abatement:
1. A reduction or decrease. 2. The removal of a nuisance.

A, B, C, D paper:
Mortgage loans are rated as A, B, C, or D paper. "A" paper loans are the highest quality, lowest risk loans; "B" quality are loans where the borrower has minor credit problems; "C" quality are borrowers with marginal or poor credit; "D" quality indicates very high risk loans.

absorption rate:
The total number of vacant square feet of office space divided by the square footage leased per year historically. Used to analyze demand of office space in a given market area.

abstract of title:
A full summary of all consecutive grants, conveyances, wills, records and judicial proceedings affecting title to a specific parcel of real estate, together with a statement of all recorded liens and encumbrances affecting the property and their present status. The abstract of title does not guarantee or ensure the validity of the title of the property. Rather, it is a condensed history that merely discloses those items about the property that are of public record; thus, it does not reveal such things as encroachments and forgeries. (See abstracter, title insurance policy, certificate of title)

abstract of judgment:
A full summary by the court of a judgment. It becomes a general lien on all of a debtor's property in the county where it is recorded. (See general lien, judgment)

abstracter:
The person preparing the abstract of title. The abstracter searches the title as recorded or registered with the county recorder, county registrar, circuit court and/or other official sources. He or she then summarizes the various instruments affecting the property and arranges them in the chronological order of recording, starting with the original grant of title.

acceleration clause:
A provision in a mortgage, trust deed, promissory note or contract for deed (agreement of sale) that, upon the occurrence of a specified event, gives the lender (payee, obligee or mortgagee) the right to call all sums due and payable in advance of the fixed payment date. (See alienation clause)

acceptance:
An acceptance is a promise by the offeree to be bound by the exact terms proposed by the offeror. The acceptance must be communicated to the offeror. (See offeree, offeror)

accession:
Acquiring title to additions or improvements to real property as a result of the annexation of fixtures or the accretion of alluvial deposits along the banks of streams.

accord and satisfaction:
The settlement of an obligation. An accord is an agreement by a creditor to accept less than bargained for from a debtor. The creditor's acceptance of the accord constitutes satisfaction of the debt.

accounting:
The agent must be able to report the status of all funds received from or on behalf of the principal. Most state real estate license laws require a broker to give accurate copies of all documents to all parties affected by them and to keep copies on file for a specified period of time. Most license laws also require the broker to deposit immediately, or within 24 to 48 hours, all funds entrusted to the broker (such as earnest money deposits) in a special trust or escrow account. Commingling such monies with the broker's personal or general business funds is strictly illegal.

accretion:
The increase or addition of land by the deposit of sand or soil washed up naturally from a river, lake or sea. The gradual and imperceptible addition of land by alluvial deposits of soil through natural causes, such as shoreline movement caused by streams or rivers. This added land upon a bank or stream, navigable or not, becomes the property of the riparian or littoral owner, and it also becomes subject to any existing mortgages.

accrued depreciation:
1. In accounting, a bookkeeping account that shows the total amount of depreciation taken on an asset since it was acquired; also called accumulated depreciation. (See depreciation) 2. For appraisal purposes, the difference between the cost to reproduce the property (as of the appraisal date) and the property's current value as judged by its "competitive condition." In this context, accrued depreciation is often called diminished utility.

accrued items:
In a closing statement, items of expense that are incurred but not yet payable, such as interest on a mortgage loan or taxes on real property.
accusation:
The first step in a disciplinary action against a licensee.

acknowledgment:
A formal declaration made before a duly authorized officer, usually a notary public, by a person who has signed a document; also, the document itself. An acknowledgment is designed to prevent forged and fraudulently induced documents from taking effect.

acquisition cost:
The amount of money or other valuable consideration expended to obtain title to a property. It includes the purchase cost, plus such items as appraisal fees, closing costs, finance charges, mortgage loan origination fees and title insurance. (See title)

acre:
A measure of land equal to 43.560 square feet, 4,840 square yards, 4,047 square meters, 160 square rods or 0.4047 hectares.

actual damages:
Real, substantial and just damages or the amount awarded to a complainant in compensation for his actual and real loss or injury.

actual eviction:
The legal process that results in the tenant's being physically removed from the leased premises. (See eviction, constructive eviction, lease)

actual notice:
Express information or fact; that which is known; direct knowledge.

addendum:
Additional material attached to and made part of a document. If there is space insufficient to write all the details of a transaction on the sales contract form, the parties will attach an addendum or supplement to the document. The sales contract should incorporate the addendum by referring to it as part of the agreement. The addendum should refer to the sales contract and be dated and signed or initialed by all the parties.

add-on rate:
Interest charged on a principal amount for specified term, regardless of any repayments of principal. The borrower is paying interest on the full principal sum for the entire loan period, even though the principal is being reduced each month.

ademption:
Disposal by a testator in his or her lifetime of a specific property bequeathed in his or her will so the bequest is revoked. (See testator)

adjustable rate mortgage (ARM):
A broad term for a loan (mortgage or deed of trust) with rates and terms that can change. The adjustable rate loan has become commonplace, with allowable ranges as to time intervals, percentage of increase or decrease and total increases or decreases likely to change as market conditions change. (See caps, index rate, initial rate, rate cap, rate factor)

adjusted basis:
The original cost basis of a property reduced by certain deductions and increased by certain improvement costs. The original basis determined at the time of acquisition is reduced by the amount of allowable depreciation or depletion allowances taken by the taxpayer, and by the amount of any uncompensated property losses suffered by the taxpayer. It then increases by the cost of capital improvements plus certain carrying costs and assessments. The amount of gain or loss recognized by the taxpayer upon sale of the property is determined by subtracting the adjusted basis on the date of sale from the adjusted sales price. (See basis, capital gain)

adjustment:
Decrease or increase in the sales price of a comparable property to account for a feature that the property has or does not have in comparison with the subject property.

adjustment period:
In an adjustable rate mortgage (ARM), the "adjustment period," is the period of time (i.e., one month, three months, six months, one year, etc.) between changes in one interest rate charged and the next interest rate to be charged. (See adjustable rate mortgage (ARM))

administered price system:
Federal National Mortgage Association securities purchasing procedure where required yields are adjusted daily to reflect financial market factors. (See Federal National Mortgage Association)

administrative agency:
A government agency that makes rules and regulations to carry out the law. A state's real estate commission develops regulations to complement license law.

administrative order:
A legal document signed by the EPA directing an individual, business, or other entity to take corrective action or refrain from an activity. The order describes the violations and action to be taken and can be enforced in court.

administrator:
A male person appointed by the court to settle the estate of a person who has died intestate (leaving no will). Sometimes referred to as the personal representative. (See executor)

administratrix:
A female person appointed by the court to settle the estate of a person who has died intestate (leaving no will). Sometimes referred to as the personal representative. (See executrix)

advance fee:
A fee paid before any services are rendered. Specifically, it is a practice of some brokers to obtain a nonrefundable fee from the seller in advance to cover the advertising of properties or businesses for sale while giving no guarantee that a buyer will be found, which is often held to be improper conduct. Brokers must keep accurate records of expenditures.

advance fee addendum:
An agreement specifying services for which an agent or broker will be compensated including a provision for payment of an advance fee. (See advance fee)

ad valorem:
The Latin word for "according to value."

ad valorem tax:
A tax levied according to value, generally used to refer to real estate tax. Also called the general tax.

adverse action:
A denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit either on the amount requested or on the terms requested.

adverse possession:
The acquiring of title to real property owned by someone else by means of open, notorious, hostile and continuous possession for a statutory period of time. The burden to prove title is on the possessor, who must show that four conditions were met: 1. He or she has been in possession under a claim of right. 2. He or she was in actual, open and notorious possession of the premises so as to constitute reasonable notice to the record owner. 3. Possession was both exclusive and hostile to the title of the owner (that is, without the owner's permission and evidencing an intention to maintain the claim of ownership against all who may contest it). 4. Possession was uninterrupted and continuous for at least the prescriptive period stipulated by state law.

aesthetic zoning:
Zoning for beauty. May regulate architectural styles, colors or signage. (See zoning)

affirmation:
A formal declaration that an affidavit is true.

affirmative easement:
Gives the owner of the dominant tenement the right to use the servient tenement. (See dominant tenement, servient tenement)

affidavit:
A sworn written statement made under oath before a notary public or other official authorized by law to administer an oath. The term literally means "has pledged one's faith." The affiant (person making the oath, sometimes called the deponent") must swear before the notary that the facts contained in the affidavit are true and correct.

affidavit of title:
A written statement, made under oath by a seller or grantor of real property and acknowledged by a notary public, in which the grantor 1. identifies himself or herself and indicates marital status, 2. certifies that since the examination of the title on the date of the contracts no defects have occurred in the title and 3. certifies that he or she is in possession of the property (if applicable).

after-acquired title:
Title or interest acquired by the grantor after a property has been conveyed. (See grantor)

agency:
A relationship created when one person, the principal, delegates to another, the agent, the right to act on his or her behalf in business transactions and to exercise some degree of discretion while so acting. An agency gives rise to a fiduciary relationship and imposes on the agent, as the fiduciary of the principal, certain duties, obligations, and high standards of good faith and loyalty. (See agent, fiduciary, dual agency, buyer's broker)

agency coupled with an interest:
An agency relationship in which the agent is given an estate or interest in the subject of the agency (the property).

agent:
One authorized to represent and to act on behalf of another person (called the principal). Unlike an employee, who merely works for a principal, an agent works in the place of a principal. The main difference between an agent and an employee is that the agent may bind his or her principal by contract, if within the scope of authority, whereas an employee may not unless given express authorization. (See law of agency, principal)

agent property evaluation:
A questionnaire filled out by real estate agents while reviewing a listed property. Often completed during the course of a caravan. (See caravan)

aggrieved party:
One whose legal right is invaded by an act(s) of another. The word "aggrieved" refers to a substantial grievance, a denial of some personal or property right, or the imposition upon a party of a burden or obligation.

agricultural lease:
Agricultural landowners often lease their land to tenant farmers, who provide the labor to produce and bring in the crop. An owner can be paid by a tenant in one of two ways: an agreed cash in advance rental amount (cash rents) or as a percentage of the profits from the sale of the crop when it is sold (sharecropping). (See cash rents, sharecropping)

AIDA:
Attention, Interest, Desire, Action. In real estate advertising, creating ads that get the Attention of prospects, stimulating their Interest in a property, generating a Desire to purchase, and motivating the prospect to take Action.

AIDS:
Persons with acquired immunodeficiency syndrome are protected under most federal and state discrimination laws. If buyers ask the real estate agent whether a prior occupant had AIDS, most agents point out that the law prevents responding one way or the other. Many states have emended their licensing laws to include that someone who has AIDS is not deemed a material fact, and therefore, does not form the basis for a claim that a broker concealed a material fact. Also protected are persons with AIDS-related complex (ARC) or human immunodeficiency virus infection (HIV).

air lot:
A designated airspace over a piece of land. An air lot, like surface property, may be transferred.

air rights:
Rights to the use of the open space or vertical plane above a property. Ownership of land includes the right to all air above the property. Until the advent of the airplane, this right was unlimited, but now the courts permit reasonable interference with one's air rights, such as is necessary for aircraft, so long as the owner's right to use and occupy the land is not lessened. Thus, low-flying aircraft might be unreasonably trespassing, and their owners would be liable for any damages. Governments and airport authorities often purchase air rights adjacent to an airport, called an avigation easement, to provide glide patterns for air traffic.
The air itself is not real property; however, air space is real property when described in three dimensions with reference to a specific parcel of land, as in a condominium unit. A Maryland case has decided that separate owners of the land and the air rights may be separately assessed for tax purposes. Air rights may be sold or leased and buildings constructed thereon, such as was done with the Pam Am Building constructed above Grand Central Station in New York City.

Air rights may also be transferred by way of easements, such as those used in constructing elevated highways or in acquiring scenic easements or easements of light and air. Because of the scarcity of land, many developers are examining the possibilities for developing properties in the airspace above prime properties owned by schools, churches, railways and cemeteries. (See surface rights, subsurface rights)

air quality standards:
The level of selected pollutants set by law that may not be exceeded in outside air. Used to determine the amount of pollutants that may be emitted by industry

alienation:
The act of transferring ownership, title, interest, or estate in real property from one person to another. Property is usually sold or conveyed by voluntary alienation, as with a deed or assignment of lease. Involuntary alienation takes place when property is sold against the owner's will, as in a foreclosure sale or a tax sale. (See alienation clause)

alienation clause:
A provision sometimes found in a promissory note or mortgage that provides that the balance of the secured debt becomes immediately due and payable at the option of the mortgagee upon the alienation of the property by the mortgagor. Alienation is usually broadly defined to include any transfer of ownership, title, interest, or estate in real property, including a sale by way of a contract for deed. Also called a due-on-sale clause. (See acceleration clause)

all-inclusive encumbrance:
(See wraparound mortgage)

allodial system:
A system of land ownership in which land is held free and clear of any rent or service due to the government; commonly contrasted to the feudal system. Land is held under the allodial system in the United States.

Alquist-Priolo Special Study Zone:
A California law requiring a real estate agent or owner to disclose to prospective buyers that a property is located within a special studies zone (geological hazard zone) and if the property contains or will contain a dwelling (a residentially zoned lot). "Special study zones" cover an area 660 feet on each side of fault lines and are indicated on maps prepared by the California Department of Mines and Geology.
ambient:
Any unconfined portion of the atmosphere; open air; outside surrounding air.

amendment to the escrow instructions:
A change to escrow instructions requiring the agreement of both buyer and seller. (See escrow instructions)

amendments:
An amendment is a change to the existing content of a contract. Any time words or provisions are added to or deleted from the body of the contract, the contract has been amended.

amenity or amenities:
The qualities and state of being pleasant and agreeable. In residential appraising, those peculiar and intangible benefits of home ownership such as satisfaction of possession and use arising from architectural excellence, scenic beauty, and desirable social environment.

American Institute of Real Estate Appraisers (AIREA):
A professional organization formerly affiliated with the National Association of REALTORS. AIREA promoted professional practice and ethics in the real estate appraisal industry and identified experienced, competent, ethical appraisers by awarding the MAI (Member Appraisal Institute) and RM (Residential Member) designations. In 1991, AIREA was merged with the Society of Real Estate Appraisers into the Appraisal Institute. The only designations awarded now are the MAI and SRA (Senior Residential Appraiser)

American Land Title Association (ALTA) policy:
A title insurance policy that protects the interest in a collateral property of a mortgage lender who originates a new real estate loan. (See title insurance)

American Society of Appraisers (ASA):
A professional organization of appraisers engaged in the appraisal of both real and personal property. It confers the designations ASA and FASA (Fellow).

American Society of Real Estate Counselors (ASREC):
A professional organization, affiliated with the National Association of REALTORS®, composed of individuals with proven success in real estate counseling who serve clients on a fee basis. The society offers its members exclusive use of the professional designation CRE (Counselor of Real Estate).

Americans with Disabilities Act (ADA):
On July 26, 1990, President Bush signed into law the Americans with Disabilities Act of 1990 ("ADA"), a federal law which prohibits discrimination against individuals with disabilities. The ADA addresses discrimination in four general areas:
Employment (Title I);

Public services (Title II);

Public accommodations and commercial facilities (Title III); and,

Telecommunications (Title IV).

The purpose of the ADA is to give individuals with disabilities civil rights protection against discrimination similar to hose afforded to individuals on the basis of race, color, national origin, sex, and religion.

amortization:
The gradual repayment of a debt by means of systematic payments of principal and/or interest over a set period, so that at the end of the period there is a zero balance. The principal is thus directly reduced or amortized over the life of the loan. Some loans are not fully amortized, and require a balloon payment at the end of the term of the loan. (See balloon payment, fully amortized)

annexation:
An addition to property by the act of joining or uniting one thing to another, as in attaching personal property to real property, thereby creating a fixture. For example, a sink becomes a fixture when it is annexed to the plumbing outlet.

annual debt service:
Monthly loan payments (principal and interest, if any) times 12 months.

annual operating expenses:
The actual costs it takes to run the property, such as property tax, insurance, maintenance, repairs, management fees, utilities, and supplies.

annual percentage rate (APR):
An expression of the relationship of the total finance charge to the total amount to be financed as required under the federal Truth-in-Lending Act. Tables available from any Federal Reserve bank may be used to compute the rate, which must be calculated to the nearest one-eighth of 1 percent. Use of the APR permits a standard expression of credit costs, which facilitates easy comparison of lenders. (See interest, Truth-in-Lending Act)

annuity:
A sum of money received by an annuitant in a series of fixed periodic payments.

anticipation
The appraisal principle which holds that value can increase or decrease based on the expectation of some future benefit or detriment produced by the property. (See appraisal)

anti-merger clause
A clause in a mortgage or deed of trust specifying that the senior lien holder will retain lien priority in the event of a merger. (See merger)

antitrust laws:
State and federal laws designed to maintain and preserve business competition. The Sherman Antitrust Act (1890) is the principal federal statute covering competition, which is defined by most courts as "that economic condition in which prices are determined by market forces without interference from private concerns and there is reasonable freedom of entry into most businesses."
Certain real estate brokerage activities have come under public scrutiny by the Federal Trade Commission. These activities include the fixing of general commission rates by local boards or groups of brokers and the exclusion of brokers from membership in local boards or in multiple-listing arrangements due to unreasonable membership requirements. As a result of court cases, local real estate boards no longer directly or indirectly influence fixed commission rates or commission splits between cooperating brokers. Moreover, in some states, clients must be specifically informed that the commission rates are negotiable between client and broker.

apartment building:
A building having separate units for permanent tenants who rent or lease them. The owner of the building provides common facilities, such as lights, heat, elevator and garbage disposal services, and maintains common entrances and hallways.

appraisal:
An estimate of the monetary value of a property on the open market; an estimate of a property's type and condition, its utility for a given purpose or its highest and best use. (See cost approach, income approach, index method, market-data approach, quantity survey method, sales comparison approach, square-foot method, unit-in-place method)

appraiser:
An independent person trained to provide an unbiased estimate of value, such as a professional service performed for a fee.

appreciation:
An increase in the worth or value of a property due to economic or related causes, which may prove to be either temporary or permanent; opposite of depreciation. (See depreciation)
appropriation:
Appropriation is the way a taxing body authorizes the expenditure of funds and provides for the sources of funding. Appropriation generally involves the adoption of an ordinance or the passage of a law that states the specific terms of the proposed taxation.

appropriative water rights:
A water right favored in some states where an owner has the exclusive rights to take all the water for specific beneficial uses. (See correlative water rights, riparian rights)

appurtenant:
Belonging to; adjunctive; appended or annexed to. For example, the garage is appurtenant to the house, and the common interest in the common elements of a condominium is appurtenant to each apartment. Appurtenant items run with the land when the property is transferred.

appurtenant easement:
An easement that is annexed to the ownership of one parcel and allows the owner the use of the neighbor's land.

aquifer:
An underground water-bearing layer of rock including gravel and sand that will yield water in usable quantity. Aquifers are sources of water for wells and springs.

arbitrage:
Borrowing at one interest rate and investing at a higher rate.

arbitration:
A non-judicial method of resolving disputes by selecting a neutral party to make a final determination. This method was either previously agreed to by the disputing parties or stipulated by law.

arranger of credit:
As defined under the federal Truth-in-Lending Law, a person who regularly arranges for the extension of consumer credit by another person if a finance charge will be imposed, if there are to be more than four installments, and if the person extending the credit is not a creditor. At present, the term does not include a real estate broker who arranges seller financing of a dwelling or real property. (See Truth-in-Lending Law)

arrears:
1. The state of being delinquent in paying a debt. 2. At or after the end of the period for which expenses are due or levied; the opposite of in advance. Mortgage interest and real estate taxes are often paid in arrears.

Article 5:
The part of the Business and Professions Code governing transactions in real property sale contracts and trust deeds.

Article 6:
The part of the Business and Professions Code governing real property securities dealers.

Article 7:
The part of the Business and Professions Code governing commissions, loan costs, and payment requirements in loan brokerage activities.

asbestos:
A mineral once used in insulation and other materials that can cause respiratory diseases. Asbestos has been classified as carcinogenic. (See carcinogen)

asbestos containing material (ACM):
The EPA defines asbestos containing material as any material or product that contains more than one percent asbestos. Some states regulate smaller percentages of asbestos containing material.

Asbestosis:
A disease associated with inhalation of asbestos fibers. The disease makes breathing progressively more difficult and can be fatal. (See asbestos)

"as-is":
Words in a contract intended to signify that no guarantees, whatsoever, are given regarding the subject property and that it is being purchased exactly as it is found. An "as-is" indicator is intended to be a disclaimer of warranties or representations. The recent trend in the courts to favor consumers tends to prevent sellers from using "as-is" wording in a contract to shield themselves from possible fraud charges brought on by neglecting to disclose material defects in the property.

assemblage:
The combining of two or more adjoining lots into one larger tract to increase their total value.

assessment:
The imposition of a tax, charge or lien, usually according to established rates.

asset:
An asset is something of value, encumbered or not, owned by a person, corporation or other entity. Assets are financial (cash or bonds), tangible or intangible, or physical (real or personal property).

asset management:
The assembly, management and disposition of a portfolio of investment properties.

assignment:
The transfer of the right, title and interest in the property of one person (the assignor) to another (the assignee). There are assignments of, among other things, mortgages, sales contracts, contracts for deeds, leases and options.

associate broker:
A real estate license classification used in some states to describe a person who has qualified as a real estate broker but still works for and is supervised by another broker; also called a broker-salesperson, broker-associate or affiliate broker.

assumption of mortgage:
The acts of acquiring title to property that has an existing mortgage and agreeing to be personally liable for the terms and conditions of the mortgage, including payments. (See acceleration clause, due-on-sale clause, novation, subrogation)

assumption "subject to":
When a loan is taken "subject to," the seller agrees to remain liable and the buyer accepts no liability in the event of a deficiency on a foreclosure. (See assumption of mortgage, foreclosure)

attachment:
The legal process of seizing the real or personal property of a defendant in a lawsuit by levy or judicial order, and holding it in court custody as security for satisfaction of a judgment. The lien is thus created by operation of law, not by private agreement. The plaintiff may recover such property in any action upon a contract, express or implied.

Attorney General:
The chief law officer of the federal or state government, who appears for the people in criminal court.

attorney-in-fact:
A competent and disinterested person who is authorized by another person to act in his or her place. In real estate conveyance transactions, an attorney-in-fact, who has a fiduciary relationship with his or her principal, should be so authorized by way of a written, notarized and recordable instrument called a power of attorney. (See power-of-attorney)

attorney's opinion of title:
An abstract of title that an attorney has examined and has certified to be, in his or her opinion, an accurate statement of the facts concerning the property ownership. (See abstract of title)

attractive nuisance doctrine:
An owner has a duty to reasonably protect children from injury when his or her property is likely to attract children.

auction:
Selling property to the highest bidder.

automated underwriting:
Computer systems that permit lenders to expedite the loan approval process and reduce lending costs.

automatic extension:
A clause in a listing agreement that states that the agreement will continue automatically for a certain period of time after its expiration date. In many states, use of this clause is discouraged or prohibited.

avulsion:
The sudden tearing away of land, as by earthquake, flood, volcanic action or the sudden change in the course of a stream.

backup offer:
An offer to buy, submitted to a seller, with the understanding that the seller has already accepted a prior offer; a secondary offer. Sometimes the seller accepts the backup offer contingent on the failure of the sales transaction on the part of the first purchaser within a specified period of time. The seller must be careful how he or she proceeds, however, when the time for the buyer's performance, under the first contract, has expired.

back-end qualification:
When qualifying a prospective buyer for financing, the ratio of the borrower's income to monthly debt obligation is a primary consideration. Based on "back-end qualification," the ratio of a prospect's income to their total housing expense plus their long-term debt obligation should not exceed 36%. (See front-end qualification, pre-qualify)

back-end ratio:
The ratio of monthly housing costs (PITI) plus long-term debt service to total monthly income. (See front-end ratio, PITI)

bail bond lien:
A real estate owner who is charged with a crime for which he or she must face trial, and may post bail in the form of real estate rather than cash. The execution and recording of such a bail bond creates a specific, statutory, voluntary lien against the owner's real estate. If the accused fails to appear in court, the lien may be enforced by the sheriff or another court officer.

balance:
The appraisal principle that states that the greatest value in a property will occur when the type and size of the improvements are proportional to each other as well as the land.

balanced trust:
A "combination trust" is referred to as a "balanced trust" in California. (See combination trust)

balloon payment:
Under an installment loan agreement, a final payment that is substantially larger than the previous installment payments and repays the debt in full; the remaining balance that is due at maturity (stop date) of a note or obligation. (See amortization, fully amortized, stop date)

baluster:
Any of the vertical supports for a stair, balcony or railing.

banker's rule:
Using a 360-day year for prorations.

bankruptcy:
A condition of financial insolvency in which a person's liabilities exceed assets and the person is unable to pay current debts.

bankruptcy score:
A scoring system to indicate risk of borrower default. (See bankruptcy)

bargain and sale deed:
A deed that carries with it no warranties against liens or other encumbrances but that does imply that the grantor has the right to convey title. The grantor may add warranties to the deed at his or her discretion.

base line:
A set of imaginary lines running east and west used for reference in locating and describing land under the government survey method of property description.

basic form homeowner's policy:
The most common homeowner's policy is called a basic form. It provides property coverage against fire/lightning; glass breakage; windstorm/hail; explosion; riot and civil commotion; damage by aircraft; damage from vehicles; damage from smoke; vandalism and malicious mischief; theft; and loss of property removed from the premises when it is endangered by fire or other perils. (See homeowner's insurance policy)

basis:
The dollar amount that the Internal Revenue Service attributes to an asset for purposes of determining annual depreciation or cost recovery, and gain or loss in the sale of the asset. The determination of basis is of fundamental importance in tax aspects of real estate investment. All property has a basis. If property was acquired by purchase, the owner's basis is the cost of the property plus the value of any capital expenditures for improvements to the property, reduced by any cost recovery depreciation actually taken or allowable. The basis is also reduced by any untaxed gain "carried over" to the new property in cases where the new property is a replacement of a former residence or is acquired through a like-kind exchange or through an involuntary conversion. This new

basis is called the property's adjusted basis. (See adjusted basis, depreciable basis, original basis)

before-tax cash flow:
The result when the annual debt service is subtracted from the net operating income. (See annual debt service, net operating income)

benchmark:
A permanent reference mark or point established for use by surveyors in measuring differences in elevation.

beneficiary:
A person who receives benefits from the gifts or acts of another, as in the case of one designated to receive the proceeds from a will, insurance policy, or trust; the real owner, as opposed to the trustee who holds only legal title. With a trust, the trustee holds the legal title, but the beneficiary enjoys the benefits of ownership.

beneficiary statement:
When an existing loan is to be paid or assumed by a buyer, the escrow agent will obtain a statement of the balance due on the loan so the buyer receives the proper amount of credit.

best-faith estimate:
The acquisition cost is the purchase price plus a "best-faith estimate" of all settlement costs. (See acquisition cost)

blended rate:
An interest rate for a newly financed loan that is higher than the existing rate but lower than the current market rate.

bilateral contract/agreement:
A contract in which each party promises to perform an act in exchange for the other party's promise to perform. The usual real estate contract is an example of a bilateral contract in which the buyer and seller exchange reciprocal promises respectively to buy and sell the property. If one party refuses to honor his or her promise and the other party is ready to perform, the nonperforming party is said to be in default.

bill of sale:
A written agreement by which one person sells, assigns or transfers to another his or her right to, or interest in, personal property. A bill of sale is sometimes used by a seller of real estate to evidence the transfer of personal property, such as when the owner of a store sells the building and includes the store equipment and trade fixtures.

