

Paul Christian Stamm Jr., ESQ

Mobile Closings & Title Services

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TERMS YOU MAY WANT TO KNOW

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

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

Adjustable-Rate Mortgage (ARM). A loan with an interest rate that changes periodically in keeping with a current index, like one-year treasury bills. Typically, however, ARM s cannot jump more than two percentage points per year or six points above the starting rate.

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

ALTA. American Land Title Association, a national association of title insurance companies and title abstract organizations. This term is used most frequently as part of the identification of standard policy forms adopted by that association.

Amortization. A payment plan which enables the borrower to reduce his debt gradually through regular payments of principal and interest.

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

Appurtenances. Rights which pass with the title to the land itself. These rights may affect other lands; e.g., an appropriate access easement over adjoining land.

Assessment. A special tax imposed on owners of land by governing bodies for the purpose of paying for improvements (sewer lines, sidewalks, street paving, etc.) which benefit the land of such owners.

Assignment. A transfer of (or the document transferring) a right and/or interest in land. Used often in transferring interests of a mortgagee or of a lessee. Assignor is the person who transfers the interest; assignee is the person to whom the interest is transferred.

Assumption of Mortgage. An obligation undertaken by the purchaser of land to be personally liable for payment of an existing note secured by a mortgage. As between the lender and the original borrower, the original borrower remains liable on the mortgage note.

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Balloon Payment. A large lump sum payment of un-amortized premium and accrued interest at the end of the term of a loan in which the consecutive monthly installment payments are insufficient to amortize the entire principal and interest over its terms.

Base Title or Basic Title. Title to an area of tract out of which parts are subsequently conveyed or from which a subdivision or development is made. Thus the title to farm acreage which has been subdivided would be the base title to the entire subdivision.

Binder or Commitment. An enforceable agreement that upon satisfaction of the requirements which are stated in the binder, the insurer will issue the specified title insurance policy subject only to the exceptions stated in the binder. A binder sets forth status the title as of a particular date.

Building (restriction) Line or Setback. A line fixed at a certain distance from the front and/or sides of a lot or at a certain distance from a road or street which marks the boundary of the area within which no part of the building may project. This line may be established by a filed plat of subdivision, by restrictive covenants in deeds or leases, by building codes, or by zoning ordinances.

Certificate of Satisfaction. A document signed by the note-holder and recorded in the land records evidencing release of a deed of trust, mortgage or other lien on the property.

Chain of Title. The successive ownerships or transfers in the history of title to a particular parcel of land. Each deed or other instrument effecting a transfer of the title is called a link and all of the links constitute the chain.

Closing. The process by which all the parties to a real estate transaction conclude the details of a sale or mortgage. The process includes the signing and transfer of documents and distribution of funds. The closing is conducted by a Settlement agent responsible to collect and compile all necessary documents, prepare the Settlement statement and disburse the money. The Settlement agent records the deed, deed of trust/mortgage at the local courthouse.

Closing Costs. The expenses which buyers and sellers normally incur to complete a transaction in the transfer of ownership of real estate. These costs are in addition to price of the property and are items prepaid or paid at the Closing. The agreement of sale negotiated previously between the buyer and the seller may state in writing who will pay each of these costs. This is a typical list:

Some normal buyer(s) expenses: Settlement/Closing fee, abstract/title Search fee, title insurance premiums and fees, and government recording and transfer charges on the deed and deed of trust. Some normal Seller(s) expenses: Real estate commission, settlement fee, document preparation, fees for processing payoffs, courier fees, wire fees, recording fees for mortgage/deed of trust release documents, grantor s tax on deed, and termite inspection.

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

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

Commitment (for Title Insurance). Prepared by the title insurance company after the title is searched in the public records, indicating the status of the title and stipulating requirements to be satisfied prior to Closing. These requirements may include a deed to the purchaser and a deed of trust or mortgage, satisfaction of delinquent taxes, judgments, etc., and payment and release of other encumbrances on the title.

Commitment Letter (for Title Insurance). A written promise from a lender that you will receive a mortgage of a specified amount at a specified rate.

Community Property. A category of property in which all property (except property specifically acquired by husband or wife as separate property) acquired by a husband and wife, or either, during marriage, is owned in common by the husband and wife.

Conditional Offer. An offer to buy a property, but only under certain circumstances (for example, the buyer receives financing or sells the old home first).

Contractor. In the construction industry, a contractor is one who contracts to erect buildings or portions of them. There are also contractors for each phase of construction: heating, electrical, plumbing, air conditioning, road building, bridge and dam erection, and others.

