

Title and Closing Process Handbook



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Table of Contents

Title and Closing Process.....	1
Title and Closing Process.....	2
Closing process in Minnesota:	2
The Closing Process Explained	4
Questions About Title Insurance	4
Types of Title Insurance	4
How Am I Protected?.....	5
Common Title Problems	5
Fraud & Forgery	5
Conflicting Wills.....	5
Missing Heirs	6
I'm refinancing, why do I need title insurance?	6
I'm buying a newly built home, do I need title insurance?	6
Finding a Local Title Company	6
How your Title Insurance Dollar is Divided Up.....	7
The HUD-1 Form Explained	9
Glossary of Title Terms	11



Title and Closing Process

Selling and buying real estate can be confusing; Title Companies are experts at making this process as stress-free as possible. When partnering with a Title Company you can be comfortable in knowing that your transaction will receive the attention it deserves. Our pledge to each customer is to give the best title policy and the best service before, during and after the closing.

Closing process in Minnesota

- Upon acceptance of the purchase agreement, the Listing Realtor deposits the earnest money and forwards the purchase agreement to the closing company administering the closing for the Seller.
- The Buyers apply for financing with their Lender.
- The Lender places an order for a Title Commitment from the Buyer's Title Company.
- The Buyer's Title Company gathers the title evidence, which includes an assessment, tax, name and county records search along with a property location inspection.
- The Buyer's Title Company examines the title evidence. The end result of the examination is a title commitment for issuing a lender's and owner's Title Insurance Policy.
- All parties receive a copy of the Title Commitment for review.
- The Seller's and Buyer's Closers review paperwork, assist in resolving any title issues, order payoffs on existing loans or contracts and facilitate the scheduling of the closing.
- The Closers set the closing date, time and location. All parties are notified.
- The Closers continue to collect necessary information and begin to prepare closing documents.
- The Lender prepares and sends the financing documents and closing instructions to the buyer's closer.
- After the Buyer's Closer receives the financing documents and closing instructions, the closer prepares the remaining closings documents and the settlement statement.
- At the Closing, the Closers will present the figures (settlement statement) and closing documentation for review and signatures. Funds are collected and disbursed at the closing.
- After the Closing, the Buyer's Title Company issues the title policies and records the documents.



ALTA NEWS

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One-Third of All Residential Real Estate Transactions Have Title Issues, According to Survey

Washington, DC— According to a 2005 member survey by the American Land Title Association (ALTA), title problems were found in 36 percent of all residential real estate transactions (new and resale homes, and refinances), up from 25 percent in 2000. The “Abstracter and Title Agent Operations Survey” tracks changes in the title industry, including the number of orders received and percentage of title issues discovered and repaired prior to closing or escrow.

According to Rande Yeager, President of ALTA, “The most frequent curative action taken last year was obtaining releases and/or obtaining pay-offs for discovered liens, such as prior or existing first or second mortgages, unpaid child and spousal support, outstanding taxes, and other judgments against the property.”

The next most common curative action, according to Yeager, was obtaining releases for assignment on deeds of trust/and or mortgages, followed closely by recording errors of names, addresses, or legal descriptions of the property.

“The booming real estate market over the last several years has increased the number of transactions significantly, which means more title problems are found,” said Yeager. “This clearly demonstrates the importance of a professional title



The Closing Process Explained

Whether you're purchasing your first home or your fifth, the day of closing should be a time of celebration. While you're busy packing, ordering phone service and scheduling movers, it's comforting to know that skilled professionals are busy working behind the scenes to make sure your closing runs smoothly.

Your first look at the settlement process may be on the day of closing, but the process itself begins much earlier. Come along for a look behind the scenes at the settlement process in action!

Once an order is received, the countdown to closing begins. Timing is essential, to make sure all the ingredients for a successful closing are in place for your arrival. When the contract or escrow agreement is received, the settlement agent will review it for completeness and accuracy. If an earnest money or deposit check is received, the settlement agent will see that it is promptly deposited into an escrow account, where the funds will remain until the time of closing.

One of the first things the settlement agent does, upon receipt of an order is to request preliminary title work. The title company searches and examines the title and prepares a title commitment or other form of title evidence. This is then forwarded to the settlement agent.

Upon receipt of the title commitment, the settlement agent checks the information for completeness and accuracy and makes note of any requirements which must be satisfied. The agent compares the commitment to other documents, such as the contract and loan closing instructions, making sure all information is consistent.

While the title evidence is being prepared, the settlement agent is busy coordinating other matters. If the contract calls for a prior mortgage to be paid off, the agent will order payoff figures from the existing lender. If the buyer is assuming the loan, an assumption package will be ordered showing the current status of the loan.

While each closing is as unique as the people attending it, much of the behind-the-scenes work leading up to the closing is fairly commonplace for the skilled professionals performing it. Ordering property inspections, surveys and termite reports are typical of what's happening behind the scenes at this point in the settlement process.

The settlement agent brings any problems or discrepancies that may be discovered to the attention of the appropriate parties so that they can be corrected. It is his or her job to facilitate cooperation, coordination and compliance between all settlement services professionals involved with the transaction. Everyone working together helps make the closing a cause for celebration!

Once the preliminary work is complete and all information on the contract, loan closing documents and title commitment has been compared and complied with, the settlement agent is ready to prepare the HUD-1 Settlement Statement.

All costs must be shown on the HUD-1. This includes costs paid at closing as well as pre-paid costs, such as earnest money deposit or loan application fee. If you are a buyer and are obtaining a loan to purchase residential property, your lender has three days from the time of the loan application to provide you with a Good Faith Estimate of your loan costs. Within those three days you should also receive a copy of the HUD-1 Booklet, "Buying Your Home," which outlines the settlement process.


As closing day approaches, the settlement agent orders any updated information which might be required. Once the settlement agent is satisfied that the paperwork is in order, he or she confirms the date, time and location of the closing with all the parties involved.

The closing is where it all happens. Everything done behind-the-scenes leads up to this day. It's time to close the transaction and transfer ownership of the property from the seller to the buyer. If that buyer is you, welcome to your new home!