BIF:
Bank Insurance Fund

binder:
An agreement that may accompany an earnest money deposit for the purchase of real property as evidence of the purchaser's good faith and intent to complete the transaction.

binder policy:
A type of title insurance policy offered by some title companies which allows for a refund of the basic title insurance rate if the property is sold within a specified period of time.
biweekly loan:
A loan with twice-monthly payments to match a borrower's payroll schedule.

bird dogs:
(See centers of influence)

blanket loan:
A mortgage covering more than one parcel of real estate, providing for each parcel's partial release from the mortgage lien upon repayment of a definite portion of the debt.

blanket trust deed:
A trust deed secured by several properties or a number of lots. A blanket mortgage is often used to secure construction financing for proposed subdivisions or condominium development projects. The developer normally seeks to have a "partial release" clause inserted in the mortgage so that he or she can obtain a release from the blanket loan for each lot as it is sold, according to a specified release schedule.

blind ad:
An advertisement that does not include the name and address of the person placing the ad, only a phone number or post office box address. Licensed brokers are generally prohibited by state license laws from using blind ads.

blockbusting:
An illegal and discriminatory practice whereby one person induces another to enter into a real estate transaction from which the first person may benefit financially by representing that a change may occur in the neighborhood with respect to race, sex, religion, color, handicap familial status or ancestry of the occupants. A change possibly resulting in the lowering of the property values, a decline in the quality of schools or an increase in the crime rate. Also called panic selling or panic peddling.

blue-sky provision:
Requiring full disclosure of all risks in a limited partnership solicitation under the Uniform Partnership Act. (See Uniform Partnership Act)

bona fide:
In good faith, honestly, openly, and sincerely and without deceit or fraud. In an attitude of trust and confidence, without notice of fraud.

bond:
1. A debt instrument; an obligation to pay; a security issued by a corporation. 2. A written promise that accompanies a mortgage and is evidence of the debt secured by the mortgage. 3. An interest-bearing certificate issued by a government to finance public projects. (See security)
boot:
Money or other property that is not like-kind, which is given to make up any difference in value or equity between exchanged properties. Boot may be in the form of cash, notes, gems, the market value of an asset such as a mortgage, land contract, personal property, goodwill, a service or a patent offered in an exchange. The taxable gain in the like-kind exchange is recognized immediately to the extent of boot, whereas, other gain from the exchange may be deferred until subsequent transfer. (See exchange, like-kind)

branch office
A secondary place of business apart from the principal or main office from which real estate business is conducted. A branch office usually must be run by a licensed real estate broker working on behalf of the broker.

breach of contract:
Violation of any of the terms or conditions of a contract without legal excuse; default; nonperformance. The non-breaching party can usually seek one of three alternative remedies upon a material breach of the contract: rescission of the contract, action for money damages or an action for specific performance.

breaker:
A switch-like device in electrical panel boxes used to keep the electrical current from exceeding the recommended load for the wire size connected to the breaker.

breaker panel:
A large rectangular shaped electrical box used to distribute electricity throughout a house after passing through protective breakers located within the box. (See breaker)

break-even point:
In income property, the figure at which rental income is equal to expenses and debt service.

bridge loan:
A short-term loan made to cover the period between the termination of one loan, such as an interim construction loan, and the beginning of another loan, such as a permanent takeout loan. (See interim financing, swing loan, takeout)

broad-form homeowner's policy:
Covers falling objects; damage due to the weight of ice, snow or sleet; collapse of all or part of the building; bursting, cracking, burning or bulging of a steam or hot water heating system or of appliances used to heat water; accidental discharge, leakage or overflow of water or steam from within a plumbing, a heating or an air-conditioning

system; freezing of plumbing, heating and air-conditioning systems and domestic appliances; and injury to electrical appliances, devices, fixtures and wiring from short circuits or other accidentally generated currents.

broker:
One who acts as an intermediary on behalf of others for a fee or commission.

broker cooperation:
Working with outside licensed real estate brokers who have prospective tenants in exchange for a finder's fee or commission split.

brokerage:
The bringing together of parties interested in making a real estate transaction. The business of a broker in acting as a third party agent to a transaction.

brownfields:
Economically depressed urban areas suffering from real or perceived hazardous material contamination.

budget loan:
A loan with payments set up to cover taxes and insurance in addition to interest and principal reductions.

building code:
An ordinance that specifies minimum standards of construction for buildings to protect public safety and health. (See Uniform Building Code)

building inspection:
An overall inspection of a home or building performed by a qualified contractor or inspector. The inspection usually covers all major systems including foundation, plumbing, electrical, roof, heating and air conditioning.

Building Owners and Managers Association (BOMA):
A national organization of more than 4,000 professionals in the high-rise/office building industry, with 80 local BOMA associations. The Building Owners and Managers Institute (BOMI) is the related educational institute that provides professional training in all aspects of building management and operations via courses in individual study leading to professional certification as a Real Property Administrator (RPA). The seven required courses are Engineering and Building Structures, Real Property Maintenance, Risk Management and Insurance, Accounting and Financial Concepts, Law, Finance and Management Concepts.

building permit:
Written governmental permission for the construction, alteration or demolition of an improvement, showing compliance with building codes and zoning ordinances.

build-up rate:
The discount or interest rate used in the selection of the capitalization rate for an investment property. (See capitalization rate)

Bulk Sales Act:
An act that requires the recording and publication of a sale that is not in the normal course of business. The act is intended to give notice to the creditors of the seller so they can protect their interests.

bulk sales transfer:
Any transfer in bulk (and not a transfer in the ordinary course of the seller's business) of a major part of the materials, inventory or supplies of an enterprise. The Uniform Commercial Code (UCC) regulates bulk transfers to deal with such commercial frauds as a merchant selling out stock, pocketing the proceeds and leaving creditors unpaid. The UCC requires the buyer of the goods to demand that the seller provide a schedule of all the property and a list of all creditors and that the buyer give notice to creditors of the pending sale. Failure to comply with UCC means that the transfer or sale is ineffective in respect to the claims of any creditor of the seller. Bulk transfers usually become relevant upon the liquidation or sale of a business.
Under state law, a bulk sale must be reported by the seller to the state tax authorities, and the purchaser must withhold payment until the seller's tax clearance is received. If the tax clearance is not made, the purchaser may become liable for any unpaid taxes that are a lien against the items sold. (See Uniform Commercial Code)

bulk transfer of goods:
Any transfer in bulk of a substantial part of the materials, supplies, merchandise, equipment or other inventory of an applicable enterprise that is not in the ordinary course of the transferor's business.

bulk zoning:
Zoning for density. Regulates height restrictions, open-space requirements, parking and setback. (See zoning)

bullet loan:
A loan that includes a call date earlier than its normal amortization period; also called a renegotiable rate loan or a rollover loan.

burden of proof:
The obligation to prove the truth or falsity of a fact.

bundle of legal rights:
The concept of land ownership that includes ownership of all legal rights to the land. For example, possession, control within the law and enjoyment.

business cycle:
The wavelike movement of increasing and decreasing economic prosperity consisting of four phases: expansion, recession, contraction and revival.

business opportunity:
Any type of business that is for sale (also called business brokerage). The sale or lease of the business and goodwill of an existing business, enterprise or opportunity, including a sale of all or substantially all of the assets or stock of a corporation, or assets of partnership or sole proprietorship.

buydown:
A financing technique used to reduce the monthly payments for the first few years of a loan. Funds in the form of discount points are given to the lender by the builder or seller to buy down or lower the effective interest rate paid by the buyer, thus reducing the monthly payments for a set time.

buyer listing:
An agreement where a buyer agrees to pay a commission if a broker locates a property that the buyer purchases.

buyer's agent:
A residential real estate broker or salesperson who represents the prospective purchaser in a transaction. The buyer's agent owes the buyer/principal the common-law or statutory agency duties. (See seller's agent)

buyer-agency agreement:
A principal-agent relationship in which the broker is the agent for the buyer, with fiduciary responsibilities to the buyer. The broker represents the buyer under the law of agency.

buyer's broker:
A broker who represents the buyer in a fiduciary capacity. Some buyer's brokers practice single agency, in which they represent either buyers or sellers, but never both in the same transaction. Some buyer's brokers represent only buyers and refer prospective sellers to other brokers. The broker is paid by the buyer, or through the seller or listing broker at closing, provided all parties consent.

buying motives:
Ownership of real estate satisfies certain basic human needs. These needs are what motivate a person to purchase real property. They include: comfort and convenience, desire for profit, pride of ownership, and security.

buying on contract:
A type of contract used in connection with the sale of real property where the seller retains legal title to the property until some future date, usually when the full purchase price has been paid. Referred to as one of four terms, all meaning much the same thing: agreement to convey, contract for deed, contract of sale, or installment sales contract.

buying signals:
Words, actions or facial expressions that signal a prospect's readiness to buy.

buyer's remorse:
Buyers of expensive items, like a home or automobile, sometimes regret their decision. They wonder if they paid too much or made the wrong selection. This fear of having made a serious mistake is referred to as "buyer's remorse."

California Environmental Quality Act:
The Act allows local governments to require environmental impact reports for private or government projects that may have a significant impact on the environment. (See environmental impact report, National Environmental Policy Act)

California Housing Financial Discrimination Act of 1977:
Also known as the Holden Act. A California act prohibiting discrimination by a lender for any reason unrelated to the creditworthiness of the loan applicant.

California Residential Mortgage Lending Act:
An act administered by the Commissioner of Corporations which provides licensing authorizing mortgage lending and brokering.

CAL-FIRPTA:
California's version of the federal FIRPTA. It is a tax act which became effective in 1988 and was subsequently amended in September, 2002 to become a withholding tax for residents and non-residents who sell California real estate. Assembly Bill 2065 requires that all sales closing after December 31, 2002 in California withhold 3 1/3% of the sales price for certain California real property transactions. (See FIRPTA)

Cal-Vet:
A program to help eligible California Veterans finance the purchase of farms and ranches within the state.

canceling escrow:
Providing written notification that an escrow is to be terminated; must be done by mutual consent of all parties to the escrow and in accordance with governing agreements.

capacity of parties:
The legal ability of people or organizations to enter into a valid contract. A person entering into a contract will have full, limited or no capacity to contract.

No capacity to contract:
The inability of a person to enter into a valid contract under any circumstances. Such inability can arise when a person has been adjudicated insane or is an officer of a corporation who is not authorized to execute a contract in behalf of a corporation.

capital gain:
Profit earned from the sale of an asset, where the sales price was greater than the adjusted basis. (See adjusted basis, deferred capital gain, excluded capital gain, realized capital gain (loss), recognized capital gain)

capital loss:
Loss sustained from the sale of an asset, where the sales price is less than the adjusted book basis. (See adjusted basis)

capitalization:
A mathematical process for converting net income into an indication of value. The net income of the property is divided by an appropriate (capitalization) rate of return to give the indicated value. (Income ÷ Rate = Value)

capitalization rate:
The rate of return a property will produce on the owners investment.

capping:
The process of laying two - four feet of soil over the top of a landfill site then planting vegetation to prevent erosion and enhance the landfill's aesthetic value. (See landfill)

caps:
Yearly and/or life-of-loan limitations on the amount of variation allowed when adjusting interest on variable-rate loans. (See adjustable rate mortgage (ARM), rate cap)

caravan:
A group tour by a real estate office's sales agents to view listed properties. (See agent property evaluation)

carbon monoxide (CO):
A colorless, odorless gas that occurs as a byproduct of burning such fuels as wood, oil and natural gas due to incomplete combustion.

care:
The agent must exercise a reasonable degree of care while transacting the business entrusted to him or her by the principal. The principal expects the agent's skill and expertise in real estate matters to be superior to that of the average person. The most fundamental way in which the agent exercises care is to use that skill and knowledge on the principal's behalf. The agent should know all facts pertinent to the principal's affairs, such as the physical characteristics of the property being transferred and the type of financing being used. (See agent, law of agency, principal)

carcinogen:
A cancer producing substance. (See asbestos, radon)

carry-back:
Financing where the seller takes back a note for part of the purchase price secured by a junior mortgage, wraparound mortgage or contract for deed. (See wraparound, junior mortgage)

cash flow analysis:
A cash flow analysis shows the effect an investment property has on an owner's income in terms of tax benefits. Analyzes the return on investment after taxes on an income producing property. Measures the property manager's performance from period to period by comparing income and expenses for a given property.

cash now:
The net spendable income from an investment, determined by deducting all operating and fixed expenses from the gross income. When expenses exceed income, a negative cash flow results.

cash-out:
When a seller of a property wants to receive the entire sales price in cash with no carry-back financing. (See carry-back)

"cash-out" scheme:
Where a buyer offers a large cash down payment and asks the seller to carry-back the balance as a subordinate trust deed. (See carry-back, subordination clause)

cash rent:
In an agricultural lease, the amount of money given as rent to the landowner at the outset of the lease, as opposed to share cropping.

casualty:
Casualty insurance policies include coverage against theft, burglary, vandalism and machinery damage as well as health and accident insurance. Casualty policies are usually written on specific risks, such as theft, rather than being all-inclusive.

caveat emptor:
Latin for "let the buyer beware." A buyer should inspect the goods or realty before purchase.

CC&Rs:
Covenants, conditions and restrictions are limitations on land use, which are imposed by deeds, usually when land is subdivided. CC&Rs are a means of regulating building construction, density and use. May be referred to simply as restrictions. (See deed restrictions, restrictive covenants)

centers of influence:
Influential people in a community. Real estate agents cultivate relationships with these "centers of influence" as a method of locating prospects in the community where the person has influence. Also known as "bird dogs," indicating that these people "point the way" to new prospects.

certificate of eligibility:
A certificate issued by a Veterans Administration regional office to veterans who qualify for a VA loan. The Veteran Housing Act permits regional administrators to restore a veteran's entitlement to loan-guarantee benefits after his or her property purchased with an existing VA-guaranteed loan has been disposed of and 1. this loan has been paid in full; 2. the administrator is released from liability under the guarantee or 3. any loss suffered by the administrator has been repaid in full. It is no longer required that property ownership was transferred for a compelling reason.
The act also authorizes regional administrators to restore a veteran/seller's entitlement to loan-guarantee benefits and release the veteran from liability to the VA when another veteran has agreed to assume the outstanding balance on the veteran/seller's existing VA-guaranteed loan and consented to the use of his or her entitlement to the same extent that the veteran/transferor had used the original entitlement. This is not a release from the lender, however. The veteran/transferee and the property must otherwise meet the requirements of the law. Reinstatement of eligibility is never automatic but must always be applied for, preferably at the time of the sale of property purchased with an existing VA-guaranteed loan.
Many veteran/sellers presume that they are eligible for a new VA loan after selling their property by way of a loan assumption. In a loan assumption, the broker should point out that for the seller to have complete VA entitlement restored, the buyer must be a veteran and must agree in the sales contract to substitute his or her entitlement for the seller's. (See VA loan)

certificate of occupancy (CO):
A certificate issued by a governmental authority indicating that a building is ready and fit for occupancy and that there are no building code violations. Some condominium developers insert language into the sales contract to the effect that upon notification that the units are ready for occupancy, the buyer must accept the unit despite any construction defects that may exist, although acceptance will not bar the buyer from obtaining redress for such defects. Once the building has been certified for occupancy the developer can then close the individual sales, transfer title to the buyers and, most important, begin to pay off the construction loan and eliminate the interest payments.
certificate of reasonable value (CRV):
A certificate insured by the Veterans Administration setting forth a property's current market value estimate, based on a VA-approved appraisal. The CRV places a ceiling on the amount of a VA-guaranteed loan allowed for a particular property. (See VA loan)

certificate of sale:
The document generally given to the purchaser at a tax foreclosure sale. A certificate of sale does not convey title: normally it is an instrument certifying that the holder received title to the property after the redemption period passed and that the holder paid the property taxes for that interim period.

certificate of title:
A statement of opinion prepared by a title company, licensed abstracter or an attorney on the status of a title to a parcel of real property, based on an examination of specified public records. This certificate of title should not be confused with the certificate of title that is issued to a titleholder of land registered under the Toreens system, or with a title insurance policy.
A certificate of title does not guarantee title, but it does certify the condition of title as of the date the certificate is issued, on the basis of an examination of the public records maintained by the recorder of deeds, the county clerk, the county treasurer, the city clerk and collector and clerks of various courts of record. The certificate also may include records involving taxes, special assessments, ordinances, zoning and building codes.
Note that a certificate of title does not offer protection against "off -the-record" matters such as undisclosed liens, rights of parties in possession and matters of survey and location. Nor does it protect against "hidden defects" in the records themselves, such as fraud, forgery, lack of competency or lack of delivery. A title insurance policy, not a certificate of title, protects against certain off-the-record and hidden defects risks.

cessation of work:
A period of 60 days where no work is being conducted. (See notice of cessation)

chain of title:
The succession of conveyances, from some accepted starting point, whereby the present holder of real property derives title. (See conveyance)

change:
The appraisal principle that holds that no physical or economic condition remains constant. (See appraisal)

chattel:
See personal property.

civil action:
An action where an issue, formed by some kind of complaint, is presented for trial. Proceedings are for declaration, enforcement, protection of a right, redress, or prevention of a wrong.

civil law:
A system of law codified by statutes. (See common law, constitutional law, Roman Civil Law, statutory law)

Civil Rights Act of 1866:
The Civil Rights Act of 1866 prohibits racial discrimination in the sale and rental of housing. (See Federal Fair Housing Law)

Civil Rights Act of 1870:
The Voting Rights Act of 1870 (aka, Civil Rights Act of 1870) includes a clause reaffirming the remedies of the Civil Rights Act of 1866.

Civil Rights Act of 1964:
The first modern civil rights act made into law by President John F. Kennedy's Executive Order 11063 prohibiting discrimination in housing where federal funds were involved. (See Federal Fair Housing Law)

Civil Rights Act of 1968:
In 1968, Congress enacted Title VIII of the Civil Rights Act, called the federal Fair Housing Act, which declared a national policy of providing fair housing throughout the United States (Reference Sections 3601-3631 of Title 42, United States Code). This law makes discrimination based on race, color, sex, familial status, handicap, religion or national origin illegal in connection with the sale or rental of most dwellings and any vacant land offered for residential construction or use. (See Fair Housing Act, Federal Fair Housing Law)

classified ads:
Advertisements purchased by the line and placed in the classified ad section of newspapers or real estate magazines. Used primarily for advertising residential properties and rentals. (See display ads)

client:
The person who employs an agent to perform a service for a fee. In traditional real estate brokerage, the client is the seller, and the buyer is the prospect or customer. In modern practice, more and more buyers are seeking representation as a client. Dual agency occurs when a broker represents the seller and the buyer as clients.

close-of-escrow/closing:
The consummation of a real estate transaction, when the seller delivers title to the buyer in exchange for payment by the buyer of the purchase price. Closing in some areas may not occur until the documents are recorded; however, under general rules of real estate law, transfer of title takes place upon delivery of the deed to the grantee.

closing costs:
Expenses of the sale (or loan refinancing) that must be paid in addition to the purchase price (in the case of the buyer's expenses) or be deducted from the proceeds of the sale (in the case of the seller's expenses). Some closing costs result from legal requirements; others are a matter of local custom and practice.

closing statement:
A detailed cash accounting of a real estate transaction showing all cash received, all charges and credits made and all cash paid out in the transaction.

cloud on title:
Any document, claim, unreleased lien or encumbrance that may impair the title to real property or make the title doubtful: usually revealed by a title search and removed by either a quitclaim deed or suit to quiet title.

CLTA policy:
A standard coverage title insurance policy protects real estate buyers in matters of record and specific risk. (See standard coverage policy, title insurance)

clustering:
The grouping of home sites within a subdivision on smaller lots than normal, with the remaining land used as common areas.

CMO:
Securities (a series of bonds) issued backed by mortgages.

code of ethics:
A written system of standards of ethical conduct. Because of the nature of the relationship between a broker and a client or other persons in a real estate transaction, a high standard of ethics is needed to ensure that the broker acts in the best interests of both his or her principal and any third parties.

codicil:
A supplement or an addition to a will, executed with the same formalities as a will, that normally does not revoke the entire will.

coinsurance clause:
A clause in insurance policies covering real property that requires the policyholder to maintain fire insurance coverage generally equal to at least 80 percent of the property's actual replacement cost.

collateral:
Something of value given or pledged as security for a debt or obligation. The collateral for a real estate mortgage loan is the hypothecated mortgaged property itself.

combination trust:
A trust that participates in real estate investments as both financier and investor.

combustion gases
The gasses that are emitted from a flame upon the combustion of a flammable material.

commercial acre:
A commercial acre is that portion of an acre of newly subdivided land remaining after dedication for streets, sidewalks, parks and so on.

commercial bank:
A financial institution designed to act as a safe depository and lender for many commercial activities (usually short-term loans or lines of credit). Commercial banks rely heavily on demand deposits--checking accounts--for their basic supply of loanable funds, although they also receive capital from savings accounts, loans from other banks, short-term loan interest and the equity invested by their owners. (See line of credit)

Commercial Investment Real Estate Institute (CIREI):
A professional organization of real estate practitioners specializing in commercial real estate. CIREI, affiliated with the National Association of REALTORS®, confers the designation CCIM (Certified Commercial Investment Member).

commercial leasehold insurance:
Insurance that covers payment of rent in the event the insured (tenant) cannot pay it.

commercial real estate/property:
A classification of real estate that includes income-producing property such as office buildings, gasoline stations, restaurants, shopping centers, hotels and motels, parking lots and stores. Public accommodations.

commercial waste:
All solid waste from businesses. This category includes but is not limited to, solid waste originating in stores, markets. office buildings, restaurants, shopping centers, and theaters.

commingling:
The illegal act of mixing deposits or monies belonging to a client (trust funds) with one's personal money. By law brokers are required to maintain a separate trust or escrow account for other parties' funds held temporarily by the broker. (See trust funds)

commission:
Payment to a broker for services rendered, such as in the sale or purchase of real property; usually a percentage of the selling price of the property.

commitment:
1. A pledge to do a certain act, such as a promise by a lender to loan a certain amount of money at a specific rate of interest to a qualified borrower, provided the loan is made by a certain date. 2. Also refers to an agreement by a title insurance company to issue a policy in favor of a proposed insured upon acquisition of a specific property.

common areas:
Land or improvements in a condominium development designated for the use and benefit of all residents, property owners and tenants. Common areas frequently include such amenities as corridor or hall areas, elevators, parks, playgrounds and barbecue areas, which are sometimes called green belts. In shopping centers, the common areas are parking lots, malls and traffic lanes.

common elements:
Parts of a property that are necessary or convenient to the existence, maintenance and safety of a condominium or are normally in common use by all of the condominium residents. Each condominium owner has an undivided ownership interest in the common elements. (See condominium ownership)

common interest:
The percentage of undivided ownership in the common elements belonging to each condominium apartment, as established in the condominium declaration.

common interest subdivision:
A subdivision in which the owners own or lease a separate lot or unit together with an undivided interest in the common areas of the subdivision. (See common areas, subdivision)

common law:
The body of law based on custom, usage and court decisions. (See civil law, constitutional law, stare decisis, statutory law)

community property:
A system of property ownership based on the theory that each spouse has an equal interest in the property acquired by the efforts of either spouse during marriage. This system stemmed from Germanic tribes and, through Spain, came to the Spanish colonies of North and South America.
In states that maintain a community property system, such as California and other states with laws of Spanish origin, there are two classifications of property - separate property and community property. Separate property is property that either the husband or wife owned at the time of marriage or that was acquired by one spouse during marriage by inheritance, will or gift. Separate property is considered all community property and is automatically owned equally by each spouse regardless of whose name the record title is held under.

Community Reinvestment Act of 1977 (CRA):
Community reinvestment refers to the responsibility of financial institutions to help meet their communities' needs for low- and moderate-income housing. In 1977, Congress passed the Community Reinvestment Act of 1977 (CRA). Under the CRA, financial institutions are expected to meet the deposit and credit needs of their communities, participate and invest in local community development and rehabilitation projects, and participate in loan programs for housing, small businesses and small farms.

company dollar:
The term "company dollar" is the amount left over after all commissions have been paid out.

comparables:
Properties that are substantially equivalent to the subject property.

comparative market analysis (CMA):
This is a term often used by real estate brokers in preparing a report for prospective sellers and buyers, indicating market trends in various neighborhoods, based on computer statistics generated from multiple-listing service data. Generally, these analyses are used for clients to determine a listing price for the sale of a home or for buyers to determine if a list price is reasonable for a given location.

compensating factors:
Positive factors in an individual's credit history which offset negative factors. "Compensating factors" increase the possibility that a borrower's loan application will be approved. (See credit score)

compensation:
The source of compensation does not determine agency. An agent does not necessarily represent the person who pays his or her commission. In fact, agency can exist even if no fee is involved (called a gratuitous agency). Buyers and sellers can agree, whichever way they choose, to compensate the broker, regardless of which is the agent's principal. For instance, a seller could agree to pay a commission to the buyer's agent. The written agency agreement should state how the agent is being compensated and explain all the alternatives available.

compensatory damages:
Monetary damages paid to compensate an injured party for a loss. (See exemplary damages, nominal damages)
competition:
The appraisal principle that states that excess profits generate competition. (See appraisal)

completion bond:
A surety bond posted by a landowner or developer that guarantees a proposed development will be completed according to specifications and free of mechanic's liens.

