

A

Abandonment

The situation in which a homeowner leaves a house with no intention to return.

Abstract Of Judgment

An abstract is a summary; an abstract of judgment is a summary of a judgment; a judgment is the end result of a lawsuit. A judgment may run many pages. An abstract of judgment typically runs one or two pages. It just shows who won the lawsuit, who lost, how much is owed, what court made the decisions, the date of the judgment and the attorney for the winner of the lawsuit. Once the abstract of judgment is recorded (filed with the county clerk or county recorder), it creates a general lien on the judgment debtor's property, including the real estate. An abstract of judgment will be discovered by a title company whenever a landowner tries to sell the land. Most title companies will demand that it be paid off as a condition of insuring the resale.

Acceleration Clause

Clause in trust deed or mortgage giving a lender the right to call all sums owing him to be immediately due and payable upon the happening of a certain event.

Acceptance

When the seller's or agent's principal agrees to the terms of the agreement of sale, approves the negotiation on the part of the agent, and acknowledges receipt of the deposit in subscribing to the agreement of sale, that act is termed the acceptance.

Accrued Items of Expense

Those incurred expenses that are not yet payable. The seller's accrued expenses are credited to the purchaser in the closing statement.

Adjustable Rate Mortgage

A loan that has an interest rate that can go up or down at certain intervals, called periods, and within certain limits, called caps. The loan is secured by a house, on which the lender will foreclose if the loan is not paid.

Alienation

The transferring of property from one person to another.

Alienation Clause

(Acceleration Clause; Due on Sale Clause) A clause that states that upon sale or transfer of certain property, a loan is immediately due and payable.

All-Inclusive Deed or Trust

(Wrap Around Contract) A form of deed of trust that, in addition to any other amounts actually financed, includes the amounts of any prior deeds of trust.

Amortization

The repayment of a debt in installments.

Amortization Mortgage

A debt, of which the periodic repayments are used to reduce the principal outstanding as well as paying off the current interest charges.

Apportionment

The adjustment of the income, expenses, or carrying charges of real estate that are usually computed to the date of closing of title so that the seller pays all expenses to that date. The buyer assumes all expenses from the date on which the deed is conveyed to the buyer.

Appraisal

An estimate of a property's value made by an appraiser who is usually presumed to be an expert in this work.

Appraisal by Comparison

An estimate of value by comparing the sale prices of other similar properties.

Appurtenance

Something which is outside the property itself but belongs to the land and adds to its greater enjoyment, such as a right-of-way or a barn or a dwelling.

As Is

When a property is sold as is, the seller does not warrant or guarantee that the property is free of defects. The buyer accepts the property in its present condition, without modification.

Assessed Valuation

A valuation placed upon property by a public officer or a board as a basis for taxation.

Assessment

A charge against real estate made by a unit of government to cover a proportionate cost of an improvement such as a street or sewer.

Assessor

An official who has the responsibility of determining assessed valuation.

Assessors Parcel Number

A number assigned by the county tax assessor to identify a parcel of real property.

Assignment

The method or manner by which a right or contract is transferred from one person (the assignor) to another (the assignee).

Assignment of Rents

A procedure in which a borrower gives a lender the right to receive the rents collected from a tenant in a house owned by the borrower.

Assumes and Agrees to Pay

A clause in a deed or related document under which a buyer who takes over payments on the seller's old loan also agrees to pay the old loan. The buyer will normally receive title and make the payments. The assumes and agrees to pay language is often found in the consideration section of the deed that transfers title from the seller to the buyer in such an assumption. The seller may or may not be released from liability, but in either case, the buyer is responsible legally to make payments on the loan.

Assumption of Mortgage

Occurs when a person takes title to property and assumes liability for the payment of an existing note or bond secured by a mortgage against the property.

Auction

The process of selling property at a public sale to the highest bidder. The person conducting the sale will call out the initial asking price and each price that anyone in the audience bids until no one will bid a higher price. The auctioneer then calls out "going once, going twice, sold to the highest bidder!"

Automatic Stay

A bankruptcy court order. When bankruptcy is filed, the bankruptcy court will issue a court order that prevents any creditor from attempting to collect any debt from the person who declared bankruptcy. Creditors, even though they are owed money, may not undertake foreclosure, repossession, eviction or seizure, or even call or write the debtor demanding payment. Instead, they must all come to the bankruptcy court and seek the money they are owed together with the other creditors.

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B

Balance Owed on the Loan

The part of the original loan that remains unpaid by the borrower at a given point in time.

Balloon Payment

A final installment payment, larger than previous installments that pays off a debt.

Bankruptcy

An action filed in a federal bankruptcy court that allows a creditor to reorganize or discharge credit obligations due to insolvency. A property owner may restrain foreclosure action by filing bankruptcy.

Bearer

Lender in whose hands the promissory note remains until it is paid in full.