Questions About Title Insurance

Title insurance, especially Owner's title insurance, is extremely important when purchasing a house or piece of property. Yet many consumers are unsure about what title insurance is and what it protects against. Here are some answers to the more common questions about title insurance.

Types of Title Insurance



There are two types of title insurance: Lenders title insurance, also called a Loan Policy, and Owner's title insurance. Most lenders require a Loan Policy when they issue you a loan. The Loan Policy is usually based on the dollar amount of your loan. It protects the lender's interests in the property should a problem with the title arise. The policy amount decreases each year and eventually disappears as the loan is paid off.

Owner's title insurance is usually issued in the amount of the real estate purchase. It is purchased for a one-time fee at closing and lasts as long as you or your heirs have an interest in the property. This may even be after the insured has sold the property. Only Owner's title insurance fully protects the buyer should a problem arise with the title that was not uncovered during the title search. Owner's title insurance also pays for any legal fees involved in defending a claim to your title.

Prices, and the way title insurance is issued, vary from state to state.

How Am I Protected?

In order to issue title insurance, the title company must search public land records for matters affecting that title. Many search the "chain" of title back 50 years. Twenty-five percent of title searches find a title problem that is fixed before the insurance is issued. Some examples of items that can cause a problem are: deeds, wills and trust that contain improper information; outstanding judgments or tax liens against the property; and easements. Title companies fix the problems then issue the title insurance.

Occasionally, in spite of an exhaustive title search, hidden hazards can emerge after closing. Things such as mistakes in the public record, previously undisclosed heirs claiming to own the property; or forged deeds could cloud the title. Owner's title insurance offers financial protection against these by negotiating with third-parties, and paying claims and the legal fees involved in defending the title.

Common Title Problems

Here are three short stories on some common title problems:

Fraud & Forgery

(NAPS) — Those involved in real estate fraud and forgery can be clever and persistent. which can spell trouble for your home purchase.


In a western state, an innocent buyer purchased an attractive home site through a realty company, accepting a notarized deed from the seller. Then another couple, the trio owners of the property—who lived in another locale—suddenly appeared and initiated legal action to prove their interest in the real estate was valid. Under the owner's title insurance policy of the innocent buyer, the title company provided a money settlement to protect against financial loss. As it turned out, the forger spent time in advance at the local court house, searching the public records to locate property with out of town owners who had been in possession for an extended period of time. The individual involved then forged and recorded a deed to a fictitious person and assumed the identity of that person before listing the property for sale to an innocent purchaser, handling moot contracts through an answering service. Also, the identity of the notary appearing on deeds was fictitious as well.

Fraud and forgery are examples of hidden title hazards that can remain undetected until after a closing despite the most careful precautions. Although emphasizing risk elimination, an owner's title insurance policy protects financially through negotiation by the insurer with third parties, payment for defending against an attack on the title as insured, and payment of valid claims.

Conflicting Wills

(NAPS) — Conflicts over a will from a deceased former owner may suggest a study topic for law school. But the subject can take on a reality dimension and all too quickly your home ownership is at stake.

After purchasing a residence, the new owner was startled when a brother of the seller claimed an ownership interest and sought a substantial amount of money as his share. It seemed that their late mother had given the house to the son making the challenge, who placed the deed in his drawer without recording it at the court house. Some 20 years later, after the death of the mother, the deed was discovered and then filed. Permission was granted in probate court to remove the property from the late mother's estate, and the brother to whom the residence initially was given sold the house. But the other brother appealed the probate court decision, claiming their mother really did not intend to give the house to his sibling. Ultimately, the appeal was upheld and the new owner faced a significant financial



loss. Since the new owner had acquired owner's title insurance upon purchasing the real estate, the title company paid the claim, along with an additional amount in legal fees incurred during the defense.

Missing Heirs

(NAPS) - When buying a home, it's important to remember what you don't know can cost you.

As an example illustrating the need for precautions, The American Land Title Association pointed to a couple who purchased a residence from a widow and her daughter, the only known heirs of the husband and father who died without leaving a will.

Soon after the sale, a man appeared - claiming he was the son of the late owner by a former marriage. As it turned out, he indeed was the son of the deceased man. This legal heir disapproved of his father's remarriage and had vanished when the wedding took place. Nonetheless, the son was entitled to a share of the value of the home, which meant an expensive problem for the unwary couple purchasing the property.

Although the absence of a will hindered discovery of the missing heir in a title search of the public records, ALTA said that owner's title insurance issued at the time of the real estate transaction would have financially protected the couple from the claim by the missing heir. For a one-time charge at closing, owner's title insurance will safeguard against problems including those even an exhaustive search will not reveal.

ALTA reminded that owner's title insurance is necessary to fully protect a home buyer. Lender's title insurance, which is usually required by the mortgage lender, serves as protection only for the lending institution.

I'm refinancing, why do I need title insurance?

When you refinance you are obtaining a new loan, even if you stay with your original lender. Your lender will require lender's title insurance to protect their investment in the property. You will not need to purchase a new owner's title policy; the one you bought at closing is good for as long as you and your heirs have an interest in the property.

Even if you recently purchased or refinanced your home, there are some problems that could arise with the title. For instance, you might have incurred a mechanics lien from a contractor who claims he/she has not been paid. Or you might have a judgment placed on your house due to unpaid taxes, homeowner dues, or child support for instance. The lender needs reassurance that the title to the property they are financing is clear.

If it has been no more than 10 years since you bought your house or refinanced, ask for a reissue or discount rate. They are not available in every state, and you might have to meet some criteria to be eligible, so be sure to ask.

I'm buying a newly built home, do I need title insurance?

Construction of a new home raises special title problems for the lender and owner. You may think you are the first owner when constructing a home on a purchased lot. However, there were most likely many prior owners of the unimproved land. A title search will uncover any existing liens and a survey will determine the boundaries of the property being purchased. In addition, builders routinely fail to pay subcontractors and suppliers. This could result in the subcontractor or supplier placing a lien on your property. Again, lenders want to be sure the property has clear title, and they are insuring the correct property. Purchasing owner's title insurance will protect you against these potential problems and pay for any legal fees involved in defending a claim.

