

## GLOSSARY OF GENERAL REAL ESTATE TERMS

**absorption** The consumption of available vacant property in a building or market.

**abstract of title** A written, chronological record of the title records affecting rights and interests in a parcel of real property.

**acceleration** A right granted through a loan clause enabling the lender to call all sums immediately due and payable on a loan should the borrower violate certain provisions of the loan agreement.

**accretion** An increase in land caused by natural phenomena, for example a deposit of sand on a beachfront property due to a tropical storm.

**actual notice** Knowledge given or received directly through demonstrable evidence. Actual notice of ownership: reading a bill of sale, inspecting a deed, searching title records. See also *constructive notice*.

**adjustable rate mortgage** A mortgage loan having an interest rate that can be periodically raised or lowered in accordance with the movement of a financial index.

**adjusted basis** The beginning basis, or cost, of a property plus the costs of capital improvements, minus all depreciation expense.

**ad valorem tax** A real property's annual tax levied by taxing entities according to the property's assessed value.

**adverse possession** The entry, occupation, and use of another's property without the consent of the owner or where the owner took no action to evict the adverse possessor. May lead to loss of legal title if the adverse possessor fulfills certain requirements.

**agency** A fiduciary relationship between an agent and a principal where respective rights and duties are prescribed by laws of agency and by the agency agreement executed by the two parties. See *universal agency, limited agency, and fiduciary*.

**agent** The party in an agency relationship who is hired by the principal to perform certain duties. In so doing, the agent must also uphold fiduciary duties owed the principal.

**air rights** Rights in real property as they apply to the property's airspace, or all space above the surface within the parcel's legal boundaries.

**air space** The air portion of real property. In a condominium unit, the freehold space enclosed by the unit's outer walls, floor, and ceiling.

**alienation** A transfer of title to real property by voluntary or involuntary means.

**allocation of markets** An act of collusion where two or more competitors agree to limit competitive activity in portions of the market in exchange for reciprocal restrictions from the others.

**amortization** A partial or complete reduction of a loan's principal balance over the loan term, achieved by periodic payments which include principal as well as interest. See *negative amortization*.

**annual percentage rate (APR)** The total cost of credit to a borrower inclusive of finance charges and the stated interest rate, expressed as an annual rate of interest.

**antitrust laws** Legislation aimed at preventing unfair trade practices and monopoly, including collusion, price fixing, and allocation of markets.

**appraisal** An opinion of value of a property developed by a professional and disinterested third party and supported by data and evidence.

**appraiser** A duly trained and licensed professional authorized to perform appraisals for other parties.

**appreciation** An increase in the value of a property generally owing to economic forces beyond the control of the owner.

**appurtenance** A right, interest, or improvement that attaches to and transfers with a parcel of real property, such as an easement or a riparian right.

**arrears** Payment that occurs at the end of a payment term rather than at the beginning. Examples of items paid in arrears include taxes and interest.

**assemblage** A combining of contiguous parcels of real estate into a single tract, performed with the expectation that increased value will result.

**assessed value** The value of a property as established by assessors for the purpose of ad valorem taxation.

**assessment** A periodic charge payable by condominium owners for the maintenance of the property's common elements.

**asset** A tangible or intangible item of value.

**asset sale** A sale of a business involving the transfer of assets as opposed to the liabilities or stock.

**assignment** A transfer of one's entire interest in an item of real or personal property. The assignor transfers the interest to the assignee.

**assumption** In a sale of real property, the transfer of the seller's mortgage loan obligations to the buyer. Requires, in most cases, the approval of the lender.

**balloon payment** A lump sum payment on any loan which retires the remaining loan balance in full.

**base line** An imaginary latitude line within the rectangular survey system that is designated in relation to a principal meridian for purposes of identifying townships.

**beginning basis** The original cost or market value of an acquired asset.

**benchmark** A registered marker denoting an official elevation above sea level; used by surveyors to identify other elevations in the area.

**beneficiary** A party named to benefit from the yield or disposition of an asset identified in a trust, insurance policy, or will.

**bilateral contract** A contract where both parties promise to perform in exchange for performance by the other party. See *unilateral contract*.

**binder** A temporary agreement to buy a property evidenced by a valuable deposit. Receipt of the deposit binds a seller to a good-faith agreement to sell a property, provided a complete sale contract is executed within a certain period.

**blind ad** An advertisement that does not contain the identity of the advertiser.

**blockbusting** Inducing property owners to sell or rent their holdings due to an impending downturn in their property values, often owing to a change in the area's ethnic or social composition.

**broker** A direct agent of the principal who is hired for compensation to perform a stated service such as procuring a customer.

**broker's opinion of value** An estimate of a property's value rendered by a party who is not necessarily licensed, objective, or qualified. The estimate may not be a complete appraisal.

**brokerage** The business of procuring customers on behalf of clients for the purpose of completing a real estate transaction.

**business brokerage** The brokerage of a business enterprise in addition to any real property it may own or lease.

**building code** A specific standard of construction or maintenance of any aspect of an improved property established by local government officials.

**bundle of rights** A set of rights associated with ownership of property, including the rights to possess, use, transfer, encumber and exclude.

**business trust** See *syndication*.

**buydown** A loan arrangement where the borrower pays extra interest in advance for the future benefit of a lower interest rate over the loan term.

**buyer representation agreement** A broker's listing with a buyer to locate a suitable property for purchase or lease.

**buyer's market** A market characterized by an excess of sellers over buyers.

**capital gain (or loss)** The difference between the net sales proceeds of an asset and its adjusted basis.

**capital improvement** An upgrading of improved property having sufficient magnitude to constitute an addition to the property's basis. Contrasts with repair and maintenance.

**capitalization rate** The rate of return on capital an investor will demand from the investment property, or the rate of return that the property will actually produce.

**cash flow** The remaining positive or negative amount of income an investment produces after subtracting all operating expenses and debt service from gross income.

**certificate of occupancy** A document confirming that a newly constructed or renovated property has fully complied with all building codes and is ready for occupancy and use.

**certificate of title** A document expressing the opinion of a title officer or attorney that a property seller is in fact the owner of good title based on a review of title records.