Beneficiary

(1) One entitled to the benefit of a trust: (2) One who receives profit from an estate, the title of which is vested in a

trustee: (3) The lender on a security of a note and deed of trust.

Beneficiary's Statement

("Benny Statement") A written statement of the conditions and remaining balance of a loan secured by a deed of trust.

Bill of Complaint

The initial paperwork filed in many states to begin a foreclosure. It is part of the process of filing a lawsuit.

Bill of Sale

A document by which title to personal property is passed from seller to buyer.

Bond

A set sum of money or assets that are available if needed to pay to a court or other named person upon a certain event.

Broker Price Opinion

A real estate broker's estimate of the price for which property can reasonably be sold. The broker price opinion is often much cheaper than a professional appraisal, but often just as good, or even more useful because it tells the owner at what price the property can successfully be marketed.

Buydown

An arrangement in which the seller of real estate pay some or all of the buyer's loan costs, usually measured by increments of 1 percent of the loan called points. The seller pays enough points to the lender to permit it to offer the buyer's loan at a reduced interest rate, which reduces the monthly payment. The cost to the seller is small, but the reduction in payments to the buyer is often quite substantial. Buydown arrangements are often structured to focus the entire reduction in interest rate, and therefore monthly payments, in the early years of the loan. In a 3-2-1 buydown, a seller will pay enough points to reduce the buyer's interest rate by 3 percent, such as from 10 percent to 7 percent, the first year, then by 2 percent the second year and by 1 percent the third year. In the fourth year the loan interest rate and the monthly payments would return to the normal market rate of interest as set when the loan was first obtained.

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C

Capitol Improvement

A permanent structure erected to extend the useful life and value of a property. (The replacement of a roof would be considered a capital improvement.)

Certificate of Sale

A document indicating that a property has been sold to a buyer at foreclosure, subject to a right of redemption for a set period after the foreclosure sale. In an IRS, the redemption period is 180 days. The redemption period is different in other types of foreclosure. Many foreclosures take place without any certificate sale. Instead, if the sale is final, or near final, the buyer gets a deed rather than a certificate of sale.

Chain of Title

A history of the conveyances and encumbrances affecting a title from the time the original patent was granted, or as far back as records are available.

Chapter 13

One of the bankruptcy chapters in the federal Bankruptcy Code. Under Chapter 13, a wage earner can reduce debt payments through a bankruptcy court order according to the terms of a plan that will allow the debtor to pay much or even all of the original amount.

Chapter 7

One of the chapters in the federal Bankruptcy Code. Chapter 7 is liquidation bankruptcy in which a debtor's nonexempt assets are gathered together and given up or sold for the benefit of creditors in order of their priority. Priority creditors get much of the cash, if any. Their debts are not discharged. Secured creditors receive continued payments or the asset that served as collateral for the loan. Unsecured creditors are usually given little or nothing in a Chapter 7 bankruptcy.

Chattel

Personal property, such as household goods or fixtures.

Chattel Mortgage

A mortgage on personal property.

Clear Title

Ownership rights to a piece of real estate that are not diminished by liens, leases or other types of encumbrances. No other ownership claims exist.

Client

The one by whom a broker is employed (the principal) and by whom the broker will be compensated.

Closing Date

The date upon which the buyer takes over the property.

Cloud on the Title

An outstanding claim or encumbrance that, if valid, would affect or impair the owner's title.

Collateral

Additional security pledged for the payment of a debt.

Collections

An activity in which lenders or their agents employ various techniques to put pressure on borrowers to pay what they owe.

Color of Title

An apparent, invalid, title.

Condemnation

The acquisition of private property for public use, with fair compensation to the owner.

Conditional Sales Contract

A contract for the sale of property stating that, although delivery is to be made to the buyer, the title is to remain vested in the seller until the conditions of the contract have been fulfilled.

Condominium

A land ownership arrangement in which one owns an individual unit and a percentage of common areas.

Conforming Loans

Loans that meet FNMA standards.

Conservatorship

A state of affairs in which a bank or savings and loan association has been taken over by the FDIC or RTC and is being managed by these federal institutions, either directly or through hired managers. The institution will be preserved in its existing form until it can be sold complete or broken down into its major components. The institution is run on a caretaker basis until it can be sold.

Consideration

Something of value exchanged between the parties to a contract. It may consist of goods, services, or promises.

Constructive Notice

Information that a person is assumed, by law, to have simply because it could be ascertained by proper diligence and inquiry, for example, information that is to be found in the public records.

Contingency Fee

An employment arrangement commonly used by attorneys in which the attorney is paid a percentage of whatever money damages are awarded at the final judgment in a lawsuit.

Contract for Deed

A sales arrangement in which the seller holds title until the buyer finishes paying for the property. The terms of the sale and the payments are set in a written contract signed by the buyer and the seller. At the end of the payment period, the buyer gets title to the real estate by means of a deed.