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA):
A federal law administered by the Environmental Protection Agency that establishes a process for identifying parties responsible for creating hazardous waste sites, forcing liable parties to cleanup toxic sites, bringing legal action against responsible parties and funding the abatement of toxic sites. (See Superfund)

comprehensive zoning:
A broad zoning plan over a large area. (See general plan, zoning)

compound interest:
Interest computed on the principal sum plus accrued interest. At the beginning of the new interest period, all interest is added to the principal, forming a new principal figure on which interest is then calculated. This process repeats itself each interest period—interest may be compounded daily, monthly, semiannually or annually.

computerized loan origination (CLO) system:
An electronic network for handling loan applications through remote computer terminals linked to various lenders' computers.

concession:
Discount given to prospective tenants by landlords to induce them to sign a lease. Concessions are frequently encountered in commercial leases, where landlords may give the first two months' rent free or provide an allowance to the tenant for renovating or customizing the demised space. A purchaser of a commercial or income-producing property should check all existing leases to see if there are any lease concessions that would reduce the amount of rent receivable in the future (such as free cable TV or one month's free rent per year for the term of the lease). If so, the value of these concessions should be computed to reduce the amount of contract rent specified. An estoppel certificate should also be obtained from the tenant. Some state laws require concessions to be noted on a lease by special wording. Concessions are negotiable points in a lease that are resolved in favor of the prospective tenant. Another example in leasing a new office building is the owner's assumption of the lessee's remaining obligation under the lessee's existing lease in another building.

concurrent ownership:
Ownership by two or more persons at the same time, such as joint tenants, tenants by the entirety, tenants in common or community property owners. (See joint tenancy, tenants in common)

concurrent performance:
Occurring simultaneously; real estate exchanges often must be recorded concurrently.

condemnation:
A judicial or administrative proceeding to exercise the power of eminent domain, through which a government agency takes private property for public use and compensates the owner. (See eminent domain).

condition precedent:
A condition that requires a certain action or a specified event to take place before an estate granted can take effect. For example, most installment real estate sales contracts require all payments to be made by the time specified before the buyer can demand transfer of title.

condition subsequent:
A fee simple estate, may be qualified by a condition subsequent. This means that the new owner must not perform some action or activity. The former owner retains a right of reentry so that if the condition is broken, the former owner can retake possession of the property through legal action. Conditions in a deed are different from restrictions or covenants because of the grantor's right to reclaim ownership, a right that does not exist under private restrictions. (See fee simple, restrictive covenant).

conditional public report:
An interim report that allows a sub-divider to enter into a binding contract with a buyer prior to the issuance of the final public report.

conditional-use permit:
Written governmental permission allowing a use inconsistent with zoning but necessary for the common good, such as locating an emergency medical facility in a predominantly residential area. (See zoning)

condominium:
A subdivision providing an exclusive ownership interest in the airspace of a particular portion of real property, as well as an interest in common in a portion of that property.

condominium ownership:
An estate in real property consisting of an individual interest in an apartment or commercial unit and an undivided common interest in the common areas in the condo project such as the land, parking areas, elevators, stairways, exterior structure and so on. Each condominium unit is a statutory entity that may be mortgaged, taxed, sold or otherwise transferred in ownership, separately and independently of all other units in the condo project. Units are separately assessed and taxed based on the combined value of the individual living unit and the proportionate ownership of the common areas. The unit also can be separately foreclosed upon, in case of default on the mortgage note or other lienable payments. In effect, the condominium permits ownership of a specific horizontal layer of airspace as opposed to the traditional view of vertical property ownership from the center of the earth to the sky. Typically, the unit, the percentage of common interest and the limited common elements are appurtenant to each other and cannot be sold or transferred separately.

conduits:
A party that purchases loans from one lender and resells the loans to investors.

confession of judgment clause:
Permits judgment to be entered against a debtor without the creditors needing to institute legal proceedings.

conforming loan:
A mortgage loan that meets all Fannie Mae and Freddie Mac underwriting guidelines. (See Fannie Mae, Freddie Mac)

conformity:
The appraisal principle that holds that the greater the similarity among properties in an area, the better they will hold their value. (See appraisal)

conservator:
A guardian, protector, preserver or receiver appointed by a court to administer the person and property of another (usually an incapable adult) and to ensure that the property will be properly managed. A conservator may not need a real estate license to sell the protected real estate, although the sale does require court approval.

consideration:
An act or the promise thereof, which is offered by one party to induce another to enter into a contract; that which is given in exchange for something from another; also the promise to refrain from doing a certain act, like filing a justifiable lawsuit (the forbearance of a right). Consideration, which distinguishes a contractual obligation from a gift, is usually something of value, such as the purchase price in and paid for a promise or it may be a return promise. Thus, the mere promise to pay money is sufficient consideration, so an earnest money deposit is not necessary for purposes of creating a binding contract.

constitutional law:
Law set forth in federal or state constitutions. (See civil law, common law, statutory law)

construction loan:
(See interim financing)

constructive eviction:
Actions of a landlord that so materially disturb or impair a tenant's enjoyment of the leased premises that the tenant is effectively forced to move out and terminate the lease without liability for any further rent. (See eviction, actual eviction, lease)

constructive fraud:
Breach of a legal or equitable duty that the law declares fraudulent because of its tendency to deceive others, despite no showing of dishonesty or intent to deceive. A broker may be charged with constructive fraud for failing to disclose a known material fact when the broker had a duty to speak—for example, if a listing broker failed to disclose a known major foundation problem not readily observable upon an ordinary inspection. (See material fact)

constructive notice:
Notice given to the world by recorded documents. All people are charged with knowledge of such documents and their contents, whether or not they have actually examined them. Possession of property is also considered constructive notice that the person in possession has an interest in the property.

constructive receipt:
Control of the cash proceeds in a delayed exchange without actual physical possession by the exchanger or his or her agent.

contingency:
A provision in a contract that requires a certain act to be done or a certain event to occur before the contract becomes binding.

continuing education:
A requirement in most states that real estate and appraiser licensees complete a specified number of educational offerings as a prerequisite to license renewal or reinstatement.

contract:
A legally enforceable promise or set of promises that must be performed and for which, if a breach of the promise occurs, the law provides a remedy. A contract may be either unilateral, by which only one party is bound to act, or bilateral, by which all parties to the instrument are legally bound to act as prescribed. (See valid contract)

contract for deed:
The contract for deed is used extensively in many areas, where it may be called a land contract, agreement of sale, installment contract, articles of agreement, conditional sales contract, bond for deed or real estate contract.

A contract for deed is an agreement between the seller (vendor) and buyer (vendee) for the purchase of real property in which the payment of all or a portion of the selling price is deferred. The purchase price may be paid in installments (of either principal and interest or interest only) over the period of the contract, with the balance due at maturity. When the buyer completes the required payments, the seller must deliver good legal title to the buyer by way of a deed or assignment of lease (if the property is leasehold property). Under the terms of the contract for deed, the buyer is given possession of the property and equitable title to the property, while the seller holds legal title and continues to be primarily liable for payment of any underlying mortgage. The features of the buyer's equitable title and obligation to purchase are what distinguishes a contract for deed from a lease-option.

The contract for deed document usually contains the names of the buyer and seller, the sales price, the terms of payment, a full legal description and a lengthy statement of the rights and obligations of the parties, similar to those under a mortgage, including use of premises, risk of loss, maintenance of premises, payment of taxes and insurance and remedies in case of default. Specific rights, such as acceleration or the right to prepay without penalty, must be expressly written into the agreement. The contract is usually signed by both parties, acknowledged and recorded.

In a dynamic and rapidly appreciating real estate market, the contract for deed enables buyers to purchase property on reasonable financial terms and thereby benefit from the appreciation of the property values. Many buyers then sell the property at a profit before

their final payment becomes due. In a tight money market where it is difficult to qualify prospective buyers for conventional financing, the contract for deed is frequently the best method to sell or purchase a property. Especially benefited by the contract for deed are young couples, who would have difficulty qualifying for a bank loan at the time of entering into the contract for deed, but whose incomes will increase before maturity of the agreement, enabling them to refinance and pay off the contract for deed.
Some sellers prefer to sell on a contract for deed because it can create an installment sale, which will enable them to defer payment of a portion of tax. In addition, if the buyer defaults the seller can sue for strict foreclosure, something he or she cannot do with a mortgage. However, a seller who chooses this remedy is rescinding the contract and cannot seek a deficiency judgment for the unpaid balance.

Some contracts for deed provide that seller and/or buyer can convert the contract into a conventional security transaction. For example, upon payment of 40 percent of the purchase price, the seller may be required to deliver a deed and take back a purchase-money mortgage from the buyer for the balance of the purchase price.

Use of a contract for deed is not without some disadvantages.

From the buyer's viewpoint:

1. Because the seller need not deliver good marketable title until the final payment, the buyer must, at the risk of default, continue to make payments even when there may be a doubt whether the seller will be able to perform when all payments are made. This can be especially serious when the seller is a corporation, because its directors and shareholders have only limited liability. Some attorneys try to minimize this problem by inserting a clause to the effect that "the property is to be conveyed free and clear of all encumbrances except (those specified herein) and to remain free and clear except for the above-stated encumbrances." The seller is then discouraged from placing further mortgages and encumbrances on the property during the period of the contract for deed.
2. The buyer may have difficulty getting the seller to deed the property upon satisfaction. By withholding a large enough final payment, the buyer often can persuade a seller to pay the costs of drafting the deed. In addition, at the time of final payment, the seller might be suffering a legal disability or may be missing, or may be bankrupt or dead. The property might then be tied up in probate.
3. The buyer might be restricted from assigning his or her interest in the contract for deed by covenants against assignment.
4. Liens that arise against the seller could cloud the title.
5. Unless a collection account is used, problems could arise if the seller does not apply the buyer's payments to the underlying mortgage.

From the seller's viewpoint:

1. If the buyer defaults, the process of clearing record title may be time consuming and costly, especially if the buyer is under a legal disability or is bankrupt, is a

nonresident or has created encumbrances in favor of persons who might have to be joined in any quiet title action.

2. The seller's interest in the contract for deed is less salable than a mortgagee's interest would have been had the seller sold under a purchase-money mortgage.

3. By its very nature, the contract for deed is a contract, and all contracts are subject to differing interpretations with the possibility of disputes and litigation.

contract of sale:
A contract for the purchase and sale of real property in which the buyer agrees to purchase for a certain price and the seller agrees to convey title by way of a deed or an assignment of lease (for leasehold property). In addition to binding the parties to the purchase and sale of the property during the period of time required to close the transaction, the contract frequently serves as the initial directions to the closing agent or escrow company to process the mechanics of the transaction. In essence, the contract of sale is an executory contract to convey property, serving as the vehicle to get to the deed, which finally conveys title; it is the blueprint for the entire transaction. Some of the many names for this contract are sales contract, purchase agreement, deposit receipt, offer and acceptance, agreement of sale, offer to lease or purchase and sale agreement.

contract rent:
The rental income as stipulated by the parties in a lease.

contribution:
The appraisal principle that states that the value of any component of a property is what it gives to the value of the whole or what its absence detracts from that value. (See appraisal)

controlled business arrangements:
As defined under the Real Estate Settlement Procedures Act (RESPA), an arrangement or combination in which an individual or a firm has more than a 1 percent interest in a company to which the individual or firm regularly refers business. Such arrangement is permitted provided that written disclosure of the affiliation is made; an estimated charge for the service is provided; consumers are free to obtain the services elsewhere; and referral fees are not exchanged among the affiliated companies. (See Real Estate Settlement Procedures Act (RESPA))

conventional life estate:
A conventional life estate is created intentionally by the owner. It may be established either by deed at the time the ownership is transferred during the owner's life or by a provision of the owner's will after his or her death. The estate is conveyed to an individual who is called the life tenant. The life tenant has full enjoyment of the ownership for the duration of his or her life. When the life tenant dies, the estate ends and its ownership passes to another designated individual or returns to the previous owner. (See life estate)

conventional loan:
A loan made with real estate as security and not involving government participation in the form of insuring (FHA) or guaranteeing (VA) the loan. The mortgagee can be an institutional lender or a private party. The loan is conventional in the sense that it conforms to accepted standards and the lender looks solely to the credit of the borrower and the security of the property to ensure payment of the debt. Conventional loans include those loans insured by private mortgage insurance companies.

Because the lender is not subject to the more stringent government regulations of the FHA and VA, conventional loans are frequently more flexible with respect to terms and interest rates, although they do reflect a higher interest rate and larger down payment requirements due to the higher risk involved. Non-conventional loan interest rates (VA loans) are fixed by federal regulation. Conventional loans are subject to institutional regulation, which may be statutory (federal, state) or self-created. (See FHA, VA loan)

conversion:
The appropriation of property belonging to another. The conversion may be illegal (as when a broker misappropriates client funds), or it may be legal (as when the government condemns property under the right of eminent domain). (See eminent domain)

convertible loan:
An adjustable-rate loan that the borrower can convert to fixed-rate at any time during the life of the loan. (See adjustable-rate mortgage, hybrid financing)

converted-use properties:
Factories, warehouses, office buildings, hotels, schools, churches and other structures that have been converted to residential use. Developers often find renovation of such properties more aesthetically and economically appealing than demolishing a perfectly sound structure to build something new. An abandoned warehouse may be transformed into luxury loft condominium units, a closed hotel may reopen as an apartment building, and an old factory may be recycled into a profitable shopping mall.

conveyance:
A term used to refer to any document that transfers title to real property. The term is also used in describing the act of transferring. (See title)

cooperating broker:
A broker who assists another broker in the sale of real property. Usually the cooperating broker is the selling broker who found a buyer for the listing broker. (See listing broker)

cooperating broker fee agreement
An agreement between brokers specifying the commission split should the cooperating broker sell a property listed by the listing broker. (See cooperating broker, listing broker)

cooperative:
A residential multiunit building whose title is held by a trust or corporation that is owned by and operated for the benefit of persons living within the building, who are the beneficial owners of the trust or stockholders of the corporation, each possessing a proprietary lease.

co-ownership:
Title ownership held by two or more persons.
coping:
1. The tile around the outer edge of a swimming pool at the water line. 2. The flat portion at the top of a parapet wall rising above the roof line of a building.

corporation:
An entity or organization, created by operation of law, whose rights of doing business are essentially the same as those of an individual. The entity has continuous existence until it is dissolved according to legal procedures.

corporation franchise tax lien:
State governments generally levy a corporation franchise tax on corporations as a condition of allowing them to do business in the state. Such a tax is a general statutory involuntary lien on all real and personal property owned by the corporation.

correction lines:
Provisions in the rectangular survey (government survey) system made to compensate for the curvature of the earth's surface. Every fourth township line (at 24-mile intervals) is used as a correction line on which the intervals between the north and south range lines are measured and corrected to a full six miles. Range lines are only parallel in theory. Due to the curvature of the earth, range lines gradually approach each other. If they are extended northward, they eventually meet at the North Pole. The fact that the earth is not flat, combined with the crude instruments used in early days, means that few townships are exactly six-mile squares or contain exactly 36 square miles.

correlative water rights:
A modern law in some states that holds that a riparian owner who has rights in a common water source is entitled to take only a reasonable amount of the total supply for the beneficial use of land (such as irrigation). (See appropriative water rights, riparian rights)

correspondent:
A mortgage banker. (See mortgage banker)

corrosion:
The dissolving and wearing away of metal caused by a chemical reaction such as between water and the lead pipes or solder in a home's plumbing.

corrosive:
A substance that eats or wears away materials gradually by chemical action.

cosigners:
Additional signers of a financial agreement that add their personal guarantees to that of the borrower.

cost approach:
The process of estimating the value of a property by adding to the estimated land value. The appraiser's estimate of the reproduction or replacement cost of the building, less depreciation. (See appraisal)

cost basis:
A cost basis of real property is usually based on the purchase price of the property plus the buyer's capitalized closing costs. (See closing costs)

cost recovery:
An Internal Revenue Service term for depreciation.

cost-plus:
A method of paying construction contractors when the contractor is paid the actual costs of the job plus a percentage for profit. (See fixed-fee)

counteroffer:
A new offer made in response to an offer received. It has the effect of rejecting the original offer, which cannot be accepted thereafter, unless revived by the offeror.

covenant:
A written agreement between two or more parties in which a party or parties pledge to perform or not perform specified acts with regard to property; usually found in such real estate documents as deeds, mortgages, leases and contracts for deed.

covenant against encumbrances:
The grantor warrants that the property is free from liens or encumbrances, except for any specifically stated in the deed. Encumbrances generally include mortgages, mechanics' liens and easements. If this covenant is breached, the grantee may sue for the cost of removing the encumbrances. (See encumbrances, liens)

covenant of further assurance:
The grantor promises to obtain and deliver any instrument needed to make the title good. For example, if the grantor's spouse has failed to sign away dower rights, the grantor must deliver a quitclaim deed (discussed later) to clear the title.

covenant of quiet enjoyment:
The covenant implied by law by which a landlord guarantees that a tenant may take possession of leased premises and that the landlord will not interfere in the tenant's possession or use of the property. The grantor guarantees that the grantee's title will be good against third parties who might bring court actions to establish superior title to the property. If the grantee's title is found to be inferior, the grantor is liable for damages.

covenant of seisin:
The grantor warrants that he or she owns the property and has the right to convey title to it ("seisen" simply means "possession").

covenant of warranty forever:
The grantor promises to compensate the grantee for the loss sustained if the title fails at any time in the future. These covenants in a general warranty deed are not limited to matters that occurred during the time the grantor owned the property: they extend back to its origins. The grantor defends the title even against himself/herself and all those who previously held title.

covenants that run with the land:
Covenants that become part of the property rights and benefit or bind successive owners of the property.

crawl space:
1. The space between the ground and the first floor, often found in homes with no basement. 2. The space found between the top floor and the roof, often found in the place of an attic.

creative financing:
Structuring the financing of a real estate transaction based on the cash positions of the buyer and seller. It involves working in conjunction with the existing financing to create a financing package that enables the buyer to purchase the property at better interest rates or terms than a conventional loan.

credit:
1. Obligations that are due or are to become due to a person. 2. In closing statements, that which is due and payable to either the buyer or seller--the opposite of a charge or debit. The credit appears in the right-hand column of the accounting statement.

credit loan:
A mortgage issued upon the financial strength of a borrower, without regard for collateral.

credit rating:
The Dun & Bradstreet credit rating system. Rating the financial strength of commercial and industrial companies.

credit report:
A document, obtained from a credit repository, indicating an individual's credit circumstances. Used to derive credit scores for borrowers seeking a real estate loan. (See credit repository, credit score)

credit repository:
Organizations that maintain and make available public credit history records; lenders use information from credit repositories to derive credit scores for potential borrowers. (See credit report, credit score)

credit score:
A snapshot of a borrower's credit worthiness; a numerical score based on statistics showing the risk of default on a loan; takes into consideration available credit, management of existing credit, and any detrimental credit information. (See FICO)

credit unions:
Credit unions are cooperative organizations whose members place money in savings accounts. In the past, credit unions made only short-term consumer and home improvement loans. Recently, however, they have branched out to originating longer-term first and second mortgages and deed of trust loans. (See non-institutional lenders)

creditor:
The person to whom a debtor owes a debt or obligation; a lender.

creosote:
A potentially flammable oily byproduct of wood burning. Often builds up in the chimney of wood burning fireplaces.

cross-default:
A provision of many junior mortgages stipulating that a default in one mortgage also triggers a default in the mortgage in which the clause appears. (See junior lien/mortgage)

crunch down:
A form of recasting where the lender rewrites an existing mortgage loan to a lower balance to avoid a foreclosure. (See foreclosure, recasting)

curtesy:
A life estate, usually a fractional interest, given by some states to the surviving husband in real estate owned by his deceased wife. Most states have abolished curtesy.

cumulative zoning:
Zoning that allows more restrictive uses. For example, a lot zoned for a multi-family dwelling would allow a single-family home if the zoning were cumulative. (See zoning)

customer:
A prospective buyer of real estate. Not to be confused with a property seller, who is the listing broker's client.

damages:
The indemnity recoverable by a person who has sustained an injury, either in his/her person, property, or relative rights, through the act or default of another. (See liquidated damages)

datum:
A horizontal plane from which heights and depths are measured.

debenture:
A type of long-term bond or note given as evidence of debt. Unlike a mortgage note, a debenture is not secured by a specific property. Fannie Mae issues debentures to finance the acquisition of mortgages in the secondary mortgage market. If a borrower defaults on an FHA loan, the government gives interest-bearing debentures to the mortgagee after the title is transferred to FHA. (See Fannie Mae, FHA)

debit:
A charge on an accounting statement or balance sheet (appearing on the left-hand column); the opposite of a credit. Used in bookkeeping and in preparing the closing statement in a real estate transaction.

debtor:
One who owes money; a borrower, a maker of a note; a mortgagor.

debt ratio:
The relationship between a person's long term debt payments and their monthly income.

debt-to-income ratio:
A borrower's monthly long term debt payments divided by the borrower's gross monthly income and expressed as a percentage. This ratio is used by lenders to determine if a loan applicant is qualified for the amount of the loan.

decedent:
A deceased person, especially one who has died recently.

declaration of condominium:
The declaration includes: 1. A legal description of the condominium units and the common elements (including limited common elements-those that serve only one particular unit); 2. A copy of the condominium's bylaws, drafted to govern the operation of the owners' association; 3. A survey of the property; 4. An architect's drawings, illustrating both the vertical and horizontal boundaries of each unit; and 5. Any restrictive covenants controlling the rights of ownership.

declaration of restrictions:
A statement of all the covenants, conditions and restrictions (CC&Rs) that affect a parcel of land. A subdivider may note the restrictions on the map or plan when recording the subdivision plat. If the restrictions are numerous, the subdivider may also prepare a separate document called a declaration, listing all the restrictions, and then record this declaration. (See CC&Rs)

declaratory relief action:
An action to have a court determine the rights of parties before a violation of rights has occurred.

dedication:
The voluntary transfer of private property by its owner to the public for some public use, such as for streets or schools. deed A written instrument that, when executed and delivered, conveys title to or an interest in real estate.

declining-balance method:
An accounting method of depreciation for income-tax purposes designed to provide larger-than-straight-line deductions in the early years of a property's life, and applicable to property placed in service before 1981.
The declining-balance method of calculation is applied in the IRS percentage tables for determining ACRS depreciation deductions applicable to personal property. The 3-, 5-, 7- and 10-year classes use the 200 percent declining-balance method, switching to straight-line at the appropriate time, and the 15- and 20-year classes use the 150 percent declining-balance method, also switching to straight-line. (See depreciation, straight-line method)

deed:
A written instrument, when executed and delivered, conveys title to or an interest in real estate. (See title)

deed executed pursuant to court order:
Executors' and administrator' deeds, masters' deeds, sheriffs' deeds and many other types are all deeds executed pursuant to a court order. These deeds are established by state.

deed in lieu of foreclosure:
Voluntarily signing over to a lender the property pledged as collateral on a defaulted loan. It is an alternative to a foreclosure action. Its main disadvantage to a lender is that the deed does not wipe out junior liens, as a foreclosure action would. (See junior liens)

deed in trust:
An instrument that grants a trustee under a land trust full power to sell, mortgage and subdivide a parcel of real estate. The beneficiary controls the trustee's use of these powers under the provisions of the trust agreement.

Deed of Trust and Assignment of Rents:
The first page of a lending instrument; identifies the parties to the agreement, conveys title to the trustee, describes the collateral, states the terms and conditions of the note, and refers to previously recorded "fictitious deeds of trust."

deed of reconveyance:
A document used to transfer legal title from the trustee back to the borrower (trustor) after a debt secured by a deed of trust has been paid to the lender (beneficiary). (See trust deed (deed of trust))

deed restrictions:
Provisions placed in deeds to control future uses of the property. (See covenants, conditions & restrictions, restrictive covenants)

default:
The nonperformance of a duty or obligation that is part of a contract. The most common occurrence of default on the part of a buyer or lessee is nonpayment of money when due. A default is normally a breach of contract, and the non-defaulting party can seek legal remedies to recover any loss. Defaults in long-term leases or contracts for deed other than nonpayment might be failure to pay real estate taxes, damage to the property and so forth.

defeasance clause:
A clause used in leases and mortgages that cancels a specified right upon the occurrence of a certain condition, such as cancellation of a mortgage upon repayment of the mortgage loan.

defeasible fee estate:
An estate in which the holder has a fee simple title that may be divested upon the occurrence or nonoccurrence of a specified event. There are two categories of defeasible fee estates: fee simple on condition precedent (fee simple determinable) and fee simple on condition subsequent.

defect:
A condition that materially affects the value or use of residential property in an adverse manner.

defect of record:
Any encumbrance on a title that is made a part of the public record. Recorded defects include judgments, deeds of trust, mortgages, other liens and easements. (See encumbrance)

deferred capital gain:
The part of the realized gain that is tax deferred. (See capital gains, excluded capital gain, realized capital gain (loss), recognized capital gain)

deferred maintenance:
Physical deterioration of a building resulting from postponed maintenance.

deficiency judgment:
A personal judgment levied against the borrower when a foreclosure sale does not produce sufficient funds to pay the mortgage debt in full.

delayed exchange:
A three way exchange in which the properties close at different times.

delinquent:
The status of a financial obligation, such as a mortgage loan, when it is past-due.

demand:
The amount of goods people are willing and able to buy at a given price; often coupled with supply. (See supply)

density zoning:
Zoning ordinances that restrict the maximum average number of houses per acre that may be built within a particular area, generally a subdivision. (See zoning)

Department of Real Estate (California):
The California agency that administers the Real Estate Law, including the licensing of real estate brokers and agents; headed by the Real Estate Commissioner, who is appointed by the Governor and presides over the Real Estate Advisory Commission whose ten members are appointed by and serve at the Commissioner's discretion.

deposit:
Money offered by a prospective buyer as an indication of good faith in entering into a contract to purchase; earnest money; security for the buyer's performance of a contract. An earnest money deposit is not necessary to create a valid purchase contract because the mutual promises of the parties to buy and to sell are sufficient consideration to enforce the contract. If the buyer completes the purchase, the deposit money is applied toward the purchase price.

depreciation:
The decrease in the value of an asset allowed when computing property value for tax purposes. It can also be a loss in the appraised value of a property due to physical deterioration. This latter type of depreciation is curable when it can be remedied by repair or an addition to the property, and incurable when there is no easy or economic remedy. (See appreciation)

depreciable basis:
In investment real estate only structures can be depreciated. The depreciable basis is the original basis less the value of the land. (See basis)

descent:
Acquisition of an estate by inheritance in which an heir succeeds to the property by operation of law.

designated agent:
A licensee authorized by a broker to act as the agent for a specific principal in a particular transaction. A designated agent is the only agent in the company who has a fiduciary responsibility toward the principal.

destruction of premises:
In many states, once the sales contract is signed by both parties, the buyer bears the risk of any damage to the property that may occur before closing. Of course, the contract may provide otherwise.

detached garage:
A garage that is not attached to a home. Usually found in older homes.

deviation:
The measure of how widely the individual varies from the general population.

devise:
A transfer of real property under a will. The donor is the devisor, and the recipient is the devisee.

direct management costs:
Expenses that can be attributed to the operation of a management firm or department. (See indirect management costs)

direct endorsement:
The ability of an FHA-approved lender to secure FHA single- and multifamily mortgage insurance by following FHA guidelines. Under a direct endorsement program, applications for many of FHA's mortgage insurance programs can be underwritten by approved lenders who certify that the mortgage complies with applicable FHA requirements. (See mortgage insurance)

disability:
A physical or mental impairment that substantially limits one or more major life activities, such as walking, seeing, learning and working. Disability includes a record of such impairment or the fact of being regarded as having such impairment. The Americans with Disabilities Act (ADA) protects individuals with disabilities from various forms of discrimination in employment, public services, transportation, public accommodations and telecommunication services. A person abusing illegal drugs or alcohol is not covered, but a person who is rehabilitated in these areas may be protected under ADA. (See handicap)

discharge:
The release of any waste into the environment from a point source. Usually refers to the release of a liquid waste into a body of water through an outlet such as a pipe, but also refers to air emissions.

discharge of contract:
A contract is discharged when the agreement is terminated. Obviously, the most desirable case is when a contract terminates because it has been completely performed, with all its terms carried out. However, a contract may be terminated for other reasons, such as a party's breach or default.

disclaimer:
A statement denying legal responsibility, frequently found in the form of the statement, "There are no promises, representations, oral understandings or agreements except as contained herein." Such a statement, however, would not relieve the maker of any liabilities for fraudulent acts or misrepresentations. (See hold-harmless clause)

disclosed dual agency:
Real estate licensing laws may permit dual agency only if the buyer and seller are informed and consent to the broker's representation of both in the same transaction. Although the possibility of conflict of interest still exists, disclosure is intended to minimize the risk for the broker by ensuring that both principals are aware of the effect of dual agency on their respective interests. The disclosure alerts the principals that they may have to assume greater responsibility for protecting their interests than they would if they had independent representation. The broker must reconcile how, as agent, he or she will discharge the fiduciary duties on behalf of both principals, particularly providing loyalty and protecting confidential information.

disclosure:
It is the agent's duty to keep the principal informed of all facts or information that could affect a transaction. Duty of disclosure includes relevant information or material facts that the agent knows or should have known.

discount:
To sell at a reduced value; the difference between face value and cash value.

discounted cash flow:
Used in measuring the return from a real estate investment, the present value of a future income stream as determined by a given discount rate. (See present worth, return on investment)

discounting:
To sell at a reduced value; the difference between face value and cash value. Some companies specialize in buying mortgages and real estate contracts (often referred to as paper) at a discount. Often the original lender, wanting to cash out on the loan, will thus sell the mortgage at the current published mortgage discount rate. If the discount rate is 12 percent, for example, the lender could sell a $100,000 mortgage at 88 percent of its worth ($88,000 or 12 percent below par).