**chain of title** Successive property owners of record dating back to the original grant of title from the state to a private party.

**chattel** An item of personal property.

**closing** A meeting of principal parties where a seller transfers title and a buyer pays monies owed the seller and lender.

**closing statement** A financial summary and settlement of a property transaction indicating sums due and payable by the buyer and seller.

**cloud** An encumbrance or claim on title to property impeding or diminishing its marketability.

**co-brokerage** A brokerage practice where agents and brokers outside of the listing broker's agency assist as subagents in procuring a customer in exchange for portions of the commission.

**collateral** Property lien by a lender as security for a loan.

**collusion** An unlawful agreement between competitors to monopolize a market, disadvantage other competitors, or otherwise undertake activities in violation of fair trade laws.

**color of title** A defective title transfer or the transfer of a defective title where the new owner is originally unaware of the defect. Color of title may be used as a grounds for adverse possession, which, if successful, would nullify the original defect.

**commingling** An unlawful practice of mixing escrow funds with the agency's operating funds.

**common elements** 1. Portions of a condominium property that are owned by all unit owners, for example the grounds, parking facilities, lobby, and elevators. 2. Portions of a commercial property used by all occupants as well as the public, for which the tenants may have to share in the repair and maintenance costs.

**common law** A body of law developed by court judgments, decrees, and case decisions.

**community property** A system of property ownership established by law which generally defines rights of property ownership of spouses; community property is co-owned by spouses, and separate property is owned by a single spouse. Generally, property acquired during the marriage with jointly held funds is community property.

**comparable** A property having similar characteristics to a subject property in an appraisal. The value or sale price of the comparable is used to estimate the value of the subject.

**comparable sales approach** See *sales comparison approach*.

**comparative market analysis (CMA)** A method used by brokers and salespeople for estimating the current value of a property using sale price data from similar properties. Not to be confused with a bona fide appraisal performed by a licensed appraiser.

**concurrency** A local, county, or regional planning policy that requires developers to correct foreseen negative impacts of a development during the construction period of the project itself rather than afterwards; for example, widening a road during construction to accommodate a future increase in traffic.

**condemnation** 1. A decree by a court or municipal authority that a parcel of private property is to be taken for public use under the power of eminent domain. 2. A government order that a particular property is no longer fit for use and must be demolished.

**condominium estate** An estate distinguished by fee simple ownership of the airspace of a unit plus an undivided interest with the other unit owners in the overall property's common elements.

**consideration** An item of tangible or intangible value, or one's promise to do or not do some act which is used as an inducement to another party to enter into a contract.

**constructive notice** Knowledge one could or should have, according to the presumption of law; a demonstration to the public of property ownership through title recordation, "for all to see." See *actual notice*.

**contingency** A condition that must be satisfied for a contract to be binding and enforceable.

**contract** A potentially enforceable agreement between two or more parties who agree to perform or not perform some act. If valid, the contract is enforceable, with limited exceptions.

**contract for deed** A financial contract where a seller retains legal title to a property and gives the buyer equitable title and possession over a period of time. During the contract period, the seller finances all or part of the purchase price. If the buyer makes timely payments and abides by all contract provisions, the seller conveys legal title at the end of the contract period.

**contribution** The increment of market value added to a property through the addition of a component or improvement to the property. Not to be confused with the cost of the component.

**conventional loan** A permanent long-term loan that is not FHA-insured or VA-guaranteed.

**conversion** 1. Changing real property to personal property, and vice versa. 2. An illegal act of appropriating escrow funds for payment of an agency's operating expenses.

**conveyance** A voluntary transfer of real property interests.

**cooperative estate** Ownership of shares in a cooperative association which acquires a multi-unit dwelling as its primary asset. Shareholders also receive a proprietary lease on a unit for the duration of their share ownership.

**cost approach** A method for determining value that takes into account the cost of the land and the replacement or reproduction cost of the improvements net of estimated depreciation.

**cost recovery** See *depreciation*.

**counteroffer** Any new offer or amended offer made in response to an offer. See *offer*.

**covenant** A written warrant or promise set forth in a contract or other legal document by one or both of the parties to the contract.

**credit** 1. An accounting entry on a closing statement indicating an amount a party has paid or is to receive. 2. Loan funds advanced to a borrower.

**credit evaluation** A lender's opinion of a borrower's ability to repay a loan in view of financial capabilities and past repayment patterns.

**curtesy** A widower's life estate claim to portions of his deceased spouse's real property. See also *dower*.

**customer** In agency law, a party outside of the fiduciary relationship of client and agent. If an agent treats a customer as a client, an implied agency may result.

**datum** A standard elevation reference point used by surveyors to measure elevations of property in an area.

**debit** An accounting entry on a closing statement indicating an amount a party must pay.

**debt coverage ratio** An underwriting equation reflecting how much debt service an investment property can reasonably afford to pay out of its net operating income; used to identify how large a loan the property can afford given an interest rate and loan term.

**debt ratio** An underwriting equation that is used to determine how much debt an individual can reasonably afford in view of the party's or household's income.

**debt service** Periodic payments of interest and/or principal on a mortgage loan.

**Deed-in-lieu-of-foreclosure** An instrument used to convey mortgaged property back to the lender rather than have the lender foreclose on the property.

**deed in trust** An instrument used to convey real property to the trustee of a land trust. The trustor is also the beneficiary. See *land trust*.

**deed of trust** An instrument used by a borrower to convey title to mortgaged property to a trustee to be held as security for the lender, who is the beneficiary of the trust.

**deed restriction** A provision in a deed that limits or places rules on how the deeded property may be used or improved.

**defeasible fee** A fee estate where ownership is perpetual, provided that usage restrictions or other conditions stated in the deed are upheld. If not, the fee reverts to the grantor either automatically (determinable fee) or by the grantor's actions (condition subsequent).

**deficiency judgment** A court order enabling a damaged lender to attach a lien on the defaulted borrower's property for an amount equal to the difference between the debt and the proceeds of a foreclosure sale.

**demand** A quantity of a product or service that is desired for purchase, lease, or trade at any given time.

**density** A measure of the degree of residential land use within a given area for purposes of residential zoning and land use control.

