

GLOSSARY of REAL ESTATE TERMINOLOGY and *UNIFORM* TOPIC INDEX

(Note: The *COLORADO* TOPIC INDEX follows after this Uniform Topic Index.)

The GLOSSARY has been designed as a quick reference to help students understand the language of the real estate profession. A complete vocabulary review before your state examination also will serve to bring together the many different facets of real estate that you have been studying.

Although you will need to *understand* these terms for both the Uniform and Colorado exams, the Colorado portion of the license exam will not *test* on the definitions and their applications. Therefore, you should focus more on these definitions in the preparation for the *Uniform* exam.

Terms that you are less likely to encounter may not be in the text material but have been included in this glossary, both to aid your general understanding and to allow the glossary to serve as a resource tool.

Numbers in brackets (i.e., [7], [10]) following the definition indicate in which chapter(s) the terms appear in the Uniform (Real Estate Law and Practice) course. If a definition is not followed by a number in brackets, this is a “minor” term not requiring additional explanation within the materials.

Terms preceded by an asterisk (*) apply only to the *Colorado* (final / license) exam. A detailed Colorado Topic Index follows this Uniform Index, and indicates which chapter each Colorado *topic* appears.

As a quick aid, remember that words ending in "-or" are givers: donor, grantor and optionor. Words ending in "-ee" are receivers: donee, grantee and optionee.

A

abatement A legal action to stop a nuisance. Also can be a reduction of a property tax assessment.

absolute fee See *fee simple*, below. [3]

abstract A history of every recorded document dealing with a property. It is examined to determine whether there is marketable title. See also, *abstract and opinion*, below. [7]

abstract and opinion A summary of all recorded instruments affecting title to the particular piece of land, accompanied by an attorney's opinion of the status of title. Used to inform the purchaser of the nature of the seller's title and of any defects, liens, or encumbrances. [7]

abstractive method A means of obtaining land value by deducting the value of improvements from the total property value.

abstract of judgment A condensation of a court judgment. When recorded, the judgment becomes a general lien on the property of the debtor within the county where recorded.

accelerated depreciation Any method of depreciation for tax purposes that gives greater initial depreciation than the straight-line method.

acceleration clause A provision in a note making all payments due upon the happening of a certain event (such as missing a payment or selling the property). Also known as an *alienation clause* and a *due-on-sale clause*. [5] [10]

acceptance An act or agreement that forms a contract. [1]

accession Obtaining title as a result of attaching or joining property to other property.

accommodation party A third person (cosigner) who signs a negotiable instrument agreeing to be liable personally to the payee.

accord and satisfaction The act of accepting a different consideration than agreed; for exam purposes, if there is a dispute as to performance and one party accepts less than bargained for originally. [1]

accounting One of the five duties of an agent to the principal: to make an accounting to the principal for all money or other valuable consideration which is received in the course of the agency. [2]

accretion A gradual buildup of soil by action of water or wind. [3]

accrual basis An accounting method where income and expenses are considered reportable (and deductible) when the right to receive it occurs (although the actual cash may not be received). [12]

accrued depreciation Depreciation to date; measured by the difference between the replacement cost new and the present value. [4]

acknowledgment A declaration customarily made before a notary, certifying that the signing of an instrument is the signer's own free act. [7]

acre A measure of land equal to 43,560 square feet. [8] [13]

action in personam A legal action against a person. When recorded, a judgment from such an action is a general lien against all of a debtor's property in the county where recorded.

action in rem A legal action against property. When recorded, a judgment from such an action is a specific lien against the particular property involved in the action.

actual authority That authority given either expressly or impliedly by the agent's principal. [2]

actual notice Personal, first-hand knowledge of an interest or instrument. [7]

ademption Disposal of property by a testator prior to death. It defeats the rights of a specific beneficiary under the will. (The beneficiary is not entitled to the sale proceeds or value.)

adjustable rate mortgage (ARM) A mortgage loan bearing a rate of interest subject to change (based on a particular index, such as the T-bill rate) during the term of the loan. ARMs generally have caps (upper limits) on the interest that can be charged. [5]

adjusted basis Acquisition cost less depreciation plus cost of improvements. The adjusted basis is deducted from the sales price to determine gain or loss. [12]

adjusted gross income Gross income adjusted for a vacancy factor and collection loss. (See *effective gross income*, below) [12]

adjusted market price The adjustment of a comparable property's sales price to account for differences in features and amenities of a property under appraisal (using the market comparison approach).

administrator A person appointed by a probate court to administer the estate of a deceased; a woman appointee is an *administratrix*.

administrator's deed A deed from a person duly appointed by a court for an adult adjudged to lack the legal capacity to voluntarily convey their property. [7]

ad valorem A tax according to value; real property taxes are *ad valorem* taxes. [10] [13]

advance commitment A lender agreement to provide permanent financing upon completion of a construction project.

advance fees Fees paid in advance of services rendered.

adverse possession A means of obtaining title from another by open, hostile and continuous use for a statutory period of time. (*In Colorado, 18 years.) In some states, adverse possession also requires payment of taxes. The purpose behind this concept is to promote the productive use of land and to give title to the one putting the land to use. [3] [7]

affidavit A statement sworn to under oath or by affirmation before a notary.

affirmation A formal declaration as to the truthfulness of a statement; may be made by a person whose religious beliefs prohibit swearing under oath.

affirmative easement An easement that allows the easement holder a right of use over the land of another.

after-acquired interest An interest acquired by a grantor after he or she has conveyed property. Under some deeds, after-acquired interest is said to pass to the grantee.

age-life tables Appraisal tables that indicate the economic life for various types of structures.

agency A contractual relationship in which one person (an agent) represents another (a principal).

agency by estoppel An agency created when the principal's words or conduct led another to believe in the agency and thereby act to the other's detriment.

agency by ratification An agency created by a principal approving an unauthorized act of an agency coupled with an interest An irrevocable agency under which the agent has an interest in the subject matter of the agency.

agent A person representing another, (a principal) acting in his or her behalf, in dealings with third parties. [2]

air rights The rights of a property owner to the reasonable use of the airspace over his or her property. Air rights are real property and can be separately leased or conveyed.

ALC (Accredited Land Consultant) A professional designation of the REALTORS Land Institute.

alienation A transfer of property or property rights by one person to another. [7]

alienation clause See *due-on-sale clause*, below. [5] [10]

all-inclusive mortgage See *wraparound loan*, below. [5]

allodial system Ownership by individuals rather than the government. The United States follows the allodial system of ownership. [3]

alluvion Soil added gradually to land by action of water. The soil belongs to the land it is added to by this accretion process. [3]

ALTA (American Land Title Association) A type of title insurance policy providing extended coverage to the lender. The same extended coverage also may be available for the buyer.

alteration Modification of a contract or note by one party without the consent of the other.

amend escrow instructions A change in the escrow instructions after they have been signed. The signatures of both buyer and seller are required to amend the instructions.

amenities Features of a property that enhance the satisfaction and use of the property; for example, an extra bath, a flower garden, mature shade trees.

Americans with Disabilities Act (ADA) Prohibits any discrimination based on physical or mental disabilities that would deny the equal enjoyment of goods, services, facilities and accommodations in any existing place of public accommodation. [6]

amortization The liquidation or gradual retirement of a financial obligation by specific installment payments. [5]

amortized loan A loan that is liquidated (paid off) by equal payments throughout the life of the loan.

annexation Adding to something, as when a city annexes outlying land.

annual percentage rate (APR) An interest rate expressed in simple interest considering all finance charges over the life of the loan. It is required by Regulation Z to reveal the true cost of the financing. See also, *finance charge*, below. [5]

anticipation The principle of value that states that value changes based on anticipated future use and income. [4]

anticipatory breach An action or a statement of a party prior to the performance due date that indicates the party will breach the contract. The other party can bring suit upon anticipatory breach without waiting for an actual breach.

antimerger clause A clause in a mortgage that prevents loss of lien priority should the lienholder receive a deed. Otherwise, a deed in lieu of foreclosure would convey title subject to later liens.

apparent authority That authority which the principal by words or conduct to other persons, has led these other persons to believe that the agent has. [2]

appraisal An estimate of market value of property; the process by which conclusions of the value of property are obtained; also refers to the report setting forth the estimate of value together with the basis for such conclusions. [4]

appraised value The value placed on a parcel of real property by an appraiser, based on a comparison of the subject property with other comparable properties (*Sales Comparison Approach*), or the cost of building a comparable property (*Cost Approach*), or the property's potential income production (*Income Approach*). Not the same as *assessed value*, below. [4] [13]

appropriation A legal term designating the act or acts involved in the taking and reducing to personal possession of water occurring in a stream or other body of water, and of applying such water to beneficial uses or purposes.

appurtenance Rights, benefits and attachments that transfer with real property; for example; buildings, easement rights, water rights and the like. [3]

appurtenant easement A beneficial easement that transfers with the land. Involves two parcels of adjacent property: the parcel benefiting from the easement is the dominant estate, and the parcel being burdened is the servient estate. [3]

arbitrage Taking advantage of the interest rate differential by buying at one interest rate and selling at a higher interest rate by either land contract or the use of a wraparound loan.

arbitration A nonjudicial process for resolution of disputes whereby the parties agree to abide by a decision made by a third person.

arm's-length transaction A bargain freely entered into without duress, undue influence or collusion (deceit).

artificial monument A surveyor point for metes and-bounds descriptions that is manmade, such as an iron stake, a fence or a canal.

as is A phrase intended to mean that the seller does not warrant a property's condition. Such phrase, however, does not protect the seller in cases of concealment or fraud. Some courts hold that it applies only to readily observable defects, not to known but undisclosed latent defects.

assemblage The act of bringing adjacent parcels of land under one ownership; the opposite of subdividing. Assemblage usually results in an increase in value. (See *plottage*, below.) [4]

assessed value Value placed by a tax assessor for property tax purposes only. (Note: has nothing to do with the actual or appraised value of a property, but will be used to confuse the student on exams.) [4] [13]

assessment The process of valuing a property for taxation purposes.

assessor The county assessor determines the general assessed valuation for property (taxes) in the county. [10]

assets Property owned by or owed to a business or person.

assignee (assigns) One who receives an assignment.

assignment The complete transfer of one person's rights to another. The assignee takes over the rights and duties of the assignor. [1]

assignment of rents A mortgage clause that allows the mortgagee to collect rents during the foreclosure period. Could also be a transfer of rents to a third party.

assignor One who makes an assignment.

assumption The act of taking over the responsibilities for an obligation and agreeing to be liable personally for the obligation. A deficiency judgment might be possible against an assuming party. (Also known as "*Assume and Agree to Pay*".) [5] [10]

attachment The legal seizure of property under court order prior to a judgment when there is belief that the property will not be available after judgment. [10]

attestation The act of witnessing; to attest is to bear witness. Formal wills require witnesses.

attorney-in-fact A person operating as an agent (not an attorney at law) under a power of attorney. [2]

attornment An agreement between owner and sublessee that the owner will recognize the sub-lease and the sublessee will pay the owner should the sublessor's interests be foreclosed.

attractive nuisance A doctrine holding the owner of land liable for injury to children due to the unsafe condition of property where property is likely to attract children as trespassers.

avulsion The sudden tearing away or loss of real property by action of water, such as a river changing course. [3]

axial growth City growth along transportation routes from the city center (resembles the spokes of a wheel).

Azimuth system A rarely-used land description system that expresses all directions in terms of the angle from one direction only through 360°. (For example, the description “S. 35° E.” under the bearing system would be expressed as merely “145°” under the Azimuth system.) [8]

B

back-end ratio The ratio of gross income to loan payments (PITI) plus long-term installment debt payments. (Used to qualify buyers.)

bailment Giving possession of personal property to another but retaining title; for example, storing goods in a warehouse, renting a trailer, giving existing mortgages to a lender as security for a loan.

balance The principle of valuation that states that the maximum value of an area is realized when there is balance in the number and location of the various types of real estate usages. Value will decrease if there is either too much or too little of Residential, Commercial or Industrial property in the particular area. [4]

balance sheet A financial statement showing assets and liabilities. The balance sheet shows net worth.

balloon loan A mortgage loan where the periodic payments are not sufficient to fully repay the principal loan balance by the end of the term of the loan (Also known as a *limited reduction loan* or a *partially-amortized loan*.) [5]

balloon payment A final installment of an unamortized (“balloon”) loan that exceeds the previous payments. [5]

band of investment method A procedure to determine the capitalization rate to be used for a particular property under the income approach.

banker's interest Interest based on a 30-day month and a 360-day year.

bankruptcy A legal procedure to eliminate unsecured debts. To eliminate secured debts, the security must be surrendered.

bargain and sale deed A deed for consideration that uses the terms “bargain and sale”. (It implies that monetary consideration was given, as opposed to a gift.) It contains no warranties other than an implied interest by the grantor. [7]

base fee See *fee simple determinable*, below. [3]

base lines The principal east and west surveyor lines established by government survey.

basis (cost basis) Cost plus improvements less depreciation. Used to determine profit for tax purposes upon sale.

bearer paper A negotiable instrument made out to cash or bearer that can be transferred without endorsement.

bearing The direction of a line. Used along with *distances* in the legal description of a parcel of land. [8]

bearing system A method of land description that uses the degrees (or fractions of a degree) from the cardinal directions of north or south (i.e., N. 83° 27' E). [8]

benchmark A marker placed by a government surveyor showing elevation above sea level and used by surveyors as a reference point.

beneficiary The person receiving payments under a deed of trust; similar to a mortgagee (lender). [10]

beneficiary statement A statement of a lender of the balance due on a loan.

bequeath To give personal property by will.

bequest Personal property that is given by will.

betterment An actual improvement (not a repair) to real estate.

bilateral contract A mutual exchange of promises whereby each promise is consideration for the other promise. [1]

bill of sale A written agreement transferring title to personal property. [1] [21]

binder Insurance coverage given by an agent prior to the issuance of a policy or payment of a premium.

blanket mortgage A mortgage covering more than one property. Often used by developers to buy the land for a subdivision. As each lot is developed and sold to individual home buyers, the developer will pay off that portion of the loan and the lender will “release” that parcel as collateral for the loan. [5]

blended mortgage rate A refinance rate that is less than the current market rate but more than the old rate.

blind advertising An advertisement that fails to indicate that the advertiser is a real estate agent.

block A division of a subdivision plat which describes a group of lots and provides for infrastructure such as sidewalks, street lighting, and streets. See also, *lots*, below. [8]

blockbusting The act of inducing panic-selling for gain by exploiting the fear of loss in value due to minority members moving into an area. Blockbusting is illegal under the Civil Rights Act of 1968. [6]

blue-sky laws Security registration requirements to protect consumers against investments in fraudulent schemes.

board foot A unit of lumber measurement equal to 144 cubic inches (1' x 1' x 1").

book value Original property purchase price plus improvements less depreciation taken; the value assigned an asset for bookkeeping purposes. [4]

boot Money, personal property or debt relief given to even off a trade. Boot is taxable to the person receiving it. [12]

bounds Measurements of boundaries. See also *metes* and *metes and bounds*, below. [8]

bracketing The process of selecting a value that lies between selling prices of comparable properties having more and fewer amenities; used in the market comparison method of appraisal.

breach The breaking of a law or the terms of a contract.

bridge loan See *gap loan*, below.

broker A licensed agent employed by a principal for real estate transactions. Only a broker can employ a salesperson (or Associate Broker, in Colorado).*

See Chapter 14, under 12-61-101, C.R.S., for the specific Colorado definition of what actions constitute the need for a broker's license in Colorado.