discount rate:
1. An annual competitive rate of return on total invested capital necessary to compensate the investor for the risks inherent in a particular investment. 2. The rate at which the Federal Reserve lends money to its eligible banks. These are short-term loans to fulfill immediate cash needs, not supplement the bank's capital. Thus, the discount rate is not a cost of funds indicator but more of a signal to the banking community. (See Federal Reserve System)

discount points:
An added loan fee charged by a lender to make the yield on a lower-than-market-interest VA or FHA loan competitive with higher-interest conventional loans. One discount point is equal to 1 percent of the loan amount.

discretionary income:
Income left over for investment after allocations for bills and savings.

disintermediation:
The process of individuals investing their funds directly instead of placing their savings with banks, savings and loan associations and similar institutions for investment by such institutions. This bypassing of financial institutions occurs when proportionately higher yields are available on secure investments (such as high-grade corporate bonds, money market funds and government securities) than can be obtained on savings deposits.

display ads:
Newspaper and magazine advertisements sold by the column inch. More elaborate than classified ads, display ads often include more extensive text, graphics and photographs. (See classified ads)

disposal:
The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into the environment (land, surface water, ground water, and air).

divided agency:
Acting for more than one party in a transaction without the knowledge and consent of all parties thereto. This situation is considered unlawful and may be grounds for revocation or suspension of license under Section 10176(d) of the Business and Professions Code. (See dual agency)

divisible contract:
A contract that consists of separate agreements that are not dependent on each other. The illegality of one part will not void the balance of the contract.

doctrine of prior appropriation:
In states where water is scarce, ownership and use of water are often determined by the doctrine of prior appropriation. Under this doctrine, the right to use any water; with the exception of limited domestic use, is controlled by the state rather than by the landowner adjacent to the water.

documentary transfer tax:
Tax applicable to property transfers and affixed to the grant deed; varies from county to county, city to city.

domicile:
From domus, Latin for "house." The state where an individual has his or her true, fixed permanent home and principal business establishment and where that person has the intention of returning whenever he or she is absent from it. Once established a domicile is never lost until there is a concurrence of specific intent to abandon the old domicile, intent to acquire a specific new domicile and actual physical presence in the new domicile.
Though a person may have residences in different states and reside there at different times of the year, it is possible to have only one domicile. Because domicile consists of physical presence plus an intention to make the state one's permanent abode, such factors as local registration of autos, driver's license, voting, paying taxes, membership in local organizations, local bank accounts and local business interest are all important in establishing the requisite intent.

dominant tenement:
The estate that is said to attach to and derive benefit from the servient estate in reference to an easement appurtenant. For example, an easement road passes over an owner's land (the servient tenement) to give access to an adjacent parcel (the dominant tenement). The dominant tenement usually adjoins the servient tenement. (See easement, servient tenement)

double taxation:
One of the main disadvantages of corporate ownership of income property is that the profits are subject to double taxation. As a legal entity, a corporation must file an income tax return and pay tax on its profits. The portion of the remaining profits distributed to shareholders as dividends is taxed again as part of the shareholders' individual incomes.

dower:
The legal right or interest, recognized in some states, that a wife acquires in the property her husband held or acquired during their marriage. During the husband's lifetime the right is only a possibility of an interest; upon his death it can become an interest in land.

down drain:
A drain pipe or similar conduit to allow water to flow from the rain gutter at the edge of the roof to the ground.

downzoning:
A change in zoning from a higher to a lower classification or from a more active to less active classification, such as from residential to conservation, or multifamily to single-family use. In these cases, there is no taking under eminent domain and thus no compensation paid to the affected landowner who helplessly sees the property reduce in value. (See zoning)

draws:
1. An advancement of money against future earnings. 2. Periodic advances of funds under a construction loan agreement.

drywall:
A construction material used as a basis for interior walls in a home. Drywall is composed of an inner core of chalk with a paper facing on each side.

dual agency:
An agency relationship in which the agent acts concurrently for both principals in a real estate transaction. (See agency, agent, fiduciary)

due-on-sale-clause:
A form of acceleration clause found in some mortgages, especially savings and loan mortgages, requiring the mortgagor to pay off the mortgage debt when the property is sold, resulting in automatic maturity of the note as the lender's option. This clause effectively eliminates the possibility of the new buyer's assuming the mortgage unless the mortgagee permits the assumption, in which case the mortgagee might increase the interest rate or charge as assumption fee.

dump:
A land site where wastes are discarded in a disorderly or haphazard fashion without regard to protecting the environment. Uncontrolled dumping is an indiscriminate and illegal form of waste disposal. Problems associated with dumps include multiplication of disease-carrying organisms and pests, fires, air and water pollution, unsightliness, loss of habitat, and personal injury.

duplex:
A structure that provides housing accommodations for two families and supplies each with separate entrances, kitchens, bedrooms, living rooms and bathrooms. A two-family dwelling with the units either side by side or one above the other.

duress:
Unlawful constraint or action exercised upon a person whereby the person is forced to perform an act against his or her will. A contract entered into under duress is voidable.

dwelling:
Any building, structure or part thereof used and occupied for human habitation or intended to be so used, including any appurtenances. Many municipalities have adopted ordinances relating to the repair, closing and demolition of dwellings unfit for human habitation.

earnest money:
Money deposited by a buyer under the terms of a contract, to be forfeited if the buyer defaults but applied to the purchase price if the sale is closed. The cash deposit (including initial and additional deposits) paid by the prospective buyer of real property as evidence of good-faith intention to complete the transaction; called bargain money, caution money, hand money, or a binder in some states. (See trust funds)

earthquake safety disclosure:
By California law, real estate agents or owners are required to prepare a "Residential Earthquake Hazards Report" disclosing the earthquake safety preparedness of all houses sold in the state.

easement:
The right to a specific use of or right to travel over land owned by another. The land being used or traveled over is the servient tenement; the land that is benefited by the use is the dominant tenement. An easement appurtenant is a property interest belonging to the owner of dominant tenement and is transferred with the land; an easement in gross is a personal right that usually is not transferable by its owner. (See affirmative easement, dominant tenement, easement appurtenant, easement in gross, implied easement, negative easement, servient tenement)

easement by condemnation:
An easement created by the government or government agency that has exercised its right under eminent domain. (See eminent domain)
easement by estoppel:
An easement created when a person's words or actions lead another to believe that an easement exists. If, in relying on those words or actions, the easement user acts to his or her detriment, they may not deny the existence of the easement. (See estoppel)

easement by necessity:
An easement allowed by law as necessary for the full enjoyment of a parcel of real estate; for example, a right of ingress and egress over a grantor's land.

easement in gross:
An easement that is not created for the benefit of any land owned by the owner of the easement but that attaches personally to the easement owner. For example, a right granted by Eleanor Franks to Joe Fish to use a portion of her property for the rest of his life would be an easement in gross.

easement by prescription:
An easement acquired by continuous, open and hostile use of property for the period of time prescribed by state law.

Easton v. Strassburger:
The duty of the licensee to make a reasonable investigation of the property evolved from the case of Easton v. Strassburger (1984). As the leading case on this issue, the courts decision sent the message "loud and clear" to all real estate licensees that their responsibility does not stop at a mere disclosure of material facts known to the licensee. Easton filed suit against Strassburger, the real estate agency and others for fraudulent concealment and intentional misrepresentation regarding potential soil problems and a resulting slide on the property.

economic life:
1. The estimated period over which an improved property may be profitably used so that it will yield a return over and above the economic rent attributable to the land itself; the period during which an improvement has value in excess of its salvage value. In the case of an older structure or improvement, economic life refers to the remaining period during which the improvements to the real property (not land) are depreciated for tax purposes. The economic lives of such improvements are normally shorter than their actual physical lives. Also called service life. 2. As applied to a structure, the years or age indicated by the condition and utility of the structure, as opposed to its actual or chronological age.

economic rent:
Currently referred to as market rent, it is the rental income that real estate can command in an open, competitive market at any given time, as contrasted with contract rent, or the income actually received under a lease agreement.
effective interest rate:
The actual rate or yield of a loan, regardless of the amount stated on the debt instrument. (See nominal interest rate)

egress:
A way to exit from a property; the opposite of ingress.
electromagnetic fields (EMFs):
Fields generated by the movement of electrical currents.

elevations:
Just as surface rights must be identified, surveyed and described, so must rights to the property above the earth's surface. In the same way land may be measured and divided into parcels, the air itself may be divided. An owner may subdivide the air above his or her land into air lots. Air lots are composed of the airspace within specific boundaries located over a parcel of land.

eminent domain:
The right of the government to acquire title to property for public use by condemnation; the property owner receives compensation which is generally fair market value. (See taking)

embezzlement:
The fraudulent appropriation for one's own use or benefit of property or money, by a clerk, agent, trustee, public officer, or other person acting in a fiduciary capacity for another. (See fiduciary)

emblements:
1. Growing crops produced by the labor of the cultivator. 2. The right to the profits from such crops. (See fructus industriales)

employee:
Someone who works as a direct employee of an employer and has employee status. (See employer, independent contractor)

employer:
An individual or company that pays people to work for them. Employers are obligated to withhold income taxes and social security taxes from the compensation of employees. (See employee)

employment contract:
A document evidencing formal employment between employer and employee or between principal and agent. In the real estate business this generally takes the form of a listing agreement or management agreement. (See listing agreement)

enabling acts:
State legislation that confers zoning powers on municipal governments. (See zoning)

encapsulation:
A method of controlling environmental contamination by sealing off a dangerous substance (such as asbestos). The treatment of asbestos containing material with a liquid that covers the surface with a protective coating or embeds fibers in an adhesive matrix to prevent the release of asbestos fibers into the air. (See asbestos)

encroachment:
An unauthorized invasion or intrusion of an improvement or other real property onto another's property, thus reducing the size and value of the invaded property. Common examples of encroachments are the roof of a building that extends over the property line or the front of a building that extends over the building setback line or extends onto a neighbor's property.

encumbrance:
Any claim, lien, charge or liability attached to and binding on real property that may lessen its value or burden, obstruct or impair the use of a property but not necessarily prevent transfer of title; a right or interest in a property held by one who is not the legal owner of the property.
There are two general classifications of encumbrances: those that affect the title, such as judgments, mortgages, mechanics' liens and other liens, which are charges on property used to secure a debt or obligation; and those that affect the physical condition of the property, such as restrictions, encroachments and easements. (See easement, encroachment, judgment, lien, mechanics' lien, mortgage)

Endangered Species Act:
Passed by the United States Congress in 1973. The Act was originally intended to protect endangered species on federal lands. Since passage, the Act has been used to prohibit development or other land use in habitats of protected species.

endless chain:
A method of prospecting where agents asks each prospect to recommend other prospects. (See prospecting)

endorsement:
A method of transferring title to a negotiable instrument, such as a check or promissory note, by signing the owner's name on the reverse side of such instrument. A blank endorsement guarantees payment to subsequent holders. An endorsement that states that it is without recourse does not guarantee payment to subsequent holders. A special endorsement specifies the person to whom or to whose order the instrument is payable.

endowment funds:
Many commercial banks and mortgage bankers handle investments for endowment funds. The endowments of hospitals, universities, colleges, charitable foundations and other institutions provide a good source of financing for low-risk commercial and industrial properties.

energy audit:
An inventory and description of all the features and products in a home or building that effect the use of energy.

energy efficient mortgage (EEM) :
A home mortgage in which the qualifying debt-to-income and housing expense-to-income ratios have been increased by 2% because the home meets or exceeds model standards for energy efficiency.

energy improvement mortgage (EIM):
A loan secured by real property that is made to an owner for the specific purpose of making energy efficient improvements to a home or building.

Energy Star® Home:
A home that has been certified and labeled by the U.S. Environmental Protection Agency as having a 30% higher energy efficiency rating than the national residential standards for energy efficiency. Energy Star® is a registered trademark of the U.S. EPA.

enjoin:
1. to direct or order (someone) to do something. 2. to prescribe (a course of action) with authority or emphasis. 3. to prohibit or restrain by an injunction. (See injunction)

entitlement:
1. to be owed something under the law. 2. The portion of a VA-guaranteed loan that protects a lender from defaults. (See certificate of eligibility)

entity rule:
Three entities can hold property: individuals, partnerships and corporations. In the case of a property exchange, the way an exchanger holds property going into an exchange is the way they must hold the property coming out of the exchange.

environmental hazards disclosure:
By California law (AB 983) a real estate agent or owner is required to inform prospective buyers of environmental hazards located on a residential property.
environmental impact report:
A report required by the California Environmental Quality Act that projects the impact a project may have on the environment. The report includes relevant data and an analysis of its effects on the environment.

environmental impact statement:
Required by the National Environmental Policy Act and applies to federal government actions or legislation, it includes relevant data about an action and an analysis of its effect on the environment.

Environmental Protection Agency (EPA):
A federal agency created in 1970 by bringing together various federal pollution control activities that had been scattered among a number of federal departments and agencies. The EPA is involved with environmental problems of air and water pollution, solid-waste management, pesticides, radiation and noise. The EPA sets standards,

determines how much pollution is tolerable, establishes timetables to bring polluters into line with its standards and enforces environmental laws. The EPA conducts an extensive environmental research program; provides technical, financial, and managerial help to state, regional and municipal pollution control agencies; and allocates funds for sewage-treatment facilities. The original authority of the EPA was broadened by passage of the Clean Air Amendments and the Resource Recovery Act in 1970; the Federal Water Pollution Control Act Amendments, the Federal Environmental Pesticide Control Act, the Noise Control Act and the Marine Protection Research and Sanctuaries Act in 1972; the Safe Drinking Water Act in 1974; and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in 1980. (See CERCLA, hazardous waste)

environmental site assessment:
An independent investigation and assessment of a property to determine if any existing or potential environmental problems or hazards exist on property. It is usually done to determine if any environmental problems exist on a property that might effect the use or market value of the property. It is sometimes referred to as the "due diligence" audit since it can be done to establish the "innocent landowner" defense in a Superfund suit. Usually done by an outside environmental engineering firm.

Equal Credit Opportunity Act (ECOA):
Federal legislation passed in 1974 to ensure that the various financial institutions and other firms engaged in the extension of credit exercise their responsibility to make credit available with fairness and impartiality, and without discrimination on the basis of race, color, religion, national origin, sex or marital status, age, receipt of income from public assistance programs (food stamps, social security), and to ensure good-faith exercise of any right under the Consumer Credit Protection Act (creditor must state reasons for denial of credit). The act applies to all who regularly extend or arrange for the extension of credit. A real estate licensee is considered a creditor if the licensee routinely assists sellers in determining whether a proposed buyer in a land contract or purchase-money mortgage is creditworthy.

equal dignities rule:
A rule of agency law that stipulates that when a contract is required by law to be in writing, the authority of an agent to enter into such a contract on behalf of the principal must also be in writing.

equalization:
In some jurisdictions, when it is necessary to correct inequalities in state wide tax assessments, an equalization factor is used to achieve uniformity. An equalization factor may be applied to raise or lower assessments in a particular district or county. The assessed value of each property in the area is multiplied by the equalization factor, and the tax rate is then applied to the equalized assessment.

equalization factor:
A factor (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.

equitable lien:
A lien arising out of common law—in contrast to a statutory lien, which is imposed on property by statute. (See common law, statutory lien)

equitable redemption:
A defaulted property owner recovering his or her property prior to its sale by curing the default. (See statutory redemption)

equitable right of redemption:
The right of a defaulted property owner to recover the property prior to its sale by paying the appropriate fees and charges.

equitable title:
The interest held by a vendee under a contract for deed or an installment contract; the equitable right to obtain absolute ownership to property when legal title is held in another's name.

equity:
The interest or value that an owner has in property over and above any indebtedness.

equity loans:
A loan based on a percentage of the equity a borrower holds in a collateral property.

equity trust:
An investment trust dealing with ownership rather than financing. (See investment group financing)

erosion:
The gradual loss of soil due to the operation of currents, tides or winds.

escape clause:
1. A contract provision relieving a party of liability for failure to perform, as where a stated contingency does not occur. If such a clause allows the party to cancel the contract for no reason whatsoever, there really is no enforceable contract, for mutuality of obligation is lacking. 2. A clause in a proprietary lease of a tenant-stockholder that permits the tenant to surrender the stock and lease back to the cooperative association and thereby terminate continuing liability for payments due under the lease.

Essential elements of a valid contract:

1. Offer and acceptance;
2. Consideration;
3. Legally competent parties;
4. Consent

escheat:
The reversion of property to the state or county, as provided by state law, in cases where a decedent dies intestate and there are no heirs capable of inheriting or when the property is abandoned. In some states, bank accounts that are unused for more than seven years will escheat to the government. (See intestate)

escrow:
The process by which money and/or documents are held by a disinterested third person (a stakeholder) until satisfaction of the terms and conditions of the escrow instructions (as prepared by the parties to the escrow) have been achieved. Once these terms have been satisfied, delivery and transfer of the escrowed funds and documents takes place. Although is some states a real estate broker is authorized to handle escrow functions, the common practice is to employ the services of a licensed escrow company, title company or lending institution.

escrow agent/officer:
An individual qualified to perform all the steps necessary to prepare and carry out escrow instructions. Tasks include obtaining title insurance; securing payoff demands; prorating taxes, interest, rents, etc.; and distributing the funds held in escrow. (See escrow instructions, prorations, title insurance)

escrow account:
The trust account established by a broker under the provisions of the license law for the purpose of holding funds on behalf of the broker's principal or some other person until the consummation or termination of a transaction. (See trust fund bank account)

escrow fee:
A fee covering all the usual escrow services except for title insurance. The fee is normally determined by the amount of money involved in the transaction.
escrow instructions:
In a sales transaction, a writing signed by buyer and seller that details the procedures necessary to close a transaction and directs the escrow agent how to proceed. Sometimes the buyer and seller execute separate instructions and sometimes the contract of sale itself serves as the escrow instructions. (See final escrow instructions, lender's escrow instructions, contract of sale, escrow, escrow agent)

essentials of a valid lease:
A lease is a form of contract. To be valid, a lease must meet essentially the same requirements as any other contract:
- Offer and acceptance—The parties must reach a mutual agreement on all the terms of the contract.
- Consideration—The lease must be supported by valid consideration. Rent is the normal consideration given for the right to occupy the leased premises. However, the payment of rent is not essential as long as consideration was granted in creating the lease itself, sometimes, for instance, this consideration is labor performed on the property. Because a lease is a contract, it is not subject to subsequent changes in the rent or other terms unless these changes are in writing and executed in the same manner as the original lease.
- Capacity to contract—The parties must have the legal capacity to contract.
- Legal objectives—The objectives of the lease must be legal.

estate (tenancy) at sufferance:
The tenancy of a lessee who lawfully comes into possession of a landlord's real estate but who continues to occupy the premises improperly after his or her lease rights have expired. (See tenant)

estate (tenancy) at will:
An estate (or tenancy) in which a person holds or occupies real estate with the permission of the owner, for a term of unspecified or uncertain duration; i.e., there is no fixed term to the tenancy.

estate (tenancy) for years:
An interest for a certain, exact period of time in property leased for a specified consideration.

estate (tenancy) from period to period:
An interest in leased property that continues from period to period--week to week, month to month or year to year.

estate in land:
The degree, quantity, nature and extent of interest a person has in real property.

estate taxes:
Federal estate taxes and state inheritance taxes (as well as the debts of decedents) are general, statutory, involuntary liens that encumber a deceased person's real and personal property. These are normally paid or cleared in probate court proceedings. (See inheritance taxes, lien)

estimated buyer's costs:
An estimate of the buyer's total cash requirements to purchase real property. A realistic estimate of all costs and payments based on the buyer's offer.

estimated seller's proceeds:
An estimate of the net amount an owner will receive from the sale of his or her property. An "Estimated Seller's Proceeds" form is filled out by the listing broker and calculates the proceeds based on the listing price and seller's costs.

estoppel:
Method of enforcing an agency relationship in which someone stated incorrectly that another person is his or her agent, and a third person relied on that representation.

estoppel certificate:
A document in which a borrower certifies the amount owed on a mortgage loan and the rate of interest.

ethics:
The system of moral principles and rules that become standards for conduct.

evaporative coolers (swamp cooler):
An economical method of cooling a home in a dry climate. An evaporative cooler is a large box-like unit, four sides of which are removable panels with vents that let air flow through. Inside of each panel is a "cooler pad," usually made of wood fibers. The unit contains a large fan and a water pump. At the bottom of the unit is a water reservoir. Water is pumped from the reservoir, continually soaking the cooler pads. The fan draws hot outside air through the pads. As the warm air evaporates water from the pads, heat is carried away, cooling the air by up to 20 degrees-F. The water-cooled air is then pumped into the house through an air duct.

eviction:
1. The legal process of removing a tenant from the premises as a result of a breach of a lease. 2. The disturbance of a tenant's enjoyment of any material part of a leased premises by an act of the landlord, or by a claim of superior title by a third party. (See actual eviction, constructive eviction, lease, retaliatory eviction)

evidence of title:
Proof of ownership of property; commonly a certificate of title, an abstract of title with lawyer's opinion, title insurance or a Torrens registration certificate.

exchange:
A transaction in which all or part of the consideration for the purchase of real property is the transfer of property of "like kind" (i.e., real estate for real estate). (See like kind, realized capital gains)

exchange period:
The period during which the exchanger must acquire replacement property in the exchange. The exchange period starts on the date the exchanger transfers the first relinquished property and ends on the earlier of the 180th day thereafter or the due date (including extensions) of the exchanger's tax return for the year of the transfer of the relinquished property.

exchanger:
The property owner seeking to defer capital gain tax by utilizing an IRS 1031 tax deferred exchange.

exculpatory clause:
A clause in an agreement that relieves a party from all obligation for his or her acts or failure to act.

excluded capital gain:
The part of the realized gain that is "excluded" from taxes. (See capital gains, deferred capital gain, realized capital gain (loss), recognized capital gain)

exclusionary zoning:
Zoning that excludes stated uses. (See zoning)

exclusive agency listing:
A written listing agreement giving a sole agent the right to sell a property for a specified time, but reserving to the owner the right to sell the property himself without owing a commission. The exclusive agent is entitled to a commission if he or she personally sells the property or if it is sold by anyone other than the seller. It is exclusive in the sense that the property is listed with only one broker. The multiple-listing service must accept exclusive-agency listings submitted by participating brokers. (See listing agreement)

exclusive-agency-buyer-agency-agreement:
Similar to the exclusive buyer agency agreement, this is an exclusive contract between the buyer and the agent. However, this agreement limits the broker's right to payment. The broker is entitled to payment only if he or she locates the property the buyer ultimately purchases. The buyer is free to find a suitable property without obligation to pay the agent.

exclusive-buyer-agency-agreement:
This is a completely exclusive agency agreement. The buyer is legally bound to compensate the agent whenever the buyer purchases a property of the type described in the contract. The broker is entitled to payment regardless of whether he or she locates the property. Even if the buyer finds the property independently, the agent is entitled to payment.

exclusive-authorization-and-right-to-sell listing:
A written listing agreement appointing a broker as the exclusive agent for the sale of property for a specified period of time. The listing broker is entitled to a commission if the property is sold by the owner, by the broker or by anyone else. The phrase "right-to-sell" really means the right to find a buyer; it does not mean that the agent has a power of attorney from the owner to sell the property. (See listing agreement)

exclusive authorization to acquire real property:
A contract providing for the exclusive representation of a buyer by a broker. It authorizes a broker to act as the exclusive agent of the buyer. Similar to an exclusive-authorization-and-right-to-sell listing. (See exclusive-authorization-and-right-to-sell listing)

execute:
The act of making a document legally valid, such as formalizing a contract by signing or acknowledging and delivering a deed. In some cases, execution of a document may refer solely to the act of signing, in other cases it may refer to complete performance of the document's terms.

executor:
A male person appointed by a testator to carry out the directions and requests in his or her last will and testament, and to dispose of his or her property according to the provisions of the will. State probate laws generally refer to this person as a "personal representative of the decedent."

executory contract:
A contract under which something remains to be done by one or more of the parties.

executrix:
A female person appointed by a testator to carry out the directions and requests in his or her last will and testament, and to dispose of his or her property according to the provisions of the will. State probate laws generally refer to this person as a "personal representative of the decedent."

exemplary damages:
Monetary damages that go beyond the actual compensatory damages. They are awarded to punish a wrongdoer for fraudulent, malicious and wrongful conduct. (See compensatory damages, nominal damages)

express agency:
A stated (written or verbal) agency agreement.

express agreement/contract:
An oral or written contract in which the parties state the contract's terms and express their intentions in words.

express authority:
The stated (written or verbal) authority of an agent. (See express agency)

extended coverage policy:
A title insurance policy that covers risks normally excluded by most standard coverage policies. The standard policy normally insures the title only as shown by the public records. It does not cover unrecorded matters that might be discovered during an inspection of the premises. Most lenders require extended coverage mortgage title insurance policies. Extended coverage indemnifies the insured against such things as mechanic's liens, tax liens, miscellaneous liens, encumbrances, easements, rights of parties in possession and encroachments, which may not be disclosed by the public records. (See standard coverage policy, title insurance)

extender clause:
1. A condition, once found in most listing forms, providing that the listing would continue for a set period of time, such as 90 days, and then would be automatically renewable until the parties agreed to terminate it. Use of such clauses in listing contracts is frowned on by the courts and violates many state license laws. The use of such a clause by an organization may be a violation of the antitrust laws. Such clauses, however, do not violate antitrust laws if inserted by individual brokers in their own exclusive listing forms, though the clause must state a final termination date.
2. A "carryover" clause (often referred to as a safety clause) may be contained in a listing. It provides that a broker is still entitled to a commission for a set period of time after the listing has expired if the property is sold to a prospect of the broker introduced to the property during the period of the listing. A clause stating such conditions for payment might read: "If within 90 days after expiration of the listing agreement, the property is sold to or exchanged with any person who physically inspected the property with the broker or any cooperating broker during the listing period and if the broker gave the seller the name of such a person in writing within five days after the stated expiration date of the listing agreement." The owner should disclose to any broker seeking a listing whether there are any expired listings. Unless careful disclosure is made of any extender clauses in such expired listings, the owner could be faced with a claim for commissions from both the former broker who showed the buyer the property and the new broker. In many states the extender clause is revoked once the owner relists the property with another broker.

external depreciation:
Reduction in a property's value caused by outside factors (those that are off the property).

external obsolescence:
A type of incurable depreciation caused by negative factors not on the subject property, such as environmental, social or economic forces. The loss in value can not be reversed by spending money on the property. (See depreciation)

Four Zero One 401(k) retirement plan:
401(k) retirement plans allow an individual to contribute part of their "pre-tax" income to an investment account. Pre-tax contributions are not tax-free, they are tax-deferred, meaning the person does not pay income tax on this money until they withdraw it from the plan (which should be at retirement). Some companies offer to "match" the individual's contribution as an incentive to join the company's retirement plan.

Depending on the provisions of a company's retirement plan, a person may take a loan from their 401(k) account, however, not all plans allow for loans. The loan is paid back, plus interest (a fixed rate determined at the time of the loan), through after-tax payroll deductions. As long as the individual repays the loan on time, they are not subject to withholding taxes or penalties.

Fair Credit Reporting Act:
The Fair Credit Reporting Act gave consumers the right of access to, and correction of, credit reports. (See credit report)

Fair Employment and Housing Act:
California's Fair Employment and Housing Act (FEHA) (Sections 13100-13196 of the Government Code) prohibits housing discrimination based on marital status as well as race, color, religion, sex, national origin or ancestry. The Department of Fair Employment and Housing enforces the law, which is based on the former Rumford Fair Housing Act.

Example:

Some years ago Len Lessor tried to evict Alice Tenant because Alice, an unmarried woman, was living with an unrelated adult male. Len was unsuccessful because his intended action violated what was then the Rumford Act. Len recently decided to require that each member of an unrelated couple living together in one of his apartments meet his rental financial requirements, even though married couples can aggregate their income to meet the financial requirements. Can Len do that?