Conventional Lender

A lender that makes conventional loans.

Conventional Loan

A loan that is not insured or guaranteed by any agency of the federal government. It is a private loan.

Conversion

In terms of property, the exchange of personal real property of one character or use for another.

Conveyance

The process of transferring title or some interest in real estate to a new owner.

Correlation

The final state of the appraisal process in which the appraiser reviews the data and estimates the subject property's value.

Covenants

Agreements written into deeds and other instruments promising performance or nonperformance of certain acts, or stipulating certain uses or restrictions on the property.

Coverage

The amount of money an insurance company will pay in response to a claim.

Cram-down

A chapter 13 bankruptcy arrangement in which a plan to repay lenders and creditors, which was developed by the debtor's attorney, is ordered into effect by the bankruptcy court. It is crammed down on the sometimes unwilling creditors.

Credit

The willingness of a borrower to repay borrowed money. It is usually measured by a borrower's past record of payments on loans and debts, which is kept in a credit report.

Cured Default

Correction of a borrower's failure to make payments or meet the terms of a loan to the lender's satisfaction.

Current Value

The value at the time of an appraisal.

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D

Damages

Monetary compensation set by a court for a loss suffered by a party to a lawsuit.

Debt Service

Annual amount to be paid by a debtor for money borrowed.

Decree

The final order of a court in many states.

Deed

The legal document commonly used to transfer ownership of real estate from one owner to the next.

Deed in Lieu of Foreclosure

Instead of waiting until the lender forces the sale of the house in foreclosure, usually to the lender, the borrower just deeds the property to the lender.

Deed of Reconveyance

An instrument that releases and discharges a deed of trust.

Deed of Restriction

A restriction imposed in a deed to limit the use of the land. A deed might include clauses preventing the sale of liquor or defining the size, type, value, or placement of improvements.

Deed of Trust

(Trust Deed) A deed given by the property owner to secure performance of an act (such as making payments on a loan). A deed of trust is a type of mortgage.

Default

Failure to fulfill a duty or promise, or to discharge an obligation; omission or failure to perform an act. In property foreclosure, usually the failure to pay loan installment repayments when they become due.

Defeasance Clause

The clause in a mortgage that permits the mortgagor to redeem his or her property upon the payment of the obligations to the mortgagee.

Defeased

In medieval times ownership rights constituted a fee. To be defeased meant to lose the fee, or today, to lose ownership.

Defendants Original Answer

The first responsive pleading of a defendant in a lawsuit.

Deficiency

Money a borrower who has lost real estate in foreclosure still owes to the lender because the foreclosure sale failed to generate enough to pay off the loan. Frequently, lenders acquire title to real estate at foreclosures, in which case they most often give credit only for the fair market value of the property against the balance due on the loan. Any unpaid balance on the loan after all just credits are applied is the usual amount of a deficiency. Many states limit or restrict deficiencies.

Deficiency Judgment

A court judgment that a defaulting borrower owes a deficiency.

Delinquency

The state of affairs when payments on a note or other loan obligation are past due.

Demand Note

A note that is payable on demand of the holder.

Department of Veterans Affairs

The arm of the federal government that guarantees loans and performs other services for veterans. This agency was formerly known as the Veterans Administration (VA).

Discharge of Indebtedness

A lender tells a borrower that a loan doesn't have to be paid back, also called discharge of debt.

Discovery

The phase of a lawsuit in which respective parties are permitted to ask each other formal written and oral questions, obtain copies of documents and in general find out the facts related to the lawsuit.

Documentary Transfer Tax

A tax applicable to transfers of real property. Notice of payment is entered on the face of the deed or on a separate paper filed with the deed.

Double Whammy

Some lenders refuse to permit assumptions, which is one blow, while at the same time insisting on a hefty prepayment penalty when the non assumable loan is paid off early, which is a second blow.

Down Payment

The initial cash a borrower pays to the seller to purchase a property. It does not include closing costs.

Due on Encumbrance

A clause in a mortgage that prevents a borrower from encumbering title to the property with liens, leases or other encumbrances without the lender's consent.

Due on Sale

A clause in a mortgage that demands that the borrower pay off the loan in full if the house is ever sold. The lender can't prevent the sale, but it can demand payment in full on the loan balance, which often has the same practical effect. In the absence of a due on sale clause, the loan is assumable without the lender's consent. Older FHA and DVA loans are assumable without the consent of the lender.

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Earnest Money

Down payment made by a purchaser of real estate as evidence of good faith.

Earnest Money Contract

A contract in which the seller agrees to sell and the buyer agrees to buy.

Easement

A right that may be exercised by the public or individuals on, over, or through the property of others.

Encroachment

A building, part of a building, or obstruction that intrudes upon the property of another.

Encumbrance

See [Incumbrance](#).

Entry and Possession

A method of foreclosure used in some states in which the lender, who already owns the property, reenters it and takes possession away from the borrower, either peacefully or by court order.

