

REAL ESTATE DICTIONARY

Capstone Title offers this dictionary as a reference tool for individuals and organizations in the real estate community. We hope you find useful its brief definitions of real estate-related terminology. We welcome the opportunity to be of service to you. Old Republic Title – your single source for answers to today’s title insurance questions.

Why Capstone Title?

Capstone Title and Escrow has been a respected member of the American title insurance community for over 100 years. Our experienced title professionals would be pleased to answer any questions regarding title insurance or entries in this dictionary.



A

Abstract of Title: A condensed history or summary of all transactions affecting a particular tract of land.

Access: The legal right to enter and leave a tract of land from a public way. Can include the right to enter and leave over the land of another.

Accretion: The slow buildup of land by natural forces such as wind or water.

Adjustable Rate Mortgage (ARM): A residential mortgage that has an interest rate that is subject to change. The times of adjustment are agreed upon at the inception of the loan.

Administrator: A person appointed by a probate court to settle the affairs of an individual dying without a will. The term is “administratrix” if such a person is a woman.
Also see “Personal Representative.”

Adverse Possession: A claim made against the land of another by virtue of open and notorious possession of said land by the claimant.

Affidavit: A sworn statement in writing.

Agent: A person or company that has the power to act on behalf of another or to transact business for another, e.g., a title agent under contract with Capstone Title is an agent solely for the purpose of issuing policies of title insurance and other title insurance products.

Air Rights: The right to ownership of everything above the physical surface of the land.

ALTA: American Land Title Association, a national association of title insurance companies, abstractors and attorneys specializing in real property law. Its headquarters are in Washington, D.C.

Annual Percentage Rate (APR): An expression of the percentage relationship of the total finance charges to the total amount to be financed as required under the federal Truth-in-Lending Act.

Appraisal: A written opinion of market value based upon a factual analysis of relevant local market information.

Appurtenance: Anything so annexed to land or used with it that it will pass with the conveyance of the land.

ARM: Adjustable Rate Mortgage.
Also see “Variable Rate Mortgage.”

Assessment: The imposition of a tax, charge or levy, usually according to established rates.

Assessor: A public official who evaluates property for the purpose of taxation.

Assignee: One to whom a transfer of interest is made. For example, the assignee of a mortgage or contract.

Assignor: One who makes an assignment. For example, the assignor of a mortgage or contract.

Assumable Mortgage: A mortgage which, by its terms, allows a new owner to take over its obligations.

Attachment: Legal seizure of property to force payment of a debt.

Attorney in Fact: One who holds a power of attorney from another, allowing him or her to execute legal documents such as deeds, mortgages, etc., on behalf of the grantor of the power.

B

Balloon Mortgage: A mortgage that is amortized over a specific period of years, but requires a lump-sum payment in full at an earlier date.

Bankruptcy: A federal court proceeding in which debtors may be relieved of liability for their debts after surrender of their nonexempt assets to a court-appointed trustee.

Bureau of Land Management: The branch of government in charge of surveying and managing public land.

C

CC&R's: Covenants, Conditions and Restrictions.
Also see "Conditions and Restrictions."

Changed Circumstance: In accordance with the TRID Rule, events which allow a creditor to revise a Loan Estimate or a Closing Disclosure include: (i) an extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction; (ii) information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; (iii) new information specific to the consumer or transaction that the creditor did not rely on when providing the Loan Estimate; (iv) revisions requested by the consumer; (v) when the Loan Estimate expires; or (vi) on the day of the rate lock.

Chain of Title: A term applied to the past series of transactions and documents affecting the title to a particular parcel of land.

Cloud on Title: An irregularity, possible claim, or encumbrance which, if valid, would affect or impair the title.

Closing: Also known as "escrow" or "settlement." The process of executing legally binding documents, such as deeds and mortgages, most commonly associated with the purchase of real estate and the borrowing of money to assist in the purchase.

