

The potential homebuyer will find this Vocabulary helpful for understanding words and terms used in real estate transactions. There are, however, some factors that may affect these definitions:

- Terms are defined, as they are commonly understood in the mortgage and real estate industry. The same terms may have different meanings in another context.
- The definitions are intentionally general, non-technical and short. They do not encompass all possible meanings or nuances that a term may acquire in legal use.
- State laws, as well as custom and use in various States or regions of the country, may modify or completely change the meanings of certain terms defined.

Before signing any documents or depositing any money preparatory to entering into a real estate contract, the purchaser should consult with an attorney of his choice to ensure that his rights are properly protected.

Note: *A bold typed word appearing within a definition indicates that the word is defined elsewhere in the alphabetical listing.*

A **Abstract (of title)** A summary of the public records relating to the **title** to a particular piece 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**, insurable **title**.

Acceleration Clause Condition in **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.

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.

Amortization A payment plan which enables the borrower to reduce his debt gradually through monthly payments of **principal**.

Appraisal An expert judgement or estimate of the quality or value of

real estate as of a given date.

Assumption of Mortgage An obligation undertaken by the purchaser of property to be personally liable for payment of an existing **mortgage**. In an assumption, the purchaser is substituted for the original **mortgager** in the mortgage instrument and the original mortgager is released from further liability under the mortgage. Since the mortgager is to be released from further liability in the assumption, the **mortgagee's** consent is usually required.

The original mortgager should always obtain a written release from further liability if he desires to be fully released under the assumption.

Failure to obtain such a release renders the original mortgager liable if the person assuming the mortgage fails to make the monthly payments.

An "Assumption of Mortgage" is often confused with "purchasing subject to a mortgage." When one purchases property subject to a mortgage, the purchaser agrees to make the monthly mortgage payments on an existing mortgage, but the original mortgagor remains personally liable in the event of default, the mortgagee's consent is not required to a sale subject to mortgage.

Both "Assumption of Mortgage" and "Purchasing Subject to a Mortgage" is used to finance the sale of property. The latter may also be used when a mortgagor is in financial difficulty and desires to sell the property to avoid foreclosure.

B Binder or "Offer to Purchase" A preliminary agreement secured by the payment of earnest money, between a buyer and a seller as an offer to purchase real estate. A binder secures the right to purchase real estate upon agreed terms for a limited period of time. If the buyer changes his mind or is unable to purchase, the earnest money is forfeited unless the binder expressly provides that it is to be refunded.

Broker (See real estate broker)

Building Line or Setback Distances from the ends and/or sides of the lot beyond which construction may not extend. The building line may be established by a filed plat of subdivision, by **restrictive covenants** in deeds or leases, by building codes, or by **zoning ordinances**.

C Certificate of Title A certificate issued by a title company or a written opinion rendered by an attorney that the seller has good marketable and insurable title to the property which he is offering for sale. A

certificate of title offers no protection against any hidden defects in the title, which an examination of the records could not reveal. The issuer of a certificate of title is liable only for damages due to negligence. The protection offered a homeowner under a certificate of title is not as great as that offered in a **title insurance** policy.

Closing Costs The numerous 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 at the **closing day**.

This is a typical list:

BUYER'S EXPENSES	SELLER'S EXPENSES
Documentary Stamps on Notes	Cost of Abstract
Recording Deed and Mortgage Documentary	Transfer Tax
Escrow Fees	Real Estate Commission
Title Insurance	Recording Mortgage
Appraisal and Inspection	Escrow Fees
Survey Charge	Attorney's Fee

The agreement of sale negotiated previously between the buyer and the seller may state in writing who will pay each of the above costs.

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 an attorney, or escrow company. The buyers have signed the loan documents prior to closing day. The final closing merely confirms the original statement reached in the **agreement of sale**.

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

Commission Money paid to a real estate agent or broker by the seller as compensation for finding a buyer and completing the sale. Usually it is a percentage of the sale price-6 to 7 percent on houses, 10 percent on land.

Condemnation The taking of private property for public use by a government unit, against the will of the owner, but with payment of just compensation under the government's power of eminent domain. Condemnation may also be a determination by a governmental agency that a particular building is unsafe or unfit for use.

Condominium Individual ownership of a dwelling unit and an individual interest in the common areas and facilities, which serve the multi-unit project.

Contract of Purchase (See **agreement of sale**)

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** or guaranteed by the Veteran's Administration. It is subject to conditions established by the lending institution and States statutes. The mortgage rates may vary with different institutions and between States.

D Deed A formal written instrument by which **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 signed and witnessed according to the laws of the State where the property is located, and should be delivered to the purchaser at **closing day**. 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 A security instrument whereby real property is given as security for a debt. However, in a deed of trust there are three parties to the instrument: 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 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.