Equity

The excess of fair market value over the outstanding loan balance.

Equity Cushion

The amount of equity required before a lender will make a loan.

Equity Loan

Junior (subordinate) loan based on a percentage of the equity.

Equity Right of Redemption

A right of the owner to avert foreclosure by paying the debt, interest, and costs.

Equity Skimmer

A scam artist who assumes a loan and collects money up front, and possibly rents, then refuses to pay the payments on the assumed loan while keeping the cash paid up front.

Escrow

A deposit held ready for some use, such as to pay taxes and insurance on a mortgaged property.

Estate

The degree, quantity, nature and extent of interest (ownership) that a person has in real property.

Estoppel Certificate

An instrument executed by the mortgagor setting forth the status of and the balance due on the mortgage as of the date of the execution of the certificate.

Eviction

The legal procedure to have a tenant forcibly removed from a dwelling.

Exclusive Right to Sell

An agreement to give, for a specified period, only one broker the right to sell. If a sale during the term of the agreement is made by the owner or by any other broker, the broker holding the exclusive right is entitled to compensation.

Execution Sale

The sale of property by a sheriff pursuant to a court order.

Extending the Loan Term

Giving the borrower more time to repay a loan.

Extension Agreement

An agreement that extends the life of a mortgage.

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F

Fair Credit Reporting Act

A federal law that regulates credit bureaus and credit reports and gives persons certain rights regarding both.

Fair Market Value

The value that a willing and knowledgeable buyer would pay, and a willing and knowledgeable seller would accept, in an arm's-length transaction for a property.

Fannie Mae

See [Federal National Mortgage Association](#).

FCL

The abbreviation a lender puts on a borrower's credit record to indicate a foreclosure.

FDIC

See [Federal Deposit Insurance Corporation](#).

Federal Deposit Insurance Corporation

The corporation set up by the federal government to insure deposits in banks and S&Ls.

Federal Home Loan Mortgage Corporation

A government-chartered but privately owned corporation that buys mortgages from S&Ls. Also called Freddie Mac.

Federal Housing Administration

An agency of the federal government that regulates many aspects of the real estate industry, and that insures repayment of certain home loans.

Federal National Mortgage Association

A government-chartered but privately owned corporation that buys mortgages from mortgage companies. Also called Fannie Mae.

Federal Savings and Loan Insurance Corporation

A corporation formerly run by the federal government that insured deposits in S&Ls; FDIC took over this function. FSLIC deposit insurance funds, what were left of them, were transferred to an FDIC fund called Savings Association Insurance Fund, SAIF for short.

FHA Guidelines

Rules that specify income and credit requirements for a borrower, and the condition and value of a property to allow an insured loan of a particular size.

FHA Mortgage Loan

Mortgage loan insured by the Federal Housing Administration.

FHLMC

See [Federal Home Loan Mortgage Corporation](#).

First Lien

Debt recorded first against a property.

First Mortgage

Mortgage that has priority as a lien over all other mortgages. In cases of foreclosures, the first mortgage must be satisfied before other mortgages are paid off.

FNMA

See [Federal National Mortgage Association](#).

For Sale by Owner

(FSBO) A property being marketed by its owner without the help of a real estate broker.

Forbearance

A lender voluntarily accepts payments that are lower than originally agreed in the loan documents for a limited period of time in order to allow the borrower to recover financially. The borrower must eventually repay the missing or reduced payments, as well as all the other remaining payments on the loan.

Foreclosure

The forced sale of a piece of real estate to repay a debt.

Fraud

Intentional false statements that were believed and relied on by a person, who suffered loss as a result.

Freddie Mac

See [Federal Home Loan Mortgage](#).

Freeze Order

See [Automatic Stay](#).

FSA

A designation for Federal Savings Association.

FSBO

See [For Sale by Owner](#).

FSLIC

See [Federal Savings and Loan Insurance Corporation](#).

Full Assumption

An arrangement in which a buyer takes title to the house and takes over the payments on the seller's old loan with the full permission of the lender, which evaluates the buyer's ability to show adequate income and creditworthiness by the lender's traditional standards. The process of obtaining lender approval is called qualifying.

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G

Ginnie Mae

See [Government National Mortgage](#).

GNMA

See [Government National Mortgage Association](#).

Good Repair

A borrower has an obligation to maintain the condition of mortgaged property.

Government National Mortgage Association

An arm of the federal government that purchases loans. Currently GNMA buys over 90 percent of all DVA loans.

Grace Period

Additional time allowed to perform an act or make a payment before a default occurs.

Grant

A term used in deeds of conveyance of land to indicate a transfer.

Grant Deed

A deed of conveyance that implies that the grantor (seller) is granting an actual interest and has not previously granted such interest to anyone else.

Grantee

The party to whom the title to real property is conveyed.

Grantor

The person who conveys real estate by deed; the seller.