**deposit** Valuable consideration accompanying an offer to purchase real estate that signifies the offeror's good faith intention to complete a sale or lease contract.

**depreciable basis** The portion of a property's total basis that may be depreciated, generally the basis of the improvements, since land cannot be depreciated.

**depreciation** 1. A non-cash expense taken against the income of investment property that allows the owner to recover the cost of the investment through tax savings. 2. A loss of value to improved property.

**descent and distribution, laws of** A body of state-level laws that stipulates how an estate will be passed on to heirs in the absence of a valid will.

**determinable fee** A defeasible fee estate where title automatically reverts to the grantor if usage conditions stated in the deed are violated.

**devise** A transfer of real or personal property from the devisor to the devisee(s) by means of a will.

**discounting** A financial practice of reducing the value of dollars received in the future by an amount that reflects the interest that would have been earned if the dollars had been received today. Performed to measure the present value of an investment's future income.

**discounted cash flow analysis** A financial analysis to identify the discounted value of the cash flow of an investment over a given number of years. See *discounting* and *cash flow*.



**discrimination in housing** A failure to provide equal opportunity for persons to acquire or finance housing based on race, color, religion, national origin, sex, handicapped status, marital status, or family status.

**disintermediation** Direct investment without the intermediation of a bank or other depository institution to make loans and other investments.

**documentary stamp** A tax stamp affixed to a property document or record as evidence that the owner has paid taxes related to the financing or transfer of real property.

**dominant tenement** The property that benefits from the existence of an easement appurtenant. The holder of the easement is the dominant tenant. See *servient tenement*.

**dower** A widow's life estate interest in portions of her deceased spouse's real property.

**dual agency** Representing both principal parties to a transaction.

**due on sale** A loan provision defining the lender's right to accelerate a note upon the transfer of collateralized property.

**earnest money escrow** An impound account used for the safekeeping of a buyer's earnest money deposit; accompanied by specific instructions to the escrow agent for holding and disbursing the funds.

**easement** An interest in real property giving the interest holder the right to use defined portions of another's property. May or may not attach to the estate.

**economic life** The period during which an improvement is expected to remain useful in its original use. Establishes the improvement's annual depreciation amounts in appraisal. Depreciation in tax accounting is determined by a property's cost recovery class, which is related to economic life.

**economic obsolescence** A loss of value in a property because of external factors generally beyond the control of the owner, for example, a municipality's lack of funds to improve deteriorated roadways. Also called external obsolescence.

**effective gross income** The actual income of an investment property before expenses, expressed as total potential income minus vacancy and collection losses. **elective share** A right of a surviving spouse to claim a prescribed portion of the decedent's real and personal property in place of the provisions of the decedent's will.

**emblems** Plants and crops considered personal property, since human labor is required for planting, growing and harvesting.

**eminent domain** A power of a government entity to force the sale of private property for subsequent public use.

**encroachment** An unauthorized physical intrusion of one's real property into the real property of another.

**encumbrance** An interest, right or intrusion that limits the freehold interest of an owner of real property or otherwise adversely affects the marketability of title.

**enforceability** Legal status of a valid contract or other document that a court of law will force to be performed.

**equalization** An averaging of assessed valuations in an area to compensate for ad valorem tax inequities.

**equilibrium** A theoretical market state in which the forces of supply and demand are in balance.

**equitable title** An interest that gives a lienholder or buyer the right to acquire legal title to a property if certain contractual conditions occur.

**equity** That portion of a property's value owned by the legal owner, expressed as the difference between the property's market value and all loan balances outstanding on the property.

**equity of redemption** A mortgagor's right to pay off a defaulted mortgage and reclaim the property, provided the redemption occurs before the completion of the foreclosure sale.

**escalator clause** A lease clause providing for an increase in rent.

**escheat** A reversionary transfer of real property to the state or county when the legal owner dies without a will and without heirs.

**escrow** 1. A trust or impound account used for the proper handling of funds and documents in the closing of a real property transaction. 2. An account that a lender requires a borrower to establish to ensure that adequate funds will be available for payment of taxes and insurance on a mortgaged property.

**estate** 1. A set of rights to real property that includes the right of possession. 2. The totality of one's personal and real property ownership.

**estate in land** An estate.

**estoppel** A legal restraint to prevent a person from claiming a right or interest that is inconsistent with the person's previous statements or acts. An estoppel certificate documents the party's initial position or act, which cannot be contradicted later.

**ethics** Standards governing proper and professional business practices.

**eviction** Removal of a tenant from a property because of a lease default.

**evidence of title** Actual or constructive notice of real property ownership, including opinion of title, certificate of title, and title insurance.

**exclusion** One of the bundle of legal rights to real property enabling the owner to prevent others from entry or use.

**exclusive agency** A listing agreement which pays the listing broker a commission if anyone other than the property owner procures a customer..

**exclusive right to sell** A listing agreement which pays the listing broker a commission if anyone at all procures a customer.

**executory contract** A completed agreement which enjoins one or both principal parties to perform certain actions in order for the contract to become fully executed.

**facilitator** A transaction broker who assists principal parties in completing a transaction without acting as a fiduciary agent of either party.

**fair financing laws** Anti-discrimination legislation designed to ensure that all parties have equal access to mortgage financing.

**fair housing laws** Anti-discrimination legislation designed to ensure equal opportunity in housing to all home buyers.

**Federal Deposit Insurance Corporation** A quasi- governmental agency that insures deposits of depository institutions and otherwise develops regulations for the banking industry.

**Federal Home Loan Mortgage Corporation (Freddie Mac)** A major secondary mortgage market organization which buys conventional, FHA, and VA loans and sells mortgage-backed securities.

**Federal Housing Administration** An agency of the Department of Housing and Urban Development which insures permanent long-term loans that meet certain qualifications.

**Federal National Mortgage Association (Fannie Mae)** A government-sponsored agency in the secondary mortgage market which buys conventional, FHA, and VA loans, sells mortgage-backed securities, and guarantees payment of principal and interest on the securities.

**Federal Reserve System** The principal regulator of the money supply as well as of the American banking system.

**fee simple** An estate representing the highest form of legal ownership of real property, particularly the fee simple absolute estate.