Finding a Local Title Company

Closing your loan can vary from state to state, and even within the same county or city. Settlements can be conducted by lenders, title insurance companies, escrow companies, real estate brokers or attorneys. Be sure to ask your Realtor® how your settlement will be handled.

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How your Title Insurance Dollar is Divided Up

by Sandy Gadow

Often misunderstood, title insurance is viewed by many home buyers as an unusually high expense in comparison to other closing costs in their real estate transaction. Lender costs are generally accepted, as borrowers realize they are getting something valuable for their money, a mortgage to purchase the property. City or county transfer taxes are accepted, as they are a non-negotiable requirement of most real property transfers. Buyers understand and pay for fire or hazard insurance policies on their property, anticipating the policy will reimburse them in case of a loss. Why then are title insurance premiums, a one-time charge for a title policy lasting an indefinite period of time, considered not worthy of the cost?

Melanie and Bill Murphy, grudgingly paid out \$950.00 to purchase Owner's title insurance on a \$250,000.00 home they were buying in Richmond, Virginia. As required by their lender, the Murphys also purchased a Lender's Policy to protect the mortgage holder's interest in the property.

Realizing that title insurance was a necessity, Melanie and Bill wanted to have this protection, but the cost seemed high to them in comparison to other closing costs. The Murphys understood the \$875.00 fee for fire insurance, and were comfortable paying that charge. But Bill hadn't heard of any of his friends having to make a title insurance claim, and he wondered how valuable that policy really was. Bill had doubts that he was getting value for his dollar in purchasing the title insurance policy.

Homebuyers may be confused as to where their title insurance dollar goes. Looking at the statistics, title insurers paid out \$487 million in claims thru the 3rd quarter of 2004, \$662 million in 2003 and \$583 million in 2002. While the amount paid out in claims is rising every year, historically title insurance claims represent between 4-6% of the total revenue collected. It would seem logical that the higher percentage of claims that an insurance company pays out, the better value the insured is getting for his money. With title insurance the opposite is true.

Title insurance is based on the theory of "loss prevention" which means that the greatest amount of

time, and money, is spent preventing title problems from ever occurring in the first place. According to an American Land Title Association (ALTA) survey, one out of every four real estate transactions


shows evidence of title problems. You may not even be aware that a problem exists, as title companies make every effort to ensure the property is free of all possible title problems before issuing the policy of title insurance.

Preventing potential loss and subsequent claims is a highly labor-intensive, and expensive, component of a title company's operating budget. One reason is that in order to maintain current records, which are critical to the accuracy of a title search, new documents must be up-dated and indexed daily. Skilled and trained researchers and underwriters must interpret the effects of these documents on the title. Forged documents, one of the most common title problems found, in addition to falsified documents, invalid deeds, and incorrect property descriptions, are just some of the title issues which must be examined. Other title risks include recording mistakes, deed indexing errors, unpaid mechanics' liens, judgment liens, income tax or property tax liens, undisclosed easements, claims by missing heirs, and claims by ex-spouses.

The cost of a title insurance policy relative to the cost of a property transaction is about one-half to one percent of the purchase price. The premium price is based on five factors, starting with the largest percentage and descending to the smallest.

1. The cost of maintaining current title information on property local to that operation, the "title plant"
2. The cost of searching and examining the title to subject properties
3. The cost to resolve or clear defects to the title
4. The claims costs covering title defects, including legal fees
5. The allowance for a reasonable profit

The average expense ratio for a title company is greater than 90%, while the expense ratio for personal property or casualty insurance is less than 30%. Adding to the expense title companies incur is the need to perform the majority of underwriting work in the state and county where the property is located. Performing title searches



on a national level, which could be more cost effective, is generally not possible as laws and customs vary from state to state.

Brian Harrison, a title researcher for a local title company, was conducting a title search on a property in Plainview, New York. His search revealed a federal tax lien against John and Roberta Simmons, the Sellers, (and against the property), in the amount of \$84,504.00. The Simmons'

assured Mr. Harrison that the lien had been paid off, and they produced a faded copy of an IRS form titled "Release of Levy," which described the property and was signed by an IRS agent. Mr. Harrison went ahead and authorized the closing of Mr. and Mrs. Simmons' property sale, without listing the tax lien as an exception of the new owner's policy of title insurance. Shortly thereafter, the IRS threatened to execute against the property. The "Release of Levy" document which John and Roberta Simmons produced was in reality only a promise from the IRS to forego collection efforts as long as the Simmons made installment payments on the outstanding lien balance of \$41,572.00. Once the sale was finalized, the Simmons' stopped making payments to the IRS on the tax lien. The title company was obligated to pay the full amount owing to the IRS to obtain the correct document, called a "Certificate of Release of Federal Tax Lien." which cleared the lien from the property.

A unique benefit of Owner's title insurance is that its coverage can extend long after an owner has sold the property. This coverage was tested in the case of Mr. and Mrs. Stark of Toledo, Ohio. A judgment lien in the amount of \$253,513.00 was placed on the Stark's property and was still in place when Mr. Stark deeded the house to his wife. Mrs. Stark sold the home a short time later to Richard and Nancy Prouder. After living in the home several years, the Prouders sold the house to Henry and Edwina Miller. Nearly eight years passed before the bank who had filed the original lien started enforcement of it's claim against Mr. Stark. The bank filed a lawsuit against the Millers, as the current owners of the home, and sought to force a sale of the house. Henry and Edwina Miller contacted their title company and learned that the bank had the right, as a judgment creditor, to file their lawsuit against the Millers, as the lien against Mr. Stark was filed during the time Mr. Stark owned the home. The title company representing Henry and Edwina Miller determined that the judgment lien had gone undetected because it was originally indexed in the local computerized title plant under the name "Stank," instead of "Stark." The title company insuring Henry and

Edwina Miller negotiated a settlement with the bank, paying out \$147,500 for an assignment of the judgment lien. Knowing that the prior owners, Richard and Nancy Prouder also had held title insurance, the Miller's title company made a claim against the Prouders on the warranties given when they sold the home. The Prouders title company reimbursed the Miller's title company in the amount of \$145,000.00.