Guarantee

The DVA guarantees repayment of a DVA loan to the private lender who made it. Actually, this guarantee amounts to an agreement by the DVA to cover the loss up to a certain dollar figure on a loan of a given size that goes into default and foreclosure.

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H

Hearing

A proceeding before a court.

Holder in Due Course

A legal doctrine that holds that a person or entity that obtains a note without notice of any borrower defenses to its enforcement may enforce payment of that note in a court despite any borrower defense or other reason for not paying.

Homestead

Special legal protection that many states give to a person's principal residence.

Housing and Urban Development

A department of the federal government that administers housing programs.

HUD

See [Housing and Urban Development](#).

Hypothecate

To use something as security without giving up possession of it.

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I

Impound Account

An account held by the lender that is used for him or her to advance payments of certain expenses or charges that are incidental to property ownership and that may protect the lender's security.

Incumbrance

Any right to or interest in property interfering with its use or transfer, or subjecting it to an obligation. In connection with foreclosure property, the most likely incumbrances are mortgages and claims for unpaid taxes.

Installment

Parts of the same debt, payable at successive periods as agreed; payments made to reduce a mortgage.

Instrument

A written legal document.

Internal Revenue Service

The arm of the U.S. government that collects taxes.

Involuntary Lien

A lien imposed against property without consent of the owner, e.g., taxes, special assessments.

IRS

See [Internal Revenue Service](#).

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J

Jeopardy

To have one's property or liberty subjected to a possibly adverse decree of a court or agency.

Joint Tenancy

Ownership of property by two or more persons, each of whom has an undivided interest with the right of survivorship.

Judgment

The final decision of a court.

Judicial Foreclosure

A foreclosure action that is executed by the court.

Junior Lienholder

A holder of a right to force the sale of property that is inferior and subordinate to another lienholder's right to do the same. A junior lienholder who forces the sale of the real estate must either pay off the senior lien or make arrangements to make payments on it to prevent it from being foreclosed. The foreclosure of a first lien destroys the right of a junior lienholder to foreclose, but the foreclosure of a junior lien does not affect the right of a senior lien to foreclose.

Junior Mortgage

A mortgage second or subsequent in lien to a previous mortgage.

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K

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L

Land Sale Contract

A document that may be used to sell real property that transfers ownership rights but does not actually transfer title.

Late Payments

Payments that are made past their due dates according to the loan documents.

Lease With Option To Buy

An arrangement in which the owner of a property rents it to a tenant, but gives the tenant the right to purchase the property on agreed terms.

Lender Approval

A lender's agreement to allow an assumption after its review of a borrower's creditworthiness and income. Lender approval can also apply to an initial loan.

Lender Liability

The legal doctrine that holds lenders legally responsible to pay damages for legal misdeeds committed against

borrowers in the course of making loans.

Liability

The obligation to pay a debt.

Lien

The right to force the sale of property to pay a debt.

Lienholder

A person or institution that controls a lien.

Life Estate

The conveyance of title to property of the duration of the life of the grantee.

Life Tenant

The holder of a life estate.

Liquidating Plan

A plan by which a borrower repays missed payments to the lender over time.

Liquidation Appraisal

An estimate of the value of property when it is sold quickly in a forced sale. Usually, this figure is lower than fair market value for a regularly conducted sale.

Lis Pendens

A recorded notice that tells the world that a lawsuit is in progress, the outcome of which could affect the title to a particular piece of land.

Listing Agreement

The agreement by which a seller hires a real estate broker to sell a house, usually for a commission.

Loan Balance

The amount a borrower owes on a loan.

Loan Default

See [Default](#).

Loan Modification

A procedure in which a loan's terms, such as the interest rate, monthly payment or term, are altered.

Loan Officer

A person paid commissions to find and sign up borrowers for loans.

Loan Pool

A group of mortgages in which investors own shares.

Loan Processor

The person who gathers and prepares the paperwork used by a lender to decide whether or not a loan should be made.

Lot Book Report

A report made by a title company that identifies and encumbrances recorded against a particular property. A lot book report does not identify liens recorded in the name of the owner that may affect property.

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M

Marketable Title

A title that the court considers to be so free from defect that it will enforce its acceptance by a purchaser.

Mechanics Lien

A claim made to secure the price of labor done upon and materials furnished for uncompensated improvement.

Metes and Bounds

A term used in describing land by setting forth all the boundary lines together with their uncompensated improvement.

MGIC

See [Mortgage Guaranty Insurance Corporation](#).

Misrepresentation

Making false statements in the course of a business transaction.

Modification

See [Loan Modification](#).

Mortgage

An instrument in writing, duly executed and delivered, that creates a lien upon real estate as security for the payment of a specified debt, which is usually in the form of a bond.

Mortgage Commitment

A formal indication, made by a lending institution, that it will grant a mortgage loan on property in a certain specified amount and on certain specified terms.