**fiduciary** The agent in an agency relationship; receives the trust and confidence of the principal and owes fiduciary duties to the principal.

**fiduciary duties** Duties of an agent to the principal in an agency relationship, including skill, care, diligence, loyalty, obedience, confidentiality, disclosure, and accounting.

**fixture** An item permanently attached to land so as to be defined as real property.

**foreclosure** A procedure for forcing sale of a secured property to satisfy a lienholder's claim.

**freehold estate** An ownership estate of indeterminable duration; contrasts with a leasehold estate.

**full-service lease** A lease requiring the landlord to pay all of a property's operating expenses, including those that pertain to an individual tenant.

**functional obsolescence** A loss of value in an improved property because of design flaws or failure of the property to meet current standards. May be curable or incurable.

**general agency** A fiduciary relationship which authorizes the agent to conduct a broad range of activities for the principal in a particular business enterprise. May or may not include authority to enter into contracts.

**general lien** A lien against any and all property owned by a lienee.

**general partnership** A for-profit business where two or more co-owners agree to share management responsibilities and profits. Does not involve silent partners, as in a limited partnership.

**general warranty deed** A bargain and sale deed containing the assurance that the grantor will defend against any and all claims to the title.

**goodwill** An intangible business asset valued at the difference between the sale price and the value of all other assets of the business.

**Government National Mortgage Association (Ginnie Mae)** A division of HUD which guarantees FNMA mortgages and securities backed by pools of VA- guaranteed and FHA-insured mortgages.

**government survey system** See *rectangular survey system*.

**grantee** A party who receives a right, interest, or title to real property from another.

**grantor** A party who transfers a right, interest, or title to real property to another.

**gross easement** A personal right to use another's property, granted by the owner; does not attach to the estate, and there are no dominant or servient tenements.

**gross income multiplier** A shortcut method for estimating the value of an income property. The procedure involves multiplying the property's gross annual income times a multiplier that reflects the ratio between gross annual income and sale price that is typical for similar properties in the area.

**gross rent multiplier** A shortcut method for estimating the value of an income property. The procedure involves multiplying the property's gross monthly rent times a multiplier that reflects the ratio between gross monthly rent and sale price that is typical for similar properties in the area.

**gross lease** See *full service lease*.

**ground lease** A lease of the land-only portion of a parcel of real property

**hazard insurance** Insurance against loss or damage to real property improvements; required by most mortgage lenders to protect the collateral.

**highest and best use** A theoretical use of a property that is legally permissible, physically possible, financially feasible, and maximally productive, usually in terms of net income generation.

**holographic will** A will prepared entirely in the testator's handwriting, complete with date and signature.

**home equity loan** A junior mortgage loan on a residence, secured by portions of the owner's equity in the home.

**homestead laws** Laws that protect a homeowner against loss of the homeowner's principle residence to a sale forced by creditors to collect debts. Homestead laws also protect the interests of individual spouses by requiring both spouses to sign any conveyance of the homestead property.

**homestead tax exemption** An exemption of a portion of the assessed value of a homeowner's principal residence from ad valorem taxation.

**hypothecation** Use of real property as collateral for a mortgage loan.

**implied agency** An agency relationship that arises by implication from the actions and representations of either agent or principal.

**implied contract** An unstated or unintentional agreement that may be deemed to exist by implication because of acts or statements by any of the parties to the agreement.

**implied listing** See *implied agency*.

**improvement** Any manmade structure or item affixed to land.

**income capitalization** A method of appraising the value of a property by applying a rate of return to the property's net income.

**income ratio** An underwriting ratio that relates a borrower's gross or net income and the debt service of a loan; used to determine how large a loan a borrower can reasonably afford.

**independent contractor** A sales agent who works for a broker but is not legally an employee. The employer exerts only limited control over the contractor's actions, does not provide employee benefits, and does not withhold taxes from the contractor's pay.

**inferior lien** A lien whose priority is subordinate to that of a superior (tax) lien. Priority among inferior liens is established according to the time of recordation, with the exception of the mechanic's lien. Also called junior lien.

**installment contract** See *contract for deed*.

**interest** 1. A right to real property. 2. A lender's charge for the use of the principal amount of a loan.

**interest rate** The percentage of a loan amount that a borrower must pay a lender annually as interest on a loan amount.

**intermediation** Investment by a depository institution on behalf of depositors.

**internal rate of return** The rate at which inflows from an income property investment must be discounted in order for the total inflows over time to equal the initial outlay, expressed as a percent; may include projected proceeds from the future sale of the property as an inflow.

**interval ownership** See *time-share*.

**intestate** Legal condition of a person who dies without leaving a will.

**investment** Expenditure to purchase an asset with the expectation of deriving a future profit or benefit from the asset.

**involuntary alienation** A transfer of title to real property without the consent or against the will of the owner, for example, eminent domain, foreclosure, and adverse possession.

**involuntary lien** A lien imposed by legal process irrespective of the owner's wishes or consent.

**joint tenancy** A form of real property ownership in which co-owners share all rights and interests equally and indivisibly; entails right of survivorship. Parties must establish tenancy at the same time and with a single deed.

**joint venture** A partnership created for a specific, pre-determined business endeavor, after which the joint venture is usually dissolved.

**judgment** A court decision resulting from a lawsuit. If a creditor sues to collect a debt, a favorable ruling is followed by a judgment lien against the defaulting borrower's property.

**judicial foreclosure** A court proceeding triggered by a foreclosure suit. Involves notice, debt acceleration, the termination of the owner's interests in the property, and a public sale where proceeds are applied to the debt.

**junior lien** See *inferior lien*.

**land** The surface area of the earth, all natural things permanently attached to the earth, and everything beneath the surface to the earth's center and above the surface extending upward to infinity.

**land contract** See *contract for deed*.

**land trust** A trust in which a trustor conveys a fee estate to a trustee and names himself or herself as beneficiary. The beneficiary in turn controls the property and the actions of the trustee.

**land use control** Regulation of how individual owners use property in a municipality or planning district. Control patterns are generally in accordance with a master plan.

**landlocked** A parcel of property lacking legal access to a public thoroughfare; requires a court-ordered easement by necessity to relieve the condition.