Although you may not be aware of the financial benefits of your Owner's title insurance policy, when a title claim is made, it is usually very significant. It may be large in terms of dollar loss, or critical in terms of property loss. Whether a claim is valid or not, your Owner's title insurance policy will cover all the legal expenses necessary to defend your title.



The HUD-1 Form Explained

For every federally related mortgage transaction, a HUD-1 Form must be filed. The HUD-1 Form lists a complete accounting of the purchase transactions. Below you will find a complete explanation of the HUD-1 Form along with a downloadable version of the form. We recommend that you download and print out the HUD-1 Form at this time so that you may more easily follow along with the text and audio explanation.

The HUD-1 Settlement Statement is the financial picture of the closing. All money flowing into and out of settlement appears on the form. "Buyers" are referred to as "borrowers" on this form even though it may be used when there is no loan involved, such as in a cash transaction. For our purposes, we will refer simply to "buyers" and "sellers."

The Settlement Agent is responsible for preparing the HUD-1 and closing the transaction in accordance with several documents.

The Contract or Escrow Agreement is the written agreement between Buyer and Seller which shows the purchase price of the home as well as the "who-pays-what" information relating to closing costs.

The Loan Closing Instructions, provided by the Lender, show all loan-related costs.

Title evidence, in the form of a title commitment, title report or other document, reflects any existing mortgages or judgment liens that must be satisfied or paid off at time of closing.

It is the responsibility of the Settlement Agent to see that all charges on the HUD-1 are substantiated in writing and to see that all deposits and disbursements are made in accordance with the HUD-1. Let's review the HUD-1 Settlement Statement section by section.

Close up of Page 1: Page 1 of the Settlement Statement is divided into three main sections.

Sections A-I: The top portion shows the parties to the transaction are: Buyers, Sellers, Lender and Settlement Company--along with the property address and closing date.

Sections J and K: The bottom portion of page 1 is divided into two columns: Section J for Buyers and Section K for Sellers.

J-scans Sections 100-300: Section J is further broken down into the Buyer's debits (section 100), credits (section 200) and totals (section 300).

Section 100 Buyer Debits: Section 100 shows what the Buyer owes, such as the purchase price of the home.

Line 103: Line 103 reflects the settlement charges paid by the Buyer, which are itemized on Page 2 and carried over from Line 1400.

Line 120: Line 120 is the total of what the Buyer owes.

Section 200 Buyer Credits: Section 200 shows what credits the Buyer has, such as the loan amount, the deposit made by the Buyer and any money owed to the Buyer by the Seller at time of closing, such as prorations for taxes and assessments.

Section 300: Section 300 carries the totals down to the bottom of the page. Line 301 is the same as Line 120. Line 302 is the same as Line 220. Line 303 is the total "cash" due from the Buyer at closing.

Line 303: Generally, the buyer is asked to bring a cashier's check or other certified funds for this amount to closing.


Sections J and K: Section K reflects the credits, debits and totals of the Seller and is broken down into Sections 400, 500 and 600.

Section 400 Seller Credits: Section 400 reflects the credits due the Seller at closing, such as the sales price of the home.

Line 420: Line 420 shows the total credits due to the Seller at closing.

Section 500 Sellers Credits: Section 500 reflects the charges or debits of the Seller. Examples include the settlement charges paid by the Seller (Line 502), payoffs of existing loans and prorations of items such as taxes and assessments to be credited to the Buyer at closing.

Line 520: Line 520 shows the total debits due from the Seller at closing.



Section 600: Section 600 carries the totals down to the bottom of the form. Line 601 is the same as Line 420. Line 602 is the same as Line 520.

Line 603: Line 603 is the "cash" due to the Seller at closing.

Section L - Highlighted: Page 2 of the settlement statement Buyer/Seller Columns contains Section L, "Settlement Charges," with separate Buyer and Seller columns. Section L is further divided into Sections 700 through 1300, ending with Line 1400.

Line 700: Section 700 reflects the amount of commission to be paid to the real estate brokers.

Section 800: Section 800 discloses loan-related charges such as origination fees and discount points.

"POC" Example: Any fee the Lender requires to be paid "up front" (at time of loan application), such as a credit report fee, will be shown on the HUD-1 with the notation "POC" for "Paid Outside Closing".

Section 900 Prepays: Section 900 reflects any prepaid items the Lender requires be paid in advance, such as preliminary interest or the first year's hazard insurance premium.

Section 1000 Escrows: Section 1000 reflects escrow items, such as deposits for taxes and insurance, which the Lender collects and holds for payment of future bills.

Section 1100 Title: Section 1100 reflects title charges payable to the title and/or settlement company. Such fees may include settlement or closing fee, abstract or search fee, title examination fee, and title insurance premiums, among others.

Section 1200 Recording: Section 1200 reflects county and/or state recording fees for instruments such as the deed and mortgage.

Section 1300 (Additional): Section 1300 reflects any additional settlement charges, such as survey or pest inspection fees.

Line 1400: Line 1400 reflects the total of charges for the Buyer and the Seller.

Line 1400 carried to Buyer 103: The total due from the Buyer is carried over to Page 1, Line 103.

Line 1400 carried to Seller 502: The total due from the Seller is carried over to Page 1, Line 502.

Once you are satisfied that the information shown on the HUD-1 Settlement Statement is complete and accurate, you will be asked to sign the statement, indicating your approval for the disbursement of funds in connection with the transaction. The Settlement Agent will also sign the HUD-1, certifying that the information shown is accurate and that disbursement of the funds will be made in accordance with the Statement.

Glossary of Title Terms

The title industry has its own language. Many of its words and idioms are derived from the language of the law while others are common words given special meaning related to land titles. There are also words and phrases coined over the years by the title industry itself.