No. The Fair Employment and Housing Act bans discrimination based on marital status.

Note: Discrimination under FEHA does not include refusal to rent part of a single-family, owner-occupied dwelling to only one individual. All notices and advertisements must comply with FEHA, except for those expressing a preference for applicants of one sex for the sharing of living in a single dwelling unit.

Fair Housing Act:
Pursuant to the federal Fair Housing Act, any offer to sell, rent, buy, or exchange property shall not contain any preference, limitation, or discrimination based on race, color, religion, sex, national origin, handicap, familial status, or an intention to make such preference, limitation or discrimination. (See Civil Rights Act of 1968, federal fair housing law)

Fair Housing Amendment Act of 1988:
Extends the Civil Rights Act of 1968 to cover handicapped persons and families with children. (See Fair Housing Act, federal fair housing law, Civil Rights Act of 1968)

familial status:
Familial status is defined as one or more individuals who have not obtained the age of eighteen (18) years, being domiciled with a parent or other person having custody, or anyone who is pregnant. It is therefore unlawful to refuse housing to anyone with children under the age of 18 or anyone who is pregnant, except when such housing meets the definition of housing for older persons.

Fannie Mae:
(See Federal National Mortgage Association (FNMA))

Farm Credit System:
A national banking system for financing the activities of farmers and ranchers.

farming:
Prospecting an area for buyers or sellers. (See geographic farming, non-geographic farming, prospecting)

Farm Service Agency (FSA):
Formerly the Federal Agricultural Mortgage Corporation (FAMC or Farmer MAC), the FSA is a federal agency of the Department of Agriculture. FSA offers programs to help families purchase or operate family farms. It also provides loans to help families purchase and improve single-family homes in rural areas. The FSA provides assistance to rural and agricultural businesses and industry through the Rural Business and Cooperative Development Service. Loan programs fall into two categories: guaranteed loans, made and serviced by private lenders and guaranteed for a specific percentage by FSA, and loans made directly by the FSA.

Federal Deposit Insurance Corporation (FDIC):
An independent federal agency that insures the deposits in commercial banks.

federal fair housing law:
In 1968, Congress enacted Title VIII of the Civil Rights Act, called the Federal Fair Housing Act, which declared a national policy of providing fair housing throughout the United States (reference Sections 3601-3631 of Title 42, United States Code). This law makes discrimination based on race, color, sex, familial status, handicap, religion or national origin illegal in connection with the sale or rental of most dwellings and any vacant land offered for residential construction or use. The law does not prohibit discrimination in other types of real estate transactions, such as those involving commercial or industrial properties. The law is administered by the Office of Equal Opportunity (OEO) under the direction of the Secretary of the Department of Housing and Urban Development (HUD). (See Civil Rights Act of 1968, Fair Housing Act, HUD)

As amended in 1972, the law instituted the use of equal opportunity posters (11" x 14") for display at brokerage houses, model home sites, mortgage lenders' offices and other related locations. Failure to display the poster constitutes prima facie evidence of discrimination if a broker who does not display the sign is investigated by HUD on charges of discrimination. The poster must show the equal housing opportunity slogan: Equal Housing Opportunity. It must also carry the equal housing opportunity statement:

"We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, familial status, handicap or national origin."

The following equal housing opportunity logo also must be displayed on the poster:

The fair housing law provides protection against the following acts of discrimination, if they are based on race, color, sex, familial status, handicap, religion or national origin:

- Refusing to sell, rent, deal or negotiate with any person.
- Misrepresenting terms or conditions for buying or renting housing.
- Advertising that housing is available only to persons of a certain race, color, sex, familial status, handicap, religion or national origin (such as placing sold signs when the property in fact is not sold).
- Denying that housing is available for inspection, sale or rent when it really is available. (This includes a practice called steering, whereby certain brokers may direct members of certain minority groups away from some of their listings in racially unmixed areas.)
- Blockbusting, a practice whereby a broker hopes to profit through persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood; also called panic peddling.
- Denying or requiring different terms or conditions for home loans made by commercial lenders such as banks, savings and loan associations and insurance companies.
- Denying to anyone the use of, or participation in, any real estate service such as broker's organizations, multiple-listing services or other facilities related to the selling or renting of housing.

The Fair Housing Act applies to the following:

- Single-family housing owned by private individuals and sold through a broker or other person who is in the business of selling or renting dwellings is employed (includes use of MLS) and has used discriminatory advertising is used.
- Single-family housing not owned by private individuals, such as those owned by development corporations.
- Single-family housing owned by a private individual who owns more than three such dwellings or who, in any two-year period, sells more than one dwelling in which he or she was not the most recent resident.
- Multifamily dwellings of five or more units.
- Multifamily dwellings containing four or fewer units, if the owner does not reside in one of the units.

Exception: The following situations are exempt from the Fair Housing Act (but covered by the post-Civil War 1866 antidiscrimination civil rights law, if based on race):

- The sale or rental of single-family housing if neither a broker nor discriminatory advertising is used, and no more than one dwelling in which the owner was not the most recent resident is sold during any two-year period.
- The rental of rooms or units in owner-occupied multiple dwellings for two to four families, if discriminatory advertising is not used (the "Mrs. Murphy exemption" in which Mrs. Murphy represents the small investor struggling to earn a living by taking in roomers in a small rooming house).
- The sale, rental or occupancy of dwellings owned and operated by a religious organization for other than commercial purposes to persons of the same religion, if membership in that religion is not restricted on account of race, color, sex or national origin; the religious organization can give preference to its members (e.g., it could levy a surcharge on nonmembers).
- The restriction of lodgings owned or operated by a private club for other than a commercial purpose for rental or occupancy by its own members.

The 1988 amendments to the federal Fair Housing Act bar discrimination based on handicap or familial status of the buyer or renter or anyone associated with the buyer or renter. "Handicap" means a physical or mental impairment, including cancer, AIDS, alcoholism, or a speech, visual or hearing impairment (but not including illegal drug use). The landlord must allow the tenants to make reasonable modifications of existing premises at the tenant's expense. Discrimination also includes the failure to make reasonable accommodation in rules, policies, practices or services to allow a disabled person an equal opportunity to use or enjoy a dwelling.

The law bars discrimination in the sale and rental of housing based on the presence of children (under 18 years of age) in the family, including pregnancy or a pending adoption. The law still permits reasonable limitations on the number of occupants per unit under state and private regulation. Housing for older persons is exempt from the familial status prohibitions if 1. the building is occupied solely by those 62 years of age or older or 2. the housing is specially designed for occupancy by older persons, and at least 80 percent of the dwellings are occupied by at least one person 55 years of age or older.

Two remedial avenues, one administrative and one judicial, are available. An aggrieved person may complain directly to a U.S. District Court within one year of the alleged discriminatory practice, whether or not a verified complaint has been filed with the Secretary of HUD. However, in states with equivalent antidiscrimination judicial rights and remedies, such a suit would have to be brought to the state court. The burden of proof is on the complainant. The court can grant permanent or temporary injunctions, temporary restraining orders or other appropriate relief and may award actual damages and not more than $1,000 in punitive damages. The parties can agree to have the case decided by an administrative law judge.

Criminal penalties are provided for those who coerce, intimidate, threaten or interfere with a person's buying, renting or selling housing; making a complaint of discrimination or exercising any rights in connection with this law. Licensees should keep detailed records of all transactions and rentals in order to defend themselves against possible discrimination complaints. Violations are frequently proved through the use of cases, "testers" and the courts have ruled that there is no requirement that the testers actually be bona fide purchasers or renters. (See blockbusting, familial status, handicap, steering)

Under 1980 regulations, HUD identified certain words that should be avoided because they may tend to convey discriminatory intent. Examples are White, Black, Colored, Catholic, Jew, Protestant, Chinese, Chicano, Irish, restricted, ghetto, disadvantaged, private, membership approval.

Advertising should never state or imply that the rental of separate units in a dwelling is restricted to persons of only one sex unless the sharing of living areas is involved. Even directions to the real estate for sale may be discriminatory, such as references to synagogues or "near Martin Luther King memorial," or close to a specific country club or a private school that caters to particular racial, religious or ethnic groups.

The selective use of advertising media or content based on ethnic considerations could be considered as violating the intent of the law. An example might be the sole use of an English-language newspaper in an area like Miami, Florida, where there are many Hispanic publications. Although an advertiser cannot be forced to advertise in a minority media, such failure will be a consideration in a discrimination hearing, as would be a policy of using as human models members of only one sex, race or other group (it is not necessary, however, to have an exact percentage of the various groups in the local population).

Discrimination in federally subsidized housing projects is prohibited under Title VI, Civil Rights Act of 1964, which states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance."

Jones vs. Alfred H. Mayer CO.— On June 17, 1968, the United States Supreme Court handed down its opinion in the case of Joseph Lee Jones, et ux., Petitioners v. Alfred H. Mayer Co. et al. On September 2, 1965, the petitioners filed a complaint in the District court for the Eastern District of Missouri, alleging that "the respondents had refused to sell them a home in the Paddock Woods community of St. Louis County for the sole reason that the petitioner, Joseph Lee Jones, is a Negro. From this landmark case, we now have a whole new all-encompassing set of rules prohibiting discrimination on the part of owners of property and their agents.

In Jones vs. Mayer, the Supreme Court interpreted and applied an Act of Congress, first enacted in 1866 (now U.S. Code, para 1982), and rested its constitutionality on the

Thirteenth Amendment of the Constitution of the United States, the amendment prohibiting slavery. As so interpreted, Section 1982 applies everywhere, to everyone in the United States. (See Civil Rights Act of 1866)

To react to changing social and economic patterns in America, Congress adopted Title VIII in 1968. That law prohibits discrimination based on race, color, national origin, religion and sex. It is the major basis for most current federal fair housing activities. The passage of this statute was a watershed mark in the nation's commitment to equal housing opportunity.

federal funds rate:
The interest rate the Federal Reserve charges its member banks on uncollateralized loans.

Federal Housing Administration (FHA):
A federal agency established in 1934 under the National Housing Act to encourage improvement in housing standards and conditions, to provide an adequate home-financing system through the insurance of housing mortgages and credit and to exert a stabilizing influence on the mortgage market. FHA was the government's response to a lack of quality housing, excessive foreclosures and a building industry that collapsed during the depression.

Federal Home Loan Bank System (FHLB):
Regulates the nation's savings and loan associations, much like the Federal Reserve governs the commercial banking industry.

Federal Home Loan Mortgage Corporation (FHLMC):
Commonly known as "Freddie Mac," a federally chartered corporation established in 1970 for the purpose of purchasing mortgages in the secondary market. Freddie Mac was created as a part of the savings association system and, while it is not so limited, its loan purchase policies are designed to accommodate savings association needs. It functions with an independent board of directors but is subject to oversight by HUD.

Federal National Mortgage Association (FNMA):
Popularly known as "Fannie Mae," an active participant in the secondary mortgage market. Fannie Mae was established as a federal agency in 1938 for the purpose of purchasing FHA loans from loan originators to provide some liquidity for government-insured loans in a depression-wracked economy when few lending institutions would undertake this type of loan.

Federal Reserve System ("the Fed"):
The nation's central bank created by the Federal Reserve Act of 1913. Its purpose is to help stabilize the economy through the judicious handling of the money supply and credit available in this country. The system functions through a seven-member Board of Governors (appointed by the President) and 12 Federal Reserve District Banks, each with its own president. The system sets policies and works with the privately owned commercial banks.

Federal Water Pollution Control Act:
Enacted by Congress in 1972, this federal law administered by the EPA regulates the release of pollutants into navigable waters.

fee appraiser:
A non-salaried appraiser who is paid a fee for the appraisal assignments performed.

fee simple:
The maximum possible estate one can possess in real property. A fee simple estate is the least limited interest and the most complete and absolute ownership in land; it is of indefinite duration, freely transferable and inheritable. Fee simple title is sometimes referred to as "the fee." (See fee title)

fee simple absolute:
The maximum possible estate or right of ownership of real property, continuing forever.

fee simple defeasible:
An estate in land in which the holder has a fee simple title subject to being divested upon the happening of a specified condition; also called a qualified fee or a defeasible fee. There are two categories of fee defeasible estates--fee simple determinable and fee simple subject to a condition subsequent. The term fee simple determinable implies that the duration of the estate can be determined from the deed itself. This is not true of a fee simple subject to a condition subsequent, in which case the estate's duration depends on the grantor's independent choice of whether to terminate the estate. (See fee simple determinable, fee simple subject to a condition subsequent)

fee simple determinable:
A fee simple determinable is an estate in real property that exists "so long as," "while" or "during the period" that a certain prescribed use continues. Such use is described in the grant of conveyance. For example, a conveyance to the University of Know-it-all "so long as" the real estate is used for educational purposes would give the university title, provided the granted land is used as prescribed. If, at some future time, the university were to stop using the property for educational purposes, title would revert to the original grantor, if living, or to his or her heirs if the grantor is deceased. A fee simple determinable automatically ends when the purpose for which it has been prescribed terminates. Upon the grant of a fee simple determinable, there remains in the grantor a possibility of reverter.

fee simple subject to a condition subsequent:
A fee simple subject to a condition subsequent is an estate conveyed "provided that," "on the condition that" or "if" it is used for a specific purpose. If it is no longer used for that purpose, it reverts to the original grantor or his heirs. This type of estate is much the same as a fee determinable, except that in a fee determinable conveyance, the words are of duration while a fee condition subsequent refers strictly to a specific condition. In addition, unlike a fee determinable, when fee condition subsequent property is no longer used for its prescribed purpose, the original grantor (or heirs) must physically retake possession of the property within a reasonable period of time after the breach (i.e., the grantor must exercise his or her right of reentry). Any transaction involving a fee simple defeasible estate should be referred to an attorney for a professional opinion.

fee title:
The maximum possible estate one can possess in real property. A fee title estate is the least limited interest and the most complete and absolute ownership in land; it is of indefinite duration, freely transferable and inheritable. A "fee title" is sometimes referred to as "the fee." (See fee simple)

feudal system:
A system of ownership usually associated with pre-colonial England, in which the king or other sovereign is the source of all rights. The right to possess real property was granted by the sovereign to an individual as a life estate only. Upon the death of the individual title passed back to the sovereign, not to the decedent's heirs.

fictitious business (company) name:
A business name other than that of the person under whom the business is registered. Most state license laws require such brokerage offices operating under an assumed name be jointly registered under the supervising broker's name and the fictitious business name.

FICO:
Acronym for "Fair, Isaac & Company." FICO is the most commonly used scoring system used by lenders to derive credit scores for borrowers. (See credit score)

fictitious business name statement (California):
A fictitious business name statement must be filed with the county clerk in the county of the broker's principal business address, and a copy sent to the Real Estate Commissioner. The commissioner may refuse to allow the use of a name that may be inappropriate or misleading. (See fictitious business name)

fictitious deed of trust:
Comprehensive master deeds of trust are established by lenders to cover all areas of trust deed finance. (See deed of trust)

fiduciary:
A relationship that implies a position of trust or confidence wherein one person is usually entrusted to hold or manage property or money for another. The term fiduciary describes the faithful relationship owed by an attorney to a client or by a broker (and salesperson) to a principal. The fiduciary owes complete allegiance to the client. Among the obligations that a fiduciary owes to his or her principal and the duties of loyalty, obedience and full disclosure; the duty to use skill, care and diligence; and the duty to account for all monies. (See law of agency, principal)

filled land:
An area of a property where the grade has been raised by depositing dirt, gravel or rock. Under most circumstances a seller (broker) has a duty to disclose to a buyer the fact that a property is on filled land.

final escrow instructions:
Statements prepared by the escrow agent which reflect the final figures and instructions required to close escrow. (See escrow instructions)

financing statement:
Security interests in chattels (personal property) are created by an instrument known as a security agreement. To give notice of a security interest, a financing statement must be recorded. (See personal property, Uniform Commercial Code)
Financial Institutions Reform, Recovery and Enforcement Act (FIRREA):
Legislation that abolished the FSLIC and established a new deposit insurance fund, SAIF, for savings institutions; appropriated funds and created the Resolution Trust Corporation to dispose of failed thrifts; imposed wide-ranging changes in savings institution investment activities and operations; and created the Office of Thrift Supervision as part of a restructuring of the federal thrift regulatory and supervisory systems. (See Office of Thrift Supervision, Resolution Trust Corporation)

financial intermediaries:
A financial institution that accepts deposits and makes loans.

Financial Management Rate of Return (FMRR):
A multi-year analysis of rate of return. Used by investors in medium and large properties (occasionally on small properties). Multi-year cash flows and net sale proceeds are analyzed using discounted cash flow techniques to solve for the Financial Management Rate of Return (FMRR).
FMRRs are the best rate of return indicator, because they require an analysis of the investor's entire holding period, not just a single year. The discounting process takes into consideration the time value of money, and thereby produces a more realistic rate of return.

financial statement:
A brief summary of a person's assets, liabilities and earnings records.

finder's fee:
A fee paid to someone for "finding" either the buyer to purchase or the seller to list a property.

fire insurance requirement form:
A statement signed by the "borrower" agreeing to comply with the lender's requirements for fire insurance coverage.

fire rating:
A rating of the length of time it takes a fire to penetrate a barrier. Designates the ability of a material to contain a fire in a carefully controlled test setting for a specified period of time. A material tested in a laboratory that adequately contains a fire for two hours and meets other requirements during the laboratory fire test, is given a two-hour fire resistance rating. Fire-resistance ratings are based on full-scale tests under controlled conditions and are generally recognized by building code authorities and fire insurance rating bureaus. Requirements for fire-resistance ratings are usually set by local building code officials based on the expected occupancy of the building.

fiscal policy:
The government's policy in regarding to taxation and spending programs. The difference between these two areas determines the amount of money the government will withdraw from or feed into the economy, which can stimulate or restrain economic growth.

fixed expenses:
Those recurring expenses that have to be paid regardless of whether the property is occupied; for example, real property taxes, hazard insurance and debt service. These expenses contrast with operating expenses necessary to maintain the production of income from the operation of a property. (See operating expenses)

fixed-fee:
A contractor submits a bid proposing a fixed amount to do a job. Most construction bids are made on this basis. (See cost-plus)

fixed-rate loan:
A loan with the same rate of interest for the life of the loan.

fixtures:
An article that was once personal property but has been so affixed to real estate that it has become real property. Whether an article is a fixture depends on the intention of the parties and may be determined by the manner in which the item is attached, its type and adaptability to the real property, its purpose and the relationship of the parties.

flashing:
Sheet metal or other impervious material used in roof and wall construction as a barrier to water seepage.

flat fee:
A property management fee expressed as a dollar amount per year or month. (See percentage fees)

flood hazard areas:
Locations specified on Federal Emergency Management Agency (FEMA) maps indicating areas that are subject to flooding. The seller's agent is required to inform potential buyers if the agent has knowledge that a property is located in such an area.

flue:
The pipe or conduit that allows combustion gasses to exit the house. (See combustion gasses)

flush:
To open a cold-water tap to clear out all the water that may have been sitting for a long time in the pipes. In new homes, to flush a system means to send large volumes of water gushing through the unused pipes to remove loose particles of solder and flux.

forbearance:
The act of refraining from taking legal action despite the fact that payment of a promissory note in a mortgage or deed of trust is in arrears. It is usually granted only when a borrower makes a satisfactory arrangement by which the arrears will be paid at a future date.

formaldehyde:
A colorless, pungent, and irritating gas, used chiefly as a disinfectant and preservative and in synthesizing other compounds like resins. (See urea-formaldehyde)

For Sale By Owner (FSBO):
Some owners choose to sell their own property without the aid of a real estate broker. "For Sale By Owner" properties are often a source of listings when the owner is unsuccessful finding qualified buyers.

Fourteenth Amendment to the United States Constitution (1868):
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. (See Thirteenth Amendment)

Foreign Investment in Real Property Tax Act (FIRPTA):
Enacted by the United States Congress in 1985, the act requires buyers to withhold estimated taxes equal to 10% of the sale price of a property sold or exchanged by a foreign person. The withholdings must be reported and paid to the Internal Revenue Service within 10 days of closing. The act applies to sales of personal residences with prices of $300,000 or more.

foreclosure:
A legal procedure whereby property used as security for a debt is sold to satisfy the debt in the event of default in payment of the mortgage note or default of other terms in the mortgage document. The foreclosure procedure brings the rights of all parties to a conclusion and passes the title in the mortgage property to either the holder of the mortgage or a third party who may purchase the realty at the foreclosure sale, free of all encumbrances affecting the property subsequent to the mortgage. There are three general types of foreclosure proceedings: judicial foreclosure, non-judicial foreclosure and strict foreclosure.

form appraisal report:
Any of the relatively brief standard forms prepared by agencies such as the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association and others for routine property appraisals. Narrative appraisal report: A detailed written presentation of the facts and reasoning behind an appraiser's estimate of value.

four unities:
Four "unities" are required to create a joint tenancy:
1. Unity of possession - all joint tenants holding an undivided right to possession.
2. Unity of interest - all joint tenants holding equal ownership interests.
3. Unity of time - all joint tenants acquiring their interests at the same time.
4. Unity of title - all joint tenants acquiring their interests by the same document.

The four unities are present when the following requirements are met:
- Title is acquired by one deed.
- The deed is executed and delivered at one time.
- The deed conveys equal interests to all of the parties.
- The parties hold undivided possession of the property as joint tenants.

Because the unities must be satisfied, many states require the use of an intermediary when a sole owner wishes to create a joint tenancy with another party(ies). The owner conveys the property to a nominee, or straw man. Then the nominee conveys it back, naming all the parties as joint tenants in the deed. As a result, all the joint tenants acquire title at the same time by one deed.
fractional basis:
Each property in the improvement district is charged a prorated share of the total amount of the special tax assessment. The share is determined either on a fractional basis (four houses may equally share the cost of one streetlight) or on a cost-per-front-foot basis (wider lots incur a greater cost than narrower lots for street paving and curb and sidewalk installation).

fractional section:
A parcel of land less than 160 acres, usually found at the edge of a rectangular survey. Undersized or oversized sections are classified as fractional sections. Fractional sections may occur for a number of reasons. In some areas, for instance, the rectangular survey may have been made by separate crews and gaps less than a section wide remained when the surveys met. Other errors may have resulted from the physical difficulties encountered in the actual survey. For example, part of a section may be submerged in water.

franchise:
1. A privilege granted to conduct certain service businesses, such as a franchise real estate brokerage. 2. The private contractual right to operate a business using a designated trade name and the operating procedures of the parent company (the franchisor). Such firms as Century 21 and Coldwell Banker operate national franchise brokerages.

Franchise Investment Law:
Administered by the California corporations commissioner, the law requires disclosure from the franchisor to the franchisee and is intended to protect prospective purchasers of franchises. (See franchise)

franchise tax:
An income tax, California corporations pay.

fraud:
Any form of deceit, trickery, breach of confidence or misrepresentation by which one party attempts to gain some unfair or dishonest advantage over another. Unlike negligence, fraud is a deceitful practice or material misstatement of a material fact, known to be false, and done with intent to deceive, or with reckless indifference as to its truth, and relied on by the injured party to his or her damage.

Freddie Mac:
(See Federal Home Loan Mortgage Corporation (FHLMC))

freehold estate:
An estate in land in which ownership is for an indeterminate length of time, in contrast to a leasehold estate.

friable:
The breaking down of a substance into tiny filaments and particles. Asbestos is harmful only if it is disturbed or exposed, as often occurs during renovation or remodeling. Asbestos is highly friable. This means that as it ages, asbestos fibers break down easily into tiny filaments and particles. When these particles become airborne, they pose a risk to humans.

friable asbestos:
Any material containing more than one-percent asbestos, and that can be crumbled or reduced to powder by hand pressure. (See asbestos, friable)

frivolous:
Void of significance or reason; of little or no worth, or importance; not worthy of serious notice; trivial; unimportant.

front-end zero:
Under a conventional loan, a borrower may elect to finance all of the mortgage insurance premium, thus incurring no cash obligation for this charge at closing. (See mortgage insurance premium)

front-end qualification:
When qualifying a prospective buyer for financing, the ratio of the borrower's income to monthly debt obligation is a primary consideration. (See back-end qualification, pre-qualify)

front-end ratio:
The ratio of monthly housing cost (PITI) to gross monthly income. (See back-end ratio, PITI)

front footage:
The measurement of a parcel of land by the number of feet of street or road frontage.

fructus industriales:
Corn, wheat and other crops that are produced annually by labor and industry, and not spontaneously. They are referred to in Latin as "fructus industriales." (See emblements)

fully amortized:
Fully amortized mortgages are paid in equal monthly installments, which include interest and amortization of principal, paid over a period of years. The interest is set at a predetermined rate and is charged only on the loan balance. As payments are made, the amount allocated to interest decreases while the amount allocated to principal increases. At the end of the term the mortgage will be paid in full, including interest. No balloon payment is required. (See amortization, balloon payment)

functional obsolescence:
A loss of value to an improvement to real estate arising from functional problems, often caused by age or poor design.

funding fee:
A percentage of the loan amount charged on VA loans to provide for administrative costs. The fee has increased over time and is higher for subsequent use by veterans, reservists and National Guard.

funding letter:
Cover letter prepared by the escrow agent to the lender detailing the documents being forwarded to the lender to complete the borrower's loan and release the loan proceeds to escrow.

future interest:
A person's present right to an interest in real property that will not result in possession or enjoyment until some time in the future, such as a reversion or right of reentry.

future worth:
The compounding increase in the value of money over time.

gap:
A defect in the chain of title of a particular parcel of real estate; a missing document or conveyance that raises doubt as to the present ownership of the land.

Garn-St. Germain Bill:
Or the Depository Institutions Deregulation and Monetary Control Act of 1980 which authorized the deregulation of banks and savings institutions. Allowed savings and loan associations to offer checking-type accounts; to issue credit cards. Established loan loss reserve requirements. A follow-on bill, The Depository Institutions Act of 1982 (also sponsored by Senators Garn and St. Germain), allowed savings and loan associations to have up to 50% of assets in real estate development; 30% of assets in consumer loans and corporate debt; own real estate development companies; and offer money market deposit accounts.

general agent:
One authorized by a principal to perform any and all acts associated with the continued operation of a particular job or a certain business of the principal. The essential feature of a general agency is the continuity of service, such as that provided by a property manager of a large condominium project. Most real estate brokers are treated as special agents. (See agent, special agent)

general contractor:
A licensed construction specialist who enters into a construction contract with a developer or property owner to construct a building or real estate project. The general contractor often negotiates individual contracts with sub-contractors who specialize in various aspects of the building process, such as electricity, drywall and plumbing.

general index:
A county recorder's office index used by title company examiners when searching the chain of title of a property. The examiner uses the index to research all the grantors and grantees in the chain of title. The index lists all the things that apply to a person by name, including liens, judgments and power of attorneys. (See chain of title)

general lien:
The right of a creditor to have all of a debtor's property—both real and personal—sold to satisfy a debt. (See lien)

general partner:
In a limited partnership, the individual or company acquiring, organizing and managing the investment. (See limited partnership)

general partnership:
In a general partnership, all the partners participate in the operation and management of the business and share full liability for business losses and obligations. (See partnership)

general plan:
Every city and county is required to develop a general plan of comprehensive zoning. (See comprehensive zoning)

general real estate tax:
General real estate taxes are levied to fund the operation of the governmental agency that imposes the taxes.

general warranty deed:
A deed in which the grantor fully warrants good clear title to the premises. Used in most real estate deed transfers, a general warranty deed offers the greatest protection of any deed.

geographic farming:
Farming/prospecting an area defined by specific "geographic" boundaries. The best geographic farms are particular subdivisions with similar demographics, such as: the price of homes, the ages of residents, family composition, etc. (See farming, non-geographic farming)

gift deed:
A deed in which the consideration is "love and affection." Because the deed is not supported by valuable consideration, the donee (recipient of the gift) may not be able to enforce against the donor certain promises or agreements contained in the deed.