Mortgage Company

A company that makes home loans to borrowers. Most mortgage companies sell the loans they have on the secondary market to loan buyers, but continue to service the loans under contracts, collecting payments from borrowers and handling trouble with the loan, such as default and foreclosures.

Mortgage Guaranty Insurance Corporation

A major private insurer of mortgage loans in the United States.

Mortgage Instrument

The legal paperwork to create a mortgage.

Mortgage Lien

The right of a mortgage lender to force a sale of the mortgaged property if the borrower fails to repay the loan as agreed.

Mortgage Reduction Certificate

An instrument executed by the mortgagee, setting forth the status of and the balance due on the mortgage as of the date of the execution of the instrument.

Mortgagee

The lender.

Mortgagees Title Policy

A title insurance policy that will pay off the lender's loss if the title to the mortgaged property fails.

Mortgagor

The borrower.

Motion to Lift Stay

A formal request to a bankruptcy court to dissolve an automatic stay that prevents a lender from foreclosing. Once the motion is granted, the lender may proceed to foreclose unless the borrower can keep up the payments.

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N

Negative Equity

A position in which a borrower owes more on property than the property is worth.

Non-judicial Foreclosure

Foreclosure on a mortgage without filing a lawsuit or obtaining a court order. Generally such sales occur because the borrower has signed a document, such as a deed of trust, giving a trustee pre-authorization to sell the real

estate to pay off the debt.

Notary Public

A person authorized to take acknowledgment to certain classes of documents, such as deeds, contracts, mortgages, and before whom affidavits may be sworn.

Note

The legal document that specifies the terms of the borrower's loan, such as the length of time to repay it, the interest rate, the monthly payment amounts and provisions to deal with the borrower's failure to pay on a timely basis.

Notice Of Default

Letter sent to a defaulting party as a reminder of the default. It may state a grace period and the penalties for failing to cure the default.

Notice Of Rescission

A document that is used to cancel a notice of default and declare that the default has been corrected.

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O

One Action Rule

A rule of law, used heavily in California, that forces a lender to bring only one court action or proceeding against a borrower in a foreclosure. The one action rule makes it difficult for a lender to obtain a deficiency judgment against a borrower.

Open Mortgage

A mortgage that has matured or is overdue and, therefore, is "open" to foreclosure at any time.

Origination

Creation of a loan.

Out-Of-Court Foreclosure

See [Non-Judicial Foreclosure](#).

Owner-Occupied

The borrower who owns the home lives in it.

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P

Partial Payments

Payments that are less than the full payment the borrower owes on a loan.

Performance Bond

A bond used to guarantee the specific completion of an endeavor in accordance with a contract.

Plat Book

A public record containing maps of land showing the division into streets, blocks, and lots and indicating the measurements of the individual parcels.

PMI

Private Mortgage Insurance.

PMI-Assisted Presale

An arrangement in which a private mortgage insurance company pay for part of the loss that occurs when a house with negative equity (one worth less than the balance on the existing mortgage loan) is sold by regular means prior to a foreclosure.

Points

Discount charges imposed by lenders to raise the yields on their loans.

Positive Equity

The situation in which a house has a value in excess of what is due on the mortgage.

Posting

The act of placing a legal notice, such as a notice specifying the date, time and place of a foreclosure sale, on public display in the proper place for such notices.

Power Of Attorney

A written instrument (document) duly signed and executed by an owner of property that authorizes an agent to act on behalf of the owner.

Power Of Sale Clause

The clause in a deed of trust or mortgage, by which the borrower pre-authorizes the sale of a house to pay off the balance on a loan in the event of the borrower's default. Usually a trustee conducts the sale, although in some states the sheriff or constable does this.

Prepays

The costs of purchasing a house that the buyer must pay at the time of closing to a party other than the seller.

Prepayment Clause

A clause in a mortgage that gives a mortgagor the privilege of paying the mortgage indebtedness before it becomes due.

Primary Lender

The lender that deals directly with the borrower.

Promissory Note

See [Note](#).

Property Condition

The physical state of the property.

Prorations

Allocation of closing costs and credits to buyers and sellers.

Purchase Money Mortgage

A mortgage given by a grantee in part payment of the purchase price of real estate.

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Q

Qualifying

The process a lender undertakes prior to agreeing to make a loan, which consists of evaluating a buyer's income and credit and the property's physical condition, and comparing the figures with the lender's guidelines. If the guidelines are met or exceeded, then the lender will approve a mortgage loan.

Quiet Title Suit

A suit in court to ascertain the legal rights of an owner to a certain parcel of real property.

Quitclaim Deed

A deed that conveys simply the grantor's rights or interest in real estate; generally considered inadequate except when interests are being passed from one spouse to the other.

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R

Real Estate Lien Note

See [Note](#).

Real Estate Owned

Property acquired by a lender through foreclosure and held in inventory; commonly referred to as REO.