Conventional Mortgage. A mortgage loan not insured by HUD (U.S. Department of Housing & Urban Development) or guaranteed by the Veterans Administration. It is subject to conditions established by the lending institution and State statutes. The mortgage rates may vary with different institutions and between States. (States have various interest limits).

Co tenancy. Ownership of the same interest in a particular parcel of land by more than one person; e.g., tenancy in common, joint tenancy, tenancy by the entireties.

Covenant. An agreement between the parties in a deed where one party promises either (1) the performance or non-performance of certain acts with respect to the land or (2) that a given state of things with respect to the land are so; e.g., covenant that the land will be used only for residential purposes.

Deed. A formal written instrument wherein title to real property is transferred from one owner to another. The deed should contain an accurate description of the property being conveyed, should be

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signed and witnessed according to the laws of the State where the property is located, and should be delivered to the purchaser at Closing. There are two parties to a deed: the grantor and the grantee. (See also deed of trust, general warranty deed, quitclaim deed, and special warranty deed.)

Deed of Trust. Like a mortgage, a security instrument where real property is given as security for a debt. However, in a deed of trust there are three parties: the borrower, the trustee, and the lender (or beneficiary). In such a transaction, the borrower transfers the legal title for the property to the trustee who holds the property in trust as security for the payment of the debt to the lender or the beneficiary. If the borrower pays the debt as agreed, the deed of trust becomes void. If, however, he defaults in the payment of the debt, the trustee may sell the property at a public sale, under the terms of the deed of trust. In most jurisdictions where the deed of trust is in force, the borrower is subject to having his property sold without benefit of legal proceedings. A few States have begun in recent years to treat the deed of trust like a mortgage.

Defect In Title. Any recorded instrument that would prevent a grantor from giving a clear title.

Discount Points. Amounts paid to the lender (usually by the borrower) at the time of origination of a loan, to account for the difference between the market interest rate and the lower face rate of the note.

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

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

Easement Rights. A right-of-way granted to a person or company authorizing access to or over the owner's land. A right-of-way to install, operate and maintain utility lines is a common example.

Eminent Domain. The right of a government to appropriate private property for a public use by making reasonable payment to the owner of such property.

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

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

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with the encumbrance or what can be done to remove it.

Endorsement. A form issued by the insurer at the request of the insured which changes terms or items in an issued policy or commitment.

Equity. The portion of a property you own outright. If, for example, you put 20 percent down on a house, you have 20 percent equity in your property. Over time, you earn more equity as you pay off the mortgage.

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

Exceptions & Exclusions. Those matters affecting title to the particular parcel of realty and are excluded from coverage in a specific title insurance policy.

Fee Simple. An estate in which the owner is entitled to the entire property, with unconditional power of disposition (sell) during the owner's life, and which descends to the heirs upon the owner's death if the owner dies without a will (intestate) or can be devised (given to another) by a will (testate).

Fixed-Rate Mortgage. A loan that carries an unchangeable interest rate over its entire term typically a period of 15-30 years.

Foreclosure. A legal process by which the owner/borrower of real estate is deprived of any interest in that property due to failure to comply with the terms and conditions of the loan. Generally, the failure to make (timely) mortgage payments will result in foreclosure.

General Warranty Deed. A deed which conveys not only all the grantor's interests in and title to the property to the grantee, but also warrants that if the title is defective or has a cloud on it (such as mortgage claims, tax liens, title claims, judgments, or mechanic's liens against it) the grantee may hold the grantor liable.

G.F.E. A good faith estimate, referred to as a GFE, must be provided by a mortgage lender or broker in the United States to a customer, as required by the Real Estate Settlement Procedures Act (RESPA). The estimate must include an itemized list of fees and costs associated with the loan and must be provided within three business days of applying for a loan. These mortgage fees, also called settlement costs or closing costs, cover every expense associated with a home loan, including inspections, title insurance, taxes and other charges. A good faith estimate is a standard form which is intended to be used to

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compare different offers (or quotes) from different lenders or brokers. The good faith estimate is only an estimate. The final closing costs may be different.

Grantee. That party in the deed who is the buyer or recipient.

Grantor. That party in the deed who is the seller or giver.

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

Hidden Defect. Any encumbrance on a title that is not apparent in the public records; for example, unknown heirs, forged instruments, mental incompetency, infancy of a seller, etc.

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

Insurable Title. A land title which a title insurance company is willing to insure.

Interest. A charge paid for borrowing money. (See mortgage note).