Ginnie Mae:
(See Government National Mortgage Association (GNMA))

goal setting:
A planning tool where agents establish, in writing, exact short-term, intermediate-term and long-term goals. Goals should be reasonably attainable and progress should be periodically evaluated.

good-faith estimate:
A preliminary accounting of expected closing costs. The Real Estate Settlement Procedures Act (RESPA) requires the lender to promptly give loan applicants a good-faith estimate of closing costs. (See Real Estate Settlement Procedures Act (RESPA))

good funds:
Cash, cashier's checks and personal checks that have cleared the bank.

goodwill:
An intangible, salable asset arising from the reputation of a business; the expectation of continued public patronage; including other intangible assets like trade name and going concern value. When a business is sold, the sales price often reflects its goodwill value.

Government National Mortgage Association (GNMA):
A federal agency created in 1968 when the Federal National Mortgage association (FNMA) was partitioned into two separate corporations. "Ginnie Mae," as it is popularly called, is a corporation without capital stock and is a division of HUD. The GNMA operates the special assistance aspects of federally aided housing programs and has the management and liquidating functions of the old FNMA. The FNMA is authorized to issue and sell securities backed by a portion of its mortgage portfolio, with the GNMA guaranteeing payment on such securities.

government check:
The 24-mile-square parcels composed of 16 townships in the rectangular (government) survey system of legal description.

government lot:
Fractional sections in the rectangular (government) survey system that are less than one quarter-section in area. Areas smaller than full quarter-sections were numbered and designated as government lots by surveyors. These lots can be created by the curvature of the earth; by land bordering or surrounding large bodies of water; or by artificial state borders.

government survey system:
A system of land description that applies to much of the land in the United States, particularly in the western states; also called the geodetic or rectangular survey system. It is based on pairs of principal meridians and base lines, with each pair governing the surveys in a designated area. (See legal description)

grace period:
An agreed upon time after an obligation is past due when a party can perform without being considered in default.

graduated commission splits:
Other companies have graduated commission splits based on a salesperson's achieving specified production goals. For instance, a broker might agree to split commissions 50/50 up to a $25,000 salesperson's share; 60/40 for shares from $25,000 to $30,000; and so on. Commission splits as generous as 80/20 or 90/10 are possible, however, particularly for high producers.

graduated-payment mortgage (GPM):
A loan in which the monthly principal and interest payments increase by a certain percentage each year for a certain number of years and then level off for the remaining loan term.

grandfather clause:
An expression that conveys the concept that something that was once permissible continues to be so, despite changes in the law.

grantee:
The person who receives a conveyance of real property from a grantor. The grantee must be a person, either natural or otherwise (e.g. corporation, public agency, partnership, etc.) existing at the time of the conveyance and is capable of taking title.

grant deed:
A type of deed in which the grantor warrants to the grantee, that he has not previously conveyed the estate, that he has not encumbered the property (except as noted in the deed) and that he will convey any title to the property he may later acquire.

granting clause:
Words in a deed of conveyance that state the grantor's intention to convey the property at the present time. This clause is generally worded as "convey and warrant," "grant," "grant, bargain and sell" or the like.

grantor:
The person transferring title, or an interest in real property. A grantor must be competent to convey title. A corporate grantor must have legal existence and be authorized to hold and convey title to real property. The grantor must be clearly identified in the deed.

gross income multiplier:
A figure used as a multiplier of the gross annual income of a property to produce an estimate of the property's value.

gross operating income:
The result when other income is added to rental income. (See other income, rental income)

gross lease:
A lease of property according to which a landlord pays all property charges regularly incurred through ownership, such as repairs, taxes, insurance and operating expenses. Most residential leases are gross leases.

gross rental income:
Gross receipts for the rental of income property.

gross rent multiplier (GRM):
The figure used as a multiplier of the gross monthly income of a property to produce an estimate of the property's value.

gross scheduled income:
The maximum amount of rent if the property were 100 percent occupied.

ground lease:
A lease of land alone, sometimes secured by improvements placed on the land. Also called a land lease, the ground lease is a means used to separate the ownership of the land from the ownership of the buildings and improvements constructed on the land.

ground rents:
A perpetual lease where the landowner retains title and the lessee receives the right of possession and use. Used predominantly in Maryland and Pennsylvania prior to 1885.

groundwater:
Water under the earth's surface, regardless of the geological structure in which the water is standing or flowing. It does not include water in underground streams that have identifiable banks and beds.

growing-equity mortgage (GEM):
A loan in which the monthly payments increase annually, with the increased amount being used to reduce directly the principal balance outstanding and thus shorten the overall term of the loan.

guardian:
A person, appointed by court or by will, given the lawful custody and care of the person or property of another (called a ward). The ward might be a minor, an insane person or even a spendthrift. The guardian may, upon court approval and without necessity of obtaining a real estate license, sell the ward's property if it is in the best interest of the ward.

habendum clause
That part of a deed beginning with the words "to have and to hold," following the grantor is conveying.
habitability
Fit for human habitation. (See implied warranty)

handicap:
As defined in the fair housing act, a physical or mental impairment that substantially limits one or more major life activities (walking, seeing, learning, working) or a record of having such an impairment or being regarded as having such impairment. Handicap does not include current, illegal use or addiction to a controlled substance. (See disability)

hard money loan:
A loan made in cash by a non-institutional lender.

hazardous waste:
A subset of solid wastes that pose substantial or potential threats to public health or the environment and meet any of the following criteria:
• Is specifically listed as a hazardous waste by EPA;
• Exhibits one or more of the characteristics of hazardous waster (ignitability, corrosiveness, reactivity, and/or toxicity;
• Is generated by the treatment of hazardous waste or is contained in a hazardous waste.
Toxic waste materials jeopardizing the value of real estate. (See asbestos, Environmental Protection Agency, underground storage tanks, urea-formaldehyde)

hazardous waste disclosure:
California Health and Safety Code (§ 25359.7(a)) requires owners of nonresidential properties to disclose to prospective buyers or lessees the existence of hazardous substances on or beneath a property. Both residential and nonresidential tenants are required to notify landlords if hazardous substances have been released on a property.

heat absorbing glazings:
A technology that uses heat-absorbing glazing with tinted coatings to absorb solar heat gain through windows. This approach does allow some light to pass through the tinted windows.

heat exchanger:
Heat exchange is the method by which the unwanted heat is removed from a system. A heat exchanger is a device by which energy (in the form of heat) is transferred from one fluid or gas to another across a solid surface.

heir:
A person who inherits under a will or a person who succeeds to property by the state laws of descent if the decedent dies intestate. (See intestate)

hereditaments:
Property capable of being inherited.

HERS score:
A number between 0-100 that is used to designate the energy efficiency of a home compared to guidelines established by the Home Energy Rating System Council. The higher the score (number), the greater the energy efficiency of the residence. (See Home Energy Rating System (HERS))

heterogeneity:
The quality or state of being heterogeneous; different in kind; unlike; incongruous.

highest and best use:
The possible use of a property that would produce the greatest net income and thereby develop the highest value.

high-rise developments:
Sometimes called mixed-use developments (MUDs), these combine office space, stores, theaters and apartment units in a single vertical community. MUDs usually are self-contained and offer laundry facilities, restaurants, food stores, valet shops, beauty parlors, barbershops, swimming pools and other attractive and convenient features.

hold-harmless clause:
A contract provision whereby one party agrees to indemnify and protect the other party from any injuries or lawsuits arising out of the particular transaction. Such clauses are usually found in leases in which the lessee agrees to "indemnify, defend and hold harmless" the lessor from claims and suits of third persons for damage resulting from the lessee's negligence on the leased premises.

holdback:
Funds not released under a construction loan agreement due to a failure to lease to the required minimum.

holder in due course:
The holder of a negotiable instrument (check or note) purchased for value when the instrument appears complete and regular on its face; is taken before its due date and without notice of previous dishonor; and the holder has no notice of any defects in title of the transferor.

holdover tenancy:
A tenancy whereby a lessee retains possession of leased property after the lease has expired and the landlord, by continuing to accept rent, agrees to the tenant's continued occupancy as defined by state law.

holographic will:
A will that is written, dated and signed in the testator's handwriting, but not witnessed. Some states consider a holographic will to be valid even though it was not witnessed, presumably on the theory that the handwriting can be analyzed to verify authenticity and demonstrate competency.

home equity loan:
A loan (sometimes called a line of credit) under which a property owner uses his or her residence as collateral and can then draw funds up to a prearranged amount against the property.

Home Energy Rating System (HERS):
A standardized system for rating the energy efficiency of residential buildings. (See HERS score)

home expense-to-income ratio:
A ratio expressed as a percentage that is used by the mortgage industry to determine a borrower's qualification for a loan. It is calculated by dividing the borrower's total monthly housing expenses by his or her gross monthly income.

Home Mortgage Disclosure Act (HMDA):
Enacted by Congress in 1975 and implemented by the Federal Reserve Board's Regulation C, a federal law that requires lenders with federally related loans to disclose to the Federal Reserve the number of loan applications and loans made in different parts of their service areas; designed to eliminate the discriminatory practice of redlining. (See Federal Reserve, redlining)

homeowner instructions:
Instructions given to a property owner by a listing broker that advise the owner of cleaning and repairs that will improve the appearance and increase the value of a listed property.

homeowner's association:
A nonprofit association of homeowners organized pursuant to a declaration of restrictions or protective covenants for a subdivision, PUD or condominium.

Homeowner's Guide to Earthquake Safety:
A document produced by the State of California Seismic Safety Commission intended to help inform homeowners on earthquake safety issues in homes.

homeowner's insurance policy:
A standardized package insurance policy that covers a residential real estate owner against financial loss from fire, theft, public liability and other common risks. (See basic form homeowner's policy and broad form homeowner's policy)

homestead:
A statutory exemption of real property used as a home from the claims of certain creditors and judgments up to a specified amount; requires a declaration of homestead be completed and filed with the county recorder's office.

homestead exemption:
The amount of homestead protection from unsecured creditors—$50,000 for single persons, $75,000 for families, $100,000 for persons 65 years of age, and $100,000 for disabled persons unable to work.

home warranty insurance policy:
An insurance policy that insures against plumbing, electrical, heating, and major appliance problems for the term of the policy.

homogeneous:
Composed of parts all of the same kind or of the same kind or nature; essentially alike.

housing accommodation:
Housing accommodations are any improved or unimproved real property, or portion thereof, used as the home, residence, or sleeping place of one or more human beings. It does not include accommodations operated by non-profit religious, fraternal, or charitable associations/corporations, provided such accommodations are used in the furtherance of the primary purposes for which the association/corporation was formed.

housing affordability index:
A measure of the percentage of the United States population who can afford to purchase a home; based on average income and average home price.

Housing Financial Discrimination Act of 1977 (Holden Act):
The Act prohibits financial institutions (banks, savings & loans, or other financial institutions, including mortgage loan brokers, mortgage bankers and public agencies) from engaging in discriminatory loan practices.

household waste (also referred to as domestic waste):
Solid waste, composed of garbage and rubbish, which normally originates from residential, private households, or apartment buildings. Domestic waste may contain a significant amount of toxic or hazardous waste from improperly discarded pesticides, paints, batteries, and cleaners.

HUD:
A federal cabinet department officially known as the U.S. Department of Housing and Urban Development, HUD is active in national housing programs. Among its many programs are urban renewal, public housing, model cities, rehabilitation loans, FHA-subsidy programs and water and sewer grants. The Office of Interstate Land Sales Registration is under HUD's jurisdiction, as are the Federal Housing Administration (FHA) and the Government National Mortgage Association (GNMA).

HUD-1 settlement statement:
At closing, in conformance with Real Estate Settlement Procedures Act (RESPA) regulations, a HUD-1 settlement statement is prepared showing the exact closing costs to buyer and seller. (See RESPA)

HVAC:
The acronym for Heating, Ventilation, and Air Conditioning.

hybrid financing:
Mixing forms of conventional financing to create a new approach. (See convertible loan, participation mortgage)

hypothecate:
To pledge real or personal property as security for a loan or other obligation without surrendering possession of the property. The borrower retains the rights of control and possession, and the lender secures an underlying equitable right in the pledged property.

identification period:
The period during which the exchanger must identify replacement property in a 1031 tax deferred exchange. The identification period starts on the day the exchanger transfers the first relinquished property and ends at midnight on the 45th day thereafter.

illusory contract:
An apparent contract that is not a contract because the parties have not agreed to be bound.

implied agency:
An agency agreement created by the actions of the parties, and not a stated (written or verbal) agreement. (See express agency)

implied agreement/contract:
A contract under which the agreement of the parties is demonstrated by their acts and conduct.

implied easement:
When the owner of two or more adjacent properties sells a part thereof, he or she grants by implication all those apparent and visible easements which are necessary for the reasonable use of the property granted. (See easement)

implied authority:
The authority of an agent to perform acts which are reasonably necessary to accomplish the purpose of the agency.

implied warranty:
A theory in landlord/tenant law in which the landlord renting residential property implies quiet enjoyment of the property or that the property is habitable. (See habitability, quiet enjoyment)

impound account:
A trust account established to set aside funds for future needs relating to a parcel of real property. Many mortgage lenders require an impound account to cover future payments for taxes, assessments, private mortgage insurance and insurance in order to protect their security from defaults and tax liens. In the case of FHA loans, many lenders require a tax reserve of six months and an insurance reserve of one year. When the property is sold and the buyer assumes the seller's mortgage, the lender does not usually return the escrow account balance to the owner. The sum remains with the lender, and it is the responsibility of the buyer and seller to prorate the balance between

them. Impound accounts are required for FHA loans, and although VA regulations do not require an impound account for taxes and insurance premiums on GI loans, many lenders customarily require that such accounts be established and maintained. Under RESPA, the amount of reserves in the impound account is limited to one-sixth of the estimated amount of taxes and insurance that will become due in the 12-month period beginning at settlement. Sometimes, part of the purchase price due the seller may be impounded or put aside by escrow to meet the post-closing expense of clearing title or repairing the structure. The issue of use of interest earned on reserve funds is frequently debated. Typically, lenders do not pay interest to borrowers on money held as reserves.

improvement:
1) Any structure, usually privately owned, erected on a site to enhance the value of the property--for example, building a fence or a driveway. 2) A publicly owned structure added to or benefiting land, such as a curb, sidewalk, street or sewer.

incentive zoning:
Zoning that offers incentives to developers, such as retail shops on the first floor of multistory office buildings if a plaza for public use is included. (See zoning)
income and expense report:
A financial report generated by a property manager that details the income and expenses from a property and the amount remitted to the owner.

income approach:
The process of estimating the value of an income-producing property through capitalization of the annual net income expected to be produced by the property during its remaining useful life. (See appraisal)
income ratio:
The relationship between a person's total income and the amount needed to make one month's mortgage payment.

incorporeal right:
A non-possessory right in real estate; for example, an easement or a right of-way.

increasing and diminishing returns:
The addition of more improvements to land and structures which increases value only to the assets' maximum value. Beyond that point, additional improvements no longer affect a property's value. As long as money spent on improvements produces an increase in income or value, the law of increasing returns applies. At the point where additional improvements do not increase income or value, the law of diminishing returns applies.

independent:
A brokerage firm operating on-its-own without an affiliation with a regional or national franchise.

independent contractor:
One who is retained to perform a certain act, but who is subject to the control and direction of another only as to the end result and not as to how he or she performs the act. The critical feature, and what distinguishes an independent contractor from an employee or agent, is the degree of control the employer has over such a person's activities.
Because many licensing laws make brokers responsible for the activities of their salespeople, even if they are independent contractors, many brokers want to exercise a high degree of control over such activities. However, the state licensing laws do not preclude the establishment of independent contractor status for tax purposes, provided the relationship is carefully structured to avoid possible classification of such a person as an employee. A broker should always consult a tax attorney concerning such matters. (See employee)

index:
Used to set interest rates, such as the six month Treasury bill rate. (See index rate)

index lease:
A lease containing an escalation clause that is tied to an index. (See lease)

index method:
The appraisal method of estimating building costs by multiplying the original cost of the property by a percentage factor to adjust for current construction costs. (See appraisal)

index rate:
The rate to which the interest rate on an adjustable rate loan is tied (see adjustable-rate mortgage). At set adjustment periods, the borrower's interest rate will move up or down as the index rate changes. Four indices are most commonly used:
- Six-Month Certificate Of Deposit (CD) Spot Index—This index is the weekly average of the interest rates paid by institutions on negotiable six-month certificates of deposit. Because it reflects every blip and swing of the market, it can change quickly.
- One-Year Treasury Spot Index—This index is the weekly average interest paid by the U.S. Government on funds borrowed for one year. It changes more slowly than the CD index.
- Treasury Twelve-Month Average Index—This index is the yearly average of the monthly interest paid by the U.S. Government on actively traded securities. It changes more slowly than either of the preceding indices.
- Eleventh District Cost-of-Funds Index—This index is the monthly weighted average cost of what banks on the West Coast pay for their various deposits and for the advances they get through the Federal Home Loan Bank Board of San Francisco. It moves at a tortoise's pace compared to the other indices.

indirect management costs:
Expenses in a budget of a real estate agency or parent company the are partially attributable to the operation of a management department. (See direct management costs)

Individual Retirement Account (IRA):
An Individual Retirement Account (IRA) is an IRS-approved way for any working individual to set aside savings for retirement each year in a tax-deferred account. The individual is not taxed for accumulated earnings in an IRA until benefits are withdrawn (usually after retirement when the person may be in a lower income tax bracket).

indoor air:
Breathing air inside a habitable structure, often highly polluted because of lack of exchange with fresh oxygen from outdoors. Solvents, smoke, paints, furniture glues, carpet padding, and other synthetic chemicals trapped inside contribute to an often unhealthy environment.

industrial broker:
A real estate broker who specializes in brokering industrial real estate.

industrial development bonds:
A bond that allows private investors to finance apartment and commercial development by using tax-exempt, inexpensive funds. TRA '86 imposed severe restrictions on this financing technique. (See TRA '86)

industrial property/parks:
A property primarily used for the production or manufacture of goods or products.

industrial revenue bonds:
Bonds issued for the development of an industrial park or the construction of a building for lease to commercial tenants.

inflation:
The gradual reduction of the purchasing power of the dollar, usually related directly to the increases in the money supply by the federal government.

ingress:
A way to enter a property - access. The opposite of egress.

inheritance taxes:
An "estate" tax imposed by the state on heirs for their right to inherit property. The tax is not levied on the property itself, but rather on the heirs for their right to acquire the property by succession or devise. Therefore, the rates or the deductions may vary depending on the degree of the relationship.

At the time of a person's death, a statutory lien usually attaches to all real property interests owned by the decedent, which lien remains in effect until the inheritance taxes have been paid and a "tax clearance" is issued. This applies even if property was held in joint tenancy with right of survivorship. (See estate taxes, statutory lien)

in-house sale:
A sale in which the listing broker is the only broker in the transaction; there is no outside broker involved as in a cooperative sale. Either the listing salesperson finds the buyer, or another salesperson working for the listing broker finds the buyer. If the buyer is a client of the broker, the issue of dual agency arises.

initial rate:
The initial rate charged to a borrower for the first adjustment period of an adjustable rate mortgage. (See adjustable rate mortgage (ARMs))

injunction:
A legal action whereby a court issues a writ that forbids a party defendant from doing some act or compels the defendant to perform an act. An injunction requires the person to whom it is directed to refrain from doing a particular thing, such as violating deed restrictions or house rules. (See restraining order)

installment contract:
A contract for the sale of real estate whereby the purchase price is paid in periodic installments by the purchaser, who is in possession of the property even though title is retained by the seller until a future date, which may not be until final payment. Also called a contract for deed or articles of agreement for warranty deed.

installment note:
A promissory note with payments of principal and interest made at designated intervals. (See promissory note)

installment sale:
An income tax method of reporting gain received from the sale of real estate when the sales price is paid in installments, i.e., where at least one payment is to be received after the close of the taxable year in which the sale occurs. No down payment is required in an installment sale.

If certain conditions are met the taxpayer can save on taxes by postponing the receipt of an installment and the reporting of such income to future years when his or her other income may be lower. Thus, a taxpayer can avoid paying the entire tax on the gain in the year of sale. (See realized capital gains)
Institute of Real Estate Management (IREM):
A national organization concerned with professional management of real estate. The professional designation conferred by IREM is ARM, Accredited Resident Manager.

institutional lenders:
Savings and loan associations, banks, life insurance companies and mutual savings banks. (See non-institutional lenders, savings and loan associations)

insurance companies:
Insurance companies accumulate large sums of money from the premiums paid by their policyholders. While part of this money is held in reserve to satisfy claims and cover operating expenses, much of it is free to be invested in profit-earning enterprises, such as long term real estate loans. Although insurance companies are considered primary lenders, they tend to invest their money in large, long-term loans that finance commercial and industrial properties rather than single-family home mortgages.

interest:
A charge made by a lender for the use of money.

interest factor:
In a table, numbers derived from formulas used to determine the present or future value of money. Interest factors are a function of interest rate and time, and can be derived for any combination of the two. (See future worth)

interest-only:
A term loan calling for payments of interest only, not to include any amount for principal. (See term loan)

intermediate theory:
Some states have adopted an intermediate theory of mortgage based on the principles of title theory, but requiring the mortgagee (lender) to foreclose to obtain legal title as is necessary in lien theory. (See lien theory, title theory)

interplead:
A judicial proceeding by which, when two parties make the same claim against a third party, the rightful claimant is determined. As such, he could require them to litigate their problems between themselves, instead of litigating it with him.

interpleaded:
A judicial proceeding where an innocent third party, such as an escrow agent or broker, can deposit with the court property or money that he or she holds and that is subject to adverse claims. The court can then distribute it to the rightful claimant.

interim financing:
A short-term loan usually made during the construction phase of a building project (in this case often referred to as a construction loan).

interim occupancy agreement:
An agreement allowing a buyer to take possession of a property as a tenant prior to close of escrow.

Internal Rate of Return (IRR):
A multi-year analysis of rate of return similar to Financial Management Rate of Return (FMRR). Used by investors in medium and large properties (occasionally on small properties). Multi-year cash flows and net sale proceeds are analyzed using discounted cash flow techniques to solve for the Financial Management Rate of Return (FMRR). Errs and FMRRs are the best rate of return indicators, because they require an analysis of the investor's entire holding period, not just a single year. The discounting process takes into consideration the time value of money and thereby produces a more realistic rate of return. (See Financial Management Rate of Return (FMRR))

Interstate Land Sales Full Disclosure Act:
A federal law, enacted in 1968, that regulates interstate land sales by requiring registration of real property with the Office of Interstate Land Sales Registration (OILSR) of the U.S. Department of Housing and Urban Development (HUD). The main purpose of the act is to require disclosure of full and accurate information regarding the property to prospective buyers before they decide to buy. To comply with the act, the developer must prepare a statement of record and register the subdivision with HUD. After the registration is effective, the developer must deliver to the purchaser (and obtain a receipt for) the property report before execution of the purchase agreement. The developer must give prospective buyers a cooling-off period of seven calendar days to consider the material contained in the property report. Many large subdivisions are registered with HUD because HUD regulations apply if the developer uses the mails or any other means of interstate commerce in the sale of lots.

There is an intrastate exemption to the regulations of the act that is limited in scope and very narrowly construed. If the subdivision contains fewer than 300 lots that are sold or leased to residents of the same standard metropolitan statistical area (SMSA) in which the subdivision is located (leeway is given so that 5 percent or less of sales in any one year may be made to residents of another state), the subdivide may apply for the exemption. Some of the more common exemptions from HUD filing requirements are:
- Subdivisions in which there are fewer than 100 lots. If there are fewer than 25 lots, there is a total exemption from the act, not just from the registration and disclosure requirements.
- Subdivisions in which all the lots are 20 acres or larger (inclusive of easements).
- Subdivisions in which the land is improved by a building or in which there is a contract obligating the seller to erect such a building within a period of two years.
- Bulk sales of lots to another developer.
- Sale to a contiguous owner.
- Fewer than 12 sales per year.
- Sales to a governmental agency.
- Sales of a single-family residential subdivision when the subdivision meets local code standards, title passes within 180 days after the contract and the seller refrains from promotional techniques such as gifts and dinner programs.

Note that condominium units are considered by HUD to be lots "in the sky," and thus the developer may have to register a condominium with HUD as well as the local regulatory agency. The risk of noncompliance is greatest in those larger projects in which the developer is building in separate increments but promotes the use of common facilities that may not be completed for more than two years (such as a golf course).

A developer need not register with HUD a condominium in which each unit has been completed before sale. In this regard, the term completed means habitable and ready for occupancy. The developer can also avoid registration (and thus not be required to furnish buyers with a property report) if the unit is sold under a contract that obligates the seller to complete construction of the development within two years following the sale, as long as construction is not delayed by conditions beyond the developer's control. Also, the developer need not give a prospective buyer a HUD property report before the buyer signs a reservation, only before he or she signs a contract to buy.

A registered subdivider who sells on an installment contract must refund any payments over 15 percent of the purchase price (excluding interest owed) if the purchaser defaults on the contract. This requirement can be avoided if the contract requires the subdivider to deliver legal title within 180 days after the execution of the contract.

The three-year statute of limitations for fraud does not begin to run until discovery of the fraud is made or should have been made.

Note that even though a particular subdivider or subdivision may be exempt from registration under the law (e.g., a 60-lot subdivision), it is still unlawful to make false statements regarding such sales by means of interstate commerce. However, if there are fewer than 25 lots, then the subdivider is not subject to any provision of the act.

intestate:
The condition of a property owner who dies without leaving a valid will. Title to the property will pass to the decedent's heirs as provided in the state law of descent.

intestate succession:
A succession of a property to the heirs when a person dies without a will.

intrinsic value:
An appraisal term referring to the value created by a person's personal preferences for a particular type of property.

inure:
1. to come into use; take or have effect. 2. to become beneficial or advantageous.

inverse condemnation:
A property owner forcing a government to take a property by eminent domain when that government's actions resulted in the owner's inability to use the property. (See condemnation, eminent domain)

investment:
Money directed toward the purchase, improvement and development of an asset in expectation of income or profits.

investment group financing:
Large real estate projects, such as high-rise apartment buildings, office complexes and shopping centers, are often financed as joint ventures through group financing arrangements like syndicates, limited partnerships and real estate investment trusts. (See equity trust)

investment property rule:
The Internal Revenue Code specifies that no gain or loss should be recognized on the exchange of property held for productive use in trade or business or for investment if the property is exchanged for property of like kind that is to be held for productive use in trade or business or for investment. (See like kind)

involuntary lien:
A lien placed on property without the consent of the property owner. (See lien).