BTU (British thermal unit) The unit of heat needed to raise one pound of water one degree Fahrenheit. The BTU is used to rate the capacity of heating and air-conditioning units.

budget mortgage A loan by which the borrower pays one-twelfth of the estimated property tax and insurance payment with each monthly payment.

building line The setback from the lot line, (the boundary upon which structures can be built within a lot.)

built-up method A process for arriving at a capitalization rate by rating a risk-free, management-free investment and then adding for risk and management problems.

bulk sales act A part of the Uniform Commercial Code; requires recording and publication of sales not in the course of normal business. It applies to the sale of stock in trade when a business is sold. If the act is not complied with, the sale is void as to the vendor's creditors, who can then treat the stock as if the vendor still owned it.

bulk zoning Zoning for density with height, setback and open space requirements.

bundle of rights All rights incidental to ownership, such as rights to lease, use, encumber, sell, exclude and so forth.

business opportunity A business including stock, fixtures and goodwill.

buydown A financing technique in which a builder, seller or broker makes a property more attractive by paying a lender a percentage of the loan or a number of payments to lower the effective interest rate on the buyer's mortgage. [5]

buyer agency Unlike common-law seller agency, here the broker exclusively represents – and owes all agency duties to – the buyer. The buyer is principal. [2]

buyers' market A market condition characterized by more sellers than buyers, so buyers have a more commanding position.

bylaws The rules of how a corporation shall be governed; set forth the authority of its officers.

C

cap A limit, usually on the interest rate or rate increases, on an adjustable-rate mortgage (ARM). [5]

capital asset A physical asset such as land, a building and equipment, usually for a business or trade. Capital assets other than land may be depreciated.

capital gain Profit from the sale of a business or an investment property. Generally it is the difference between the cost and selling price, less certain deductible expenses. Used mainly for income tax purposes. [12]

capitalization method An appraisal approach whereby the net income of an investment property is capitalized to determine its value (the net income is divided by a capitalization rate).

capitalization rate ("cap-rate") An investor's desired rate (percentage) of return for an investment. It is divided into the net income to determine a property's value. [4]

capital loss Loss from a sale of a capital asset or other real property. (For tax purposes, there is no taxation on the loss from the sale of a residence, although a gain is taxable.) [12]

* **CAR** Colorado Association of REALTORS®.

care One of the five duties of the agent to principal: to use reasonable care in the performance of the agency. [2]

cash basis An accounting method where income and expenses are considered reportable (and deductible) in the year in which it is received. [12]

cash flow The net spendable cash remaining after all cash outlays are subtracted from the gross income. [12]

caveat emptor "Let the buyer beware." This old rule has been modified by consumer rights legislation.

CC&Rs See *restrictive covenants*, below.

certificate of eligibility Obtained by the veteran to be eligible for a VA loan. The veteran must submit discharge information. [5]

certificate of occupancy Frequently required before a new structure can be occupied; usually provided by the building inspector.

certificate of purchase Received by the purchaser at a tax sale. If the defaulting taxpayer fails to redeem (pay off) the taxes within a certain time-period (3 years in Colorado), the holder of the certificate may present it to the County Treasurer to provide notice that the holder intends to occupy the property. See *treasurer's deed*, below. [10]

certificate of reasonable value (CRV) An appraisal required for VA-guaranteed loans. [5]

***certificate of taxes due (tax cert)** A written statement or guaranty of the condition of the taxes on a certain property, made by the County Treasurer of the county wherein the property is located. Any loss resulting from an error in a tax certificate shall be paid by the county that such treasurer represents. [10] [17]

certificate of title 1) Evidence of title issued by a registrar under the Torrens title system; [7] 2) Evidence of transfer of title that seller must deliver to buyer of a *manufactured home*. [1]

chain A surveyor measurement of 66 feet.

chain of title The history of a property showing all conveyances from the original government conveyance (called the *patent*). [7]

change The principle of valuation that states that neither neighborhoods nor real estate values remain constant. [4]

chattel An item of personal property. [7]

chattel mortgage A mortgage of personal property; generally has been replaced by financing statements (UCC-1's) under the Uniform Commercial Code. [5] [20]

chattel real A personal property interest in real property, such as a lease, mortgage, trust deed, land contract or share in a real estate syndicate.

check A 24-mile-by-24-mile area formed by guide meridians and parallels under government survey that correct for the curvature of the earth.

Civil Rights Act of 1866 Law that provided that every citizen shall have the same and equal rights as to housing. If the discrimination is based upon *color*,

the Civil Rights Act of 1866 has no exceptions, such as those contained in the Civil Rights Act of 1968. [6]

Civil Rights Act of 1964 Law that prohibits discrimination in government-related housing. [6]

Civil Rights Act of 1968 Title VIII of this act is known as the federal Fair Housing Act. It prohibits discrimination based on race, color, religion and national origin. The Housing and Community Development Act of 1974 added the protected class of gender, and the Fair Housing Amendments Act of 1988 added the protected classes of handicap and familial status. [6]

***closing instructions** Instructions from the parties (seller and buyer) to the closing company regarding the payment of fees for closing services. The Commission recommends the closing instructions be signed at the time of execution of the listing agreement. The Commission-approved (Rule F) form must be used. [9] [21]

closing section Because of the curvature of the Earth, townships under the governmental survey system would not be exactly 36 square miles. The closing sections of a township are located on the north and west tiers, and are smaller than the normal 640 acres (1 square mile) to account for these discrepancies. [8]

closing short Closing even though the closing company does not have the full amount of funds from lender or buyer. In Colorado, it is a violation of Rule E.

closing statement The final accounting showing all debits and credits in the sale of real property or a business; also known as a *settlement statement*.

cloud on title A claim, document or discrepancy that casts doubt on the marketability of a title. [7]

codicil An amendment to a will that requires the same formalities as the will itself

cognovit note Note containing a confession of judgment by the borrower.

coinsurance A requirement that a property carry a minimum coverage (usually 80 percent of replacement cost) in order to collect 100 percent of the loss. If a person carries only a percentage of the amount required, that person receives only that percentage of the loss suffered.

collateral Property that secures a loan.

collaterally secured Secured by other loans.

color of title Because of a defect, having only the appearance of title instead of true title; for example, a title under a forged deed. [3]

Colorado Coordinate System A little-used method of describing real property, which plots the location of the parcel on X-Y coordinates based on information from the National Geodetic Survey within Colorado. [8]

commercial acre The amount left in an acre after deducting land for streets and walks; for example, less than 43,560 square feet.

commingling The act of mixing personal funds and a principal's funds; considered grounds for disciplinary action.

commission An agent's fee or percentage for fulfilling the terms of the listing agreement. It is *earned* when the listing broker finds a "ready, willing and able" buyer, but is only *paid* when the transaction is completed. [9]

commission split Since the seller will normally be responsible for paying both the listing broker (representing the seller) and the cooperating broker (either a buyer broker or transaction broker working with buyer) the listing agreement between seller and listing broker should specify the payment (percentage) that will be paid to both brokers (the "split"). [9]

commitment 1) In lending, an agreement to grant a loan, at the terms specified; [5] 2) In title insurance, a statement of the status of title to the property, and an agreement by the title company to provide certain title insurance according to the terms stated within. [7]

common elements Areas in a common interest subdivision owned in common with other owners and used by all of the owners.

* **common interest community** Means real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in a declaration. Ownership of a unit does not include holding a leasehold interest in a unit of less than forty years, including renewal options. The period of the leasehold interest, including renewal options, is measured from the date the initial term commences. [3]

common law The unwritten law of England established by many years of court precedent. English common law is the basis for U.S. statutory real estate law. [1-12]

community property Property acquired during marriage that is considered equally owned by both spouses. Presently, community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Most states, including Colorado, have a modified version of community property. [3]

compaction The compressing of soil so that it will support a structure.

company dollar The broker's share of the gross commission earned before expenses.

comparative market analysis (CMA) An appraisal prepared by an agent using recent comparable sales to indicate the likely sales price of a property. [4]

comparative unit method An appraisal method to determine replacement cost. In general, the method is based on current price per square foot or cubic foot of similar construction.

compensating balance The requirement of a lender that a borrower keep a specified balance on deposit with the lender.

compensatory damages Money damages awarded to indemnify the injured party for a loss because of another's wrongful act. [1]

competition The principal of value that states that when extraordinary profits are being made, competition will enter the area and profits will drop. [4]

complete escrow An escrow for which everything necessary to be done has been accomplished.

compound interest Interest that compounds on interest as well as principal. Because interest is paid monthly on standard real estate loans, it is simple, not compound, interest.

concentric circle growth City growth in rings from the city center.

concurrent estates More than one estate in the same real property at the same time (one person could have a fee simple interest, and another, a leasehold estate).

condemnation (1) The legal action to take property for public use by eminent domain. (2) The process of declaring property unfit for use. [3]

condition precedent A fee simple subject to a Condition Precedent automatically terminates upon the happening of a specified event. (Also known as a **Fee Simple Subject to a Special Limitation**.) [3]

conditional loan commitment A promise to make a loan on a property to a buyer yet unknown, so long as the buyer otherwise qualifies for the loan.

conditional sales contract A security sales agreement for the sale of personal property where title remains with the vendor (the vendee has possession). Title is transferred only when goods are paid for (has generally been replaced by financing statements).

conditional use permit Special permission for a use not otherwise allowable under the zoning but considered under special criteria in the zoning. [3]

condition precedent A condition that must happen prior to the vesting of title in another. Until the condition occurs, title remains with the grantor. [3]

condition subsequent A transfer of title with the requirement that a specified condition be met. If the condition is breached, the grantor must declare a forfeiture of grantee's rights and retake the property within a reasonable period of time. Grantee's estate (interest in land) is known as a "fee simple subject to a condition subsequent". *Grantor's* future interest is called the "Right of Re-entry" (See below). [3]

condominium A vertical subdivision with common ownership of land and common areas and individual ownership of the units. [3]

conforming loan A loan that meets the purchase requirements of secondary-mortgage lenders, Fannie Mae or Freddie Mac.

conformity The principle of value that states that a property will have its maximum value when it is located in an area of similar properties. [4]

conservator A person appointed by the probate court to manage and protect the assets of an adult who is unable to handle his or her own affairs.

consideration Something of value given or promised in exchange for a promise, an act or property of another. A promise made without consideration is deemed void and unenforceable. "Love and affection", although deemed good consideration, are not regarded as valuable consideration to support a promise or an act of another. [1]

construction loan A short-term loan for builders where the principal is paid out incrementally, as construction on a large project progresses. Each pay-out is called a "draw". [5]

constructive eviction An act of a property owner that interferes with a tenant's quiet possession, thus allowing the tenant to consider the lease at an end and to be free from further obligations. [3]

constructive notice The notice given by occupancy or recording to subsequent purchasers or lienholders of a prior interest in the property. Also known as *legal notice*. [7]

contingent remainder A remainder interest in property that will vest only if some specified contingency is met, such as the holder outliving a life tenant. See also, *fee tail* and *life estate*. [3]

continuation statement A statement filed with the secretary of state that extends a financing statement (a “mortgage” for personal property) for five years.

contour lines Topographical lines on a map that follow elevations. Lines close together indicate a slope, and lines far apart indicate a relatively level area.

contract An agreement, enforceable by law, between two or more competent parties for consideration to perform or not perform a legal act. (A one-sided take-it-or-leave-it contract. Courts will refuse to enforce oppressive provisions.) [1]

contribution The principle of valuation that states that improvements should not be made to a property unless the value of the property is increased enough to justify the cost of the improvements. [4]

conventional loan A loan made by a conventional lender without government guarantee (VA) or insurance (FHA). [5]

conversion Taking property entrusted to you and converting it to your own use; a form of larceny.

conveyance An instrument in writing by which some estate, interest, or title in real estate is transferred from one person to another, such as a deed or mortgage. [7]

cooperative housing corporation A cooperative in which each owner owns stock in the project and has the right to occupy a unit. [3]

***coordinate system** A method of land description using measurements from an intersection of a defined north-south axis and a defined east-west axis. [8]

cooperative An apartment structure owned by a corporation wherein each shareholder occupies a specific unit under what is called a proprietary lease. [3]

corner influence An increase in value of commercial property because of the additional traffic and exposure of being located on two streets.

corporation A separate legal entity whose shareholders are not liable personally for corporate debts.

correction lines Surveyor corrections to compensate for curvature of the earth.

correlation Interpreting value by combining the three methods of appraisal; also known as *reconciliation*.

cost approach A method of appraisal whereby the cost to replace the structure is calculated. Accrued depreciation is determined and deducted from the replacement cost; the land value is then added to determine property value. [4]

covenant A promise that runs with the land. [7]

covenant against encumbrances A covenant in a warranty deed whereby the grantor guarantees there are no encumbrances on the property other than those specifically disclosed in the deed. [7]

covenant of further assurance A covenant in a warranty deed whereby the grantor promises to procure or perfect any instruments to make title good. [7]

covenant of habitability A law that obligates all landlords to ensure that rental properties are fit for human habitability. [3]

covenant of quiet enjoyment A covenant in a warranty deed whereby the grantor guarantees that grantee will not be disturbed in the possession of the property by superior claims. [7]

covenant of warranty forever A covenant in a warranty deed whereby the grantor guarantees that grantee shall have title and possession to the property as promised. [7]

covenant of seizin A covenant in a warranty deed whereby the grantor guarantees that grantor owns the property and has the right to convey it. [7]

CPI (consumer price index) An index that reflects by its changes the changes in the purchasing power of the dollar; widely used as a measurement of inflation.