Joint Tenants. Two or more individuals receive title with each one receiving an equal ownership interest in the property. Upon the death of any joint tenant, his or her interest passes to the surviving joint tenant(s), with each surviving joint tenant receiving an equal share of the deceased joint tenant(s) interest.

Lien. A claim by one person on the property of another as security for money owed. Such claims may include obligations not met or satisfied, judgments, unpaid taxes, materials, or labor. (See also special lien).

Lock-In. A guarantee -- for which you are usually charged a fee -- that you will receive a specific rate when you close your mortgage.

Market Value. The price that a home will likely be able to be sold for on the market, based on comparisons to similar homes that have sold recently.

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

Mechanic s Lien. A lien placed on a building or other improvement on the land, and on the land itself, as security for the payment for labor done and materials furnished for improvement.

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

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

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

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

Mortgage (Open-End). A mortgage with a provision that permits borrowing additional money in the future without refinancing the loan or paying additional financing charges. Open-end provisions often limit borrowing to no more than would raise the balance to the original loan figure.

Mortgagee. The lender in a mortgage agreement.

Mortgagor. The borrower in a mortgage agreement.

Owner s Title Policy: A title insurance policy that insures the owner against loss due to defects in title not excepted to or excluded from the policy.

Partial Interest: Any interest less than the whole.

PITI: Abbreviations for principal, interest, taxes and insurance, all of which are lumped together in your monthly mortgage payment.

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

Points: A one-time-only fee you pay up front to your lender, sometimes in exchange for a slightly lower mortgage rate. One point equals one percent of the total amount you plan to borrow.

Prepayment: Payment of mortgage loan, or part of it, before due date. Mortgage agreements often

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restrict the right of prepayment either by limiting the amount that can be prepaid in any one year or charging a penalty for prepayment. The Federal Housing Administration does not permit such restrictions in FHA-insured mortgages.

Principal: The basic element of the loan as distinguished from interest and mortgage insurance premium. In other words, principal is the amount upon which interest is paid.

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

Real Estate Broker: A middle man or agent who buys and sells real estate for a company, firm, or individual on a commission basis. The broker does not have title to the property, but generally represents the owner.

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

Reissue Rate: A reduced title insurance premium for the owner's title insurance applicable in cases where the seller of the land had purchased an owner's title insurance policy within a specified period of time prior to the current purchase. OR when a current owner is refinancing an existing loan within a specified period and previously purchased a title insurance policy for that same property.

Release. A document signed by the note-holder and recorded in the land records evidencing release of a deed of trust, mortgage or other lien on the property.

Restrictive Covenants: Documents that impose limitations on the use and enjoyment of property. Covenants are private controls on land use. Through the use of such restrictions, developers are able to assure prospective purchasers of residential property that other lots in the community will be similarly limited in use. While covenants impose a burden on the ownership of the property, they also provide the benefit of enhancing the value of the land. Although land may be subject to public controls such as zoning regulations, not all land is subject to private restrictive covenants. The covenant passes with the title in perpetuity.

Settlement Agent: Person or company that conducts the closing of a sale and/or finance of real estate.

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

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Special Warranty Deed: A deed containing a covenant whereby the seller agrees to protect the grantee (purchaser) against any claims created by the grantor (seller).

Subdivision Plats: Plats which subdivide tracts of land into separate building lots. Once recorded, a plat becomes a permanent source for determining the identification and description of the property shown. Not all properties are part of a subdivision.

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

Tax: As applied to real estate, an enforced charge imposed on persons, property or income, to be used to support the State. The governing body in turn utilizes the funds in the best interest of the general public.

Tenant in Common: Two or more individuals receive title with each person owning an interest in the property. Unless the deed specifies otherwise, each individual has an equal interest in the property. Upon the death of a tenant in common, the deceased's interest in the property passes to his or her estate.

Tenants by the Entirety: An estate that exists only between husband and wife with equal right of possession and enjoyment during their joint lives and with the right of survivorship; i.e., when one dies, the property goes to the surviving tenant. Such ownership requires both to convey land at the same time and together, a judgment against only one does not attach as a lien against the title to the real estate, and the survivor takes title by survivorship, not by probate.

Tenant in Severalty: Ownership by one person.

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

Title Defect: An unresolved claim against the ownership of property which prevents presentation of a marketable title. Such claims may arise from failure of the owner's spouse, or former part owner to sign a deed, current liens against the property, or an interruption in the title records to a property.

Title Failure: Any circumstance that defeats the right of whole ownership of property by the owner of record.

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

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

Trustee: A party who is given legal responsibility to hold property in the best interest of or for the benefit of another. The trustee is one placed in a position of responsibility for another, a responsibility enforce