While functions of the title industry are substantially the same throughout the nation, words describing or relating to the same thing often differ considerably in various parts of the country. Also, in many instances, several different words have substantially the same meaning. You will learn that a "closing" in one area is called a "settlement" in another; that a "take-off" is not a strip tease, or a "joint take-off" a marijuana orgy. You will also learn that a title plant is not something green growing in a garden; that an attachment is not an amorous affinity; that a suit is not a garment or wearing apparel; that an execution is not a public hanging; that prescription is not medication prepared at a drug store; that "writ" is not a colloquial past participle of "write;" that to condemn is not to censure or criticize; and that courts which deal with wills and estates of deceased persons are called "Ordinary's Court" in some states, in others "Orphan's Court," while in others they are called "Probate Court" and in still others, "Surrogate Court".

Title company employees should know their industry's language. To assist you in this regard we have compiled this glossary of words and terms used in the title industry. The list is not exhaustive or complete. Words and terms will be found which are not in common use in a particular area. No attempt has been made to conform definitions to dictionary standards. Only meanings familiar in the title business are shown. Definitions, as far as possible, are in layman's language, substantially accurate and comprehensive without being technically or legalistically correct.

A

ABSTRACT - An abbreviation of the cardinal aspects of all recorded deeds, mortgages, leases and other instruments affecting the title to a particular piece of land.

ABSTRACTING - The process of making and compiling an abstract.

ABTRACTER - The person or company engaged in making abstracts.

ABTRACTER'S CERTIFICATE - A certificate appearing at the end of an abstract in which the abstracter states the time period and scope of the search made for instruments among the public records. In some states it has the effect of limiting the abstracter's liability.

ABSTRACT CONTINUATION - (Also known as Abstract Extension and also as Supplemental Abstract.) A partial abstract beginning at the terminal date of an existing abstract and showing instruments recorded between such terminal date and a subsequent date.

Glossary-2 ABSTRACT OF TITLE - Just a longer name for an abstract.


ABSTRACT PLANT - There are a hundred different types. Basically it is an index of the recorded instruments in a county or political subdivision geographically grouped according to land description so that all of the instruments affecting a piece of land can be immediately found under the indexed heading of such land. (See also "Title Plant")

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

ACCRETION - A natural increase of land along the shores of a body of water.

ACKNOWLEDGEMENT - (1) Generally, the act of the maker or makers of a real estate instrument in going before a Notary Public or other judicial officer and acknowledging that they signed such instrument without fear or compulsion, and for the purposes expressed in such instrument. The laws making provision for acknowledgments incident to real estate papers were enacted to help prevent forgeries or undue advantage taken over the makers of such instruments. Forms and procedures incident to acknowledgments vary from state to state, some being considered probate procedures in which the probity or authenticity of the instrument is proven. (2) Generally, a form of certificate made by a notary public or judicial officer, appended to deeds, mortgages, leases and other real estate instruments, certifying that the maker or makers of such instruments appeared before the notary or judicial officer and acknowledged that they signed the instrument without compulsion or fear and for the purposes indicated in the instrument.

ADMINISTER - To pay the debts and wind up the business of a deceased person's estate. Also, to handle and dispose of properties of an estate by an executor, administrator or trustee in conformity with legal procedures and provisions of wills or trust instruments.



ADMINISTRATOR - A person appointed by a probate court to administer the estate of a person who dies intestate; that is without leaving a will.

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

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

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

AGENT - On who, having received authority from another, acts in such other person's behalf within the scope of such authority.

AGREEMENT - A legally binding compact made between two or more persons.

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

ALLUVION - The increasing of land, especially along river banks, caused by the natural deposit and build-up of sediment. Such sediment is called alluvium.

Glossary-3 AMORTIZATION - This term has developed through French and Old English from the Latin words "mors" or "mort" meaning death or dead. It is the killing off of an existing debt by regular partial payments. The word "mortgage" is also derived from the same Latin root.

ANNUITY - Derived from the Latin word "annus" meaning year. The annual or yearly payment of income. Such payments are made to individuals under certain types of insurance policies and sometimes under the provisions of wills and trust estates.

APPRAISE - From Latin "appretiare" meaning to set or fix a value. To judge or estimate the value of real estate.

APPRAISAL - The act, also the published results, of appraising.

APPROVED ATTORNEY - A practicing lawyer whose examinations of title and title opinions are acceptable to a title insurance company as a basis for the issuance of its title insurance policies.

APPURTENANCE - A minor right or privilege that is incident to, but outside of, the principal property such as a right-of-way to a highway across the land of another. Water rights are also an example.

APPURTENANT - Belonging to, or accessory to, or incident to a principal property.

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

ARBS - An abbreviation of "arbitraries." A title industry word, used primarily in abstract plants and title plants, which refers to simplified forms of land descriptions arbitrarily used in indexing such plants in lieu of the more involved and complex descriptions contained in deeds, mortgages and other real estate instruments. Arbitrary descriptions are often found in areas where land ownerships are highly irregular and are of all manner of shapes and sizes and are described by metes and bounds. Such tracts are usually laid out on an area map and each tract is given an arbitrary name or number. All instruments affecting a given tract are indexed under the arbitrary name or number.


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

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

ASSIGNEE - For example, the person who receives ownership of a contract or a mortgage by transfer from another.

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

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



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

Glossary-4 ATTACHMENT - A legal remedy to aid collection of a debt, usually incidental to a lawsuit against the debtor wherein the court issues a writ of attachment under the authority and direction of which the sheriff seizes property of the debtor and holds same pending the outcome of the lawsuit, keeping the property available for sale to pay any money judgment entered in such lawsuit.

ATTORNEY'S OPINION - The written statement of an attorney setting forth what he believes to be the condition of a real estate title.

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

AVULSION - A change or shift in a water boundary resulting in loss of land by an owner and the acquiring of such land by another.

B

BACK TITLE LETTER - Also called "Back Title Certificate" in some areas, and "Starter" in others. Where titles have been previously examined up to a certain date by reliable examiners, title companies sometimes give subsequent examiners of such titles a letter which sets forth the condition of the title at the time of the previous examination and authorizes them to begin their subsequent examination with the terminal date of the previous examination (See Tacking-on).