creditor 1) One to whom something is owed; 2) Regulation Z defines a creditor as anyone who extends consumer credit more than 25 times in a year or more than five times in either the preceding calendar year (or the current calendar year in the case of transactions secured by a dwelling and if the extension of consumer credit is subject to a financing charge or is payable by a written agreement in more than four installments - not including a down payment). [5]

cul-de-sac A dead-end street having a rounded end. It is desirable for housing because there is no through traffic.

cumulative zoning Zoning that allows the designated category of use as well as less restrictive uses.

curable depreciation Depreciation that can be cost-effectively corrected. [4]

curtail schedule A payment schedule that indicates principal reduction of a loan for each payment.

curtesy A common-law right of a husband in the estate of his deceased wife. Some states have made this a statutory right to a life estate in the wife's property, whereas other states grant undivided fee simple interest in a portion of the wife's estate. [3]

D

datum plane A surveyor's plane from which elevations and depths are measured.

dealer A person who makes a regular part of his or her income by buying and selling property.

debenture Bonds issued without specific security and are secured only by the overall equity of the issuer.

debt capital Money raised by a business by borrowing through bonds or other debentures.

debt service The series of payments of interest and principal required on a debt over a given period of time (i.e., mortgage payments). Debt service is not considered part of operating expenses, and therefore may not be deducted from the effective gross income to determine annual net operating income. [4]

debtor One who owes money to a creditor.

declaration of homestead A formal procedure of recording a homestead declaration. It protects the homestead from unsecured creditors up to a statutory amount.

declaration of restrictions A declaration of the restrictive covenants recorded by the subdivider. In each deed, the subdivider usually incorporates the restrictions by referencing the recording of the document.

declaratory relief The court is asked to determine the rights and possible future relief of the parties – before any damage actually can occur. [1]

declining balance depreciation An accelerated method of depreciation used for tax purposes whereby a percentage of the straight-line depreciation is taken from a constantly declining balance.

dedication The gift of real property to a governmental unit, usually by a subdivider, in order to gain approval. If the dedication is given for a particular purpose and that purpose is later abandoned, the land dedicated may revert to the grantor.

deed A document that conveys title to real property from a grantor to a grantee. [7]

deed in lieu of foreclosure A deed from owner to lienholder, given to avoid foreclosure proceedings. Unlike foreclosure, it may not wipe out junior encumbrances.

deed in trust A deed to a person as trustee for a third party. [7]

deed of reconveyance A deed given by the trustee to the trustor when the trustor has paid the beneficiary in full. It is used for trust deeds to remove the lien in the same manner as a satisfaction is used to remove a mortgage.

deed of trust An instrument given by a borrower pledging the real property as security for the loan. Unlike a mortgage, the deed of trust is given to a third part (in trust) to hold and release when the loan is paid (or conduct foreclosure if the loan goes into default). See also, mortgage, below. [5] [10]

default The breach of a promise or an agreement.

default clause A mortgage provision that allows a junior lienholder to cure any default of a prior lien (and then foreclose on his or her own lien).

defeasance clause A mortgage provision that defeats (or cancels) the mortgage upon the full payment as agreed.

defeasible estate An estate that can be lost should a certain event take place. See also, *fee simple determinable*, below. [3]

defense A condition of the parties or contract making the contract invalid (void, voidable or unenforceable). The contract will be invalid even though it has the requisite offer, acceptance and consideration. [1]

deferred maintenance Maintenance that has been postponed.

deficiency judgment A judgment obtained when a foreclosure sale does not satisfy a debt. Deficiency judgments are difficult to obtain in many states because of restrictions on them. In some states, they are not allowed at all. [10]

degree A measurement for angles used in metes-and-bounds descriptions. One degree is 1/360th of a circle.

delivery The actual transfer of an interest; requires the intent to make an irrevocable transfer. [7]

delivery and acceptance Required elements of a deed. Transfer of title is not effective until a deed is not only delivered (evidencing grantor's intent) but accepted by grantor. [7]

demand Required for real property to have value; the need for ownership. One of the four requirements for real property to have value. [4]

demand loan A mortgage loan which may be called due at any time by the lender. [5]

demise The transfer of a leasehold interest.

Department of Veterans Affairs (VA) The new name for the Veterans Administration.

dependency The principle of value that states that the value of a parcel changes based on changes in the use of surrounding parcels. [4]

depreciation A loss in property value from any cause. Only improvements (structures) may be depreciated – never land. A factor in the Cost Approach method of determining value. [4]

depth table An appraiser's table that determines additional value attributable to additional depth.

dereliction Land that is created by the recession of water. It belongs to the adjacent landowners. Also called *reliction*. [3]

descent Hereditary succession by act of law when property does not pass by will. See also *statutes of descent*, below. [7]

* **designated broker** The licensed broker who has the direct responsibility for a particular transaction. If firms with two or more licensees, the Employing Broker may or may not be the designated broker for a particular transaction. If an employed broker (who is NOT the Employing Broker) is the DB for a transaction, then that employed broker is the only licensee designated to be responsible for that transaction. (This responsibility no longer extends to the Employing Broker.) This law, enacted in 2003, changes the former status of *vicarious liability* in Colorado agency relationships with the public: NOW individual members of the public should not be held liable for the acts or omissions of real estate brokers that have not been approved, directed, or ratified by such individuals; limits the public's legal relationship with brokers to only the individual broker they have engaged. [2]

desk cost The office overhead cost per desk. It is determined by dividing overhead by number of salespeople in an office.

determinable fee An estate that would end on the happening of an event that may or may not happen. [3]

development method An appraisal method to determine land value where cost of development is deducted from estimated value after development.

devise A gift of real property by the last will and testament of the donor.

devisee The person receiving real property by Will.

devisor The testator or testatrix who transfers real property by will upon his or her death.

diminishing returns The principle of valuation that states that once demand is met, additional units will begin to saturate the market and result in a lower return. (See *increasing returns*, below.) [4]

direct endorsement A lender authorized to make FHA loans without FHA approval.

disburser Lender who disburses construction loan money periodically as work progresses. [10]

disburser's notice Recorded by the lender of a construction loan to indicate the principal contract, disburser, and legal description of the land being secured by the mortgage or deed of trust. [10]

disclosure (1) One of the five duties of an agent to the principal: keep the principal fully informed of material facts that may affect the agency; (2) Colorado (Rule E-35) requires that brokers disclose their duties and obligations (with a Commission-approved form) to a party prior to engaging in acts that require a license. [2]

discount points See *points*, below. [5]

discounting a loan Selling a loan for less than its face value (common with second mortgages or loans bearing low interest rates).

disintermediation The sudden withdrawal of savings from lending institutions, resulting in a tight money market.

distribution The apportionment and division of an estate in probate after debts and costs have been paid.

divided amortization loan The schedule of amortization may be divided so that there is a faster maturity on one part of the loan and a longer maturity on another part of it. Or only interest may be charged for several years and then a complete amortization schedule developed from that point on. [5]

***documentary fee** A Colorado state law requiring a fee of one cent for each one hundred dollars of consideration paid by the person recording an instrument of conveyance to the county clerk and recorder. [7]

documentary stamps Formerly a federal tax on real property conveyances that, when abandoned by the federal government, was adopted in many states; also known as revenue stamps.

domiciliary probate Probate in the deceased's state of residence.

dominant tenement An estate using the land of another under an easement. The easement is an appurtenance to the dominant tenement. (Also known as "dominant estate") (See *appurtenant easement*, above.) [3]

donee The person who receives a gift. [7]

donor The person who gives a gift. [7]

double escrow The use of one escrow (closing) to purchase and resell a property.

dower A wife's common-law right in the estate of her husband should she survive him. In some states, it is a statutory right, such as one-third interest. [3]

downzoning A change in zoning resulting in a lower-density use or lesser use.

dragnet clause A provision extending a mortgage to cover future obligations that may arise between the parties; used in an open-end mortgage. [5]

dual agency An agency created when an agent acts for the buyer as well as the seller in a transaction. Dual agency has been abolished in Colorado, effective January 1, 2003. [2]

dual contracting A fraudulent arrangement whereby the buyer and seller of a property a false contract for a higher sales price, in order to induce the buyer's lender to increase the loan proceeds. [1] [5]

due-on-sale clause A type of acceleration clause in a note that makes all future payments due when a property is sold. It prevents an assumption of the loan.

Also called *alienation clause*, *assumption clause* and an *acceleration clause*. [5] [10]

duress The use of force or threat to make a person act; makes a contract voidable. [1]

E

earnest money A good-faith deposit made by an offeror with an offer.

easement The right of a person to use another's land. [3]

easement by condemnation. An easement acquired for a public purpose, such as a power line or sewage treatment facility, through the right of eminent domain. (See, *condemnation*, above.) [3]

easement by estoppel An easement created when one person's words or actions lead another to believe in the existence of an easement, causing the second person to act to his or her own detriment. The person who made the assertion will be estopped by court action from denying the existence of the easement.

easement by necessity An easement sometimes granted when there is no other possible access to a property. [3]

easement by prescription (prescriptive right) An easement created by open, notorious and hostile use of property for a prescribed period of time. [3]

easement in gross A personal easement to use land of another where there is no dominant tenement being benefited. [3]

ECOA See *Equal Credit Opportunity Act*, below. [5] [6]

economic life That period for which improvements give a return attributable to the improvements alone. [4]

economic rent The rental value of a property in the marketplace.

economics of scale The overall cost of production should decrease by spreading costs among a greater number of transactions or units. [4]

effective gross income The gross income less the vacancy factor and an allowance for collection loss.

effective life An age placed on property for appraisal purposes based on the condition of the property. The effective age may be more or less than the chronological age. [4]

egress A way to exit a property.

ejectment A legal action to oust an encroacher or a trespasser.

elevations (1) Views of a structure from various directions on a builder's plans. (2) Height above sea level.

Ellwood Mortgage-Equity-Analysis A method which enables the analysis of an income-producing property by comparing mortgage financing and future property appreciation or depreciation at the time of sale. [4]

emancipated minor A minor who, under state law, may contract as an adult.

emblems Cultivated annual crops; considered to be personal property.

eminent domain The government right to take private property (title or easement) for public use. It is not under the police power, for the owner is paid for the property taken. [3]

employee A person who works under the direction and supervision of an employer. [2]

enabling act A legislative act that confers power on local governments that they would not have otherwise. Zoning and planning powers were given under enabling acts.

encroachment A trespass by placing an improvement on or over the land of another.

encumbrance Anything that affects title or limits use, such as liens, easements or restrictions. [10]

endorsement 1) The signature of a holder on the back of a negotiable instrument; 2) Supplemental title insurance coverage.

entitlement That portion of the loan the VA guarantees.

environmental impact report (EIR) A report required for projects that may have a significant effect on the environment.

Environmental Protection Agency (EPA) An agency that enforces federal environmental standards.

Equal Credit Opportunity Act (ECOA) A federal act that prohibits discrimination in the granting of credit based on age, sex, race or marital status. [5] [6]

equal dignities rule If an act must be in writing the agency agreement appointing someone to perform the act must also be in writing.

equalization factor A number by which the assessed value of a property is multiplied to arrive at a value for the property that is in line with statewide tax assessments. The *ad valorem* tax would be based on this adjusted value. [13]

equilibrium point That price that results in a number of buyers equal to the goods available.

equitable lien Written contract or court judgment placing a lien on a parcel of property as collateral for a loan. [10]

equitable owner The person identified to receive the benefit of property held in trust. (The equitable owner is the owner of the property who has given the "legal title" to the lender in the form of the mortgage or deed of trust.)

***Equity Skimming** A felony in Colorado whereby a buyer purchases a property and agrees to assume the seller's loan, often by means of a "wraparound loan" (which leaves the seller still partially liable for the payments.) Buyer then accepts rent payments from tenants on the property, but fails to make the payments on the (seller's) loan. Eventually, the property is foreclosed upon, to seller's detriment. [1] [5]

equitable title 1) The beneficial interest held by a third party to a deed wherein title is held by a trustee, (i.e., "To John Q. Public, as trustee for the benefit of Jane Doe". Jane holds equitable title); [7] 2) The right to demand that title be conveyed upon payment of the purchase price; [5] 3) The right the borrower retains, after conveying legal title to a lender. This is the beneficial interest in possession and ownership. [10]

equity (1) The difference between the value of a property and the liens against it; the owner's interest in the property; [12] (2) That which is right or just.

equity capital Money raised by a business through selling shares in the business.

equity of redemption The right of a mortgagor to redeem during and after foreclosure; governed by state statute.

erosion The wearing away of soil by acts of wind and/or water. [3]

escalator clause A contract or lease provision allowing for payments to rise or fall.

escape clause Releases a party from contract responsibilities in the event of stated situations.

escheat The reversion of property to the state when a person dies intestate (without a will) and without known heirs. [3]

escrow (1) A neutral depository that handles real estate closings as agent for the buyer and the seller; (2) the process of closing the real estate transaction.

escrow account See *impound account*, below.

escrow agreement A written agreement between two or more parties whereby the grantor, promisor or obligor delivers certain instruments or property into the hands of a third party, the escrow agent, to be held by said third party until the happening of a contingency or performance of a condition, and then to be delivered to the grantee, promisee or obligee.

estate An interest in property. [3]

estate at sufferance An estate in land arising when the tenant wrongfully holds over after the expiration of the tenant's term; the landlord has the choice of evicting the tenant as a trespasser or accepting such tenant for a similar term and under the conditions of the tenant's previous holding. See also, *tenancy at sufferance*, below. [3]

estate at will A leasehold estate for an undetermined time period; may be terminated at any time by the lessor or lessee. Most states require a statutory notice period. See also, *tenancy at will*, below. [3]

estate for life A freehold interest whereby a person has property for his or her life or the life of another named person. The life tenant cannot encumber the property beyond his or her interest. At the end of the estate, the interest either reverts back to the grantor or passes as a remainder interest to a third party. See also, *life estate*, below. [3]

estate for years A lease for a definite period of time, the result of an express agreement. See also, *tenancy for years*, below. [3]

estate from period to period An interest in land where there is no definite termination date but the rental period is fixed at a certain sum per week, month or year; often called a *periodic tenancy*. [3]

estate of inheritance An estate that can be inherited, such as a fee simple estate.

estate on a condition subsequent An estate given based on a specific condition. Upon breach of the condition, the grantor can declare a breach and regain the property.

estoppel A doctrine whereby a party is barred from raising a defense when that person's acts or words induced another party to act to his or her detriment. [1]

estoppel certificate In a commercial lease, it is an acknowledgment certificate that contains important information found in the lease, along with the status of the tenant and landlord's rights and obligations under the lease. By providing

this to the landlord's lender, the tenant will be stopped from later attempting to collect monies owed by the landlord (such as prepaid rents or security deposits) from the lender. [11]

estover Necessity that the law allows, such as the right of a tenant to use timber for fuel and repair needs.

et al. "And others."

et ux. "And wife."

eviction A dispossession by process of law.

exception in a deed An exclusion in a deed; deeding only part of a property. See also, *restriction*, below. [7]

excess land Land that does not contribute economically to use and/or value.

exchange value The value a property has in relation to other goods. [4]

exclusionary clause See an *exception in a deed*, above.

exclusionary zoning Zoning that excludes a stated use.

exclusive agency listing A listing whereby the broker is the exclusive agent of the owner and is entitled to a commission if the broker or any other agent sells the property. If the owner sells the property without an agent, the broker is not entitled to a commission. [9]

exclusive right to buy Broker agrees to assist or represent a purchaser and purchaser agrees to compensate broker for locating a suitable property. Normally, compensation comes from the seller or seller's broker (by virtue of the seller's listing agreement with the Listing Broker. [9]

exclusive right to sell listing A listing whereby the agent is entitled to a commission from the seller if the property is sold during the listing term by anyone, including the owner. [9]

exculpatory clause A contract provision excusing a party for injuries to another; frequently used by lessors in leases. Exculpatory clauses do not affect the rights of third parties who may be injured on the premises.

execute To sign a document.

executed contract A contract where all performance has been completed. [1]

execution of judgment The action of the sheriff in seizing and selling property of the debtor to satisfy a judgment.