IRS tax lien:
A federal tax lien, or Internal Revenue Service (IRS) tax lien, results from a person's failure to pay any portion of federal taxes, such as income and withholding taxes. A federal tax lien is a general, statutory, involuntary lien on all real and personal property held by the delinquent taxpayer. Its priority, however, is based on the date of filing or recording; it does not supersede previously recorded liens. (See lien)

joint and several liability:
A situation when more than one party is liable for repayment of a debt or obligation. A creditor can obtain compensation from one or more parties, either individually or jointly. (See liability)

joint protection policy:
A title insurance policy insuring the interest of both owner and lender.

joint tenancy:
An estate or unit of interest in real estate that is owned by two or more natural persons with rights of survivorship. The basic idea of a joint tenancy is unity of ownership; title is held as though all owners collectively constituted one person, a fictitious entity. The death of one joint tenant does not destroy the owning unit--it only reduces by one the number of persons who jointly own the unit. The remaining joint tenants receive the deceased tenant's interest by the right of survivorship. Thus, the decedent's interest cannot be transferred by will or descent. As each successive joint tenant dies, the remaining tenants acquire the interest of the deceased. The last survivor takes title in severalty, fully inheritable at his or her death by heirs and devisees. (See four unities)

joint venture:
The joining of two or more people to conduct a specific business enterprise. A joint venture is similar to a partnership in that it must be created by agreement between the parties to share in the losses and profits of the venture. It is unlike a partnership in that the joint venture is for one specific project only, rather than for a continuing business relationship. (See partnership)

judgment:
The formal decision of a court on the respective rights and claims of the parties to an action or suit. A judgment that has been entered and recorded with the county recorder usually becomes a general lien on the property of the defendant.

judgment decree:
Specifies the award made by the court in a civil case.

judgment lien:
A general lien on the property of a judgment debtor, giving the holder of the judgment a right to levy the property to satisfy the debt. (See general lien)

judicial foreclosure:
A method of foreclosing on real property by means of a court-supervised sale. In a judicial foreclosure, there is an appraisal, after which the court determines an upset price below which no bids to purchase will be accepted. (See non-judicial foreclosure, strict foreclosure)

judicial precedent:
In law, the requirements established by prior court decisions.

jumbo loan:
A "jumbo" loan is any loan that exceeds the underwriting guidelines for Fannie Mae/Freddie Mac maximum loan limits ($240,000 as of January 1999). (See Non-conforming loan, Fannie Mae, Freddie Mac)

junior lien/mortgage:
An obligation, such as a second mortgage, that is subordinate in right or lien priority to an existing lien (senior loan) on the same real estate. (See senior lien/loan)

junction box:
A rectangular metal or plastic box that provides a nexis (junction) for a home's electrical wiring system. Protects the wiring from the elements.

kickback:
Payment made to someone for referral of a customer or business. Unlike a commission, a kickback is made without the customer's knowledge; thus, the referral could have been made without the customer's best interest at heart.

kiosk:
A kiosk is a freestanding structure (open sides, usually multi sided) located in a shopping center or mall from which merchandise is sold. A multi-sided structure found in a shopping mall or center.

laches:
An equitable doctrine used by courts to bar a legal claim or prevent the assertion of a right because of undue delay or failure to assert the claim or right.

land:
The earth's surface, extending downward to the center of the earth and upward infinitely into space, including things permanently attached by nature, such as trees and water.

land contract:
A land contract is a real property sales contract. (See contract for deed)

landfill:
A landfill is an enormous hole, either excavated for the purpose of waste disposal or left over from a surface mining operation. The hole is lined with clay or a synthetic lining to prevent leakage of waste into the surrounding water supply. Waste is laid on the liner at the bottom of the landfill and a layer of topsoil is then compacted into the waste. The layering is repeated again and again until the landfill reaches its full capacity.

landlord:
The lessor or the owner of leased premises. The landlord retains a reversionary interest in the property, so that when the lease ends the property will revert to the landlord. (See lease, lessor, lessee)

land trusts:
A few states permit the creation of land trusts, in which real estate is the only asset. As in all trusts, the title to the property is conveyed to a trustee, and the beneficial interest belongs to the beneficiary. In the case of land trusts, however, the beneficiary is usually also the trustor. While the beneficial interest is personal property, the beneficiary retains management and control of the real property and has the right of possession and the right to any income or proceeds from its sale.
One of the distinguishing characteristics of a land trust is that the public records usually do not name the beneficiary. A land trust may be used for secrecy when assembling separate parcels. There are other benefits as well. A beneficial interest can be transferred by assignment, making the formalities of a deed unnecessary. The beneficial interest in property can be pledged as security for a loan without having a mortgage recorded. Because the beneficiary's interest is personal, it passes at the beneficiary's death under the laws of the state in which the beneficiary lived. If the deceased owned property in several states, additional probate costs and inheritance taxes can be avoided.

latent defect:
A hidden structural defect that would not be discovered by ordinary inspection and that threatens the property's soundness or the safety of its inhabitants. Some states impose on sellers and licensees a duty to inspect for and disclose latent defects. Buyers have been able to either rescind the sales contract or receive damages when a seller fails to reveal known latent defects. The courts have also decided in favor of the buyer when the seller neglected to reveal violations of zoning or building codes.

lateral support:
The right to have land supported by the adjoining land or soil beneath. (See subjacent support)

latitude:
Distance on the earth's surface, measured northward or southward from the equator measured in degrees of the meridian; angular distance reckoned on a meridian. (See longitude, meridian)

law of agency:
A fiduciary relationship is created under the law of agency when a property owner, as the principal, executes a listing agreement or management contract authorizing a licensed real estate broker to be his or her agent. (See agent, fiduciary)

leach:
Water that collects contaminants as it trickles through wastes, pesticides, or fertilizers. Leaching may occur in farming areas, feedlots, and landfills, and may result in hazardous substances entering surface water, ground water, or soil.

lead:
Lead is an element that was once used as a pigment and drying agent in paint. An elevated level of lead in the body can cause serious damage to the brain, nervous system, kidneys and red blood cells. The degree of harm is related to the amount of exposure and the age at which a person is exposed. The Federal government estimates that lead is present in about 75 percent of all private homes in the United States built before 1978.

lease:
An agreement, written or unwritten, transferring the right to exclusive possession and use of real estate for a definite period of time. To create a valid lease, the lessor must retain a reversionary right; that is, the lessor (landlord) must grant the right of possession to the lessee (tenant) but retain the right to retake possession after the lease term has expired. (See landlord, tenant)

leasehold estate:
A tenant's right to occupy real estate during the term of a lease; a personal property interest.

leasehold lending:
Loans on a leased property with satisfaction dates usually 10 to 20 years prior to the expiration of the lease.

lease option:
A lease under which the tenant has the right to purchase the property either during the lease term or at its end.

lease purchase:
The purchase of real property, the consummation of which is preceded by a lease, usually long-term. Typically done for tax or financing purposes.

leasing agent:
Real estate salespeople who specialize in leasing rental properties. Skilled at telephone techniques, on-site customer qualifying and closing.

legacy:
A disposition of money or personal property by will.

legal description:
A description of a specific parcel of real estate complete enough for an independent surveyor to locate and identify it. (See government survey system, lot and block system, metes and bounds system)

legally competent parties:
People who are recognized by law as being able to contract with others; those of legal age and sound mind.

legal life estate:
A legal life estate is not created voluntarily by an owner. Rather, it is a form of life estate established by state law. It becomes effective automatically when certain events occur.

legal title:
(See fee simple)

legatee:
A person who receives money or personal property under a will.

lender's escrow instructions:
A lender's written instructions to the escrow company stating the conditions which must be met before the deed of trust can be recorded. (See escrow instructions)

lessee:
The person to whom property is rented or leased; called a tenant in most residential leases. (See tenant)

lessor:
The person who rents or leases property to another. In residential leasing, he or she is often referred to as a landlord. (See landlord)

leverage:
Using someone else's money to purchase a property. Refers to the ability to use the investment as collateral for a loan.

levy:
To assess, seize or collect. To levy a tax is to assess a property and set the rate of taxation. To levy an execution is to officially seize the property of a person in order to satisfy an obligation.

liability:
1. Legal responsibility for an act. 2. A debt. (See joint and several liability, retroactive liability, strict liability)

liability coverage:
Insurance coverage for injuries or losses sustained by the public when on an individual's property.

license:
1. A privilege or right granted to a person by a state to operate as a real estate broker or salesperson. 2. The revocable permission for a temporary use of land—a personal right that cannot be sold.

lien:
A charge or claim that one person (lienor) has on the property of another (lienee) as security for a debt or obligation. (See general lien, involuntary lien, mechanic's lien, statutory lien, tax lien, voluntary lien)

lien theory:
Some states interpret a mortgage as being purely a lien on real property. The mortgagee thus has no right of possession but must foreclose the lien and sell the property if the mortgagor defaults.

lien waiver:
Documents signed by subcontractors and suppliers, indicating they have received payment in full.

life cycle costing:
In property management, comparing one type of equipment to another based on both purchase cost and operating cost over its expected useful lifetime.

life estate:
Any estate in real or personal property that is limited in duration to the life of its owner or the life of some other designated person. Although classified as a freehold estate because it is a possessory estate of indefinite duration, a life estate is not an estate of inheritance. For example, Bob Smith conveys his home to his son John and reserves a life estate for himself. Bob (the life tenant) has a life estate, and Hohn has a reversionary interest in the property. When Bob Smith dies, the fee simple property reverts to John. (See freehold estate)

life tenant:
A person in possession of a life estate.

lifting clause:
A provision in a junior mortgage that allows the underlying senior loan to be replaced or refinanced so long as the amount of the new senior loan does not exceed the amount of the first lien outstanding at the time the junior loan was made. (See junior mortgage, senior loan, subordination agreement)

like kind:
A term relating to the nature of a property rather than its quality or quantity. Only like kind properties qualify for a real estate exchange and the resulting tax benefit. (See exchange)

limited liability company (LLC):
LLCs are a relatively recent form of business organization. An LLC combines the most attractive features of limited partnerships and corporations. The members of an LLC enjoy the limited liability offered by a corporate form of ownership and the tax advantages of a partnership. In addition, the LLC offers flexible management structures without the complicated requirements of S corporations or the restrictions of limited partnerships. The structure and methods of establishing a new LLC, or of converting an existing entity to the LLC form, vary from state to state. (See corporation, partnership)

limited partnership:
Consists of one or more general partners as well as limited partners. The business is administered by the general partners and funded, for the most part, by limited or silent partners. Each limited partner can be held liable for business losses only to the extent of his or her investment. (See general partner, partnership, passive income)

line of credit:
An amount of money stipulated by a commercial bank to an active customer on an annual basis. The balance normally must be brought to zero on an agreed upon regular date. (See commercial bank)

liquidated damages:
An amount predetermined and agreed by the parties to an agreement as the total amount of compensation an injured party should receive if the other party breaches a specified part of the contract. (See damages)

liquefaction:
A phenomenon which occurs during an earthquake whereby the ground/soil turns into a highly unstable, jelly-like substance.

liquidity:
Refers to the time it takes to convert an asset to cash that is a reflection of its market value. (See market value)

lis pendens:
A recorded legal document that gives constructive notice that an action affecting a particular piece of property has been filed in a state or federal court. Lis pendens is Latin for "action pending' and is in the nature of a "quasi lien." A person who subsequently acquires an interest in that property takes it subject to any judgment that may be entered; that is, a purchaser pending a lawsuit is bound by the result of the lawsuit.

listing agreement:
A written employment agreement between a property owner and a real estate broker authorizing the broker to find a buyer or a tenant for certain real property. Listing can take the form of open listings, net listings, exclusive-agency listings, or exclusive-right-to-sell listings. The most common form is the exclusive-right-to-sell listing. (See exclusive-agency listings, exclusive-right-to-sell listing, net listings, open listings)

listing broker:
The broker in a multiple-listing situation from whose office a listing agreement is initiated, as opposed to the cooperating broker, from whose office negotiations leading up to a sale are initiated. The listing broker and the cooperating broker may be the same person.

listing presentation manual:
Used by real estate brokerages to make presentations to listing prospects. A visual aid used in combination with a verbal presentation made by a real estate agent.

littoral rights:
The rights of a landowner whose land borders a pond, lake or ocean shore-line where the body of water is non-flowing. Littoral rights extend to the mean high watermark of ocean or tidal waters. (See riparian rights, water rights)

living trust:
An arrangement in which a property owner (trustor) transfers assets to a trustee who assumes specified duties in managing the asset. After payment of operating expenses and trustee's fees, the income generated by the trust property is paid to or used for the benefit of the designated beneficiary.

loan broker listing:
A mortgage loan broker's contract with a buyer to obtain a loan.

loan commitment:
A lender's agreement to lend a specified amount of money which must be exercised within a set time limit.

loan constant:
The annual payment required per dollar of a mortgage loan, including principal and interest.

loan correspondent:
A person or entity that acts for a lender in arranging loans or the sale of loans.

loan documents:
Documents prepared by a lender in conjunction with granting the loan to the borrower; may include a promissory note, deed of trust, and required loan disclosure documents.

loan fees:
Also called loan origination fees. Costs charged by a lender for giving out a loan; may include points, tax service fees, an appraisal fee, etc.

loan origination fee:
The processing of a mortgage application is known as loan origination. When a mortgage loan is originated, a loan origination fee, or transfer fee, is charged by most lenders to cover the expenses involved in generating the loan. These include the loan officer's salary, paperwork and the lender's other costs of doing business.

loan application:
A lender's initial source of information on a borrower/applicant and the collateral involved; stipulates the amount of money requested and repayment terms.

loan-to-value ratio:
The relationship between the amount of the mortgage loan and the value of the real estate being pledged as collateral.

lock-in clause:
A condition in a promissory note that prohibits prepayment of the note.

longitude:
Distance measured east or west on the earth's surface, measured by the angle which the meridian through a place makes with some standard meridian, as that of Greenwich, Great Britain or Paris, France. Longitude may be measured in time (longitude in time) or in degrees (longitude in arc). (See latitude, meridian)

lot-and-block (recorded plat) system:
A method of describing real property that identifies a parcel of land by reference to lot and block numbers within a subdivision, as specified on a recorded subdivision plat. (See legal description)

loyalty:
The duty of loyalty requires the agent to place the principal's interests above those of all others, including the agent's own self-interest. The agent must be particularly sensitive to any possible conflicts of interest. Confidentiality about the principal's personal affairs is a key element of loyalty.

low/doc or no/doc loan:
Loans that require little or no documentation regarding the borrower's income, assets or liabilities. Because of the higher perceived risk, these loans will usually require a larger down payment, higher interest rate and high credit score for borrowers. Conventional qualifying ratios do not apply.

low-e glazings:
Low-e glazings have special coatings that reduce heat transfer through windows. This type of window film is inexpensive, lasts 10-15 years, reduces interior fading, and saves energy.

M1, M2, M3:
Three measurements of the United States money supply. M1, or the basic money supply, consists of cash in public hands, private checking accounts, credit union share accounts and demand deposits at thrifts. M2 includes all of M1 plus money market mutual fund shares, and savings deposits of less than $100,000 at all depository institutions. M3 includes M2 plus large time deposits at all depository institutions.

maker:
The maker of a check is known as the drawer. (See payee)

manifest system:
Tracking of hazardous waste from "cradle to grave" (generation through disposal), with accompanying documents known as "manifests." (See hazardous waste)

maintenance charges:
Monthly or annual charges assessed in a condominium, planned united development, or cooperative development to cover operational costs.

management:
Refers to the amount of personal or hired time, it takes to run the investment.

management agreement:
A contract between the owner of income property and a management firm or individual property manager that outlines the scope of the manager's authority.

management plan:
The financial and operational strategy for the ongoing management of a property. It is based on market analysis, a property analysis and the owner's goals. (See market analysis, property analysis)

manufactured home:
A structure (transportable in one or more sections) when in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet. It is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. (H & S Code § 18007)

margin:
In an adjustable-rate loan, the amount added to the index rate that represents the lender's cost of doing business (including costs, profits and risk of loss of the loan). Generally the margin stays constant during the life of the loan. (See adjustable-rate loan, index rate)

market:
A place where goods can be bought and sold and a price established.

market analysis:
A regional and neighborhood study of economic, demographic and other factors made to determine supply and demand, market trends, and other factors important to leasing and operating a specific property.

market approach:
A method of pricing single-family rental homes and condos using comparable market data. When pricing multiple unit rental properties, the income approach is probably better. (See comparative market analysis, net income approach)

market-data approach:
Estimating a property's value based on a comparison of the property with similar properties in the same locale that have sold recently. Also known as the direct sales comparison approach. (See appraisal)

marketable title:
Good or clear title, reasonably free from the risk of litigation over possible defects.

market value:
The most probable price a property should bring in a competitive and open market under all conditions requisite to a fair sale. Such conditions include the assumption that the buyer and seller acted prudently and knowledgeably and that the price is not affected by undue stimulus.

masonry:
Any construction material involving bricks/blocks and mortar or related materials.

master deed:
The principal conveyance document used by the owners of land on which condominiums are located. (See fictitious deeds of trust)

master plan:
A comprehensive plan to guide the long-term physical development of a particular area.

material fact:
Any fact that is relevant to a person making a decision. Agents must also disclose to buyers material facts about the condition of the property, such as known structural defects, building code violations and hidden dangerous conditions. Brokers are often placed in a no-win situation of trying to evaluate whether a certain fact is material enough that it needs to be disclosed to a prospective buyer, such as the fact that a murder occurred on the property 10 years ago or the fact that the neighbors throw loud parties. It is sometimes difficult to distinguish between "fact" and "opinion." The statement "real property taxes are low" is different from "real property taxes are $500 per year." Even though brokers act in good faith, they may still be liable for failure to exercise reasonable care or competence in ascertaining and communicating pertinent facts that the broker knew or "should have known." Many state laws provide that the fact that an occupant of property has AIDS is not deemed to be a material fact. A broker who fails to disclose this fact is not liable for concealment of a material fact.

mean:
The average of all items included within a group, calculated by dividing the sum of the individual items, or variates, by the number of variates. (See variate)

mechanics' lien:
A statutory lien in favor of a building contractor (architects and designers in some states) to secure payment for materials supplied and services rendered in the improvement, repair or maintenance of real property. (See lien)

median:
The middle figure in a set of numbers.

mediation:
A process where a neutral third party intervenes between the disputing parties to reach a satisfactory solution.

Mello-Roos Bonds:
Based on passage of the Mello-Roos Community Facilities Act of 1982, certain housing tracts may be within what are called "community facilities districts" where special taxes are assessed to finance designated public facilities and/or services. Mello-Roos liens are usually municipal bonds issued to fund streets, sewers and other infrastructure needs before a housing development is built. These special assessments are paid by the seller and will be assumed by the buyer.

mentor program:
A training program in a real estate office wherein newly-hired agents assist successful, knowledgeable salespersons for a period of time.

merger:
The joining of a lesser right with a greater right so that the lesser right is lost.

meridian:
One of a set of imaginary lines running north and south used by surveyors for reference in locating and describing land under the government survey method of property description.

metes-and-bounds description:
A legal description of a parcel of land that begins at a well marked point and follows the boundaries, using directions and distances around the tract, back to the place of beginning. (See legal description)

military ordinance location:
Certain military bases contain live ammunition for various reasons. A seller of residential property located within one mile of such a hazard must give the buyer written notice as soon as practicable before transfer of title.

mill:
One-tenth of one cent. Some states use a mill rate to compute real estate taxes; for example, a rate of 52 mills would be $0.052 tax for each dollar of assessed valuation of a property.

minor:
Someone who has not reached the age of majority and therefore does not have legal capacity to transfer title to real property.

mineral rights:
Rights to subsurface land and profits. Normally, when real property is conveyed, it includes everything above and below the surface of the land, except where specified by the grantor.

misdemeanor:
Offenses less serious than felonies and generally punishable by a fine or imprisonment less than one year.

misrepresentation:
A false statement or concealment of a material fact made with the intention of inducing some action by another party.

mistake:
An error or misunderstanding. A contract is voidable if there is a mistake that is mutual, material, unintentional and free from negligence, such as both parties honestly contracting for a different lot in a subdivision (mistake of fact). Innocent mistakes seldom serve to void a contract. A party cannot claim "mistake" to get out of a contract on the basis that he or she did not read the contract he or she signed and was therefore mistaken as to its material terms; neither ignorance nor poor judgment is a mistake of fact. Nor can a party claim mistake in not knowing the legal consequences upon signing the contract (mistake of law). When there is an ambiguity known by one party who fails to explain the mistake to the innocent party, the innocent party's interpretation generally will prevail.

mitigation:
Measures taken to reduce adverse impacts on the environment. To make less severe, as in the "mitigation" of environmental hazards.
mixed-use developments (MUDs):
MUDs combine office space, stores, theaters and apartment units in a single community. MUDs usually contain and offer laundry facilities, restaurants, food stores, valet shops, beauty parlors, barbershops, swimming pools and other attractive and convenient features. (See high-rise developments)

mobile-home:
Prefabricated trailer-type housing units that are semi-permanently attached to land, which is either the owner's fee land or a leasehold, such as in a mobile-home park. Mobile homes are usually affixed to a concrete foundation and connected to utilities. Although they may not be as mobile as the word implies, they may be removed from such attachments and hauled to a new location. In this respect mobile homes possess the features of both real and personal property. They are like real property when the units are attached to the earth's surface, and like personal property when they are detached and moved. The courts, however, generally consider a mobile home as a fixture and thus treat it as real property.

mobile-home loan:
A mortgage loan on a large mobile-home, usually drawn for a shorter term than conventional mortgages.

mobile-home park:
An area zoned and set up to accommodate mobile homes by providing water hookups and sewage disposal for each home. The mobile-home park contains all utilities, streets, parking and amenities. Mobile-home parks are also called trailer parks.

mode:
The most frequently occurring variate. (See variate)

modular housing:
A relatively recent concept in home construction, aimed at producing housing more economically and faster through prefabricating processes; also called prefabricated housing. Modular methods expedite construction because the house itself can be built in the factory while the building site is being prepared, thus potentially eliminating costly delays. Some courts have held that the sale of an unattached modular home is the sale of personal property, and thus no written listing or real estate license is required to earn a commission.

molds:
Molds are simple, microscopic organisms that are present virtually everywhere both indoors and outdoors. Molds are fungi and are needed to break down dead material and recycle nutrients in the environment. For molds to grow and reproduce they need only a food source such as leaves, wood, paper, or dirt - and moisture.

monetary policy:
Governmental regulation of the amount of money in circulation through such institutions as the Federal Reserve Board. (See Federal Reserve)

month-to-month tenancy:
A periodic tenancy under which the tenant rents for one month at a time. In the absence of a rental agreement (oral or written) a tenancy is generally considered to be month to month.

monument:
A fixed natural or artificial object used to establish real estate boundaries for a metes-and-bounds description.

moratorium:
1. A temporary suspension of payments due under a financial obligation in order to help a distressed borrower recover from financial difficulties and avoid default and foreclosure. 2. A temporary suspension of issuing building permits. (See workout)

mortgage:
A legal document used to secure the performance of an obligation. The term mortgage, which is derived from the French words mort meaning "dead" and gage meaning "pledge," is appropriate in that the pledge is extinguished only after the debt is paid. In the usual real estate transaction, the buyer seeks to borrow money to pay the seller the difference between the down payment and the purchase price. When the lender (mortgagee) lends the money, the buyer/borrower (mortgagor) is required to sign a promissory note for the amount borrowed and to execute a mortgage to secure the debt. The purpose of the mortgage note is to create a personal liability for payment on the part of the mortgagor; the purpose of the mortgage is to create a lien on the mortgaged property as security for the debt.
mortgage-backed security (MBS):
A security guaranteed by pools of mortgages and used to channel funds from securities markets to housing markets. Ginnie Mae has a popular MBS program recognized for its low risk and high yield. The Ginnie Mae MBS security is a pool of VA and FHA mortgages put together as a bond. Freddie Mac and Fannie Mae also have MBS programs. (See FHA, Fannie Mae, Freddie Mac, Ginnie Mae, VA loan)

mortgage banker:
A person, corporation or firm (not otherwise in banking and finance) that normally provides its own funds for mortgage financing as opposed to savings and loan associations or commercial banks that use other people's money - namely that of their depositors--to originate mortgage loans. Although some mortgage bankers do supply permanent long-term financing, the majority specialize in supplying short-term and interim financing, either through their own resources or by borrowing from commercial sources.

mortgage broker/company:
A person or firm that acts as an intermediary between borrower and lender; one who, for compensation or gain, negotiates, sells or arranges loans and sometimes continues to service the loans; also called a loan broker. Loans originated by the mortgage broker are closed in the lender's name and are usually serviced by the lender. This is in contrast to mortgage bankers, who not only close loans in their own names but continue to service them as well. Many mortgage brokers are also licensed as real estate brokers and provide these financing services as supplements to their realty services.

mortgage insurance:
A kind of insurance policy that will pay off the mortgage balance in the event of death, and in some policies, disability. Premiums are paid with the regular monthly mortgage payment.

mortgage insurance premiums (MIP):
Most FHA loans require the borrower to pay two mortgage insurance premiums: one upfront paid at closing; the second is an annual premium based on the loan balance each year.

mortgage lien:
A lien or charge on the property of a mortgagor that secures the underlying debt obligations. (See lien)

mortgage loan disclosure statement:
Borrower disclosure mandated by Article 7 of the Real Estate Law. (See Article 7)

mortgage revenue bonds:
A type of tax-exempt industrial development bond offered by state and local governments through their housing financing agencies. (See industrial development bonds)

mortgagee:
In a mortgage transaction, the party who receives and holds a mortgage as security for a debt, the lender. A lender or creditor who holds a mortgage as security for payment of an obligation.

mortgagee's title insurance:
An insurance policy protecting the lender for the amount of the loan in the event of a future title dispute. (See owner's title insurance, title insurance)

mortgagor:
In a mortgage transaction, the buyer/borrower is the mortgagor. The mortgagor is required to sign a promissory note for the amount borrowed and to execute a mortgage to secure the debt. The mortgage note creates a personal liability for payment on the part of the mortgagor. (See mortgage, promissory note)

Mrs. Murphy's Exemption:
The common description of the exemption that applies to an owner-occupied building with four or fewer units.

multi-class mortgage securities:
Short- and long-term mortgage securities, with or without pass-through privileges. (See pass-throughs)

multi-lender rule loans:
Loans involving 10 or fewer investors regulated by the Corporation Commissioner.

multi-peril policies:
Many insurance companies offer multi-peril policies for apartment and commercial buildings. Such a policy offers the property manager an insurance package that includes standard types of commercial coverage, such as fire, hazard, public liability and casualty. Special coverage for earthquakes and floods is also available.

multiple-listing clause:
A provision in an exclusive listing for the authority and obligation on the part of the listing broker to distribute the listing to other brokers in the multiple-listing organization.

multiple-listing service (MLS):
A marketing organization composed of member brokers who agree to share their listing agreements with one another in the hope of procuring ready, willing and able buyers for their properties more quickly than they could on their own. Most multiple-listing services accept exclusive-right-to-sell or exclusive agency listings from their member brokers.

municipal bonds:
Bonds issued to finance public improvements such as parks, schools and urban renewal projects.

must-buy buyers:
Buyers looking for properties that meet specific needs.

must-sell sellers:
A highly motivated or desperate seller.
mutual consent:
A meeting of the minds; a mutual assent of the parties to the formation of the contract.

mutual mortgage insurance:
Insurance premiums and other specified FHA revenues are paid into one of four FHA funds. Losses due to foreclosure are met from these funds.

naked title:
Bare title to the property, lacking the usual rights and privileges of ownership. A trustee in a deed of trust securing instrument may hold the title to a secured property, but only such title as is needed to carry out the terms of the lien document. (See deed of trust)

National Association of Independent Fee Appraisers (NAIFA):
A professional association of appraisers with more than 2,000 members nationally. NAIFA offers the specialty designations IFA (member), IFAS (senior member) and IFAC (appraiser-counselor).

National Association of REALTORS® (NAR):
Formerly known as the National Association of Real Estate Boards (NAREB), NAR is the largest and most prestigious real estate organization in the world. Its members include REALTORS® and REALTOR-ASSOCIATES® representing all branches of the real estate industry. The national organization functions through local boards and state associations. Active brokers who have been admitted to membership in state and local NAR boards are allowed to use the trademark REALTOR®. Salespeople are admitted on a REALTOR-ASSOCIATE® active status. NAR members subscribe to a strict Code of Ethics.