**law of agency** A body of law defining roles, duties and responsibilities of an agent and a principal. Laws also set forth standards of conduct agent and principal owe to a customer.

**lease** A legal contract and instrument of conveyance which transfers to the tenant, or lessee, a leasehold fee for a certain duration. The lease contract sets forth all tenant and landlord covenants, financial terms, and grounds for default. The landlord is referred to as the lessor.

**legal life estate** A life estate established by operation of law rather than by the actions or wishes of the property owners. Examples are homestead law, dower, curtesy, and elective share.

**legal title** Full legal ownership of property and the bundle of rights as they apply to it. Contrasts with equitable title.

**leasehold estate** An estate that entails temporary rights of use, possession, and to an extent, exclusion, but not legal ownership. Compare *freehold estate*.

**legal description** A description of a parcel of property which accurately locates and identifies the boundaries of the subject parcel to a degree acceptable by local courts of law.

**leverage** The relationship between the yield rate of an investment and the interest rate of funds borrowed to finance the investment. If the yield rate is greater than the loan rate, positive leverage results. If the yield rate is less than the loan rate, negative leverage results.

**liability** 1. An accounting entry representing a claim against the assets of a business by a creditor. 2. A condition of vulnerability to lawsuits seeking redress for potentially wrongful acts or statements.

**license** 1. Legal authorization to conduct business. 2. An individual's personal right to use the property of another for a specific purpose. Revocable at any time at the owner's discretion. Does not attach to the property and terminates upon the death of either party.

**lien** A creditor's claim against real or personal property as security for a property owner's debt. A lien enables a creditor to force the sale of the property and collect proceeds as payment toward the debt.

**lien priority** The order in which liens against a property are satisfied; the highest priority lien receives sale proceeds from a foreclosure before any other lien.



**lien theory state** A state whose laws give a lender on a mortgaged property equitable title rather than legal title. The mortgagor in a lien theory state retains legal title. See *title theory state*.

**life estate** A freehold estate that is limited in duration to the life of the owner or other named person. On the death of this person, legal title passes to the grantor or other named party.

**liquidated damages** In a contract, a clause that expressly provides for compensation a defaulting party owes the damaged party. In the absence of such a clause, a damaged party may sue for unliquidated damages.

**liquidity** The degree to which an investment is readily marketable, or convertible to another form of asset. If immediately salable, an investment is liquid; the longer it takes to sell, the more illiquid the investment. Real property is relatively illiquid in comparison with other types of investment.

**lis pendens** A public notice in a foreclosure proceeding that the mortgaged property may soon have a judgment issued against it. Enables other investors to join in the proceeding if they wish to collect their debts.

**listing** A legal contract that establishes and controls the dynamics of the agency relationship between principal and agent. The principal to the listing may be buyer, seller, landlord, or tenant.

**littoral rights** A set of water rights defined by state law relating to properties abutting navigable bodies of water such as lakes and bays. Generally, a property owner enjoys usage rights but owns land only to the high water mark. See *riparian rights* and *prior appropriation*.

**living trust** A trust established during one's lifetime in which the trustor conveys legal title to property to a trustee and names another party as beneficiary. The trustee discharges management duties and the beneficiary receives all profit and gain net of the trustee's fees.

**loan commitment** A lender's written pledge to lend funds under specific terms. May contain deadlines and conditions.

**loan-to-value ratio (LTV)** An underwriting ratio that relates the size of a loan to the market value of the collateral. The closer the loan value is to market value, the riskier the loan is for the lender, since the lender is less likely to recover the debt fully from the proceeds of a foreclosure sale.

**lot and block system** A method for legally describing property in a subdivision where lots are identified by block and number. A recorded metes and bounds or rectangular survey description of the subdivision underlies the lot and block system.

**market** 1. Buyers and sellers exchanging goods and services through the price mechanism. 2. The totality of interactions between supply and demand for a specific set of products or services in a particular geographic area.

**market equilibrium** See *equilibrium*.

**market value** An opinion of the price at which a willing seller and buyer would trade a property at a given time, assuming a cash sale, reasonable exposure to the market, informed parties, marketable title, and no abnormal pressure to transact.

**marketable title** A condition of title to a property where there are no claims, liens, or encumbrances clouding title or impeding the property's transferability.

**marketing plan** An agent's design for procuring a customer for a client, including selling and promotional activities.

**master deed** A deed used to convey land to a condominium developer.

**limited agency** An agency relationship which restricts the agent's authorizations to a specific set of duties. The relationship usually terminates on performance of these duties, as in a real estate broker's listing agreement. Also called special agency.

**limited partnership** A business enterprise consisting of general and limited partners: general partners manage the affairs of the business while limited partners are silent investors.

**master plan** An amalgamated land use plan for a municipality, county, or region which incorporates community opinion, the results of intensive research, and the various land use guidelines and regulations of the state. Acts as a blueprint for subsequent zoning ordinances and rulings.

**materialman's lien** See *mechanic's lien*

**mechanic's lien** A junior lien enabling property builders, suppliers, and contractors to secure debt arising from labor and materials expended on a property. Distinguished by its order or priority, which is based on when the work was performed rather than when the lien was recorded.

**meridian** A north-south line used in the rectangular survey system of legal descriptions.

**metes and bounds** A method of legally describing property which utilizes physical boundary markers and compass directions for describing the perimeter boundaries of a parcel.

**millage rate** The ad valorem tax rate of a taxing district, derived by dividing revenues required from taxpayers by the district's tax base. If the millage rate is 30, the tax rate is 3%, or \$3.00 per \$100 of assessed valuation (net of exemptions).

**mill** One one-thousandth of a dollar (\$.001). Used to quantify the ad valorem tax rate in dollars.

**mineral rights** Separable subsurface rights to mineral deposits; transferrable by sale or lease to other parties.

**misrepresentation** A statement or act, or failure to make a statement or act, that misleads a party in a transaction. May be intentional or unintentional. May warrant legal recourse or license revocation.

**monument** A fixed, artificial or natural landmark used as a reference point in a metes and bounds legal description.

**mortgage** A legal document wherein a mortgagor pledges ownership interests in a property to a lender, or mortgagee, as collateral against performance of the mortgage debt obligation.