Recasting

Restructuring a loan with a new interest rate and term. It may be the same loan from the same lender, but the terms change. FHA has a formal procedure to recast loans to assist home buyers to stay in their houses.

Receivership

After a bank is taken over by FDIC, it may be placed in receivership to liquidate its assets. The employees are fired and the assets shipped off to be sold at auction. The real estate is turned over to the RTC or the FDIC's liquidation division. Existing contracts with the institution in receivership are voidable at the option of the FDIC.

Recording

The act of writing or entering in a book of public record instruments affecting the title to real property.

Recourse

The right to claim against a prior owner of a property or note.

Redemption

The right of a mortgagor to redeem property by paying a debt before sale at foreclosure; the right of an owner to reclaim his or her property after it has been sold to settle claims for unpaid taxes.

Refinance

The process of replacing an old loan with a high interest rate with a new one, usually at a lower interest rate.

Release Clause

A clause included in a blanket mortgage that gives the owner of the property the privilege of paying off part of the debt, and thus freeing part of the property from the mortgage.

Release Of Liability

The document that relieves a person who is obligated to pay a loan of any further obligations. It may be obtained when a buyer takes over the payments on the seller's old loan, provided the buyer meets the lender's standards for income and creditworthiness. If granted, the release of liability means the seller will not be responsible if the buyer fails to pay.

Relief

Various types of loans, depending on their insurers (FHA, PMI companies, etc.) or their owners (FNMA, FHLMC), will offer various types of special payment plans or other assistance for borrowers who have missed payments. If it appears that the borrower can bring the loan current, the lender can allow a period of reduced payments with the difference made up at a later time during the loan. The lender could also assist with an early sale.

Removal

The process of transferring a case from state court to federal court.

REO

See [Real Estate Owned](#).

Repayment Plan

A plan for repaying missed payments over time.

Request For Notice Of Default

A document that under statutory provisions, allows certain interested parties to request and be entitled to notification of a default.

Resolution Trust Corporation

A government-chartered corporation whose primary function is to manage and liquidate the assets of S&Ls that have lost too much money and been taken over and shut down by the FDIC. The Resolution Trust Corporation was created by FIRREA. It is probably the largest owner of real estate in the world.

Right Of Redemption

See [Redemption](#).

Right Of Rescission

The right to back out of a contract.

Right Of Survivorship

Right of the surviving joint owner to succeed to the the interests of the deceased joint owner. This right is a distinguishing feature of a joint tenancy or tenancy by the entirety.

RTC

See [Resolution Trust Corporation](#).

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S

S and L

See [Savings and Loan Association](#).

Sales Contract

A contract by which the buyer and seller agree to terms of sale.

Satisfaction Piece

The receipt for a mortgage that has been paid off.

Savings And Loan Association

A financial institution that makes loans. Savings and Loans were originally set up to make home loans, but during the 1980s, deregulation allowed them to make commercial loans, as well.

Scire Facias

A court command to a borrower to show up at a hearing and show cause why a foreclosure should not be authorized.

Second Deed Of Trust

A Deed of Trust that is in a subordinate position to another Deed of Trust securing the same parcel.

Second Lien

See [Junior Lien Holder](#).

Second Mortgage

A mortgage made by a home buyer in addition to an existing first mortgage.

Secondary Market

The market in which investors buy loans from primary lenders, who deal directly with borrowers to originate loans.

Servicing

The process of administering a mortgage loan including collecting payments, maintaining insurance and undertaking special measures such as workouts and foreclosures when they prove necessary.

Short Payoff

A workout procedure in which the lender accepts less than the full balance due on the loan as part of a deal in which the borrower cooperates with the lender to obtain a quick sale. The lender skips foreclosure, which would take time, cost money and expose the house to vandalism, further declines in market value, and marketing costs for resale.

Simple Assumption

An assumption arrangement in which the seller conveys title to the property to the buyer and moves out while the buyer moves in and makes payments on the old loan. The lender does not approve the buyer's credit and income, so the deal may be called a no approval loan. However, the seller remains liable on the old loan under such circumstances. Only loans without strong "due on sale" clauses are assumable without approval. This includes DVA loans made before March 1, 1988, FHA loans made before December 15, 1989, and conventional loans made before 1973.

Special Assessment

An assessment made against a property to pay for a public improvement.

Stay

See [Automatic Stay](#).

Strict Foreclosure

A legal premise followed by some states that the lender owns the property and may simply evict the borrower for nonpayment and gain full and complete title free of the borrower's claims by waiting a prescribed period of time until the borrower's right to redeem ends. The lender gains the value of the land above what is owned on the loan.

Subdivision

A tract of land divided into lots or plots.

Subject To Clause

A clause in a deed that transfers title from a seller to a buyer in an assumption transaction, or in other paperwork for the assumption transaction, in which the borrower refuses to accept legal liability to make payments, although the buyer expects to do so. The lender's remedy for nonpayment is limited to foreclosure, and neither the lender nor the seller can sue the defaulting buyer for missed payments on the loan balance.

