levied against all one's assets. It creates a right to retain something of value belonging to another person as compensation for labor, materials, or money expended in that person's behalf. In some localities it is called "particular" lien or "specific" lien. (See lien")

Special Warranty Deed: A deed in which the grantor conveys title to the grantee and agrees to protect the grantee against title defects or claims asserted by the grantor and those persons whose right to assert a claim against the title arose during the period the grantor held title to the property. In a special warranty deed the grantor guarantees to the grantee that he has done nothing during the time he held title to the property which has or which might in the future, impair the grantee's title.

State Stamps: See documentary stamps.

Survey: A map or plat made by a licensed surveyor showing the results of measuring the land with its elevations, improvements, boundaries, and it's relationship to surrounding tracts of land. A survey is often required by the lender to assure him that a building is actually sited on the land according to its legal description.

Tax: As applied to real estate, an enforced charge imposed on persons, property or income, to be used to support the State.

Title: As generally used, the rights of ownership and possession of particular property. In real estate usage, title may refer to the instruments or documents by which a right of ownership is established (title documents) or may refer to the ownership interest one has in the real estate.

Title Insurance: Protects lenders or homeowners against loss of their interest in property due to legal defects in the title. Title insurance may be issued to either the mortgagor or as an "owner's title policy". Insurance benefits will be paid only to the "named insured" in the title policy, so it is important that an owner purchase an owner's title policy, if he desires the protection of title insurance.

Title Search or Examination: A check of the title records, generally at the local courthouse, to make sure the buyer is purchasing a house from the legal owner and there are no liens, overdue special assessments, or other claims or outstanding restrictive covenants filed in the record, which would adversely affect the marketability or value of title.

Trustee: A party who is given legal responsibility to hold property in the best interest of or "for the benefit of" another. The trustee is one placed in a position of responsibility for another, enforce-able in a court of law. (See deed of trust.)

Zoning Ordinances: The acts of an authorized local government establishing building codes, and setting forth regulations for property land usage.