Executive Order No. 11063 (1962) Guaranteed nondiscrimination in housing that is financed by FHA and VA loans. [6]

executor A man appointed by a will to administer the estate of a deceased; a woman is an *executrix*.

executor's deed A deed during probate containing the warranty that the executor(trix) has not encumbered the property. [7]

executory contract A contract that is in the process of being performed, or has yet to be performed. [1]

exemplary damages Punitive damages awarded in excess of compensatory damages when an action was performed with willful intent. [1]

exposure One element that affects the value of real property. [4]

express authority That authority given the agent in writing, or orally, or by the conduct of the principal. [2]

express contract A contract that is stated verbally or in writing, as opposed to an implied contract, which is understood but not stated. [1]

extended coverage policy Extends basic fire policy (fire, lightning and smoke) to cover additional perils, such as windstorm, hail, riot and such.

extension of a lease Continued occupancy under the terms of an existing lease. (A lease renewal is a new lease.)

external obsolescence Loss of value is caused by factors apart from or outside of the property. It is considered "incurable" because there is nothing that can be done to the property itself to remedy the problem. One possible cause for depreciation of a property, and an element of the Cost Approach method of determining value. [4]

F

facilitator A middleman working with both buyer and seller but without agency duties.

Fair Credit Reporting Act Allows a person to know what is in his or her credit file and to have explanations inserted and information investigated and removed if wrong.

Fair Housing Act See *Civil Rights Act of 1968*, above. [6]

Fair Housing Amendments Act of 1988 Added the protected classes of *handicap* and *familial status* to the Civil Rights Act of 1968. [6]

fair market value See *market value*, above. [4]

familial status A protected class under the Civil Rights Act of 1968 (created by the *Fair Housing Amendments Act of 1988*). Protects discrimination in the sale or rent of housing against families: persons younger than age 18 living with a parent or guardian. [6]

farm lease A lease whereby the tenant pays rental based on a share of the crops grown. [3]

FDIC (Federal Deposit Insurance Corporation) Insures bank and savings and loan deposits. The maximum federal insurance is \$100,000 for an account.

feasibility study A study as to the economic practicality of an investment.

Federal Land Bank A farm credit administrative agency that provides financing for farm purchases.

Federal Reserve System A federal agency that regulates the money supply, interest rates and reserve requirements of member banks.

fee An estate, or interest in land. See also, *fee simple*, below. [3]

fee simple The most complete estate (ownership) possible; has no time limit and can be transferred or inherited. (The word fee means an inheritable estate.) [3]

fee simple absolute See *fee simple*, above. [3]

fee simple determinable A grant that automatically ends should a property no longer be used for a designated purpose. [3]

fee simple subject to a Condition Subsequent. The interest does not return to the grantor but passes automatically to some other person upon the happening of a specified event. [3]

fee simple subject to a Executory Limitation. The estate passes to some other person (not grantor) upon the happening of a specified event. The “other person’s” future interest is called a “Possibility of Reverter”, below.[3]

fee simple subject to a Special Limitation. See *Condition Precedent*, above. [3]

fee tail An estate in which conveyance is limited to the descendants of the grantee. Technically, may only be created by these *exact* words in the conveyance (deed): “To [grantee’s name] and the heirs of [grantee’s name]’s body.” [3]

FHA (Federal Housing Administration) 1) A federal agency that insures mortgage loans; 2) A loan of favorable interest rate and terms, whereby the loan is *insured* for the lender to a certain amount or percentage in the event of default by the borrower. [5]

FHLB (Federal Home Loan Bank) Provides a credit system for savings and loan associations to borrow from. [7]

FHLMC (Federal Home Loan Mortgage Corporation or “Freddie Mac”) A subsidiary of the FHLB, which serves as a secondary mortgage market for savings and loan associations. [5]

FIRPTA (Foreign Investment in Real Property Tax Act of 1980) Federal income tax withholding on foreign persons selling U.S. real property interests. Buyers of U.S. real property interests (transferee) from foreign persons and settlement officers are required to withhold 10 percent of the amount realized (gain). Withholding is intended to ensure taxation of gains realized on disposition of foreign-held U.S. interests.

FIRREA (Financial Institutions Reform, Recovery and Enforcement Act) Law requiring standards for education and training, and a code of ethics, for appraisers. [4]

fictitious mortgage A mortgage recorded solely to provide terms for other mortgages that will incorporate them by reference. The purpose is to reduce the number of recorded pages.

fictitious name A name that does not include the surname of every principal in a business. To use a fictitious name, the fictitious name publication and recording statutes must be complied with. (Generally synonymous with *trade name*.)

fiduciary The duty of trust and honesty of an agent to the principal.

filtering down The process in which housing passes down to lower economic groups.

finance charge A calculation of the cost of interest and other charges financed over time. Regulation Z requires that lenders disclose this charge so as to reveal the true cost of the loan. See also, *Annual Percentage Rate*, above. [5]

financing statement An instrument filed by a lender on a personal property loan to give public notice that the goods are security for the loan (under the Uniform Commercial Code). [5]

finder's fee A fee paid to a non-licensee for an introduction only; legal in many states *(technically, not in Colorado).

firm commitment A loan commitment made for a particular borrower and property.

FIRPTA (Foreign Investment in Real Property Tax Act) Requires buyer withholding of taxes when the seller is a foreign national, except for exempt sales.

FIRREA (Financial Institutions Reform, Recovery, and Enforcement Act) Requires state licensing and certification of appraisers. [4]

first right of refusal A right to meet any bona fide offer to purchase or lease that an owner wishes to accept; generally given to tenants.

fixture A former item of personal property that has become so connected to the real property that it has become part of the real property. [3]

flat lease A level-payment lease with no escalation clause; also known as a *gross lease*. [3]

floodwater The water overflowing a defined channel.

floor space The interior square footage measured from the inside walls.

FmHA (Farmers Home Administration) Insures, subsidizes and makes loans in rural areas. Preference is given to veterans. [5]

FNMA (Federal National Mortgage Association or Fannie Mae) A private corporation that sets the (secondary) market in FHA and conventional loans by buying and selling loans. [5]

foreclosure The legal procedure whereby the lender forces the sale of property to pay indebtedness in the event of default. [10]

foundation The masonry substructure on which the building rests. The foundation rests on the footing.

“four unities” In order to create a joint tenancy, owners must take title at the same time, by the same instrument, with equal interests and with equal rights of possession. [3]

franchise A right to distribute goods and services under a marketing plan established by a franchisor.

fraud An intentional act or omission to deceive another to the detriment of that party. [1]

freehold estate A higher-interest category of estates (fee simple and life estates) Estate in which ownership is for an indeterminate length of time; Unlimited interest in a property; As opposed to nonfreehold estates, which are leasehold interests. [3]

front-end ratio The ratio of gross income to total loan payments (PITI); used to qualify buyers.

front foot A linear measurement of land based on the number of feet fronting on a road (could also refer to water frontage).

fully amortized loan A mortgage loan that provides for repayment of the loan within a specified time by means of regular equal payments at stated intervals (usually monthly). [5]

functional obsolescence Obsolescence that is built in by design or by construction. One possible cause for depreciation of a property, and an element of the Cost Approach method of determining value. [4]

funding fee A fee paid by a veteran for a VA loan.

fungible Able to replace or be replaced by another identical item.

future interest An interest in land that will materialize only upon the occurrence of some specified event. Although it may not ultimately occur, a future interest is real and has value, and may be transferred as any present interest. [3]

G

gain Profit resulting from the sale or exchange of real estate. Gain is determined by deducting the seller's adjusted cost basis (original cost + improvements – depreciation) or book value from the net sales price. [12]

gap loan A temporary loan, usually at a higher interest rate, where the borrower intends to obtain better financing; also known as a *bridge loan* or *swing loan*. [5]

garnishment The legal seizure of funds deposited by or due to the debtor.

GEM (growing equity mortgage) A mortgage with increasing payments, causing the principal to be rapidly decreased.

general agent An agent having all necessary authority to conduct a business or trade. [2] [9]

general lien A lien against all property of a debtor (for example, judgment liens and federal tax liens). [10]

general partner A partner who is active in management and liable for the debts and actions of the partnership.

general power of attorney A broad power given by a principal to an agent that enables the agent to act for the principal. (A specific power of attorney allows the agent to act only in the manner and area specified.) [2]

general warranty deed A deed where the grantor warrants title as to the claims of all others. [7]

gift deed A deed given for the consideration of “love and affection”. Creditors of the donor can reach the property if it can be shown that the gift was made while the donor was insolvent in an effort to evade creditors. A recorded gift deed does not take precedence over a prior unrecorded deed by the grantor for value.

GNMA (Government National Mortgage Association or “Ginnie Mae”) A federal corporation that provides assistance for federally aided housing projects that are at below-market interest rates. Funds are raised through the sale of government-backed securities. [5]

good consideration Even “love and affection” are considered good consideration for a completed gift transfer; however, they are not considered “valuable” consideration to enforce a promise to make a transfer.

good faith purchaser An innocent purchaser, who has no actual knowledge of a prior unrecorded claim. A GFP will have a superior right to a property over a purchaser who has knowledge of the unrecorded claim. [10]

good funds Closing funds where the checks have cleared; cashier's checks or certified checks.

governmental survey system The survey system used for most of the nation whereby land is measured from principal base lines and meridians and laid out in townships and sections. [8]

grace period A period allowed for late payments without penalty.

graduated lease Longer-term lease in which payments, instead of being fixed, are adjusted periodically based on appraisals or a benchmark index rate, such as increases in the Consumer Price Index. [3]

graduated payment mortgage (GPM) A loan where early payments are lower and increase during the term of the loan-making it easier for young people to purchase property. [5]

grandfather clause A regulation that permits existing conditions or uses to continue despite new laws against them; applies to prior-use zoning.

grant A transfer of title. [3] [7]

grant deed A deed used in some states in conjunction with title insurance whereby the seller warrants that title has not been conveyed previously and that there is nothing against the property that the seller knows of that has not been disclosed to the buyer. (*Not available in Colorado.) [7]

grantee The person who receives the grant from the grantor. [3] [7]

granting clause A deed provision indicating that title is passing. [7]

grantor The person who makes the grant to the grantee. [3] [7]

grantor/grantee index A recorder's index system by grantor/grantee name that makes it easy to research a title.

gross income The total income before any expenses or deductions. [12]

gross income multiplier A formula for determining the investment value of an income-producing commercial property. It is derived by dividing the sales price by the annual gross income (from rents). [4]

gross lease See *flat lease*, above. [3]

gross profit Gross sales less cost of the merchandise. To obtain net profit, all other expenses also must be deducted.

gross rent multiplier A formula for determining the investment value of an income-producing residential property. It is derived by dividing the sales price by the amount of monthly gross rent. [4]

gross rent multiplier method An appraisal variation to get an approximate idea of value where gross income is multiplied by a gross rent multiplier. It does not take into account unusual expenses. [4]

ground lease A lease of land only; tenant puts in the improvements. [3]

ground rent The portion of the rent attributable to land rather than to improvements.

gross scheduled income The scheduled gross based on anticipated 100% occupancy. [12]

ground water Underground non-flowing water.

growing equity mortgage (GEM) Increase in payments during the term of the loan reduce the principal amount more rapidly and the borrower's equity grows faster than normal. (Also known as a *rapid-payoff mortgage*.) [5]

guardian A person lawfully charged with managing the property of a minor who is legally incapable. [7]

guardian's deed A deed from a person duly appointed by a court. [7]

H

habendum clause The clause in a deed which begins with "To Have and to Hold". This clause indicates the extent of ownership being transferred (such as fee simple or life estate). [7]

habitability Reasonably fit for human habitation. (The "covenant of habitability" states that rental property not meeting basic standards of habitability will result of a constructive eviction, allowing the tenant to legally and voluntarily void the lease. *The covenant of habitability does *not* exist in Colorado.)

hard-money loan A cash loan rather than seller financing.

hereditament Any item capable of being inherited.

highest and best use That use which results in the greatest value for a property. [4]

hip roof A roof where all sides slope to the eaves.

holder in due course A person who, in the course of commerce, takes a negotiable instrument good on its face for value prior to the due date, without notice of any defense of the maker.

hold-harmless clause One party agrees to indemnify the other for any loss suffered because of the contract or lease.

holdover clause (1) A lease condition that provides for a very high rent should the tenant fail to vacate at the end of the lease, discouraging a holdover situation; (2) *In Colorado, the provision in a Listing allowing the first broker who was the "procuring cause" of the ultimate buyer, to have a portion of the commission earned at sale by a second broker. [9]

holdover tenant A tenant retaining possession after expiration of the lease. See *tenancy at sufferance*. [3]

holographic will A handwritten, signed and dated will. No witnesses are needed. (Not valid in all states.)

homeowners policy A comprehensive insurance policy covering fire, vandalism, theft, liability and other hazards.

homestead exemption A home on which a declaration of homestead has been filed to protect the home from unsecured creditors up to a statutory amount. (*In Colorado, this is granted automatically by operation of law.) [3]

Housing and Community Development Act of 1974 Added the protected class of *gender* to the Civil Rights Act of 1968. [6]

HUD The Federal Department of Housing and Urban Development.

hypothecate To give something as security without giving up possession (such as a mortgage or deed of trust.)