Closing Costs: Expenses for services incidental to a sale of real estate, such as sales commissions, loan fees, title fees, appraisal fees, etc.

Closing Disclosure: The five-page Closing Disclosure, also referred to as CD, must be provided to the consumer three business days before they close on the loan. The Closing Disclosure details all of the costs associated with the mortgage transaction.

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.

Clouded Title: An encumbered title.

Coinsurance: A form of insurance underwritten by two or more title insurers sharing a single risk under separate title insurance policies in proportional amounts.

Common Interest Community (CIC): Ownership characterized by mutual ownership of common areas, either jointly or through membership in an association, e.g., condominiums, planned unit developments and townhomes.

Condemnation: Taking private property for public use through court proceedings.
Also see "Eminent Domain."

Condition or Conditions: A proviso in a deed, will or other instrument that, upon the happening or failure to happen of a certain event, limits, enlarges, changes or terminates the title of the purchaser or devisee.

Conditions and Restrictions: Limitations placed on the use and enjoyment of land. May include penalties for failure to comply. These are found most often on condominiums and planned unit developments.

Condominium: A system of individual fee ownership of units in a multi-unit structure, combined with joint ownership of common areas of the structure and land.

Conservator: See "Guardian."

Consummation: Consummation is not the same thing as closing or settlement. Consummation occurs when the consumer becomes legally obligated to the creditor on the loan, not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction.

Consumer's Intent to Proceed: Unless a particular manner of communication is required by the creditor, a consumer indicates intent to proceed with the transaction when the consumer communicates, in any manner, that the consumer chooses to proceed after the Loan Estimate has been delivered. This may include (i) oral communication in person immediately upon delivery of the Loan Estimate; or (ii) oral communication over the phone, written communication via email, or signing a preprinted form after receipt of the Loan Estimate. A consumer's silence is not indicative of intent to proceed.

Contract for Deed: An agreement to sell and purchase, under which title is held as security by the seller until such time as the required payments to the seller have been completed.

Convey: The act of deeding or transferring title to another.

Conveyance: An instrument by which title is transferred, e.g., a deed. Also the act of transferring title.

Covenant: An agreement written into deeds and other instruments promising performance or nonperformance of certain acts, or stipulating certain uses or non-uses of the property.

Cul-de-Sac: The terminus of a street or alley. Usually laid out by modern engineers to provide a circular turnaround for vehicles.

D

Deed: A written document by which the ownership of land is transferred from one person to another.

Deed of Trust: An instrument used in many states in place of a mortgage. Property is transferred to a trustee by the trustor (borrower), in favor of the beneficiary (lender) and reconveyed (satisfied) upon payment in full.

Devise: The disposition of real property by will.

Due-on-Sale Clause: Provision in a mortgage or deed of trust which requires loan to be paid in full if property is sold or transferred.

E

Earnest Money: Advance payment of part of the purchase price to bind a contract for property.

Easement: An interest in land owned by another that entitles its holder to a specific limited use, such as laying a sewer, putting up electric power lines or crossing the property. Also see "Right of Way."

Egress: The right to leave a tract of land.

Eminent Domain: The power of the state to take private property for public use upon payment of just compensation.

Encroachment: A trespass or intrusion onto another's property, usually by a structure, wall or fence.

E (Continued)

Encryption: The conversion of data into a form that cannot be easily understood by unauthorized people. The process of encoding a message so that it can be read only by the sender and the intended recipient. Encryption is the most effective way to achieve data security.

Encumber: To burden a parcel of land with a lien or charge.

Encumbrance: A lien, liability or charge upon a parcel of land, e.g. a mortgage or easement.

Escheat: A reversion of property to the state in those cases where an individual dies without heirs or devisees, and, in some states, without a will.

Escrow: A procedure whereby a disinterested third party handles legal documents and funds on behalf of a seller and buyer, and delivers them upon performance by the parties.

Estate: A person's possessions. The extent of a person's interest in real property.