**mortgage financing** Financing that uses mortgaged real property as security for borrowed funds.

**multiple listing service** An organization of brokers who agree to cooperate in marketing the pooled listings of all members.

**mutual consent** Consent by all principals to a contract to all provisions of the contract. A requirement for validity.

**negative amortization** A situation in which the loan balance of an amortizing loan increases because periodic payments are insufficient to pay all interest owed for the period. Unpaid interest is added to the principal balance.

**negotiable instrument** A legal instrument that can be sold, traded, assigned, or otherwise transferred to another party, such as a promissory note.

**net lease** A lease which requires a tenant to pay rent as well as a share of the property's operating expenses to the extent provided for in the lease contract.

**net listing** A listing which states a minimum sale or lease price the owner will accept, with any excess going to the broker as a commission. Professionally discouraged, if not illegal.

**net operating income** The amount of pre-tax revenue generated from an income property after accounting for operating expenses and before accounting for any debt service.

**non-conforming use** A land use that is not consistent with the current zoning ordinance. May be legal or illegal.

**non-judicial foreclosure** A forced sale of mortgaged property without a formal foreclosure suit or court proceeding. Authorized through a "power of sale" clause in a mortgage or trust deed document.

**non-prorated expense** An expense incurred by buyer or seller in closing a real estate transaction that is not shared with the other party. Examples include attorney fees, documentary tax stamps, and lender fees.

**note** An agreement to repay a loan of an indicated amount under certain terms.

**notice of title** Actual or recorded public evidence of real property ownership. See *actual notice* and *constructive notice*.

**null and void** Without legal force or effect. See *void*.

**obsolescence** A loss of property value because of functional or economic (external) factors. See *functional obsolescence* and *economic obsolescence*.

**offer** A proposal to enter into a binding contract under certain terms, submitted by an offeror to an offeree. If accepted without amendment, an offer becomes a contract.

**offer and acceptance** A process that creates a contract. Acceptance is the offeree's unequivocal, manifest agreement to the terms of an offer. The offer becomes a contract when the acceptance has been communicated to the offeror.

**open listing** A non-exclusive listing which pays an agent a commission only if the agent is procuring cause of a ready, willing, and able customer.

**operating expense** A recurring or periodic expense necessary for the operation of an income property. Examples include utilities, management, and ad valorem tax expenses. Excluded are debt service and the property's income tax liability.

**opinion of title** An attorney's or title officer's opinion of the condition and marketability of title to a parcel of property based on a recent search of title records by a competent party.

**opinion of value** See *broker's opinion of value*.

**option** A unilateral contract in which an owner, or optionor, grants a buyer or tenant, the optionee, a future right to be exercised before a deadline, in exchange for valuable consideration. The terms of the right, such as a right to purchase or lease, must be clearly stated and cannot be changed during the option period.

**origination fee** A lender's charge for funding a loan.

**parallel** See *base line*.

**parol contract** An oral agreement. Potentially enforceable if validly created.

**partition suit** A lawsuit requesting the court to alter or cancel the interests of a co-owner in a parcel of real property. Initiated when co-owners do not agree to make the change voluntarily.

**party wall easement** An easement appurtenant where owners of two adjacent properties share an improvement along the property boundary. The parties agree not to perform acts that would adversely affect the other party's interest in the shared improvement.

**percentage lease** A retail property lease which requires a tenant to pay a minimum amount of rent plus an additional increment that reflects the sales achieved by the tenant.

**performance** Fulfillment of the terms of a contract.

**periodic tenancy** A leasehold interest for a lease term where, in the absence of default, the term automatically renews itself until proper notice of termination is provided by either party.

**personal property** All property that is not considered real property; all property that is not land or permanently attached to land, excepting trade fixtures and emblements.

**physical deterioration** A loss of value to property because of decay or natural wear and tear. Exacerbated by deferred maintenance, or the failure to repair or maintain property on a regular basis.

**planned unit development (PUD)** A multi-use development project requiring special zoning and involving deed restrictions.

**plat** A map of one or more properties indicating each parcel's lot and block number, boundaries, and dimensions.

**plottage** An increment of value added by the assemblage of contiguous properties.

**point** One-percent of a loan amount, a lender's finance charge.

**point of beginning (POB)** The origination and termination point in a metes and bounds legal description.

**police power** A state's or local government's legal authority to create, regulate, tax, and condemn real property in the interest of the public's health, safety, and welfare.

**potential gross income** The maximum amount of revenue a property could generate before accounting for vacancy, collection loss, and expenses. Consists of total rent with full occupancy at established rent rates, plus other income from any source.

**power of attorney** An authorization granting a fiduciary the power to perform specified acts on the principal's behalf. Used to establish a universal agency relationship.

**present value** The discounted value of an amount of money to be received in the future that accounts for the interest that would have been earned if the money had been received in the present.

**price fixing** An act of collusion where competitors agree to establish prices at certain levels to the detriment of customers or other competitors.

**price mechanism** An interaction of supply and demand that determines a price a buyer and seller agree is the value of a good or service to be exchanged. A quantification of value in a transaction.

**primary mortgage market** Lenders and mortgage brokers who originate mortgage loans directly to borrowers.

**principal** 1. The employer in an agency relationship, to whom the agent owes fiduciary duties. 2. The loan balance to which interest charges are applied.

**principal meridian** A designated meridian in the rectangular survey system that is used in conjunction with a base line to identify ranges, tiers, and townships.

**prior appropriation** A legal doctrine granting a state the power to control and regulate the use of water resources within state boundaries.

**priority** See *lien priority*.

**private grant** A voluntary conveyance of property by a private party.

**private mortgage insurance (PMI)** An insurance policy, purchased by a borrower, that protects a lender against loss of that portion of a mortgage loan which exceeds the acceptable loan-to-value ratio.

**probate** A court proceeding to validate and distribute a decedent's estate to creditors, tax authorities, and heirs.

**procuring cause** A party who was first to obtain a ready, willing, and able customer, or a party who expended the effort to induce the customer to complete the transaction.

**promissory note** See *note*.

**property** An item that has a legal owner, along with the attendant rights to legal ownership.

**property management** The business of managing the physical and financial condition of an investment property for an owner.