I

illegal In violation of an existing law.

illiquidity An asset that is not readily convertible to cash. Real estate is considered to be illiquid.

illusory contract An agreement that appears to be binding but in which one party actually is not bound; not enforceable (in court).

implied agent An agent not expressly appointed but implied by actions of the parties. [2]

implied authority That authority which is reasonably needed to perform the agent's express authority. [2]

implied contract An agreement not expressly stated but implied by actions of the parties. [1]

implied easement An easement implied when the grantor conveys property that is landlocked by other property of the grantor or where the grantor created the use, then sold the parcels separately.

impossibility of performance A legal change of circumstances which makes the contract impossible to complete, and thereby makes the contract unenforceable. [1]

impound account A reserve for taxes and insurance kept by the lender to which the borrower pays, along with regular principal and interest payments. Also called an *escrow account*.

improvement A structure on land; an addition to property, such as a room or air-conditioning. Unlike repairs, improvements increase the cost basis of the property. [12]

improvement location certificate (ILC) Includes the same information as an *improvement survey*, below, including boundaries and the location of improvements, encroachments and easements, but it is less precise because it is based on assumptions drawn from the public record rather than an actual inspection and measurement of the property. An ILC is often required by lenders on single-family residential properties. [8]

improvement survey A method for describing property which includes the same information as a land survey (scale drawing of the boundaries, including encroachments and easements) as well as the location of all structures and improvements on the parcel. Also indicates all above- and below-ground utilities. [8]

imputed interest An interest rate that will be implied for tax purposes when a note shows a rate of interest less than a statutory minimum (a person will be taxed as if the minimum acceptable rate was received).

incentive zoning Encourages particular improvements; for example, zoning that allows greater height if a public plaza is included.

inchoate right A right not yet perfected, such as a mechanic's right to file a lien or a wife's dower rights that won't come into being until the death of her husband.

income The financial gain (earned or unearned) accruing over a given period of time. [12]

income capitalization approach Present value is based on the value of the rights to future income. (Also known as the *income approach* or the *property residual method*.) [4]

incompetent A legal term for a person who, because of age or mental capacity, lacks the legal ability to enter into valid contracts. [1]

incorporeal rights Non-possessor rights in real estate arising out of ownership, such as the right to rents.

increasing returns The principle of valuation that states that as long as demand is present, keeping costs low is the most effective method of realizing profit. (See *diminishing returns*, above.) [4]

increment Any increase in value.

incurable depreciation Depreciation where the cost of correction is prohibitive. (It does not mean that the factor causing loss of value is impossible to correct, just that it is not cost effective, or that the amount spend to correct it will not yield a corresponding increase in value.)

indefeasible Cannot be voided or taken away.

indemnify To insure; to secure against loss.

independent contractor A contractor employed to complete a task who is not under the supervision or control of the employer.

index lease A lease tied to an index, such as the consumer price index.

index method A method of determining cost of replacement by taking the actual costs when built and applying the increases in the construction cost index since that date. An element of the Cost Approach method of determining value. [4]

informal description A description of property that is not a legal description, such as by street address or name of owner.

ingress A means of entering.

injunction A court action to cease and desist from a course of action. (The verb form of injunction is "to enjoin".) [1]

installment land contract An agreement for the purchase of real estate upon an installment basis, the deed to the property is not given to the purchaser until either all or a certain portion of the purchase price is paid. (Also called a **land contract**, **installment contract**, **bond for title**, **long-term escrow of deed**, or **contract for deed**.) [1] [5] [10]

inter alia Latin for "among other things".

interest Compensation paid to a lender for borrowing money for a period of time. [12]

interest rate The percentage of a loan balance charged by the lender for the use of money.

interim loan A short-term or gap loan.

intermediate theory (mortgage) A security theory where title remains with the mortgagor but automatically transfers to the mortgagee in the event of default.

internal rate of return (IRR) A method of measuring returns on investment that considers tax consequences.

interpleader action An action requested by a party to determine rights when two or more people claim to have an interest in property, such as an action brought by a broker where the buyer and seller each claim rights to a deposit.

Interstate Land Sales Act A federal disclosure act for projects of 25 or more unimproved lots to be sold in interstate commerce.

interval estate See *time-share*, below. [3]

intestate Dying without a will. Property then passes according to state statute as to intestate succession to the heirs. [7]

integration and disintegration The principle of valuation that states that every property goes through three phases of development: integration, equilibrium and disintegration (growth, stability and decline). [4]

inverse condemnation An action by an owner to force a government unit to take property when, by its action, the government has wrongfully restricted use.

investment contract A security in which the investor invests money with the expectation of profits from the efforts of another.

involuntary alienation Transfer of property without the owner's consent (i.e., tax sale or foreclosure). [7]

involuntary lien A lien imposed without the consent of the landowner, such as a tax lien. A mortgage is a voluntary lien. [10]

Inwood Annuity Method A method of using an index (the **Inwood Annuity Table**) to determine the future capitalization (value) of an income-producing property. [4]

J

joint and several The agreement to be liable together as well as separately.

joint liability The agreement that each party will be equally liable for an obligation.

joint tenancy An undivided interest with the right of survivorship. Owners must take title at the same time, by the same instrument, with equal interests and with equal rights of possession. (These are called the "four unities".) [3]

joint venture A partnership for a particular undertaking only. It differs from a standard partnership in that a sole joint venture partner cannot obligate the other joint venture partners. [5]

Jones v. Mayer (U.S. Supreme Court, 1968) Held that based on the 13th Amendment, the Civil Rights Act of 1866 was still valid: An individual discriminated against on the basis of **race** (only) **may sue** and be awarded damages if he or she prevails. This is true, even though the Civil Rights Act of 1968 created *exceptions* that *insulated* "discriminators" from prosecution. [6]

judgment The final order of a court as to money owed. When recorded, the judgment becomes a general lien on the property of the debtor. [10]

junior lien A subordinate lien as determined by the time of recording or the nature of the lien. [10]

K

key lot A lot having a number of other lots abutting a side line (undesirable for residential use).

L

laches The doctrine that upholds the loss of the right to enforce an agreement or a restriction because the delay in bringing action worked to the detriment of the other party.

land Real property; the surface of the earth and that which is affixed to it permanently, that which is below it, and the space above it; synonymous with

"real property", "realty", and "real estate". Sometimes used to mean only the unimproved surface of the earth. [3]

land contract A contract under which the seller keeps title while the buyer gets possession. Title passes when the property has been fully paid for. (See also *installment land contract*, above.) [1] [5]

landlocked Property that has no access because of surrounding property and the absence of any easement.

landlord A person who being the owner of an estate in land, has leased it for a term of years, on a rent reserved, to another person called the tenant. [11]

land residual method A means to determine land value by deducting the value of the income attributable to the improvements alone from the value of the income of the property.

land survey A method for property which includes a scale drawing of the boundaries of the parcel and indicates any encroachments and easements. [8]

late charge A charge imposed by a lender for late payments. Late charges are regulated by state law.

latent defect A defect not apparent from a reasonable visual inspection.

lateral support The ground support a landowner has a duty to provide to the land of adjacent property owners.

lease A tenancy agreement between landlord (lessor) and tenant (lessee). [3]

leasehold A lease estate in realty; a nonfreehold or possessory interest (estate) only. [3]

lease option An agreement that allows a tenant to lock in the terms of the eventual purchase of the property tenant is leasing. It may also include credit for the tenant's prior rent payments to be applied to the purchase price. [5]

legacy A bequest of money by will.

legal description A description of real property by government survey; metes and bounds; or reference to recorded lot, block and tract. [8]

legal life estate A life estate created for the benefit of a spouse, created by law. (See, *Dower*, *Curtesy*, and *Community Property*, above.) [3]

legal notice See, *constructive notice*, above. [7]

legal title An interest in real property that would be held by the lender in the case of a mortgage. This interest is complete so far as the apparent right of ownership and possession, but it carries no beneficial interest in the property, since the borrower still has what is called equitable title. [7] [10]

lender's policy See, *mortgagee's policy*, below. [7]

lessee A tenant under a lease. [3] [11]

lessor A landlord who has given a lease. [3] [11]

leverage The use of other people's money to make money. Purchasing real property with a minimum down payment is a use of leverage. [5], [12]

license A revocable privilege to use the land of another.

lien An encumbrance that is secured by real estate. A right given by law to a creditor to have a debt or charge satisfied out of the real or personal property belonging to the creditor. [10]

lien theory The theory in a majority of states that a mortgage is a lien and not a transfer of title. (See *title theory*, below.) [3]

life estate An estate in property for the life of a person that may not be inherited. When the measuring life ends, the estate (interest) will revert back to the grantor or to someone grantor specified in the original grant of a life estate. A life estate is a real property interest that may be granted, sold, encumbered, etc., just as any fee estate. However, that grant, sale, etc. is temporary and will revert back to the original grantor when the “measuring life” ends. [3]

like for like An exchange of similar property that qualifies for a tax-deferred exchange; for example, real property for real property.

***limited agent** An agent whose duties and obligations to a principal are only those set forth in Colorado Revised Statutes 12-61-804, 12-61-805, or 12-61-806, with any additional duties and obligations agreed to pursuant to section 12-61-803(5). See chapters 2 and 14 of this manual for Colorado law on agency. [2]

limited common elements Areas in a common interest subdivision owned in common with other owners but designated for the exclusive use of particular owners, such as parking spaces or storage lockers.

limited partnership A form of joint venture in which one or more partners have liability limited only to the extent of their investments. Limited partners cannot be active in the business management. [5]

limited reduction loan See *balloon loan*, above.

link A surveyor's measure equal to 7.92 inches.

liquid Cash or assets readily convertible to cash.

liquidated damages Advance agreement as to the amount of damages for nonperformance when exact damages may be difficult to ascertain. If so unreasonable that the court considers them a penalty, they will not be enforced. [1] [9]

liquidity The ease with which real property can be converted to cash without creating a substantial change (loss) in price or value. [12]

lis pendens A recorded notice of a pending lawsuit concerning a property. Though not a lien, this provides constructive notice that an action is pending against the property. [10]

listing An agency agreement between owner and broker wherein the owner authorizes the broker to attempt to find a buyer and to agrees to pay a certain commission should the broker succeed. According to common law principles of Agency, a listing agreement may be either written or oral, but Colorado law requires brokers use one of the Commission-approved listing contracts. (Otherwise, the agent will not be entitled to compensation.) [9]

littoral property Property located on the shore of a lake or an ocean. [3]

littoral rights Rights of a property owner to reasonable use of lake, pond or ocean water bordering the property. See *riparian rights*, below. [3]

livable floor space The space measured by the interior of each room, excluding interior walls and closets.

loan Letting out or renting of a certain sum of money by a lender to a borrower to be repaid with or without interest. [5]

loan value An amount which the lender is willing to loan for the purchase of real property. In residential properties, typically 75% to 80% of the market value. [4]

location The most important factor in determining the value of real property. [4]

lock-in clause A provision that allows prepayment provided full interest is paid as if the loan had gone to maturity; the borrower is "locked in" as to interest.

longitude and latitude Longitude is measured in terms of north-south meridians; latitude is referenced by lines parallel to the equator. Both are measured in degrees (*), minutes (') and seconds (").

lots The smallest division of property description surveyed and described in a subdivision plat. According to zoning and building codes, typically only one living structure may be built on each lot. See also, *block*, above. [8]

loyalty One of the five duties of an agent to the principal: undivided loyalty and trust to the principal, i.e., not to profit except for the agreed-upon compensation, not to disclose confidential information except where required by law, not to have interests adverse to those of the principal, not to represent others who have adverse or opposed interests. [2]

LTV (loan-to-value) ratio The percentage of the value (or ratio) that a lender will lend against a property.

M

maker The person who signs a negotiable instrument.

margin The different between the index rate and the rate of interest charged on an adjustable rate mortgage.

margin of security The lender's security that is the difference between the mortgage amount and the value of the property.

marketable title A title that is clear of objectionable liens and encumbrances; a merchantable title.

market data approach An appraisal method wherein value is based on sales of comparable properties. Also known as *market comparison approach*. (See also, the *sales comparison approach*, below.) [4]

market price The price actually paid. [4]

market value The price a willing, informed buyer would pay to a willing, informed seller, allowing a reasonable sale time. [4]

markup The percentage added to cost to determine selling price.

master lease The original lease between lessor and lessee when the lessee later subleases.

mechanic's lien A specific lien by a contractor, subcontractor, materialman or laborer for work performed or material supplied for a property but not paid for. [10]

mediation A nonjudicial process to resolve disputes where a third party acts as a facilitator to aid the parties in reaching an agreement.

megalopolis An urban sprawl.

menace A threat of force that makes a contract voidable.

merger The joining of a lesser right with a superior right so as to extinguish the lesser one; for example, a tenant having an estate for years buys the property in fee simple, in which case the lease is extinguished because the owner and tenant now are one and the same.

meridians Government surveyors' north-south lines that intersect base lines. Land is measured from the intersection of these lines.

metes Measures of length (in a survey). See also, *bounds*, above. [8]

metes and bounds Land description by measurements and boundaries, (as opposed to lots and blocks,) used for irregularly shaped parcels that cannot be described by the "grid" system of the governmental survey system. [8]

MGIC (Mortgage Guaranty Insurance Corporation) A private mortgage insurance (PMI) carrier.

mile A linear measure of 5,280 feet.

mill One-tenth of a cent, or 1/1000 of a dollar, written as \$.001. [12]

mill levy A tax rate of one mill on each dollar of assessed property value. A mill levy is the same as a rate of one-tenth of one percent of assessed value of the property. [12] [13]

mineral, oil and gas lease Lease rights to extract minerals, oil and gas for the lease period (a personal property interest).

minor Any person younger than contractual age.