Examination of Title: The investigation and interpretation of the record title to real property based on the title search or abstract.

Exception: In legal descriptions, that portion of land to be deleted or excluded. The term often is used in a different sense to mean an encumbrance on title, excluded from coverage in a title insurance policy.

Executor: A person appointed by the probate court to carry out the terms of a will. The term is "executrix" if that person is a woman. Also see "Personal Representative."

F

Fannie Mae: Federal National Mortgage Association (also FNMA) is a private corporation, federally chartered to provide financial products and services that increase the availability and affordability of housing by purchasing mortgage loans.

Fee Simple Estate: The greatest possible estate in land where the title is held completely and without any limitations or conditions. Sometimes designated simply as "Fee."

Financing Statement: A document filed with the Register of Deeds or Secretary of State to give notice that a creditor (lender) has or may have a security interest in the personal property of the debtor (borrower).

Fixed Rate Mortgage: A mortgage on which the same rate of interest is charged for the life of the mortgage.

Fixtures: Any item of property so attached to real property that it becomes a part of the real property.

Flood Certification: A common term for a Federal Emergency Management Agency (FEMA) Standard Flood Hazard Determination Form (SFHDF). This determines whether land or a building is located within a Special Flood Hazard Area for purposes of flood insurance requirements under the National Flood Insurance Program.

Forfeiture of Title: Provision in a deed creating a condition which will cause title to be passed to another, should certain circumstances occur.

Freddie Mac: Federal Home Loan Mortgage Corporation (also FHLMC) is a stockholder-owned corporation chartered by Congress that purchases mortgage loans.

G

Ginnie Mae: Government National Mortgage Association (also GNMA) is a wholly owned United States corporation that guarantees privately issued securities backed by pools of mortgages insured by FHA (Federal Housing Administration), FMHA (Farmers Home Administration) or VA (Veterans Administration).

Graduated Payment Mortgage: A loan in which monthly payments are relatively small in the beginning and gradually increase in dollar amount over the life of the mortgage.

Grantee: A person who acquires an interest in land by deed, grant or other written instrument.

Grantor: A person, who, by a written instrument, transfers to another an interest in land.

Guardian: One appointed by the court to administer the affairs of an individual not capable of administering his or her own affairs.

H

Harbor Line: An arbitrary line set by authorities on navigable rivers, beyond which wharves and other structures may not be built. Also designated as line of navigation.

Hazard Insurance: Insurance protecting a property owner against loss, such as: fire, windstorm, lightning, hail, explosion, riot, smoke, property damage, flood or mudslide. It is usually purchased as part of the Homeowner's Insurance Policy.

Heir: One who might inherit or succeed to an interest in land of an individual who dies without leaving a will (intestate).

Home Equity Conversion Mortgage: A reverse or reverse annuity mortgage in which HUD, through FHA, guarantees that the borrower will receive monthly payments from the insurer (FHA), in the event the lender is unable to make payments to the borrower.

Home Equity Line of Credit (HELOC): A loan in which the lender agrees to lend a maximum amount within an agreed period (called a term), where the collateral is the borrower's equity in his/her house.

Homeowners Insurance: Insurance protection paying benefits for damage to improved real property or possessions in the home. Also provides liability coverage against accidents in the home or on the property.

HUD-1: The HUD-1 is a type of settlement statement which, prior to the TILA-RESPA Integrated Disclosure (TRID) Rule, was required for use with all federally related mortgage loans. It has been supplanted by the "Closing Disclosure" as a required form, but the HUD-1 will continue to be used for reverse mortgage and HELOC transactions. In addition, it may remain in use for some transactions that do not involve federally related mortgage loans since it functions well as a balance sheet of the settlement.

I

Improvements: Those additions to raw land tending to increase value, such as buildings, streets, sewer, etc.

Indemnify: To make payment for a loss or to hold another harmless from loss.

I (Continued)

Ingress: The right to enter a tract of land.

Insurance: A contract of indemnity against specified perils.