Default Failure to make mortgage payments as agreed to in a commitment based on the terms and at the designated time set forth in the mortgage or deed of trust. It is the mortgagor's responsibility to remember the due date and send the payment prior to the due date, not after. Generally, thirty days after the due- date if payment is not received, the mortgage is in default. In the event of default, the mortgage may give the lender the right to accelerate payments, take possession and receive rents, and start foreclosure. Defaults may also come about by the failure to observe other conditions in the mortgage

or deed of trust.

Depreciation Decline in value of a house due to wear and tear, adverse changes in the neighborhood, or any other reason.

Documentary Stamps (transfer tax) A State tax required on deeds and mortgages when real estate title passes from one owner to another. The amount of stamps required varies with each state.

Down Payment the amount of money to be paid by the purchaser to the seller upon the signing of the agreement of sale. The agreement of sale will refer to the down payment amount and will acknowledge receipt of the down payment. Down payment is the difference between the sales price and mortgage Loan amount. If the purchaser wants the down payment to be refundable, he should insert a clause in the agreement of sale specifying the conditions under which the deposit will be refunded, if the agreement does not already contain such a clause. If the seller cannot deliver good title, the agreement of sale usually requires the seller to return any deposits to the purchaser.

E 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 or 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 company authorizing access to or over the owner's land. An electric company obtaining a right-of-way across private property is a common example.

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

Equity The value of a homeowner's unencumbered interest in real estate. Equity is computed by subtracting from the property's fair market value the total of the unpaid mortgage balance and any

outstanding liens or other debts against the property. A homeowner's equity increases as he pays off his mortgage or as he pays off his mortgage or as the property appreciates in value. When the mortgage and all other debts against the property are paid in full the homeowner has 100% equity in his property.

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 pays 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 premium** taxes, hazard insurance premiums, and **special assessments**.

F **Foreclosure** A legal term applied to any of the various methods of enforcing payment of the debt secured by a **mortgage**, or **deed of trust**, by taking and selling the mortgaged property, and depriving the **mortgagor** of possession.

G **Grantee** The party in the **deed** who is the buyer or recipient.

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

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

HUD U.S. Department of Housing and Urban Development. Office of Housing Federal Housing Administration with in HUD insures home mortgage loans made by lenders and sets minimum standards for such homes.

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

L **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, judgements, unpaid taxes, materials, or labor. (See also **special lien**.)

M **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.

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 to 30 years, during which the loan is to be paid off.

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

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 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.

Mortgagee The lender in a mortgage agreement.

Mortgagor The borrower in a mortgage agreement.

P **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 Sometimes called "discount points." A point is one percent of the amounts of the mortgage loan. For example, if a loan is for \$25,000, one point is \$250. Points are charged by a lender to raise the yield on his loan at a time when money is tight. On a **conventional mortgage**, points may be paid by either buyer or seller or split between them.

Prepayment Payment of mortgage loan, or part of it, before due date. Mortgage agreement often restrict the right of pre-payment 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.

Purchase Agreement (See **Agreement of Sale**)

Q 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**.)

R Real Estate Broker A middleman 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 mortgager paying off one loan with the proceeds from another loan.

Restrictive Covenants Private restrictions limiting the use of real property. Restrictive covenants are created by deed and may "run with the land," binding all subsequent purchasers of the land, or may be "personal" and binding only between the original seller and buyer. The determination whether a covenant runs with the land, or is personal is governed by the language of the covenant; the intent of the parties and the law in the State where the land is situated. Restrictive covenants, that run with the land; are encumbrances and may affect the value and marketability of title. Restrictive covenants may limit the density of buildings per acre, regulate size, style or price range of buildings to be erected, or prevent particular businesses from operating, or minority groups from owning or occupying homes in a given area. (This latter discriminatory covenant is unconstitutional and has been declared unenforceable by the U.S. Supreme Court.)

S Sales Agreement (See **Agreement of Sale**)

Special Assessments A special tax imposed on property, individual lots or all property in the immediate area, for road construction,

sidewalks, sewers, streetlights, etc.

Survey A map or **plat** made by a license 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.

T 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.

Title As generally used the rights of ownership and possession of particular property. In real estate usage, title may refer 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 Insurance Protects lenders or homeowners against loss of their interest in property, due to legal defects in title. Title insurance may be issued to either the **mortgagor**, as an "owner's title policy" or to the mortgagee, as a "mortgagee's title policy." Insurance benefits will be paid only to the "name 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.

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. Also to make sure 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 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 enforceable in a court of law. (See **deed of trust**.)

Z Zoning Ordinances The acts of an authorized local government establishing building codes and setting forth regulations for property land usage.