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

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

BARGAIN AND SALE DEED - Sometimes called "fee simple deed." A deed of conveyance which presumes that the grantor holds title, but which makes no warranty with respect to the title.

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

BILL OF SALE - The instrument by which title to personal property is transferred or conveyed.

BINDER - (1) Sometimes called "Preliminary Certificate." It is a preliminary report as to the condition of a title and a commitment to issue a title insurance policy in a certain manner when certain conditions are met. (2) Also, a deposit in escrow of a small part of the purchase price of real estate as evidence of good faith and to bind an agreement to purchase.

BLANKET MORTGAGE - A mortgage which covers all of a class of property or all of the property of the mortgagor. For example, railroads sometimes give mortgages on all of their cars and locomotives presently owned or to be acquired in the future, without specifically describing them. Or they may give a mortgage on all the assets of the railroad company.

BOND - (1) A written promise to pay to the bearer or owner a stated sum of money at a specified time, with interest usually represented by interest coupons attached to the bond. Coupons may be clipped as they mature and presented for payment. Bonds are sometimes in the form of Certificates of Indebtedness. Bonds are often secured by real estate mortgages. (See Promissory Note.) (2) A written commitment

Glossary-5 assuring the payment of a stipulated sum of money or the amount of damages in the event of an adverse happening. (3) A certificate of debt issued by a government or corporation guaranteeing payment to bearer of a specified sum of money, plus interest, on a specified future date.

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

BROKERAGE - A fee or commission paid to a broker.

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

BUILDING LINE - (See set-back line.) A line inside the boundary lines of a piece of real estate beyond which no building may be constructed. Building lines may be established by municipal ordinances, restrictions, and subdivision plats.



C

CERTIFICATE OF TITLE - A certificate issued by a title examiner stating the condition of a title. Usually more formal than an attorney's opinion.

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

CHATTEL - Another name for personal property as distinguished from real estate. An article of movable property. Also, the term applied to slaves and women before their emancipation.

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

CLOSING - In some areas called a "settlement". The process of completing a real estate transaction during which deeds, mortgages, leases and other required instruments are signed and/or delivered, an accounting between the parties is made, the money is disbursed, the papers are recorded, and all other details such as payment of outstanding liens and transfer of hazard insurance policies are attended to.

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

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

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

CO-INSURANCE - Literally, two or more policies of title insurance issued by different insurers, each covering a portion of the same risk, with interlocking provisions and which, when taken together, provide total coverage of the risk.

COMMISSION - The amount due a real estate broker or mortgage loan broker for services performed in

Glossary-6 such capacity. The term also applies to regulatory tribunals such as Real Estate Commissions.

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

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

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

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

CONDOMINIUM - A group or complex of residential units in the nature of apartments wherein each unit is separately and individually owned, the unit owners owning together the commonly used appurtenances such as gardens, sidewalks, supporting and dividing elements, elevators, and hallways. It is also possible for condominiums to encompass business buildings, office buildings, and manufacturing plants.


CONDOMINIUM UNIT - A residential unit in a condominium complex.

CONSTRUCTIVE EVICTION - The inability of a purchaser or lessee to obtain possession because of an outstanding right or superior title.

CONTRACT - Same as "agreement", but usually more formal.

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

CORPOREAL - Of material, tangible nature.



COVENANT - A formal agreement or contract between two parties in which one party gives the other certain promises and assurances, such as covenants of warranty in a warranty deed.

CURTESY - A right which a husband has in his wife's property at her death. It does not prevail in all states.

Glossary-7 D

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

DEED - An instrument, of various forms, by which title to real estate is conveyed from one party to another.

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

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

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

DEFEASANCE - Making void all rights under a contract or deed. The term has developed from an old French word meaning defeat or destroy.

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

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

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

DEPOSIT AGREEMENT - Sometimes called "Deposit Receipt." An agreement, used in some areas, prepared by real estate agents and signed by purchaser and seller acknowledging that a sale has been agreed to and that, in order to bind the deal, a certain amount of good faith money has been deposited by the purchaser with the agent or a title

company. Such agreements are often as comprehensive, with respect to terms of sale, as regular real estate sales agreements.

DEPRECIATION - Loss in value occasioned by ordinary wear and tear; destructive action of the elements; or functional or economic obsolescence.

DEVISE - A gift of real estate made by a will.

DEVISEE - One who is given real estate under a will.

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

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

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

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

DRESSER DRAWER TITLE - When an owner neglects to record his deeds and other real estate papers

Glossary-8 and places them instead in dresser drawers, or in a show box in a closet, or under the mattress, and there is nothing of record which shows any title in the supposed owner, his title is often referred to as a Dresser Drawer Title.

E


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

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

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

EJECTMENT - (1) Eviction or dispossession. (2) A law suit to regain possession of real estate held by another.

EMINENT DOMAIN - The right of a government to take privately owned property for public purposes under



condemnation proceedings upon payment of its reasonable value.

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

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

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

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

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

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

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

ESCROW - Technically, this term strictly refers to a deed delivered to a third person to be held by him until the fulfillment or performance of some act or condition by the grantee. In title industry parlance it means the depositing with an impartial third party called the escrow agent (usually the title company) of anything pertaining to a real estate transaction including money and documents of all kinds which are to be disbursed and delivered to the rightful parties by the escrow agent when all conditions of the transaction have been met.

ESCROW AGREEMENT - A written agreement usually made between buyer, seller, and escrow agent, but sometimes only between one person and the escrow agent. It sets forth the conditions to be performed

Glossary-9 incident to the object deposited in escrow, and gives the escrow agent instructions with respect to the disposition of the object so deposited.

ESTATE - (1) A sizable piece of rural land usually with a large house and other pretentious improvements. (2) The

whole of one's possessions, especially all of the property, assets, debts, and liabilities left by a deceased or bankrupt person. (3) The nature and extent of an owner's rights in real estate.