Interim Financing: Temporary or short-term loans. Often used with new construction. Usually replaced with permanent long-term financing.

Intestate: Designates the estate or condition of failing to leave a will at death. "To die intestate."

J

Joint Tenancy: An estate where two or more persons hold real estate jointly for life, the survivors to take the entire interest on the death of one of the joint tenants.

Judgment: A decree of a court. In practice, this is the lien or charge upon the land of a debtor resulting from the court's award of money to a creditor. Also see "Judgment Lien."

Judgment Docket: The record book of a County Clerk, where a judgment is entered in order that it may become a lien upon the property of the debtor.

Judgment Lien: The charge upon the land of a debtor resulting from the decree of a court properly entered into the judgment docket.

L

Land Contract: See "Contract for Deed."

Lease: A grant of the use of land for a term of years in consideration of the payment of a monthly or annual rental.

Lender's Policy: A form of title insurance policy which insures the validity, enforceability and priority of a lender's lien. This policy does not provide protection for the owner.

Lessee: One who takes land under a lease.

Lessor: One who grants land under a lease.

Lien: A hold, claim or charge allowed a creditor upon the land of a debtor. Some examples are mortgage liens, judgment liens and mechanics' liens.

Life Estate: A grant or reservation of the right of use, occupancy and ownership for the life of an individual.

Lis Pendens: A notice recorded in the official records of a county to indicate that a suit is pending affecting title to the land in the jurisdiction where the notice is recorded.

Loan Estimate: A three-page Loan Estimate (also called LE) must be provided to the consumer no later than three business days after they submit a loan application for most mortgages. The Loan Estimate provides information about key features, costs and risks of the mortgage loan for which the consumer is applying.

Loan Policy: See "Lender's Policy."

Loss Payable Clause: A clause in a contract of insurance which says any loss will be paid to two or more parties as their interest may appear. Usually the owner and the mortgage lender.

Lot: A part of a subdivision or block having fixed boundaries ascertainable by reference to a plat or survey.

M

Marketable Title: A good title about which there is not fair or reasonable doubt.

Mechanic's Lien: A lien allowed by statute to contractors, laborers and material suppliers on buildings or other structures upon which work has been performed or materials supplied.

Metes and Bounds: A description of land by courses and distances.

Mortgage: An instrument used to encumber land as security for a debt.

Mortgage Banker: A specialized lending institution that lends money solely with respect to real estate and secures its loans with mortgages on the real estate.

Mortgage Broker: A person or company that buys and sells mortgages for another on commission or who arranges for and negotiates mortgage contracts.

Mortgage Insurance: Insurance protecting against the nonpayment of, or default on, an individual mortgage or loan involved in a residential mortgage transaction. It protects the mortgage lender against loss incurred by a reason of nonpayment or mortgage default.

Mortgagee: The mortgage lender.

Mortgagee's Policy: See "Lender's Policy."

Mortgagor: The mortgage borrower.

N

Non-Public Personal Information (NPPI or NPI): Means "personally identifiable financial information" that is (i) provided by a consumer to a financial institution, (ii) about a consumer resulting from a transaction or service performed for the consumer, or (iii) otherwise obtained by the financial institution. Personally identifiable financial information includes any information obtained by a financial institution in connection with its provision of a "financial product or service," even if the information is not typically considered financial in nature.

Notary: One authorized to take acknowledgments.

Note: The instrument evidencing the indebtedness. A note is usually secured by a security instrument such as a mortgage or deed of trust.

O

Origination Fee: The administrative fee charged by the lender to prepare loan documents, run credit checks, inspect and sometimes appraise a property, usually computed as a percentage of the face value of the loan.

Owner's Policy: A policy of title insurance, which insures a named owner against loss by reason of defects, liens and encumbrances not excepted to in the policy or unmarketability of the title. The company also agrees to defend covered claims made against the title.