**proprietary lease** A cooperative owner's lease on a unit in the cooperative building. The lease runs concurrently with the owner's ownership interest in the cooperative.

**proration** Apportionment of expense and income items at closing. Examples of items prorated between buyer and seller include interest, insurance, taxes, and rent.

**public grant** A voluntary conveyance of property by a government entity to a private party.

**pur autre vie** A life estate where the grantee's interest endures over the lifetime of another party named by the grantor.

**purchase money mortgage** A mortgage loan where a seller lends a buyer some or all of the purchase price of a property.

**qualification** 1. A mortgage underwriting procedure to determine the financial capabilities and credit history of a prospective borrower. 2. A listing and marketing procedure to determine the needs and urgency of a client or customer.

**quiet enjoyment** A right of an owner or tenant to use a property without interference from others.

**quiet title suit** A court proceeding to clear a property's title of defects, claims, and encumbrances.

**quit claim deed** A deed which conveys one's possible ownership interests to another party. The grantor does not claim to own any interest and makes no warranties.

**range** A north-south area bounded by consecutive meridians.

**real estate** Land and all manmade structures permanently attached to it.

**real estate investment trust (REIT)** An investment in which owners purchase shares in a trust which owns or acquires real property. Investors receive income and gain on a per-share basis.

**real property** Real estate and the bundle of rights associated with ownership of real estate.

**reconciliation** An appraiser's weighted blending of the results of different approaches to value into a final value estimate.

**recording** An act of entering into public title records any document or transaction affecting title to real estate. Recording gives constructive notice of one's rights and interests in a property and establishes the priority of inferior liens.

**rectangular survey system** A method of legally describing real property which uses longitude and latitude lines to identify ranges, tiers, and townships. Also called government survey system.

**redemption period** A statutory period after a foreclosure sale during which the foreclosed owner may buy back the property by paying all sums due the lender. See also *equity of redemption*.

**redlining** The illegal lending practice of restricting loans by geographical area.

**refinancing** Obtaining a new loan to replace an existing loan, usually to take advantage of lower interest rates, to obtain a longer-term loan, or to liquidate equity.

**Regulation Z** A fair financing law applying to residential loans; lenders must disclose financing costs and relevant terms of the loan to the borrower.

**remainder** A future freehold interest in a life estate held by a third party remainderman named by the grantor. When the life tenant dies, the estate passes to the remainderman. See also *reversion*.

**replacement cost** The cost of constructing a functional equivalent of a property at current labor and materials costs using current construction methods.

**reproduction cost** The cost of constructing a precise duplicate of a property, at current labor and materials prices.

**reserve allowance** An amount of money allocated from a property's income to cover future repair and maintenance costs.

**restriction** A limitation on the use of a property imposed by deed, zoning, state statute, or public regulation.



**reversion** 1. A transfer of title from a life estate tenant back to the grantor. 2. Proceeds from the sale of a property at the end of a holding period in a cash flow analysis.

**revocation** 1. Cancellation of a contract. 2. Cancellation of a real estate license.

**right of redemption** See *equity of redemption*.

**riparian rights** Water rights of a property that abuts a watercourse (stream, river).

**sale contract** A contract for the purchase and sale of real property containing all terms and provisions of the sale and describing the responsibilities of the parties.

**sale leaseback** A sale of a property executed simultaneously with a lease on the property from the buyer back to the seller as tenant.

**sales comparison approach** A method of appraising property that relies on the principle that a property is generally worth what other, similar properties are worth. See *substitution*.

**salesperson** A licensed employee or independent contractor hired by a broker to perform authorized activities on behalf of the broker's client.

**scarcity** The degree of unavailability of a product or service in relation to demand for the product or service. A critical element of value.

**second mortgage** A mortgage loan whose lien priority is subordinate to a senior, or first, mortgage.

**secondary mortgage market** Lenders, investors, and government agencies who buy, sell, insure, or guarantee existing mortgages, mortgage pools, and mortgage-backed securities.

**section** An area defined by the rectangular survey system and consisting of 1/36th of a township, or one square mile.

**securities license** An authorization to broker securities. The Series 39 and 22 securities licenses authorize licensees to broker real estate securities.

**security** 1. Collateral for a loan. 2. A type of personal property investment, for example, bonds, stocks, and mutual funds.

**seller financing** Any financing arrangement where a seller takes a note and mortgage from the buyer for all or part of the purchase price of the property.

**seller's market** A market condition characterized by an excess of buyers over sellers.

**senior lien** See *superior lien*.

**servient tenement** A property containing an easement that must "serve" the easement use belonging to a dominant tenement.

**severalty** See *tenancy in severalty*.

**severance** A conversion of real property to personal property through detachment of the item from the land.

**sole proprietorship** A business entity with an individual as sole owner. The death of the owner terminates the business.

**special agency** See *limited agency*.

**special assessment lien** A lien against property to secure a tax levy for a specific public improvement, such as a new road or sewer. Only properties benefitting from the improvement are taxed and liened.

**special exception** A land use in conflict with current zoning that is nevertheless authorized because of its perceived benefit to the public welfare.

**specific lien** A lien placed against a specific item of property rather than against all of an owner's property.

**specific performance** Forced performance of one's obligations in an agreement, to the letter of the agreement. A legal remedy for a damaged party to take against a defaulting party.

**statute of frauds** A law requiring certain contracts to be in writing in order to be enforceable. Examples are real property conveyances, listing agreements, and longterm leases.

**statute of limitations** A law which restricts the period during which a damaged party may seek to rescind or disaffirm a contract or take other legal actions.

**steering** The prohibited practice of channeling prospective buyers and tenants toward or away from a particular area.

**stock sale** A conveyance of an incorporated business through the purchase of the stock. Entails the purchase of all liabilities as well as assets. See also *asset sale*.

**straight-line cost recovery** An accounting method for deducting depreciation expense from income. Periodic cost-recovery charges are made in equal amounts over a depreciation period. For example, the straight-line cost recovery of a \$5,000 item over 5 years would be \$1,000 per year.

**strict foreclosure** A court proceeding which gives a creditor legal title to a lien property rather than cash proceeds from a court-ordered sale.