Subordinate Clause

A clause in a mortgage that gives priority to a mortgage taken out at a later date.

Subrogation For Mortgage Insurers

The right of a mortgage insurance company to file a suit to recover from the borrowers sums it must pay out to a lender as a result of the borrower's default on a loan.

Summary Judgment

A legal procedure in which one side wins a lawsuit without a trial by showing that the case involves no material fact issues, but only legal issues that can be decided by the judge. If the judge agrees, then one side wins by Summary Judgment.

Survey

The process by which a parcel of land is measured and its area ascertained; also the blueprint showing the measurements, boundaries, and area.

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T

Tax Sale

Sale of property after a period of nonpayment of taxes.

Temporary Injunction

A court order that freezes the status quo for an extended time period, typically until a full court trial on the merits of a case can be held. It often requires posting a bond, although many states' laws waive the bond requirement in cases involving the foreclosure of a home.

Temporary Restraining Order

A court command that freezes the status quo for a short period of time until other legal relief is awarded or a settlement between the litigants can be reached.

Tenancy At Will

A license to use or occupy lands and tenements at the will of the owner.

Tenancy By The Entirety

An estate that exists only between husband and wife with equal right of possession and enjoyment during their joint lives and with the right of survivorship.

Tenancy In Common

An ownership of realty by two or more persons, each of whom has an undivided interest without the right of survivorship.

Title

Evidence of the ownership of land.

Title Defect

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

Title Insurance

A policy of insurance that protects the holder from any loss caused by defects in the title.

Title Report

Document indicating the current state of the title, such as easements, covenants, liens, and any other defects. The title report does not describe the chain of title.

Title Search

An examination of the public records to determine the ownership and encumbrances affecting real property.

Trust Deed

A type of mortgage that gives a lender the power to foreclose and take title away from the borrower.

Trustee

A person who is named in a deed of trust or other mortgage to conduct any foreclosure proceedings and sell the property to pay off the mortgage loan balance.

Trustees Deed

A type of deed issued to the buyer at a foreclosure by the trustee.

Trustees Sale

A non-judicial action whereby a trustee may auction and sell property secured by a Deed of Trust subsequent to a default in the terms and conditions of the loan.

Trustees Sale Guarantee

A title insurance policy for the benefit of the trustee handling a foreclosure action.

Truth In Lending Act

A federal law that requires lenders to make certain disclosures to borrowers concerning a loan, such as the interest, the annual percentage rate, the total cost of the loan, the total of all payments and the use of disclosure forms at the loan application and closing.

Turnover Order

A court command to a debtor to give title to certain assets to a creditor.

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U

Underwriter

The person who makes the final decision on whether a loan should be granted or not at most mortgage companies.

Undivided Interest

Ownership of real estate by joint tenants or tenants in common under the same title.

Upside Down Home

A house that is worth less than what is owed on the mortgage it secures.

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V

VA

See [Department of Veterans Affairs](#).

Vendees Lien

A lien against property under contract of sale to secure a deposit paid by a purchaser.

Verification Of Deposit

A form sent to an employer by a lender to verify that a borrower has a certain sum on deposit.

Verification Of Employment

A form sent to an employer by a lender to verify that a borrower is employed at a certain salary.

Veterans Administration

See [Department of Veterans Affairs](#).

VOD

See [Verification of Deposit](#).

VOE

See [Verification of Employment](#).

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W

Wage Earner Plan

A nickname for Chapter 13 bankruptcy.

Warranty Deed

A conveyance of land in which the grantor guarantees the title to the grantee.

Without Recourse

Words used in endorsing a note or bill to denote that the future holder is not to look to the endorser in case of nonpayment.

Workout

The process by which a borrower comes to a mutually acceptable financial arrangement with a lender in order to avoid an impending foreclosure.

Wraparound

A type of mortgage in which the obligation to pay a second - or later - lien mortgage includes the obligation to pay an earlier-lien mortgage. The later mortgage wraps around the earlier mortgage. Default on the earlier-lien mortgage is automatically a default on the later-lien mortgage.

Wraparound Loan

A new loan encompassing any existing loans.

Writ of Execution

A court order authorizing the holder to seize and sell a debtor's property to pay off a judgment.

Writ of Garnishment

A court order commanding a person who holds assets for another person, such as a banker who holds funds on deposit, an employer who holds a paycheck or a stock broker who holds an account for an investor, to give those assets up to a creditor.

Writ Of Possession

A court document that authorizes a constable or other officer of the law to break down a tenant's door, drag the tenant from the premises and throw the tenant's belongings out of the house or apartment.

Wrongful Foreclosure

A foreclosure that was legally improper and that caused a borrower to suffer damages.

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Y

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Z

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