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## Glossary of Terms

### A

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

**Acknowledgement** – The act by which a party executing a legal document goes before an authorized officer or notary public and declares the same to be his or her voluntary act and deed.

**Acre** – A tract of land containing 43,560 square feet of land.

**Ad Valorem Taxes** – Property taxes based on the value of property, assessed each calendar year for 1/2 payment in December and 1/2 the following May.

**Administrator** – A person appointed by a probate court to settle the affairs of an individual dying without a will. See also *Personal Representative*

**Adverse Possession** – A claim made against the lands of another by virtue of open and notorious possession of said lands by the claimant.

**Affidavit** – A sworn statement in writing.

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

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

**ARM** – Adjustable Rate Mortgage. 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.

**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 a date earlier than the maturity date of the mortgage.

**Bankruptcy** – A federal court proceeding in which debtors are relieved of liability for their debts after surrender of their assets to a court appointed trustee.

## C

**CC&R's** – Covenants, Conditions and Restrictions. See *Conditions and Restrictions*

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

**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.

**Clouded Title** – An *encumbered* title.

**Commitment to Insure** – 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.

**Community Property** – In New Mexico, all property acquired by spouses during marriage is owned

in common by the spouses, unless the property qualifies as separate property under New Mexico law.

**Condemnation** – Taking private property for public use through court proceedings.

**Conditions and Restrictions** – A common term used to designate conditions and restrictions on the use of land. Includes penalties for failure to comply. Commonly used by land subdividers on newly platted areas.

**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.

**Convey** – The act of deeding or transferring title to another.

**Conveyance** – An instrument by which title is transferred; a deed. Also, the act of transferring title.

**Covenant** – An agreement written into deeds and other instruments promising performance or non-performance of certain acts, or stipulating certain uses or non-uses of the property. Also called a restriction.

**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** – See *Mortgage*.

**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.

**Egress** – The right to leave a tract of land. Often used interchangeably with “access.” See also *Ingress*

**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.

**Encumber** – To burden a parcel of land with a lien or charge, e.g., a mortgage.

**Encumbrance** – A lien, liability or charge upon a parcel of land.

**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. See also *Closing*

**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 objection to title or encumbrance on title.

**Executor** – A person appointed by the probate court to carry out the terms of a will. 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 interest in a parcel of land that it is possible to own. Sometimes designated simply as "Fee."

**Federal Housing Administration (FHA) Guarantee** – An insurance contract in which HUD through FHA insures that the named lender will recover a specific percentage of the loan amount from the insurer (FHA) in the event that the loan goes bad.

**Financing Statement** – A document filed with the County Clerk or Secretary of State securing the title to personal property.

**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.

**Foreclosure** – Legal process by which a lender under mortgage obtains title to property for borrower's failure to comply with the terms and conditions of the mortgage.

**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

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

**Hiatus (Gore)** – A gap or space unintentionally left, when attempting to describe adjoining parcels of land.

**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.

**HUD 1** – A form settlement (closing) statement required by the U.S. Department of Housing and Urban Development (HUD) where federally related mortgages are being made on residential properties. It is a balance sheet showing the source of funds and the distribution of funds in connection with the purchase and/or mortgaging of residential property.

## I

**Improvements** – Those additions to raw lands tending to increase value, such as buildings, streets, sewer, etc.

**Indemnify** – To make payment for a loss.

**Ingress** – The right to enter a tract of land. Often used interchangeably with “access.” See also *Egress*

**Insurance** – A contract of indemnity against specified perils.

**Interim Financing** – Temporary or short term loans. Often used with new construction. Usually

replaced with a permanent long-term mortgage.

**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 interest of the one who dies.

**Judgment** – A decree of a court. In practice this is the lien or charge upon the lands of a debtor resulting from the Court’s award of money to a creditor. See *Judgment Lien*

**Judgment Lien** – The charge upon the lands of a debtor resulting from the decree of a court properly entered into the judgment docket.