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

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

ET UX - Abbreviations of Latin "et uxor" meaning "and wife". Joe Doaks et ux means Joe Doaks and wife.

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

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

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

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


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

EXECUTE - (1) To create and make valid a real estate instrument. A deed is said to be executed when it is signed, sealed, witnessed and delivered. (2) To perform or do whatever is required.

EXECUTION - The act of executing. (See Execute.)

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

F



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

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

FEE SIMPLE - The highest degree of ownership which a person can have in real estate. An interest in real estate which gives the owner unqualified ownership and full power of disposition.

FEUDAL SYSTEM - A political and economic system which prevailed in Europe based upon the

Glossary-10 relation of overlord to vassal. The feudal lord held paramount title to the land. The interest in land acquired by vassals was impermanent, and title always reverted to the lord upon the vassal's death.

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

FILING - In title industry parlance, this term relates to the delivery of real estate instruments to a recorder for recordings.

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

FIXTURE - Personal property which is permanently attached to real estate such as plumbing fixtures. So long as a fixture is permanently attached, it is usually regarded as part of the real estate.

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

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

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

FORGED - Fraudulently executed, counterfeited.

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

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

FRAUDULENT - Obtained, performed, or characterized by deceit or fraud.

FREEHOLD - A life estate or a fee simple estate.

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

G

GENERAL WARRANTY - A warranty provision in a deed or mortgage or other real estate instrument containing all of the common law items of warranty. Also known as a full warranty.

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

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

GRANTEE - One to whom a grant is made.

Glossary-11 GRANTOR - One who makes a grant.


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

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

H

HABENDUM CLAUSE - That provision in deeds which begins with the words "to have and to hold" and which, in effect, defines the quality of the estate or interest which is being conveyed to the grantee.

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



HEIR - A person who inherits or who is entitled to inherit real estate by provisions of law or under the provisions of a will.

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

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

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

I

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

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

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

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

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

INDEX - (1) An alphabetical listing in the public records of the names of parties to recorded real estate instruments together with the book and page number of the record. (2) The listing in abstract and title plants of recorded real estate instruments in groups according to land descriptions, known as a geographic index. (3) The alphabetical listing in abstract and title plants, by names of the parties, of all recorded instruments which affect but do not describe particular real estate, such as judgments, powers of attorney,

Glossary-12 wills and probate proceedings. Such indexes are known by various names such as General Index, Judgment Index, and Name Index.

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

IN GROSS - A type of offbeat easement which is not attached to a dominant estate and is in the nature of a personal right rather than an interest in real estate. It is not assignable or inheritable.

INSTALLMENT CONTRACT - A real estate purchase agreement providing for the payment of the purchase price in several successive payments such as monthly payments.

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

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

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

INTESTATE - Dying without leaving a legal will.

J

JOINT TAKE-OFF - When a group of title companies shares the cost of one take-off made for the use and benefit of each member of the group, it is called a joint take-off.


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

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

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

JUNIOR MORTGAGE - A mortgage lower in lien priority than a first mortgage.

JURISDICTION - (1) the right and power of courts to interpret and apply the law. (2) The legal power of control



over persons and property. (3) A geographical area in which a court has power and authority to act.

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

K

KAPUT - Destroyed, incapacitated, useless, terminated.

L

Glossary-13 LACHES - Material delay or negligence in the timely assertion of one's rights. Laches is a legal principle under which one is barred from asserting or claiming a right.

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

LAND CONTRACT - A contract between buyer and seller for the purchase and sale of land, the purchase price usually being payable in installments over a considerable period.

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

LATENT - Existing, but lying hidden or concealed.

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

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

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

LESSEE - A tenant holding a lease.

LESSOR - One who gives a lease to a lessee.

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

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

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

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

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

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

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

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

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

M


Glossary-14 MARKETABLE TITLE - A title which a court of equity considers to be so free of material defects and liens that it will force the title's acceptance by questioning purchaser. Also known as a merchantable title.

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

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

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

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



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

MORTGAGE BOOK - A book in the public records in which mortgages are recorded.

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

MORTGAGEE POLICY - (Sometimes called a mortgage policy.) A policy of title insurance insuring the holder of a mortgage against loss occasioned by the impairment or invalidity of the lien of such mortgage or because of defects in, superior liens upon, or unmarketability of the title.

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

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

N

NEGLIGENCE - The omission of or failure to use reasonable precaution, care, or action.

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

Glossary-15 NET LISTING - The listing, with a broker, of real estate for sale for a specified price, net to the seller, exclusive of commission and closing costs.

NOTE - See Promissory Note.

O

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

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

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

P

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

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

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

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

PERCENTAGE LEASE - A lease of property in which the rental is based upon the volume of sales made by the lessee on the leased property.

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

PERSONAL PROPERTY - Temporary or movable property as distinguished from real estate.

PERSONALTY - Personal property.

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

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



POLICY - See Owner's Policy and Mortgage Policy.

Glossary-16 POWER OF ATTORNEY - A legal instrument authorizing one to act as another's agent or attorney.

PRELIMINARY CERTIFICATE - See Binder.

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

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

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

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

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

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

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

PUBLIC TRUSTEE - A public official to whom title to real estate may be conveyed by trust deed to be held by him as security for repayment of a loan. Usually found in areas where trust deeds are used as security instruments in lieu of mortgages.

PURCHASE MONEY MORTGAGE - A mortgage given by a purchaser to a seller on the subject property to secure payment of a part of the purchase price.

Q

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

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

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

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

Glossary-17 QUIT CLAIM DEED - A deed which does not imply that the grantor holds title, but which surrenders and gives to the grantee any possible interest or rights which the grantor may have in the property.

R

RATE - This term, when used in the title industry, usually refers to the rate for title insurance. In this sense it means the cost per dollar unit of title insurance. For example, the rate for a ten thousand dollar title insurance policy is (so many) dollars. A rate schedule is the respective costs of dollar units of title insurance listed on an ascending scale.

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

REAL PROPERTY - See Real Estate.