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

P

Patent: A document or grant by which the federal or state government originally transferred title to public land to an individual. The first in the series of transfers by which title comes down to present owners.

Personal Representative: A person appointed by the probate court to administer a decedent's estate.
Also see "Executor" or "Administrator."

Plat or Plot: A map representing a piece of land subdivided into lots with streets shown thereon.

P.M.I.: Private Mortgage Insurance. An insurance contract which insures that the named lender will recover a specific percentage of the loan amount from the insurer in the event the loan goes bad.

Points: A one-time special fee or extra charge paid to a lender in order to secure a loan. Expressed as a percentage of face amount of mortgage.

Policy: See Title Insurance Policy.

Policyowner: The insured on a title insurance policy.

Power of Attorney: An instrument authorizing another to act on one's behalf in legal matters.

Power of Sale: A clause in a will, mortgage, deed of trust or trust agreement authorizing the sale or transfer of land in accordance with the terms of the clause.

Pre-Settlement Inspections: See "Walk Through."

Prepayment Penalty: A clause in a mortgage or loan contract that says if the mortgage is prepaid within a certain time period, a penalty will be assessed. The penalty can be based on percentage of the remaining mortgage balance or some other calculation as described in the clause.

Premium Tax: A tax imposed on all premiums from the business of title insurance. Only applies in some states.

Privacy Rule: The GRAMM-LEACH-BLILEY ACT requires financial institutions (which includes title insurance companies) to give notice to all of their "customers" about their privacy practices. The Privacy Policy is a "clear and conspicuous" written notice describing their privacy policies and practices.

Prorate: To allocate between seller and buyer their proportionate share of an obligation paid or due. For example, a proration of real property taxes or fire insurance premiums.

Q

Quiet Title: An action in a proper court to remove record defects or possible claims of other parties named in the action.

R

Range: A part of the government survey, being a strip of land six miles in width, and numbered east or west of the principal meridian.

Real Property: Land, together with fixtures, improvements and appurtenances.

REALTOR®: A federally registered collective membership mark which identifies a real estate professional who is a member of the National Association of REALTORS® and subscribes to its strict Code of Ethics.

Realty: A brief term for real property.

Redeem: Literally "to buy back." The act of buying back land after a mortgage foreclosure, tax foreclosure, or other execution sale.

Redisclosure: For covered transaction under the TILA-RESPA Integrated Disclosure (TRID) Rule and under very specific circumstances, the Loan Estimate and/or the Closing Disclosure may be revised and delivered to the consumer.

Registered Land: See "Torrens Title."

Reinsurance: To insure again by transferring to another insurance company all or part of an assumed liability, thus spreading the loss risk any one company has to carry.

Reverse or Reverse Annuity Mortgage: A mortgage for which the borrower pledges home equity in return for regular (monthly) payments, rather than a lump sum distribution of loan proceeds. Repayment is usually not required until the home is sold or the borrower's estate is settled, provided the borrower continues to live in the home and keeps current all taxes and insurance. Also see "Home Equity Conversion Mortgage."

Right of Way: The right which one has to pass across the land of another. An easement.

Riparian: Rights to use of waterways in adjoining lakes or rivers.

S

Second Mortgage: A second loan on real estate that already has a mortgage. It is subordinate to the first mortgage.

Section or Section of Land: A parcel of land comprising approximately one square mile or 640 acres.

Set Back Lines: Those lines which delineate the required distances for the location of structures in relation to the perimeter of the property.

Sub-Surface Right: The right of ownership to things lying beneath the physical surface of the property.

Survey: The process of measuring land to determine its size, location and physical description, and the resulting drawing or map.

T

Tax Lien: A lien for real property taxes. Attaches only to the property upon which the taxes are due in most jurisdictions. It may be foreclosed for nonpayment.

Tenancy by the Entirety: Ownership by married persons. Each owns the entire estate, with the survivor taking the whole upon the other's death.

Tenancy in Common: An estate or interest in land held by two or more persons, each having equal rights of possession and enjoyment, but without any right of succession by survivorship between the owners.