## L

**Landmark** – Any conspicuous object that helps establish land boundaries.

**Lease** – A grant of the use of lands 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 form does not provide protection for the owner.

**Lessee** – One who takes lands upon a lease.

**Lessor** – One who grants lands under a lease.

**Lien** – A hold, claim, or charge allowed a creditor upon the lands 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 the lands where the notice is recorded.

**Loan Policy** – See *Lender’s Policy*

**Loss Payable Clause** – Provision added to a Fire and Casualty Policy 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

**Majority** – The age at which a person is entitled to handle his or her own affairs.

**Marketable Title** – A good title about which there is no 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 distance.

**Minor** – One who because of insufficient age or status is legally incapable of making contracts.

**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.

**Mortgagee** – The mortgage lender.

**Mortgagee's Policy** – See *Lender's Policy*.

**Mortgagor** – The mortgage borrower.

## N

**Negative Amortization** – An actual increase in the principal amount of real estate loan because of the addition of matured but unpaid interest to the loan balance. Usually the result of monthly payments which are temporarily set at a lower than needed level.

**Notary** – One authorized to take acknowledgments. See also *Acknowledgment*.

**Note** – The instrument evidencing the indebtedness secured by a security instrument such as a mortgage or deed of trust.

## O

**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 lands 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. See also *Executor* or *Administrator*.

**Plat** – An approved 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 insuree in the event the loan goes bad. Many lenders require this on higher percentage loans.

**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** – A written contract of title insurance.

**Policyowner** – The insured on a title insurance policy.

**Power of Attorney** – An instrument authorizing another to act on one's behalf as his or her agent or attorney. See *Attorney In Fact*.

**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.

**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 Estate Contract** – An agreement to sell and purchase real property under which title is held by a third party in escrow for the seller until such time as the required payments to the seller have been made by the buyer.

**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.

**Recording** – The noting in the designated public office of the details of a properly executed document, making it a part of the public record and constructive notice to all.

**Redeem** – Literally “to buy back”. The act of buying back lands after a mortgage foreclosure, tax foreclosure, or other execution sale.

**REIT** – Real Estate Investment Trust. A product of federal tax legislation formed as a business trust, under a special state TRIT statute or as a corporation for the purpose in investing in real estate or mortgages on real estate.

**REMIC** – Real Estate Mortgage Investment Condiut. A product of 1986 federal tax legislation in which a business entity such as a corporation, partnership, or trust in which substantially all of the assets consist of qualified mortgages and permitted investments, elects to be treated as a REMIC. Qualification avoids treatment as a corporation for tax purposes.

**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. See also *Home Equity Conversion Mortgage*.

**Right-of-Way** – The right which one has to pass across the lands of another. An easement.

## S

**Second Mortgage** – A second loan on real estate that already has a mortgage. It is subordinate to the first mortgage. Usually it is of shorter term and often at a higher interest rate.

**Section or Section of Land** – A parcel of land comprising 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.

**Settlement** – See *Closing*.

**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

**Taxes** – See *Ad Valorem Taxes*

**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 will. Commonly referred to as "last will and testament."

**Testate** – The estate or condition of leaving a will at death. "To die testate."

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

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

**Title** – The right which a person has to the ownership, possession and use of land.

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

**Title Insurance** – Insurance against loss or damage resulting from defects or failure of title to a particular parcel of real property.

**Title Plant** – The total facilities — records, equipment, fixtures, and personnel — required to function as a title insurance operation. 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.

**Township** – A division of territory six miles square, containing 36 sections or 36 square miles.

**Track** – 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

**VA Guarantee** – An insurance contract in which the Veterans Administration (VA) insures that the named lender will recover a specific percentage of the loan amount from the insurer in the event the loan goes bad.

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

**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. For example, “Title may be said to vest in John Smith.”

**Vestee** – A nonlegal term used by title insurers to indicate the owner of real property in a policy or report.

## W

**Warranty** – A 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. See also *Testament*

## Z

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

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