MIP (Mortgage Insurance Premium) Insurance required for an FHA-insured loan, (as opposed to PMI, which is private mortgage insurance on a conventional loan with a high loan-to-value ratio.) [5]

misrepresentation A false statement to induce another to act. It makes a contract voidable at the option of the injured party. Unlike fraud, misrepresentation does not require intent to deceive. [1]

mitigation of damages The duty of an injured party to use reasonable efforts to keep the damages as low as possible when the other party breaches a contract. [1]

mobile home A factory-built housing unit transported on its own chassis.

monument A fixed surveyor's marker for a metes-and-bounds description; can be natural (such as a rock or tree) or artificial (such as an iron stake).

mortgage A security device for real estate. In lien theory states, the mortgagor (borrower) retains title and gives the mortgagee (lender) a lien. In title theory states, the borrower retains possession but gives the lender or trustee title as security. See also, *deed of trust*, above. [3] [5] [10]

mortgage banker Originate loans from their own funds, and often service those loans. Often simply referred to as a *lender*. [5]

mortgage broker Arrange loans between lenders and borrowers. [5]

mortgagee One who receives the mortgage; the lender (or the seller under a purchase-money mortgage). [10]

mortgagee's policy A policy of title insurance provided by the grantee (buyer/borrower) to the lender to protect the lender's security if title defects affect lender's legal interests. It is paid only once, at closing, and covers that state of title until the loan is fully paid. Also known as a *lender's policy*. See also, *owner's policy*, below. [7]

mortgage loan correspondent A firm that arranges the sale of existing loans in the secondary mortgage market.

mortgage note The note that reflects the promise to pay the mortgage debt. The mortgage is security for the note.

mortgage warehousing See *warehousing*, below.

mortgagor The owner or buyer of property who gives the mortgage (to the lender, called the “mortgagee”.) [10]

multiple listing A listing, usually an exclusive right-to-sell listing, given out to a group of cooperating brokers who are members of a *Multiple Listing Service*. [9]

muniment of title Deeds.

mutual assent The meeting of minds (offer and acceptance) required for a binding contract. [1]

mutual mistake The mistake of both parties to an agreement. A mutual mistake as to fact allows a mistaken party to void the agreement. [1]

mutual mortgage insurance FHA insurance that protects the lender against buyer default.

mutual savings bank A bank owned by its depositors and paying dividends, not interest, to the depositors. Located in several northeastern states, such a bank can make real estate loans anywhere in the nation.

N

naked title Legal title only, without another right of ownership; for example, a trustee under a deed of trust.

NAR National Association of REALTORS®.

narrative report An appraisal written in a narrative form; the most comprehensive form of appraisal report.

natural monument A surveying point for metes-and-bounds descriptions that is natural, as opposed to manmade. For example, a tree, rock, river bank.

negative amortization A loan whose monthly installments are not sufficient to pay the interest, so the principal increases. (Often called a “neg am”) [5]

negative cash flow An investment or a business that requires a regular infusion of cash because the cash outlay exceeds the cash receipts.

negative covenant A promise not to do something; for example, a restrictive covenant that prohibits detached garages.

negative declaration A statement that a development will not have a significant adverse effect on the environment.

negative easement An easement right that prohibits an owner from a use.

negative fraud Fraud resulting from failure to disclose rather than from an affirmative act.

negotiable instrument A written unconditional promise or order to pay a certain sum in money now or at a definite time in the future.

neighborhood An area of social conformity.

net income Income an investor actually realizes from a property, considering all expenses. [12]

net lease A lease under which the tenant pays all expenses, including taxes and insurance, and gives the lessor a net amount as rent; often known as a **triple-net lease**. [3]

net listing A listing whereby the broker receives as a commission that portion of the sales price that exceeds the listing price. In some states, net listings are illegal. [9]

net operating income (NOI) Gross annual income less operational costs (does not deduct for debt service or depreciation). [4]

net profit The profit after all expenses (excludes payment on the principal of loans and taxes on the profit).

net spendable See *cash flow*, above.

net worth The difference between total assets and total liabilities.

New Mexico Principal Meridian and New Mexico Baseline A large portion of southwestern Colorado is surveyed off these survey lines under the governmental survey system. [8]

nominal (1) The rate stated in the instrument. (2) A minimum quantity.

nominal damages A token amount awarded by a court when no actual damages result from a wrongful act. [1]

nominee A new person designated to perform under a contract in the place of another. Unlike an assignment, where the original party maintains some secondary liability, the original person is relieved totally of his or her obligations by the designation of a nominee.

nonconforming loan A loan that fails to meet the purchase requirements of Fannie Mae or Freddie Mac; usually held by the lender as a portfolio loan.

nonconforming use A use existing prior to zoning that does not conform with the zoning. [3]

noncumulative zoning Zoning that allows only a specified category of use (not less restrictive uses).

nondisturbance clause A mortgage condition by which the mortgagee (lender) agrees not to terminate the lease (if the lessee is in compliance with lease terms) in the event of mortgage foreclosure.

nonfreehold estate A leasehold interest.

noninstitutional lender A lender other than a bank, a savings and loan association, or an insurance company; for example, a pension fund and a private individual.

nonjudicial foreclosure Foreclosure under the power of sale provision of a mortgage or trust deed.

nonrecourse loan A loan for which the borrower is not personally liable (no deficiency judgment is possible).

note A signed instrument that acknowledges a debt and agrees to pay it either on demand or at a set date in the future. The mortgage or trust deed secures the note in real estate transactions. Also known as a *promissory note*. [10]

notice of completion A notice filed by an owner that starts a statutory period in which mechanics liens must be filed.

notice of default A notice given under a trust deed that sets the statutory period for the trustor to pay his or her obligations.

notice of intent Serve by a contractor who intends to file a *mechanic's lien* upon the owner of the property. [10]

notice of nonresponsibility A notice filed by an owner to protect the property from liens for work authorized by another person - for example, a tenant.

notice to quit A statutory notice given by a landlord to a tenant to vacate the premises.

not-to-compete clause (non-competition clause) A clause in an employment or a sales contract that prohibits competition by former employees or sellers within a reasonable distance and for a reasonable time period. (If a court determines that the restrictions are unreasonable, such a clause will not be enforceable.)

novation The substitution of one agreement for another, or the substitution of parties to the contract. [1]

nuisance A use of property that interferes with the quiet enjoyment by others of their properties. An abatement action can be taken to stop (abate) the nuisance.

nuncupative will An oral deathbed will for personal property of low value. It must be reduced to writing by the witnesses. It is not valid in all states (including Colorado.)

O

obedience One of the five duties of the agent to principal: to perform according to the terms of the employment contract. [2]

objective value The actual market value, as opposed to subjective value, which is "personal use" value. [4]

obligatory advances Loan advances required by a lender under an agreement as construction progresses.

observed condition method The method of determining the effective age of a property by its condition.

obsolescence Loss in value due to reduced desirability because of built-in design (functional obsolescence) or forces outside the property itself (economic obsolescence). [4]

offer A promise to act in a certain manner provided the other party will act in the manner requested. [1]

offeree One to whom an offer is made. [1]

offeror One who makes an offer. [1]

*** office policy, written** Colorado (Rule E-39) requires that all brokerages adopt a written office policy that identifies and describes the relationships that the broker will enter into with the public. [2]

offset statement A statement by a lender as to the current status of a loan (balance due). See *beneficiary statement*, above.

open-end mortgage A mortgage loan that can be increased in the future up to an agreed-on maximum amount. See *dragnet clause*, above. [5]

open listing A nonexclusive agency whereby the owner agrees to a fee only if the broker is the first to procure a buyer under the exact terms of the listing or any other terms to which the owner agrees. [9]

open mortgage (1) A loan that can be prepaid without penalty. (2) A mortgage in default prior to the foreclosure sale.

opportunity cost The loss of other opportunities by making an investment; for example, a long-term, low-yield investment could result in illiquidity whereby the investor would have to forego a later, more attractive investment opportunity.

option A non-cancelable right given by an owner to another to buy or lease a property at an agreed-on price within a stated period of time. To be valid, consideration must have been given to keep the offer open. [1]

optionee The party who purchased the option and has the right to exercise it. [1]

optionor The owner who gives the option. [1]

order paper A note payable to a named person or order that allows it to be negotiated by endorsement.

orientation The way a structure is placed on a site.

origination fee A fee or charge from the lender just for originating or granting a loan. [5]

"or more" clause A provision that allows prepayment without penalty.

ostensible agency An agency that is implied by the actions of the parties.

overimprovement An improvement that cannot be recaptured by increased income or sale value.

"owner will carry" Financing for the purchase of a property whereby the seller "takes back" a note. The amount of cash that buyer will be required to put up for the purchase will be that much less, and will pay back the seller with interest over time. (Also known as a *seller carry-back loan* or *purchase-money mortgage*, below.) [5]

owner's policy a policy of title insurance provided by the grantor (seller) to grantee (buyer) to protect the buyer if title defects affect grantee's ownership interests. It is paid only once, at closing, and covers that state of title until it is eventually transferred again. See also, *mortgagee's policy*, above. [7]

P

package mortgage A mortgage loan that includes personal property as well as real property. [5]

parol evidence rule The rule that bars verbal (parol) evidence from being used to show that a contract means other than what it says. Parol evidence can be used to clarify ambiguities or to show fraud. [1]

partially amortized loan A loan whose payments over the loan term leave a balance (a balloon payment). See also *balloon loan*, above. [5]

participation loan A loan agreement under which the lender receives a share of the revenue or profits in addition to the interest. The lender takes an equity share as a limited partner or shareholder as partial consideration for the loan. Also known as a *shared appreciation loan*. [5]

partition A legal action to break a joint ownership.

partition in kind The splitting of property into separate parcels to dissolve a joint tenancy or tenancy in common.

partnership An agreement between two or more persons to unite for business purposes and to share profits.

party wall (easement) A common wall on the property line commonly shared and maintained by both owners. [3]

passive loss A paper loss from depreciation.

pass-through certificate A certificate sold to investors backed by a pool of GNMA-insured mortgages. The principal and interest paid by borrowers is passed through to the certificate owners.

patent The original conveyance of land from the government to an individual.

patent defect A defect that would be obvious from a visual inspection.

payback period The time it will take for the income generated by a property to return the investment (down payment).

penny A measure for nails shown as the letter d. The larger the penny, the larger the nail.

percentage lease A lease in which the rent is a percentage of the gross income. [3]

percolation The ability of soil to absorb water. Percolation tests are required in many areas before a permit is issued for a structure requiring a septic system.

perfect escrow An escrow in which all signed documents and funds have been deposited with the escrow and the transaction is ready for closing.

periodic tenancy A rental from period to period that renews itself automatically unless notice is given by the lessor or lessee. [3]

personal property Property that is not classified as real property. Also called *personalty*.

per stirpes An inheritance by right of representation. Children share equally in the share their deceased parent would have received. This is different from *per capita* distribution, where all heirs obtain the same amount.

physical deterioration Depreciation caused by age and use, (i.e., "wearing out"). One possible cause for depreciation of a property, and an element of the Cost Approach method of determining value. [4]

PITI Denotes that a payment includes principal, interest, taxes and insurance.

* **planned community** Any common interest community that is not a condominium or cooperative. [3]

planned unit development (PUD) A development with individual lot ownership and shared ownership of common areas such as recreational areas; also called a planned development project. [3]

planning commission A group of appointed officials responsible for planning and zoning.

plat A map or plan of a subdivision showing individual lots and blocks. [8]

pledge The depositing of personal property as security for a debt with another while retaining title.

plot plan The layout of a lot showing placement of the structure in relationship to lot lines.

plottage The increase in value from the process of assemblage (joining several adjacent parcels to form a larger parcel). [4]

PMI (private mortgage insurance) Insures conventional loans (as opposed to MIP – mortgage insurance premium – for FHA-insured loans.) [5]

POB See, *point of beginning*, below. [8]

pocket listing A verbal listing not made available to other agents.

points A fee charged by the lender that amounts to advance interest, making up for an interest rate the lender considers too low. Each point is 1 percent of the loan amount. [5]

Point of Beginning (P.O.B.) In surveying, it is the starting point of a survey in the metes and bounds system of land description. The description must always “end up” back at the point of beginning to “close” the description, and properly describe the boundaries of the parcel of land. [8]

police power The power of the state to adopt and enforce laws to promote order, safety, health, morals and general welfare. No compensation is given for financial losses resulting from the exercise of police power. It cannot be delegated to a nongovernmental body. Examples include zoning, health code and building code enforcement. [3]

portfolio income The passive income received from investments rather than from a salary or business.

portfolio loan A loan held by the lender as an investment rather than one made for resale on the secondary mortgage market.

possibility of reverter In a fee simple grant subject to an Executory Limitation (see above) this future interest (see above) will only materialize upon the occurrence of some specified series of events. [3]

power of attorney A written agency agreement given by a principal to an attorney-in-fact to act on his or her behalf.

preliminary title report A report indicating the present condition of the title and indicating the conditions upon which title insurance will be issued.

prepayment penalty A penalty for prepaying a loan prior to the payment schedule of the note.

prescriptive easement Obtaining an easement by open, hostile and continuous use for a statutory period of time. [3]

primary financing First mortgages and trust deeds.

primary mortgage market Characterizes the actual granting of loans from the lender to the borrower. [5]

principal (1) One who engages an agent to act on his or her behalf [2]; (2) A party to a contract. (3) A sum of money, upon which money is being borrowed. [5]

principal meridian A survey line running north-south upon which large sections of land are surveyed under the governmental survey system. (A baseline is the other, east-west, axis of the survey.) There are 36 principal meridians in the United States. [8]

prior appropriation A theory used in some western states that the first user of water has priority rights over later users of water from the same source. [3]

private offering A real estate security offering that is exempt from state or federal registration. (Intrastate offerings are also exempt from federal registration.)

privity The relationship of parties to a contract.

probate The legal proceedings to pay debts and distribute assets of a deceased.

procuring cause The cause originating a chain of events that, without a break in continuity, resulted in the object of an agent's employment (sale or lease).

profit and loss statement A financial operating statement showing profit or loss for a designated period.

profit a prendre The right to take crops, soil or profit from the land of another.

pro forma financial statement An estimated operating statement based on anticipated returns and expenses. It is used where no actual data are available.

progression The principle of value that states that a lesser-quality property will benefit (increase in value) by being in proximity of properties of higher value. (See *regression*, below.) [4]

promissor (promisee) In terms of a contract, one who promises to act. Remember, in a contract, a promise to act (or pay, etc.) is sufficient valuable consideration to form a contract. [1]

Promissor, Inc. An independent testing organization that prepares the Real Estate Assessment for Licensure (REAL) examination. [Catalog]

promissory note See *note*, above. [10]

property The rights of ownership; the right to use, possess, enjoy, and dispose of a thing in every legal way and to exclude everyone else from interfering with these rights. Property is generally classified into two groups; personal property and real property.

***property disclosure** Seller's voluntary disclosure of information about the physical condition of the property. Use of a property disclosure is not mandatory in Colorado, but if used, the broker must use the Commission-approved Disclosure form. [9]

Property Residual method A method of using an index (the **Inwood Annuity Table**) to determine the future capitalization (value) of an income-producing property. [4]

property taxes Every parcel of real property is taxed by the county in which it is located, based on the assessed value times the tax rate (mill levy). The funds collected are used for the general operation of the county, including administration, infrastructure and education. [10] [13]

proprietary lease A lease by a cooperative to a shareholder providing a right to occupy a unit. [3]

proration To apportion based on actual time to the date of closing, as with taxes, insurance and rents.