REALTOR - A copyrighted trade name which can be legally used only by those persons belonging to the National Association of Real Estate Boards.

REALTY - Another name for real estate.

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

RECORDS - See Public Records.

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



REDEMPTION - See Equity or Redemption.

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

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

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

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

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

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

Glossary-18 RESTRICTIVE COVENANTS - (See Restrictions.)

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

REVERTER CLAUSE - (See Reversion (3).)

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

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

RIPARIAN OWNER - One who owns the upland bordering on a stream or other body of water.

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

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

S

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

SALES CONTRACT - (See Sale Agreement.)


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

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

SECOND MORTGAGE - A mortgage ranking in priority immediately below a first mortgage. See Junior Mortgage.

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

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



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

Glossary-19 SERVITUDE - A right or interest in a piece of real estate, which right or interest serves or benefits another unrelated property. For example, an easement across one piece of property which serves another piece of property is said to constitute a servitude regarding the property upon which it is located.

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

SETBACK LINE - (See Building Line.)

SETTLEMENT - (See Closing.)

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

SOVEREIGNTY - Supreme political power or authority.

SPECIAL ASSESSMENT - (See Improvement Liens.)

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

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

SPECULATIVE BUILDER - One who constructs buildings for sale without having firm purchase commitments. Speculative building is quite common in residential housing developments and in condominiums.

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

STARTER - (See Back Title Letter.)

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

SUBDIVISION - An area of land laid out and divided into lots, blocks, and building sites, and in which public facilities are laid out, such as streets, alleys, parks, and easements for public utilities.

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

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

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

SUBROGATION - The legal doctrine under which the law substitutes one creditor or claimant for

Glossary-20 another. When a title insurance company pays a claim under a title insurance policy, it is entitled to step into the shoes of the insured with respect to any rights the insured may have against parties who warranted the title to him.

SUIT - Usually meaning a lawsuit.

SUIT TO QUIET TITLE - (See Quiet Title Suit.)


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

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

T

TACKING ON - Beginning a subsequent title examination, in point of time, at the end of a previous title examination. (See Back Title Letter.)

TAKE-OFF - An abbreviated copy of the principal features of recorded instruments, required for the purposes of indexation



in an abstract plant or for purposes of making abstracts or examining titles.

TAKE-OUT - A written commitment or agreement given by a permanent mortgage lender to a temporary mortgage lender under which the permanent lender agrees to purchase mortgages made by the temporary lender.

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

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

TENANTS IN COMMON - Two or more persons in whom title to a single piece of real estate is vested in such a manner that they have a common or equal right to possession and enjoyment of the property, but each holds a separate individual interest or estate in the property. Each owner may sell or encumber his respective interest or dispose of it by will, and if he dies without leaving a will, his heirs inherit his undivided interest.

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

TENANT AT WILL - A tenant whose occupancy of real estate is subject to the will of the owner.

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

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

Glossary-21 personal property upon his death.

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

THIRD PARTY - A term usually applied to persons who are not principal parties to a contract or other instrument, but who have some right, interest or duty which such contract or instrument affects. For example, where a sale contract

between buyer and seller of real estate provides that the money and documents involved in the transaction will be deposited with a title company pending the closing of the deal, the title company becomes a third party to the transaction.

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

TITLE ASSURANCE - Assurance of title afforded by abstracts, attorneys' opinions, title insurance, and surveys.

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

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

TITLE EXAMINATION - (See Examination.)


TITLE EXAMINER - (See Examiner.)

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

TITLE INSURER - A company which insures the title to real estate.

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

TITLE SEARCH - A search and perusal of the public records for recorded instruments which affect the title to a particular piece of land. (See also Abstract and Examination.)



TITLE SEARCHER - One who searches titles.

TITLE UNDERWRITER - Synonymous with Title Insurer.

TOMBSTONE TITLE - A title, the validity of which relies upon information gleaned from one or more tombstones, such as the fact of an owner's death, the name of his surviving wife, the date of his death, and

Glossary-22 sometimes the identity of a deceased owner in cases where a person of the same name claims title.

TORRENS - A system wherein public officials by statute promulgate a system of land registration and title certification. The system incorporates a provision for court action to perfect titles if necessary.

TRUNK TITLE - (See Dresser Drawer Title.)

TRUST DEED - An instrument in the nature of a mortgage which secures the payment of a debt. Distinguished from a mortgage in that the title is transferred to, and held by, a trustee for the benefit of the holder of the debt.

U

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

USURY - (1) Any premium, profit, bonus, fee, or charge which is demanded, required, or extracted by a lender in excess of legal interest on money loaned.

V

VENDEE - The purchaser under a sale contract of real estate.

VENDOR - The seller under a sale contract of real estate.

VOID - Binding on no-one, kaput, constituting a nullity. Something which is conclusively of no effect, the defect of which is not subject to being waived, revitalized or cured by confirmation or ratification.

VOIDABLE - Sufficiently defective to make void, the deficiency, however, being curable by confirmation or ratification.

W

WAIVER - The voluntary and intentional relinquishment of a known right, claim, or privilege.

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

WARRANTY DEED - A deed containing one or more title covenants. (See Title Covenants.)

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

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

Glossary-23 WILL - (1) An instrument executed by a competent person, in the manner prescribed by law, whereby he makes disposition of his property to take effect on and after his death. (2) A holographic will is a will entirely written and signed by the testator in his own handwriting. In some states some of the legal requirements regarding the execution of wills do not apply in cases of holographic wills. (3) A nuncupative will is one made orally before witnesses, usually during the testator's last hours of life. Under English law, sailors and soldiers may make nuncupative wills any time during their military service.

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

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



Z

ZONING ORDINANCES - Laws passed by local governments regulating the size, type, structure, nature and use of buildings. Zoning ordinances, often referred to as zoning laws and zoning regulations, are divided into two classes: (1) those which regulate the height or bulk of

buildings within certain designated zones or districts - in other words, those which relate to structural and architectural design, and (2) those which prescribe the type of buildings which may be constructed, and the use to which buildings within certain designated zones or districts may be put.