Tenant: Any person occupying real property with the owner's permission.

Testament: Another term for a will. Commonly referred to as "last will and testament."

Testate: The state or condition of leaving a will at death. "To die testate."

Testator: A man who makes or has made a testament or will.

T (Continued)

Testatrix: A woman who makes or has made a testament or will.

Three-Day Review Period: For covered transactions under the TILA-RESPA Integrated Disclosure (TRID) Rule the creditor is generally required to ensure that the consumer (borrower) receives the Closing Disclosure no later than three business days prior to the consummation of the loan.

Title: (i) ownership of real property, which stands against the right of anyone else to claim the property; (ii) the evidence of right which a person has to the ownership and possession of land.

Title Agent: See "Agent."

Title Defect: Any legal right held by others to claim property or to make demands upon the owner.

Title Commitment: A report issued by a title insurance company or its agent, committing the title insurance company to issue the form of policy designated in the commitment upon compliance with and satisfaction of requirements set forth in the commitment.

Title Examination: To peruse and study the instruments in a chain of title and to determine their effect and condition in order to reach a conclusion as to the status of the title.

Title Insurance Underwriter: An insurance company that issues insurance policies either to the public or to another insurer.

Title Insurance: An agreement to indemnify the insured against loss arising from a covered defect in title to a particular parcel of real property, which is typically issued to both the buyer to protect their property rights (through an owner's title insurance policy), and the lender to protect its lien rights (through a lender's title insurance policy).

Title Insurance Policy: A written contract of title insurance.

Title Plant: The total facilities: records, equipment, fixtures, and personnel: required to function as a title insurance operation in some parts of the country. Technically, the organization of official records affecting real property into a system, which allows quick and efficient recovery of title information.

Title Search: An examination of public records, laws and court decisions to disclose the current facts regarding ownership of real estate.

Tolerances: See "Variances."

Torrens Title: A system whereby, after court proceedings, a certificate is issued setting forth the extent of the applicant's estate in land, subject to the exceptions shown.

Total Interest Percentage (TIP): The total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan, assuming the consumer makes each monthly payment in full and on time, and does not make any overpayments.

Total Loan Costs: Fees the lender charges to make the loan, as well as fees paid to providers selected by the lender and fees paid to providers chosen by the borrower. Total Loan Costs are found under Section D of the Loan Estimate.

Township: A division of territory approximately six miles square, containing approximately 36 sections or 36 square miles.

Tract: A particular parcel of land.

Trust: A property right held by one as a fiduciary for the benefit of another.

Trustee: A person holding property in trust as a fiduciary for the benefit of another.

V

Variable Rate Mortgage: A loan in which the interest rate fluctuates with the cost of funds or some other index.

Variances: The comparison made between fees and/or charges listed on the Loan Estimate (or Good Faith Estimate) and those listed on the final Closing Disclosure (or HUD-1). Not all fees are exposed to such scrutiny but for those that are the creditor/lender is held accountable for the excessive charges. There are two levels of tolerance based on the type of fee. Variance may also be referred to as Tolerance.

Vendee: A purchaser of real property under land contract.

Vendor: A seller of real property under land contract.

Vest: To pass to a person an immediate right or interest. Title may be said to vest in John Smith.

W

Walk Through: Depending on the terms of the contract of sale or based on local custom, a walk-through or pre-settlement inspection may be scheduled prior to settlement or closing of the transaction. The primary purpose of this type of inspection is to make certain the property is in the agreed-upon condition, repairs (if any) from the home inspection are complete, and to confirm that nothing has gone wrong with the property since the buyer's last viewing.

Warranty: A limited promise by the grantor of real property that he or she is the owner and will be responsible to the buyer if title is other than as represented.

Will: A written document providing for the distribution of property owned by a person after his or her death.

Z

Zoning: The right of a municipality to regulate and determine the compatible character and use of property.