***Public Trustee** The public official in each county, whose office has been created by statute, to whom title to real property is conveyed by Deed of Trust for the use and benefit of the beneficiary, who usually is the lender. [10]

PUD See *planned unit development*, above.

puffing A statement of opinion given in a sale; not a warranty. [1]

punitive damages Exemplary damages beyond actual damages awarded for a wrongful, willful act, for the purpose of punishing the wrongdoer. [1]

pur autre vie A life estate which lasts for the life of some person other than the life tenant. [3]

purchase-money mortgage (1) A mortgage given by the buyer to the seller to finance the purchase. The seller is financing the buyer. Actual cash does not

change hands. Also known as a *seller carry-back loan* or *owner-carry loan*; (2)
A loan given to a buyer to finance a property purchase. [5]

purchase saleback (purchase leaseback) The investor buys property and sells or leases it to the original owner. Normally, a leaseback is used by an owner to free capital for operational purposes. A purchase saleback is sometimes used in place of a mortgage in order to provide greater security for the lender.

pyramiding Refinancing or selling property that has increased in value to buy additional or larger property.

Q

quadrangle A tract of land in the U.S. Governmental Survey System measuring 24 miles on each side of the square. Sometimes referred to as a check. [8]

qualified endorsement An endorsement of a negotiable instrument "without recourse." The endorser is not liable if the instrument is not honored by the maker.

qualified fee See *fee simple determinable*, above. [3]

quantity survey A detailed method to determine replacement cost by pricing out all the elements of a structure in the same manner as a builder would estimate costs. An element of the Cost Approach method of determining value. [4]

quiet enjoyment The right of an owner or a tenant to use the property without interference.

quiet title A court action to determine ownership rights. [3]

quitclaim deed A deed conveying whatever interest the grantor may have without making any claims as to ownership. [7]

R

RAM (reverse annuity mortgage) A mortgage in which the mortgagee makes monthly payments to the mortgagor. The loan is paid back when property is sold or the mortgagor dies. [5]

range A vertical row of townships, measured east and west from the meridian. [8]

ratification The approval of an act of the agent by the principal when the agent exceeded his or her authority. By taking the benefits of the act, the principal also accepts its obligations.

real estate Real property, realty, land.

real estate board An organization of brokers and associates (salespeople).

real estate investment trust (REIT) An unincorporated group of 100 or more investors who have limited liability. Under federal law, REITs are taxed on retained earnings only.

real estate loan Letting out or renting of a certain sum of money by a lender to a borrower to be repaid with or without interest, where the repayment is secured by real property. [5]

Real Estate Settlement Procedures Act (RESPA) A federal disclosure act requiring that a borrower be given an estimate of settlement costs and an information booklet. RESPA is administered by HUD.

real property Land and all that goes with the land (appurtenances), including that which is below it and the space above it.

REALTOR® A member of the National Association of REALTORS® (NAR).

recapture clause A provision in a percentage lease that gives the lessor the right to terminate the lease if a specified volume of sales is not reached.

receiver clause A mortgage clause that allows the mortgagee (lender) to appoint a receiver to collect rents between the period of commencement of foreclosure and final foreclosure.

recital of consideration A statement in a deed of the consideration given. [7]

reconciliation The process whereby an appraiser assigns various weights to value determined by different appraisal methods (Also known as *correlation*). [4]

reconveyance deed The deed from the trustee returning title to the trustor when the trustor has satisfied the debt to the beneficiary.

recordation The act of recording with the county recorder so as to give constructive notice to all of the instruments recorded. Also called *recording*. [7]

recorded lot block and tract system A legal description based on recorded subdivision description.

***recovery fund** A fund maintained by many state real estate departments to repay persons who suffer losses because of wrongful acts of licensees. Recovery is up to a statutory limit and usually requires an uncollected judgment against the licensee.

redemption right The right of the mortgagor to redeem the property after default or a foreclosure sale, by paying off the past due payments (or in some cases, the entire balance owing) and any fees and interest. Prior to a sale, it would also be known as a *reinstatement right*. Also known as simply *redemption* or *equity of redemption*. [10]

redlining Refusing to make loans within designated areas; considered to violate the Civil Rights Act of 1968. [6]

reformation A court action to rectify a mistake in a deed or contract so it reads as it was intended to read. [1]

regression The principle of value that states that a property will lose value if placed in an area of lesser quality homes. (See *progression*, above.) [4]

Regulation Z That portion of the Consumer Protection Act of 1968 known as the Truth-in-Lending Act. It requires disclosure of the finance charge and annual percentage rate to a borrower, to reveal the true cost of the loan. See also, *truth in lending*, below. [5]

rehabilitation Repair without changing.

REICs (Real Estate Investment Conduits) Mortgage-backed securities that allow pooling of funds from smaller investors for reinvestment in the secondary mortgage market. [5]

REIT See, *Real Estate Investments Trusts*, above. [5]

release clause A provision in a blanket encumbrance allowing separate releases from the encumbrance by paying a stated sum of money.

reliction See *dereliction*, above. [3]

remainder depreciation The depreciation that an owner has left to take.

remainder interest An interest that a third person has in property after the death of a life tenant.

renewal of lease An extension of a lease that continues the old lease.

replacement cost The cost of replacing a structure of the same desirability and utility values using modern methods and materials. An element of the Cost Approach method of determining value. [4]

reproduction cost The cost to reproduce a structure exactly with the same design and materials. An element of the Cost Approach method of determining value. [4]

request for release A document executed by a lender and filed with the public trustee upon full payment of a loan. Doing this releases the real property as security for the deed of trust. [10]

rescission of contract Setting aside the contract and placing the parties back in the conditions they were in prior to the contract (as opposed to a waiver, which leaves them as they are). [1]

rescission of loan In financing, Regulation Z allows mortgage borrowers to rescind the loan within three days, if the loan was not for purposes of acquisition (i.e., refinance). [5]

reservation The retention of a right, such as an easement, when property is conveyed. (An exception retains part of the property.)

reserve for replacement A reserve fund established to replace an asset.

RESPA (Real Estate Settlement Procedures Act) A law enacted to prevent fraud to borrowers by requiring lenders to disclose the true cost of loans secured by real property. [5]

respondeat superior The doctrine that a master is liable for the acts of his or her servants. It applies to employees as well as agents.

restoration Returning to an original condition.

restricted license A probationary license granted by some states after a license has been revoked, suspended or denied.

restriction (deed) A private restriction imposed by the grantor in the deed. Also known as *restrictive covenant*, below. [3] [7]

restrictive covenant A private beneficial restriction whereby an owner is limited as to the use of his or her property; for example, minimum size, setback and height limitations. Also known as *CC&Rs* (covenants, conditions and restrictions). [7]

restrictive endorsement An endorsement on a negotiable instrument that restricts any further endorsement; for example, "for deposit only."

revenue stamps See *documentary stamps*, above.

reversionary interest An interest whereby a property goes back to the original grantor upon the occurrence of an event, such as the death of a life tenant.

revocation Offeror withdraws the offer before acceptance by offeree. Acts to "cancel" the contract before it can even be formed. [1]

rezoning Change of zoning, (as opposed to a variance, which is an exception to zoning.)

right of correlative user The right of a landowner to the reasonable use of underground percolating water (the water table).

right of first refusal A right sometimes given to a tenant to meet the price and terms at which the owner will sell or lease the property to another party. The owner must offer it to the holder of the right before a sale or lease can be made to another. In this case, the owner is not required to sell or lease, like he or she is with an option. [1]

right of re-entry Grantor's future interest reserved when granting a fee simple subject to a Condition Subsequent. If a certain event (the condition) takes place *and* grantor elects to exercise the right, grantee's interest is divested (taken away) and returned to grantor. [3]

right of survivorship A characteristic of joint tenancy; upon the death of one of the tenants, their rights in the property pass automatically to the surviving tenant or tenants. [3]

right of way The right to pass over another's land, such as in an easement.

riparian rights Rights of a landowner to reasonable use of the flowing water located on, under or adjacent to his or her property. See *littoral rights*, above. [3]

rollover mortgage See *RRM (renegotiable-rate mortgage)*, below.

RRM (renegotiable-rate mortgage) A short-term mortgage where the lender will rewrite the loan, when due, at the current interest rate (rollover mortgage).

rule against perpetuities Requires that private trust be restricted to a statutory life limit. (The deceased or grantor is limited as to how long he or she can continue to exercise control over property after death.)

run with the land A covenant, condition or restriction that will pass with the title to the land, regardless of subsequent grantees or deeds. [7]

S

safety clause (hold-over clause) A listing provision that grants the broker a commission for a sale made within a specified period of time after a listing expires if the broker submits the name of the buyer to the owner within a stated period of time as a party with whom the broker had negotiated prior to expiration of the listing. [9]

sale and leaseback A sale in which the grantor becomes the tenant of the grantee. [5]

sales comparison approach Value may be obtained by comparing the subject property (the property under appraisal) with recently sold comparable properties (properties similar to the subject). (See also, the *market data approach*, above.) [4]

SAM (shared appreciation mortgage) A mortgage under which the mortgagee shares in the appreciated value of the property.

sandwich lease See *sublease*, below.

sans French for "without."

satisfaction of mortgage Given by the mortgagee to the mortgagor when the mortgage has been satisfied. Recording the satisfaction removes the lien. Also known as *release of mortgage*. [10]

scarcity A finite supply. One of the four requirements for real property to have value. [4]

scheduled gross income Gross income based on 100 percent occupancy and scheduled rents.

scrivener A person who writes a document for another, usually for a fee. Note that the Colorado Real Estate Commission applies this as well to describe the "title company" or "closing company", which actually collects and disburses the funds associated with closing *and* prepares documents (such as the settlement statements). This is *not* "preparation of legal documents", which is prohibited by regulation - since only licensed attorneys may do so. Instead, they are simply "filling in blanks" on standardized documents, according to the instructions of the parties. This is why they can be labeled as "scriveners". [7]

S corporation A small, closely held corporation that has elected to be taxed as a partnership.

seal An impression or a stamp to authenticate the signature on a document, which is required in some states on formal documents. Generally, "(seal)" or the letters "L.S." are sufficient. (L.S., *locus sigilli*, is Latin for "place of the seal.")

seasoned loan A loan with a payment history. Such a loan is desirable on the secondary mortgage market.

second mortgage Supplemental financing. In Colorado, priority of liens or mortgages is determined by when they were recorded. Therefore, a second mortgage is simply one that was recorded subsequent to the first. In the event of default, the second mortgage would be required to satisfy (pay off) the first mortgage in order to foreclose. [5] [10]

secondary financing Second mortgages or trust deeds.

secondary mortgage market Describes the buying and selling of existing mortgages. Closely associated with organizations such as FNMA and GNMA.

secret profit An undisclosed profit of the agent, regardless of the amount.

section A parcel of land one mile square containing 640 acres, formed by government survey. [8]

security An investment where the investor invests money but has no control or management over the investment.

security deposit An amount given in advance by tenant to landlord to be used by landlord only if tenant fails to make rent payment when due. [11]

security agreement A security interest that a creditor retains in personal property of a debtor (under the Uniform Commercial Code).

seizin Possession of real estate by one entitled to it. [7]

sellers' market A market condition characterized by more buyers than sellers, so sellers have a more commanding position.

send-out slip An agreement that if a broker discloses a property to a prospective buyer, the buyer will negotiate for that property only through that broker.

separate property Property owned individually by a spouse in which the other spouse has no interest.

servient tenement An estate that is used by another - the "dominant tenement" - under an easement. (Also known as "servient estate") See *appurtenant easement*, above. [3]

setback The building line distance from the lot line.

severalty ownership Ownership by one person or entity alone.

shape One element that affects the value of real property. [4]

shared appreciation loan See *participation loan*, above. [5]

sheriff's deed A deed given by the sheriff when property is sold for execution of a judgment or sheriff's foreclosure sale.

short rate refund A less-than-prorated refund received by an insured who cancels an insurance policy.

short sale Used when a mortgage is in default (or being foreclosed upon) and there is little or no equity in the property. To get out from under the payments, the buyer sells the property for less than the loan amount. Typically, they are still liable to the lender for the shortage.

***single agent** A broker or salesperson who is engaged by and represents only one party in a real estate transaction. A single agent includes a Buyer Agent, Landlord's Agent, Seller's Agent, Tenant's Agent, Subagent (almost non-existent in Colorado with the advent of the Transaction Broker).

Simple Linear Regression Analysis A method of determining the value of income-producing property by plotting the square footage of the subject property on a graph of valuations of similar properties. [4]

6th Principal Meridian The main principal meridian from which most of the land in Colorado is surveyed under the governmental survey system. This north-south running line actually runs through Nebraska and Kansas. [8]

situs "site" or "location".

size One element that affects the value of real property. [4]

sky lease A lease of air space; generally long-term. [3]

soil One element that affects the value of real property. Most lenders in Colorado require a soils report, which will determine the likelihood of subsidence. [4]

Soldiers and Sailors Civil Relief Act A law that restricts foreclosure on a person in military service.

special agent An agency in which the agent is authorized to perform only designated acts (specific agency). [2] [9]

special assessment A charge against a property for a specific improvement such as a street or sewer; usually assessed on a front-foot basis. [10]

special improvement Construction or installation by a public entity (normally a city or county) of any structures or infrastructure for the public good. Examples are streets, sidewalks and street lighting. Payment is made by collecting a *special tax assessment* from the property owners benefiting from the improvement. [10]

special warranty deed A deed in which the seller warrants title only as to defects arising during the grantor's ownership, (not prior owners). [7]

specific lien A lien against a particular property only, as opposed to a general lien, which applies to all property of the debtor. [10]

specific performance The legal remedy of requiring a party to perform as agreed; ordinarily granted when money damages are inadequate. [1]

spite fence A fence that exceeds statutory height; considered a nuisance.

split rate The use of separate capitalization rates for land and improvements.

spot zoning Small areas of zoning use that do not fit with the general use of the area (frequently resulting from political influence). [3]

square foot method A method of determining value by comparing the subject property's dimensions to the cost-per-square foot of a recently built comparable structure. An element of the Cost Approach method of determining value. [4]

square footage The measurement arrived at by taking exterior dimensions, excluding the garage.

stagflation Inflation without economic growth.

stare decisis The legal principle stating that previous decisions (precedent) should be considered by the courts.