**subagency** An agency relationship between the client of a listing broker and other brokers and salespeople who have agreed to assist the broker in procuring a customer for the client. The assisting brokers are agents of the listing broker and subagents of the listing broker's client.

**sublease** A transfer by a tenant of portions of the rights and obligations of a lease to another party, the sublessee. The original tenant, who is sublessor in the sublease, is still lessee in the original lease and remains primarily liable to the landlord for fulfilling lease obligations.

**subordination** A voluntary or involuntary placing of a lien's priority below that of another. A mortgage lien, for example automatically subordinates to a real estate tax lien.

**substantive contact** Contact between an agent and others that is deemed relevant to a transaction; used as a benchmark to define when an agent should disclose agency status to a prospective client or customer . If a contact is substantive, the agent must disclose agency status at the time of the contact.

**substitution** An appraisal principle that holds that a buyer will pay no more for a property than the buyer would pay for an equally desirable and available substitute property. Forms the foundation for the sales comparison approach to value.

**subsurface rights** Rights and interests to whatever is beneath the surface of one's parcel of real property.

**suit for possession** A landlord's formal legal avenue for evicting a tenant.

**superior lien** 1. One of a class of liens that by law have a higher priority than any junior lien; all are tax liens. 2. A junior lien whose priority is higher than that of another lien.

**supply** The quantity of a product or service available for sale, lease, or trade at any given time.

**surface rights** Rights to the surface area of a parcel of real estate.

**survey** A formal measurement of the boundaries, dimensions, and elevations of a parcel of real estate performed by a professional surveyor. Required by lenders to identify possible encroachments, easements, and flood hazards.

**survivorship, right of** A surviving joint tenant's right to receive all rights and interests in the property enjoyed by another joint tenant in the event of the latter's death.

**syndication** A real estate investment structure in which investors provide capital and organizers provide management expertise to develop or acquire and manage investment real estate for profit.

**tax base** The total of the assessed valuations of real properties within a taxing jurisdiction, less the total of exemptions.

**tax certificate** An instrument that gives the holder the right to apply for a tax deed after paying taxes on a property and after a statutory period.

**tax deed** A deed used to convey title to property sold in a tax foreclosure.

**tax district** A local government entity authorized by state, county, or municipality to levy taxes for a particular purpose.

**tax rate** See *millage rate*.

**tax sale** A court-ordered sale of a property to satisfy unpaid real estate taxes.

**tax shelter** An investment that produces depreciation or other non-cash losses that a taxpayer can deduct from other income to reduce tax liability.

**taxable gain** Capital gain subject to taxation. See *capital gain*.

**taxable income** Annual income from an investment property that is subject to taxation, generally equal to net operating income plus reserves minus depreciation and interest expense.

**taxable value** The assessed value of a property net of all exemptions.

**tenancy** A freehold or leasehold estate held by a tenant.

**tenancy in common** An estate where each co-owner owns an electable share of the property and can transfer this share to any other party. Does not include right of survivorship; interests of deceased owners pass to heirs.

**tenancy in severalty** An estate in real property owned by a single party.

**testate** The legal condition of a person who dies leaving a valid will.

**tier** An area between consecutive parallels, as defined in the *rectangular survey system*.

**time share** A fee or leasehold interest in a property that is shared by owners who have use of the property at different times.

**title** Ownership of real property as well as evidence of such ownership; legal title.

**title insurance** A policy that protects the holder against loss arising from defects in title or documents conveying title.

**title plant** A duplicate set of title records copied from public records and maintained by a title company

**title records** Public records of real property documenting the history of ownership, claims, ownership, conveyances, legal descriptions, and surveys.

**title theory state** A state whose laws give legal title of a mortgaged property to the mortgagee until the mortgagor satisfies the terms and obligations of the loan. See *lien theory state*.

**Torrens System** A title recording system that registers title to property, as well as liens and encumbrances, on a title certificate. The certificate is the title and reflects everything there is to be known about the condition of the title.

**township** An area six miles square, bounded by two consecutive parallels and two consecutive meridians in the rectangular survey system. Contains 36 sections.

**trade fixture** A fixture necessary for the conduct of a business. Although affixed to the land, it is personal property.

**trust** A fiduciary relationship between a trustor and trustee. The trustor conveys legal title to property to the trustee, who holds and manages the estate for the benefit of another party, the beneficiary ( in a land trust, trustor and beneficiary are the same

**underwriting** 1. A process of investigating the financial capabilities and creditworthiness of a prospective borrower and granting credit to a qualified borrower. 2. The act of insuring or financing a party, business venture, or investment.

**unequal services** Services that differ in nature or quality from those normally rendered, with the alteration based on race, color, sex, national origin, or religion.

**unilateral contract** An agreement in which only one party promises to perform, contingent on the other party's performance of an optional action.

**universal agency** A fiduciary relationship which empowers an agent to perform any and all actions for a principal that may be legally delegated.

**usury** Excessive or illegal interest charged on a loan.

**utility** A determinant of the value of an item reflecting the item's ability to perform a desired function.

**vacancy** A measure of the unoccupied supply of existing space in a building or market at any point in time. A vacancy rate is the amount of vacant space divided by the total amount of existing space.

**validity** Legal status of a contract that meets requirements of: competence of parties, mutual consent, valuable consideration, legal purpose, and voluntary good faith. A prerequisite for enforceability.

**value** In general, the worth of an item as determined by its utility, desirability, scarcity, affordability, and other components and quantified as price.

**variance** A land use that conflicts with current zoning but is authorized for certain reasons, including undue hardship to comply and minimal negative impact to leave it alone.

**void** Without legal force or effect; unenforceable and null, such as an illegal contract.

**void contract** An agreement that is null and cannot be enforced.

**voidable contract** An agreement that is subject to being nullified because a party to the agreement acted under some legal disability. Only the disadvantaged party can take action to void the contract.

**water rights** Rights of a property that abuts a body of water to own or use the water. See *littoral rights*, *riparian rights*, and *prior appropriation*.

**will** Last will and testament; a written or verbal statement by a testator instructing how to distribute the testator's estate to heirs.

**yield** Investment return expressed as a dollar amount or a percent of the original investment amount

**zoning ordinance** A municipal land use regulation