Starker exchange A delayed exchange where the exchange property must be designated within 45 days of closing on the first property, and the exchange must be completed within 180 days of the closing on the first property, in order to avoid capital gains tax. [12]

statute of frauds A law requiring that certain contracts, including those dealing with real estate, be in writing. [1] [2] [7]

statute of limitations Sets forth the time limit within which legal action must be taken or rights will lapse. [1]

statute of descent State laws specifying the distribution of the property of someone who dies intestate (without a will). Also known as *intestate succession*. [7]

steering The illegal practice of directing buyers to certain areas, based on race or national origin. [6]

step lease (or step-up lease) A lease with graduated increases. [3]

stock cooperative project See, *cooperative housing corporation*, above. [3]

straight-line depreciation A method of depreciation (and a factor of the cost approach to determining value) whereby an equal amount is deducted each year over the life of the asset. (Also called the *economic age-life method* of depreciation.) [4]

straight note A note on which interest only is paid, with the entire principal payable on the due date. (Also known as a *term loan*). [5]

straw man A substitute used to conceal the identity of an actual purchaser.

strict foreclosure The defaulting borrower is given a certain amount of time (such as six months) to bring current any past due payments. Failing to do this, the mortgagor (lender) may foreclose by peaceful entry without a sale (allowable in several states – not Colorado). [10]

subagent A broker or salesperson engaged to act for another broker in performing brokerage tasks for a principal. The subagent owes the same obligations and responsibilities to the principal as does the principal's broker.

(Also known as the *cooperating broker* or *selling agent*.) Subagency has been abolished in Colorado, effective January 1, 2003. [2]

subdivision Land division in accordance with state subdivision laws.

subjacent support Support of the surface by the underlying ground.

subjective value The use value to the individual owner. (As opposed to *objective value*, above, which is the actual market value.) [4]

"subject to" mortgage An agreement that allows the buying of real estate without agreeing to pay an encumbrance. Buyer is not personally liable on the loan, so a deficiency judgment is not possible. Buyer must make payments, however, or lienholder will foreclose.

sublease A lease given by the original lessee, who becomes a sublessor. The sublessee is the tenant of the sublessor, not of the original lessor. Also known as a *sandwich lease*.

subordinate A subordinate lien would be one with secondary – or inferior – right to execute against that lien or foreclose. Lower in priority. [10]

subordination clause An agreement that a loan will be secondary to another encumbrance. [10]

subrogation In insurance, the substitution of one party for another as to his or her interests.

substitution The principal of value upon which the market data (sales comparison) approach to valuation is based. A person will not pay more for a property than the price of purchasing an equally desirable and valuable replacement property. [4]

sum of the years An accelerated depreciation method; also called the *sum of the digits*.

supplemental tax bill A tax bill given when property is reassessed upon sale to cover the increased tax for the increased assessment.

supply and demand The principle of valuation that states that the value of a property will increase if the supply decreases and the demand either increases or remains constant. Conversely, the value of a property will decrease if the supply increases and the demand either decreases or remains constant. [4]

surface water Water not in a defined channel.

surplus productivity The principle of valuation that states that the net income remaining after allowing for costs of labor, management and capital is imputed to the land. [4]

surrender The mutual agreement of the parties to end a lease. All further obligations of the parties are terminated.

survey A location or verification of property lines by a surveyor. [8]

survey monument Under the governmental survey system, these are markers located at the corner of each Section. [8]

survivorship Upon the death of a joint tenant, the tenant's interest ceases to exist, and all interests remain undivided with the survivors.

sweat equity Equity earned through an owner's construction or improvements.

swing loan See *gap loan*, above. [5]

syndicate (or **syndication**) Two or more persons who have joined together for investment purposes. A descriptive term for multiple ownership, syndicates may

be general partnerships, limited partnerships, corporations or REITs-although most syndicates are limited partnerships. (See also, *joint venture*, above.) [5]

T

tacking on Adding a previous owner's use so as to satisfy the statutory period of use for an easement by prescription or a title by adverse possession.

take-out loan Permanent financing that replaces (takes out) a construction loan. [5]

tandem program A program under which Fannie Mae buys below-market-interest mortgages at par value and resells them to encourage low interest housing loans. Ginnie Mae makes up the loss between market value and par value.

taxation - the governmental right to impose taxes for its own support and to proceed against the land for non-payment. [3]

tax base An assessed value of all taxable property within a tax region (Tax Rate = Needed Revenue ÷ Tax Base).

tax collector Collects property tax and conducts tax sales.

tax deed The deed given at a tax sale. [10]

tax-deferred exchange (1031 exchange) An exchange of like-for-like property held for income or investment. Only boot received is taxed. [12]

tax rate The rate or percentage at which a property is taxed. The tax rate is multiplied by the assessed value to determine the total annual taxes. [12] [13]

tax shelter A way of excluding income from taxes by such means as depreciation, which is a paper expense and can offset other income. [12]

tax stamp A charge based on a percentage of sales price of real property. Collected upon the filing or recording of the deed. (Not used in Colorado. See *documentary fee*, above.) [7]

tenancy A mode of holding ownership or interest in property. [3]

tenancy at sufferance A situation arising when a tenant holds over (continues occupancy) after expiration of a lease. Tenant is subject to an ejectment or an unlawful detainer action. [3]

tenancy at will A tenancy for an indeterminate period. [3]

tenancy from period to period See *periodic tenancy*, above. [3]

tenancy by the entirety A form of joint tenancy for husbands and wives. Neither spouse can separately convey to break the tenancy. [3]

tenancy in common Ownership by two or more persons, each of whom has an undivided interest according to their proportionate share; distinct from a joint tenancy in that there is no right of survivorship. [3]

tender An unconditional offer to perform (legal tender is money).

tenement Right that transfers with the real property.

termination statement A statement filed to remove a personal property lien from a financing statement.

term loan See *straight note*, above. [5]

testate To die with a will. [7]

testator A person who has a will.

13th Amendment "All citizens of the United States shall have the same right in every state and territory as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." [6]

tier A horizontal row of townships, measured north or south from the base line. Also known as a *township*. [8]

time is of the essence A statement that makes prompt performance mandatory. [1]

time-share An interval ownership plan used for vacation property. [3]

title In real property, it is the right, or evidence of the right, to property. Title is passed by deed. [3] [7]

title insurance An insurance policy that agrees to indemnify the owner for defects in title caused by specified risks. [7]

title theory The theory that by executing a mortgage to secure a loan, the borrower is transferring legal title to the property, and not just creating a lien. Used in a minority of states. Also known as *ownership theory*. See also, *lien theory*, above. [3] [10]

Title I loan FHA home improvement loan.

Title II loan FHA home purchase loan for one to four residential units.

topographical line Line on a map indicating the contour of the land.

topography The surface elevations of a property. One element that affects the value of real property. [4]

***Torrens title** A system of registering ownership in which the court keeps the record of title and issues certificates of title. [7]

tort A negligent or intentional wrong acted on another where the law will grant money damages in a civil action. [2]

town house Row housing having common walls with adjoining housing.

township An area established by U.S. government survey that is six miles square and contains 36 sections. [8]

trade fixture Personal property installed by a tenant to carry on a trade or business; remains personal property and can be removed by the tenant any time prior to the lease expiration. [3]

trading on equity Borrowing money on equity in property in order to invest it at a higher rate of return.

transferability The ability to transfer ownership rights from one person to another. One of the four requirements for real property to have value. [4]

***transaction broker** A broker or salesperson who assists one or more parties throughout a contemplated real estate transaction with communication, interposition, advisement, negotiation, contract terms, and the closing of such real estate transaction without being an agent or advocate for the interests of any party to such transaction. Absent a written (listing) agreement to the contrary, a broker in Colorado is automatically presumed to be a Transaction Broker. [2] [9]

treasurer's deed Given to and recorded by the purchaser of property at a tax sale after the statutory period allowed for the defaulting taxpayer to redeem the taxes. [10]

trespass A wrongful intrusion on the land of another.

triple-net lease See *net lease*, above. [3]

trust deed The transfer of title from the trustor (borrower) to a trustee (third party) as security for a note to a beneficiary (lender). Also known as a *deed of trust*, above. [5] [10]

trustee The third party who holds the trust deed. [5] [10]

trustor The debtor who gives title to the trustee as security for the loan.

truth in lending Part of the Consumer Credit Protection Act; also known as Regulation Z. It is a disclosure act requiring the lender to show the interest as an annual percentage rate (APR). See also, *Regulation Z*, above. [5]

turnover The number of times an inventory is sold in one year.

twisting Generally, an illegal practice of inducing a person to cancel a policy of insurance and take out a new policy.

U

UCC-1 Financing Statement When a (construction) loan is procured partly using personal property (such as lumber or construction machinery) as security, the UCC-1 form filed with the county in which the real property is situated and pledges that personal property as security for the loan (in a similar way the land is pledged as security for a loan by means of a mortgage). See, *Uniform Commercial Code*, below. [5]

unconscionable So unfair as to be contrary to personal sensibilities or public policy. [1]

undue influence A contract will be considered voidable when a party enters into the contract against her free will because of the coercion of a person with whom that party has a confidential relationship. [1]

ultra vires An act outside the authority of the person acting. That person is responsible personally for his or her actions.

unconscionable contract A contract that is so unfair or harsh that the courts will refuse to enforce it.

underimprovement An improvement that, because of a deficiency in size or cost, fails to achieve the highest and best use for the property.

undivided interest An unspecified interest in the whole rather than a separate interest in a particular portion of a property.

undue influence Taking advantage of another because of a unique position of trust, such as a doctor-patient or an attorney-client relationship. [1]

unearned increment An increase in value that is not due to any effort of the owner.

unenforceable A legal condition of either the parties or the contract whereby the court will not be able to hear the case, despite its merits. Common examples are a violation of the Statute of Frauds (the contract was not in writing, even though the S of F requires it) or the Statute of Limitations (the suing party waited longer than the legal time limit for bringing suit). [1]

Uniform Commercial Code (UCC) Standardized commercial laws adopted throughout the nation. It generally deals with sales of items of personal property such as consumer goods, and standards of conduct between merchants. However, one portion addresses security instruments for personal

property (such as lumber) financed along with real property. This instrument is called a UCC-1 Financing Statement. See *UCC-1 Financing Statement*, above. [5]

Uniform Consumer Credit Code (UCCC) Contains disclosure rules similar to Regulation Z of the Truth In Lending Act, above. [5]

Uniform Residential Landlord and Tenant Act An act adopted in whole or in part by a number of states and designed to provide uniformity as to rights and obligations of residential tenants and landlords. [11]

Uniform Residential Appraisal Report (URAR) A form used for VA, FNMA, HUD, FHLMC and FmHA loans. [4]

unilateral contract A promise in exchange for an act; accepted by the offeree's performance. [1]

unilateral mistake A misunderstanding by one party to a contract as to the subject or terms of the contract. Unlike a mutual mistake, a unilateral mistake will not cause the contract to be invalidated. [1]

unit in place method An appraisal method whereby cost is priced per unit, such as price per square foot. An element of the Cost Approach method of determining value. [4]

universal agent An agent appointed to perform all acts that the principal can delegate lawfully to another.

unlawful detainer A legal eviction procedure.

upset price The minimum bid at an auction.

usury An unlawful rate of interest.

Ute Principal Meridian Some portions of western Colorado are surveyed off this north-south survey line under the governmental survey system. [8]

utility Practical usefulness. One of the four requirements for real property to have value. [4]

V

VA 1) Acronym for the Department of Veterans Affairs (formerly known as the Veterans Administration); 2) A loan of favorable interest rate and terms, granted to veterans of the armed forces, whereby the loan is *guaranteed* to the lender to a certain amount or percentage in the event of default by the borrower. [5]

valid escrow Escrow in which an agreement has been reached and there has been conditional delivery of transfer agreements (deeds) to escrow. Delivery is conditioned upon escrow receiving all required funds and/or liens.

valley An internal angle in a roof. Metalwork often is used in a valley to prevent leaks.

value The relationship between an object desired and a potential purchaser. For real property to have value, it must have "D.U.S.T.": Demand, Utility, Scarcity and Transferability. [4]

variance An exception to zoning, made for an owner who has been deprived of the reasonable use of his or her property. [3]

vendee The buyer (in particular with an Installment Land Contract). [1] [10]

vendor The seller (in particular with an Installment Land Contract). [1] [10]

verification A sworn statement before an officer of the court as to the correctness of the contents of an instrument.

vested A present or sure interest that cannot be revoked.

vested remainder A remainder interest that cannot be defeated, such as a remainder interest to a life estate. The remainder holder or heirs are bound to get the property.

vicarious liability If the principal authorized the agent to do a wrongful act or if the act was within the scope of the agent's employment, *the principal will be held personally liable for those acts, as if the principal had committed them.* [2]

void Having no legal effect. In terms of contracts, it is as if the contract never existed. This is only applied in extreme cases, such as when both parties are minors or when the subject or purpose of the contract is illegal (such as murder, bigamy, etc.) [1]

voidable Capable of being voided by one party only; the contract is still valid until voided by that party. Common examples are mutual mistake or one of the parties is a minor. [1]

voluntary alienation An owner's rights are voluntarily transferred to another (i.e., gift or sale). [7]

voluntary lien A lien, such as a mortgage, intentionally placed on a property by the owner.

W

waive To give up or relinquish a right.

waiver Accepting something less than contracted for. A waiver leaves the parties as they are. Rescission places them back as they were. [1]

warehousing The practice of mortgage companies of accumulating a stock of mortgages and borrowing on them until they can be sold.

warranty deed A deed under which the grantor warrants the marketability of the title. See *general warranty deed*, *special warranty deed*, both above. [7]

waste Destruction or damage to a property (usually by a tenant).

wild deed A recorded deed or lien on a property outside the chain of title (placed by one not having a recorded interest in the property).

words of conveyance Words in a deed that indicate the grantor's intent to transfer title. [7]

wraparound loan A loan written for the amount of both junior and senior liens. The borrower makes the entire payment to the lienholder, who then makes the payment on the senior encumbrance. Also called an *all-inclusive mortgage*. [5]

writ of execution A writ or court order authorizing and directing an officer of the court, usually the sheriff, to carry into effect the judgment or decree of the court.

Z

zero interest loan A loan in which the seller buys down the interest rate to zero; usually a short-term loan.

zoning City or county regulation on land use; considered to be an exercise of police power. [3]

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COLORADO CONTRACTS & REGULATIONS Topic Index

This Index indicates in which chapter every topic discussed in the materials is located. (The fact that a topic is included in this Index, therefore, is no indication of its likelihood of being tested on the state license exam. This is intended only as a study aid, and for locating the subject matter referenced in quiz or exam questions.)

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