National Bank Act of 1863:
In 1863, President Abraham Lincoln, at the urging of Salmon Chase, the Secretary of the Treasury, signed the National Bank Act. The Act established a national banking system and a uniform national currency to be issued by new "national" banks. The banks were required to purchase U.S. government securities as backing for their National Bank notes. In 1865, a 10-percent tax levied against State Bank notes essentially taxed those notes out of existence. From 1863 to 1877, National Bank notes were printed privately by the issuing banks. After 1877, the Bureau of Engraving and Printing, a division of the U.S. Department of the Treasury, assumed responsibility for printing all notes.

National Environmental Policy Act:
The Act requires an environmental impact statement for federal actions that significantly affect the quality of the environment. (See environmental impact statement)

negative amortization:
A financing arrangement in which the monthly payments are less than the true amortized amounts and the loan balance increases over the term of the loan rather than decreases; an interest shortage that is added to unpaid principal.

negative declaration:
A declaration by a developer that a project will not have a negative impact on the environment.

negative easement:
An easement where the owner of a servient estate is prohibited from doing something on his or her estate that is otherwise lawful, because it will affect the dominant estate. (See easement)

negligence:
The failure to use ordinary or reasonable care under the circumstances.

negligent misrepresentation:
A negligent misrepresentation occurs when the broker should have known that a statement about a material fact was false. The fact that the broker may actually be ignorant about the issue is no excuse.

negotiable instrument:
A written promise or order to pay a specific sum of money that may be transferred by endorsement or delivery. The transferee then has the original payee's right to payment.

neighborhood information request:
A questionnaire used by brokers to obtain information about the neighborhood where a listed property is located. The questionnaire is completed by the homeowner and can provide valuable information that will aid in the sale of the property. The questionnaire should include questions about neighborhood schools, recreational facilities, churches, shopping centers, medical facilities, and other features that may be important to prospective buyers.

net income approach:
A method of pricing multiple unit rental properties where the desire to buy is driven by the property's ability to generate cash flow and profit. Most often used to price rental properties of 2 or more units. When pricing single-family rental homes and condos, the market approach is preferable. (See market approach, net operating income)

net lease:
A lease requiring the tenant to pay not only rent but also costs incurred in maintaining the property, including taxes, insurance, utilities and repairs.

net listing:
An employment contract in which the broker receives as commission all excess monies over and above the minimum sales price agreed on by broker and seller. Because of the danger of unethical practices in such a listing, its use is discouraged in most states. (See listing agreement)

net operating income (NOI):
The income projected for an income-producing property after deducting losses for vacancy, collection and operating expenses.

net proceeds:
The cash received after paying all liens and expenses.

networking:
Generating prospects through a real estate professional's communications with friends and professional associates. (See prospecting)

net worth:
Assets less liabilities (See asset, liability)

no-choice rule:
If a real estate transaction qualifies as an exchange, it must be treated as an exchange. An exchanger who qualifies for the 1031 tax-deferred
exchange has "no choice," they cannot recognize the gain or loss. (See exchange)

no loan, no commission:
A listing agreement requiring that escrow be closed and title transferred before an agent is entitled to a commission. (See listing agreement)

no-loss rule:
If a real estate transaction qualifies as an exchange, "no loss" can be recognized. (See exchange)

nominal damages:
Monetary damages of a token amount awarded for a wrongful act where no loss occurred. (See compensatory damages, exemplary damages)

nominal interest rate:
The stated interest rate in a note or contract, which may differ from the true or effective interest rate, especially if the lender discounts the loan and advances less than the full amount. (See effective interest rate)

non-agent:
An intermediary between a buyer and seller, or landlord and tenant, who assists both parties with a transaction without representing either. Also known as a facilitator, transaction broker, transaction coordinator and contract broker.

non-conforming loan:
A mortgage loan that does not meet Fannie Mae and Freddie Mac underwriting guidelines. Non-conforming loans are available as both fixed and adjustable rate mortgages. (See Fannie Mae, Freddie Mac)

nonconforming use:
A use of property, legally permitted to continue as such, in spite of the original zoning ordinance which prohibited such use for the area.

non-cumulative zoning:
Zoning that allows only the stated use and not more restrictive uses. (See zoning)

non-disturbance clause:
An agreement where the mortgagee agrees to honor a tenant's lease in the event that the mortgage is foreclosed.

non-geographic farming:
Farming/prospecting a particular segment of the market such as an ethnic group or nationality, as opposed to a geographic area. (See farming, geographic farming)

non-homogeneity:
A lack of uniformity; dissimilarity. Because no two parcels of land are exactly alike, real estate is said to be non-homogeneous. (See homogeneous).

non-institutional lenders:
Credit unions, pension funds, private individuals and real estate investment trusts. (See credit unions, institutional lenders, pension funds, real estate investment trusts).

non-judicial foreclosure:
The process of selling real property under a power of sale in a mortgage or deed of trust that is in default. One disadvantage is that the lender cannot obtain a deficiency judgment. Also, some title insurance companies are reluctant to issue a policy unless a court has judicially foreclosed the mortgagor's interest. (See judicial foreclosure, strict foreclosure)

notary public:
A person who acknowledges oaths, such as the signing of a grant deed or deed of trust; must be duly appointed by the proper authorities.

note (original note):
A document signed by the borrower of a loan and stating the loan amount, the interest rate, the time and method of repayment and the obligation to repay. The note serves as evidence of the debt. When secured by a mortgage, it is called a mortgage note, and the mortgagee is named as the payee. In a trust deed, the note is usually made payable to the bearer or holder. The note may also contain some of the same provisions as in the mortgage or trust deed document, such as prepayment or acceleration.

notice of cessation:
A notice that gives subcontractors 30 days and gives prime contractors 60 days to file liens from the date of cessation of work. (See cessation of work)

notice of completion:
A document recorded to give constructive notice that a building job has been completed. (See constructive notice)

notice of default:
A notice to a defaulting party announcing that a default has occurred. The defaulting party is usually provided a grace period during which to cure the default. Notices of default are frequently provided for in contracts for deeds and mortgages and are sometimes required by operation of law.

notice of delinquency:
In junior financing, where the borrower gives the senior lender permission to notify the junior lender in the event of a default. (See default, junior mortgage, senior loan)

notice of non-responsibility:
A legal notice designed to relieve a property owner of responsibility for the cost of improvements ordered by another person (such as a tenant). The owner usually gives notice that he or she will not be responsible for the work done by posting notice in some conspicuous place on the property, and by recording a verified copy in the public records.

novation:
Substituting a new obligation for an old one or substituting new parties to an existing obligation.

nuisance:
That which annoys and disturbs one in possession of his or her property, rendering its ordinary use physically uncomfortable.

nuncupative will:
An oral will declared by the testator in his or her final illness, made before witnesses and then created in legal written form.

obedience:
The fiduciary relationship obligates the agent to act in good faith at all times, obeying the principal's instructions in accordance with the contract. However, that obedience is not absolute. The agent may not obey instructions that are unlawful or unethical. Because illegal acts do not serve the principal's best interests, obeying such instructions violates the broker's duty of loyalty. On the other hand, an agent who exceeds the authority assigned in the contract will be liable for any losses that the principal suffers as a result.

obligor:
A promisor; one who incurs a lawful obligation to another (the obligee). The maker of a promissory note is an obligor. In a performance bond, the contractor is the obligor. One who guarantees the performance of the obligation is a surety; also called a guarantor. (See payor)

obligatory advance:
Any advance which, under the terms of the credit line deed of trust or other agreement, the secured party has legally obligated itself to make in the absence of a default, breach, or other such event. Obligatory advances include, but are not limited to, advances which the secured party has agreed to make as a term or condition of the credit line deed of trust or other related agreement; obligations arising out of the occurrence of a condition, event or circumstance contemplated by the agreement; obligations arising on a specified date or time; or advances made upon application therefore by the grantor under the credit line deed of trust or by another obligor whose indebtedness is secured by the deed of trust.

obsolescence:
The loss of value due to factors that are outmoded or less useful. Obsolescence may be functional or economic.

occupancy permit:
A permit issued by the appropriate local governing body to establish that the property is suitable for habitation by meeting certain safety and health standards.

Occupational Safety and Health Act (OSHA):
Congress created OSHA under the Occupational Safety and Health Act, which was signed by President Richard M. Nixon on December 29, 1970. OSHA's mission is to prevent work-related injuries, illnesses and deaths.

offer:
An offer is a promise made by one party, requesting something in exchange for that promise. The offer is made with the intention that the offeror will be bound to the terms if the offer is accepted. The terms of the offer must be definite and specific and must be communicated to the offeree.

offer and acceptance:
Two essential components of a valid contract; a "meeting of the minds." (See acceptance, offer)

offeree:
The person to whom an offer is made - usually the owner.

Office of Thrift Supervision (OTS):
Monitors and regulates the savings and loan industry. OTS was created by FIRREA.

office property:
Income-producing commercial property from which a particular service is rendered.

offeror:
The party who makes an offer - usually the buyer.

offsite improvements:
Improvements made outside of a property's boundaries, such as sidewalks and streets.

oil and gas lease:
A grant of the sole and exclusive right to extract oil and/or gas from beneath the surface of land. Such a lease is generally for a designated term of years and is subject to a payment of royalties in the event of production, the commencement of drilling operations on or before a specified date and the performance within a specified time of a certain amount of development work. Typically, an express or implied easement is granted to enter the property in order to drill.

one-hundred-percent commission plan:
Some firms have adopted a 100 percent commission plan. Salespersons in these offices pay a monthly service charge to their brokers to cover the costs of office space, telephones and supervision in return for keeping 100 percent of the commissions from the sales they negotiate. The 100 percent commission salesperson pays all of his or her own expenses.

one stop shopping:
An arrangement where settlement and service providers are all available through the broker.

open-buyer-agency-agreement:
This agreement is a nonexclusive agency contract between a broker and a buyer. It permits the buyer to enter into similar agreements with an unlimited number of brokers. The buyer is obligated to compensate only the broker who locates the property the buyer ultimately purchases.

open-end loan:
A mortgage loan that is expandable by increments up to a maximum dollar amount, the full loan being secured by the same original mortgage.

open-end trust deed:
An expandable loan in which the borrower is given a limit up to which he or she may borrow, with each incremental advance to be secured by the same trust deed.

open house:
The common real estate practice of showing listed homes to the public during established hours.

open listing:
A listing given to any number of brokers who can work simultaneously to sell the owner's property. The first broker to secure a buyer who is ready, willing and able to purchase at the terms of the listing earns the commission. In the case of a sale, the seller is not obligated to notify any of the brokers that the property has been sold.

Unlike an exclusive listing, an open listing need not contain a definite termination date. The listing terminates after a reasonable time, usually whatever is customary in the community. Either party can, in good faith, terminate the agency at will. (See listing agreement)

open-market operations:
The buying and selling of government securities by the Federal Reserve to control the amount of money in circulation.

operating budget:
A projection of income and expenses for the operation of a property over a one year period.

operating expenses:
Those recurring expenses that are essential to the continuous operation and maintenance of a property. Operating expenses are generally divided into the following categories: *fixed expenses* such as real property taxes and building insurance; *variable costs* such as utilities, payroll, administration and property management fees; and *reserves for replacement*. Operating expenses do not include items such as mortgage payments, capital expenditures and depreciation.

opportunity cost:
Earnings that may be available on alternative investments.

option:
An agreement to keep open, for a set period, an offer to sell or lease real property.

opinion of title:
An opinion of the marketability of a title given by an attorney based on the abstract of title. (See abstract of title)

option listing:
A listing in which the broker also retains an option to purchase the property for the broker's own account. In view of the body of litigation involving breach of fiduciary duties by brokers who conceal offers from buyers until after the broker has exercised the option, full and fair disclosure must be given to the seller. (See listing agreement)

ordinance:
A military weapon or item of destruction (e.g. bullets). (See military ordinance location)

original basis:
The sum of the purchase price of a property plus buying expenses on acquisition. (See basis)

ostensible agency:
A form of implied agency relationship created by the actions of the parties involved rather than by written agreement or document. (See implied agency)

other income:
Refers to income other than rent, such as vending and laundry machines, storage or parking space income, and so on.

overriding trust deed:
(See wraparound mortgage)

owner-occupied:
A property where the owner physically occupies the property.

ownership:
The right to use, possess, enjoy, transfer, and dispose of a thing to the exclusion of all others.

owner's title insurance:
An insurance policy protecting the buyer for the amount of the purchase price in the event of a future title dispute. (See mortgagee’s title insurance, title insurance)

package loan:
A real estate loan used to finance the purchase of both real property and personal property, such as in the purchase of a new home that includes carpeting, window coverings and major appliances.

par:
The face value of a bond or security. (See security)

parol evidence rule:
A rule of evidence providing that a written agreement is the final expression of the agreement of the parties, not to be modified by oral or written negotiations.

partial release clause:
A mortgage provision under which the mortgagee agrees to release certain parcels from the lien of the blanket mortgage upon payment of a certain sum of money by the mortgagor. The clause is frequently found in tract development construction loans.

partial zoning:
Zoning that does not consider its effect on other areas. (See zoning)

participation financing:
Where a lender becomes a partner in a development.

participation certificates:
Certificates issued by Freddie Mac backed by pools of mortgages.

participation mortgage:
A mortgage loan wherein the lender has a partial equity interest in the property or receives a portion of the income from the property.

partition:
Co-tenants who wish to terminate their co-ownership may file an action in court to partition the property. Partition is a legal way to dissolve the relationship when the parties do not voluntarily agree to its termination. If the court determines that the land cannot be divided physically into separate parcels without destroying its value, the court will order the real estate to be sold. The proceeds of the sale will then be divided among the co-owners according to their fractional interests. (See co-ownership)

partnership:
An association of two or more individuals who carry on a continuing business for profit as co-owners. Under the law a partnership is regarded as a group of individuals rather than as a single entity. (See general partnership, limited partnership, joint venture)

parts per billion (ppb):
Units commonly used to express contamination ratios, as in establishing the maximum permissible amount of a contaminant in water, land, or air. These ratios can also be expressed in "parts per million (ppm)."

parts per million (ppm):
Units commonly used to express contamination ratios, as in establishing the maximum permissible amount of a contaminant in water, land, or air. These ratios can also be expressed in "parts per billion (ppb)."

party wall:
A wall that is located on or at a boundary line between two adjoining parcels of land and is used or is intended to be used by the owners of both properties.

party wall easement:
A party wall can be an exterior wall on a building that straddles the boundary line between two lots, or it can be a commonly shared partition wall between two connected properties. Each lot owner owns the half of the wall on his or her lot, and each has an appurtenant easement in the other half of the wall. A written party wall agreement must be used to create the easement rights. Expenses to build and maintain the wall are usually shared. A party driveway shared by and partly on the land of adjoining owners must also be created by written agreement, specifying responsibility for expenses. (See easement, appurtenant easement)

passive income:
Income generated when a person is not active in a business or occupation. Examples of situations where passive income is generated include limited partnerships or rental income remaining after allowable deductions. (See limited partnerships)

passive losses:
Losses left over when deductions for annual operating expenses, loan interest, and depreciation exceed annual rents. For tax purposes, passive losses can only be used to offset passive income. (See annual operating expenses, depreciation, passive income)

pass-throughs:
Payments on securities sold in the secondary market that are sent directly to investors. (See secondary market)

pass-through security:
A security issued by the Government National Mortgage Association (Ginnie Mae) to mortgage investors. Cash flows from the underlying block individual mortgage loans are "passed through" to the holders of the securities in pro rata share, including loan prepayments. With a mortgage-backed security, the timely payment of principal and interest is guaranteed by Ginnie Mae. In 1982, the Federal National Mortgage Association (Fannie Mae) instituted its own mortgage-backed securities program designed to attract billions of dollars into the conventional mortgage market from pension funds and other investors. (See FHA, Fannie Mae, Freddie Mac, Ginnie Mae, mortgage-backed securities, VA loan)

patent:
The instrument that conveys real property from the state or federal government to an individual.

patent defect:
A defect that is obvious from a reasonable inspection of a property.

payee:
The person to whom a debt instrument, such as a check or promissory note, is made payable; obligee, the "receiver." (See maker, receiver)

payment cap:
The limit on the amount the monthly payment can be increased on an adjustable-rate mortgage when the interest rate is adjusted.

payoff statement:
(See reduction certificate)

payor:
The debtor on a promissory note or the party who makes payment to another. (See obligor)

percentage fee:
A property management fee expressed as a percentage of the gross collectable income from a property. (See flat fees)

percentage lease:
A lease, commonly used for commercial property, whose rental is based on the tenant's gross sales at the premises. It usually stipulates a base monthly rental plus a percentage of any gross sales above a certain amount. (See lease)

pension funds:
Pension funds usually have large amounts of money available for investment. Because of the comparatively high yields and low risks offered by mortgages, pension funds have begun to participate actively in financing real estate projects. Most real estate activity for pension funds is handled through mortgage bankers and mortgage brokers. (See non-institutional lenders)

percolation:
1) The movement of water downward in a circular direction through subsurface soil layers, usually continuing downward to ground water. Can also involve upward movement of water. **2)** Slow seepage of water through a filter.

percolation test:
A test of the soil to determine if it will absorb and drain water adequately to use a septic system for sewage disposal.

periodic tenancy:
A leasehold interest from period to period that renews automatically unless a notice of termination is given.

personal income:
A person's gross income from wages, salaries, commissions, interest and profits from businesses or investments.

personal property:
Things that are tangible and movable; property that is not classified as real property, such as chattels. Title to personal property is transferred by way of a bill of sale, as contrasted with a deed for real property.

Items of personal property frequently become the object of dispute between buyer and seller, most often due to whether an item is considered a fixture or due to the seller's attempt to substitute a similar item. Some cautious buyers insert a clause in their purchase contracts to the effect that the buyer will get the appliances "as currently installed and used in the premises."

A tree is real property while it is rooted in the ground, but when severed it is transformed into personal property. When lumber is assembled, however, and used as material to construct a house, it once again becomes a fixture or real property. (See fixture)

physical deterioration:
A reduction in a property's value resulting from a decline in physical condition; can be caused by action of the elements or by ordinary wear and tear.

piggyback loans:
A loan divided into two parts with one lender taking a secondary security position.

PITI:
Acronym for **P**rincipal, **I**nterest, **T**axes & **I**nsurance.

planned unit development (PUD):
A relatively modern concept in housing designed to produce a high density of dwellings and maximum use of open spaces. This efficient use of land allows greater flexibility for residential land and development. It also usually results in lower-priced homes and minimum maintenance cost. Often, PUDs are specifically provided for in zoning ordinances or are listed as a conditional permitted use, sometimes called planned development housing.

plaintiff:
A person who brings an action; the party who complains or sues in a personal action and is so named on the record.

plat map:
A map of a town, section or subdivision indicating the location and boundaries of individual properties.

plottage:
The increase in value or utility resulting from the consolidation (assemblage) of two or more adjacent lots into one larger lot. (See assemblage).

PMI:
Acronym for **P**rivate **M**ortgage **I**nsurance. (See private mortgage insurance).

point of beginning (POB):
In a metes-and bounds legal description, the starting point of the survey, situated in one corner of the parcel; all metes-and-bounds descriptions must follow the boundaries of the parcel back to the point of beginning.

points:
A percentage of the principal conventional loan amount. A lender often charges a borrower "service-charge" points for making a loan. Points may cover expenses in origination of the loan to increase a lender's yield or to "buy down" the rate. In conventional financing, points may be paid by the buyer or seller.

point source:
A stationary location or fixed facility such as an industry or municipality that discharges pollutants into the air or surface water through pipes, ditches, lagoons, wells, or stacks - a single identifiable source such as a ship or a mine.

police power:
The inherent right of the state to regulate for the purpose of promoting health, safety, welfare, and morality. Police power gives the state the right to impose certain restraints on human conduct which are reasonably necessary in order to safeguard the public interest. This right is the basis of zoning, the official map, building codes, and subdivision regulations.

pollution:
Any substances in water, soil, or air that degrades the natural quality of the environment, offends the senses of sight, taste or smell, or causes a health hazard. The usefulness of the natural resource is usually impaired by the presence of pollutants and contamination.

pollution prevention:
Actively identifying equipment, processes, and activities which generate excessive wastes or use toxic chemicals and then making substitutions, alterations, or product improvements. Conserving energy and minimizing wastes are pollution prevention concepts used in manufacturing, sustainable agriculture, recycling, and clean air/clean water technologies.

portfolio loan:
A loan originated and maintained by the lender and not sold in the secondary mortgage market. (See secondary mortgage market)

potentially responsible party (PRP):
Any individual or company that is potentially responsible for or has contributed to a spill or other contamination at a Superfund site. Whenever possible, EPA requires PRP's to clean up sites they have contaminated. (See Superfund)

power-of-attorney:
A written instrument authorizing a person, the attorney-in-fact, to act as the agent on behalf of another to the extent indicated in the instrument. (See attorney-in-fact)

power-of-sale clause:
A clause in a mortgage authorizing the holder of the mortgage to sell the property in the event of the borrower's default. The proceeds from the public sale are used to pay off the mortgage debt first, and any surplus is paid to the mortgagor. A power-of-sale clause is also found in trust deeds, giving the trustee authority to sell the trust property under certain circumstances.

pressure relief valve:
A valve used on hot water heating appliances to help keep the pressure in the heated tank or boiler from getting too high by allowing the relief of pressure from the valve.

preliminary notice:
Notifies a customer that work to be completed is subject to the lien rights of the contractor. Preliminary notice must be given prior to recording of a mechanic's lien, and should be filed by a contractor at least 20 days prior to the start of work. If notice is given later, liens will cover only the work starting 20 days prior to filing. (See mechanic's lien)

preliminary public report:
Under the Subdivided Land Law the preliminary public report can be issued before the public report, and allows a subdivider to take reservations from buyers but not sell parcels. (See public report, Subdivided Land Law)

preliminary report:
A title report that is made before a title insurance policy is issued or when escrow is opened. A preliminary report or policy of title insurance reports only on those documents having an affect on the title and should not be relied on as being an abstract. An abstract of title, on the other hand, reflects all instruments affecting title from the time of the original grant and also includes a memorandum of each instrument, and makes no attempt to determine which of the documents currently affects record title. The "preliminary" is not a binder or commitment that the title company will insure the title to the property, although this commitment may be obtained at an added cost. (See abstract of title)

premium:
A fee paid to an insurance company.

premium (in excess of par):
A price paid for a security in excess of its face value. (See par)

prepaid items:
On a closing statement, items that have been paid in advance by the seller, such as insurance premiums and some real estate taxes, for which he or she must be reimbursed by the buyer.

prepayment penalty:
The amount set by the creditor as a penalty to the debtor for paying off the debt before it matures; an early-withdrawal charge. The prepayment penalty is charged by the lender to recoup a portion of interest that the lender had planned to earn when the loan was made. It covers the lender for initial costs to set up the loan, to service it and to carry it in the early years of high risk. This punitive device also may represent the loss of income to the lender for the time the mortgage is paid off and the funds remain uncommitted. The reason most lenders are willing to allow prepayment after five years without penalty is that much of the total note's interest has been paid in by that time.

pre-qualify:
Determine the maximum loan amount a prospective buyer qualifies for prior to showing them properties. Failing to pre-qualify may result in wasted efforts showing the prospect properties they cannot afford to purchase. (See back-end qualification, front-end qualification)

prescription:
Acquiring a right in property, usually in the form of an intangible property right such as an easement or right-of-way, by means of adverse use of property that is continuous and uninterrupted for the prescriptive period established by state statute. Use of land is adverse when it is made under a claim or right. Therefore, there is no adverse use if the owner has granted permission, or if the user has paid for the use of the property, or if the user has admitted that the owner has a superior right in the property.

Prescription is often used interchangeably with the term adverse possession, which more strictly refers to the acquiring of title to lands. As in adverse possession, the essential elements are that the prescriptive right be adverse, under claim of right, continuous and uninterrupted, open, notorious and exclusive, with the knowledge and acquiescence of the servient owner, and continuing for the full prescriptive period. By "continuous" is meant that the property is used on a regular basis.

present worth:
The discounted present-day value of money to be collected in the future.

pressed wood products:
Materials used in building and furniture construction that are made from wood veneers, particles, or fibers bonded together with an adhesive under heat and pressure.

press release:
A news announcement written by a property manager or advertising specialist highlighting a property's features. Sent to local newspapers and real estate magazines to promote a property.

preventive maintenance:
Includes regularly scheduled activities such as painting and seasonal servicing of appliances and systems. Preventive maintenance preserves the long-range value and physical integrity of the building. This is both the most critical and the most neglected maintenance responsibility. Failure to perform preventive maintenance invariably leads to greater expense in other areas of maintenance.

price fixing:
The practice of conspiring to establish fixed fees or prices for services rendered or goods sold. In recent years, the setting of attorney fees by local bar associations and commission percentages and management fees by local realty associations has been successfully attacked as price fixing and thus a violation of the Sherman Antitrust Act.

prima facie:
At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary.

prime rate:
The minimum interest rate a commercial bank will charge to its largest clients. Prime rates are determined in part by the rate the bank pays for the money they lend to borrowers. Decisions of the Federal Reserve Bank (The Fed) to increase or decrease the supply of money can cause the prime rate that banks charge to fluctuate. (See Federal Reserve System)

primary lenders:
Originators of real estate loans including commercial banks, savings and loan associations and mutual savings banks.

primary mortgage market:
The mortgage market in which loans are originated and consisting of lenders such as commercial banks, savings and loan associations and mutual savings banks. (See secondary mortgage market)

primary personal residence:
The dwelling in which a taxpayer lives and occupies most of the time.

principal:
1. One of the main parties to a transaction. For example, the buyer and seller are principals in the purchase of real property. **2.** In a fiduciary relationship, the person who hires a real estate broker to represent him or her in the sale of property. The phrase, "principals only," often found in real estate ads, is meant to exclude real estate agents from contacting the owners of the property. (See fiduciary)

principal meridian:
The main imaginary line running north and south and crossing a base line at a definite point, used by surveyors for reference in location and describing land under the rectangular (government) survey system of legal description. (See base line, government survey system, legal description, meridian)

prior appropriation:
A concept of water ownership in which the landowner's right to use available water is based on a government administered permit system.

priority:
The order of position, time or place. The priority of liens is generally determined by the chronological order in which the lien documents are recorded; tax liens, however, have priority even over previously recorded liens. Thus the old adage "prior in time is prior in right" is applicable.

private mortgage insurance (PMI):
Insurance provided by private carrier that protects a lender against a loss in the event of a foreclosure and deficiency. A special form of insurance designed to permit lenders to increase their loan-to-market-value ratio, often up to 95 percent of the market value of the property. Many lenders are restricted to 80 percent loans by government regulations, special loss reserve requirements or internal management policies related to mortgage portfolio mix. A lender, however, may lend up to 95 percent of the property value if the excess of the loan amount, over 80 percent of value, is uninsured by a private mortgage guaranty insurer. (See deficiency, foreclosure)

private offering:
An offering of securities to no more than 25 persons and sale to no more than 10 persons.

privity of contract:
The relationship between contracting parties (mortgagor-mortgagee or assignee-assignor).

probate:
The formal judicial proceeding to prove or confirm the validity of a will, to collect the assets of the decedent's estate, to pay the debts and taxes and to determine the persons to whom the remainder of the estate is to pass. (See decedent, will)

procuring cause:
That effort which brings about the desired results. Also called predominant efficient cause or the contributing cause.

profit and loss statement:
A detailed statement of income and expenses of a business that reveals the operating position of the business over a period of time. Commonly referred to a P&L.

progression:
An appraisal principle that states that, between dissimilar properties, the value of the lesser-quality property is favorably affected by the presence of the better-quality property. (See appraisal)

promissory note:
An unconditional written promise of one person to pay a certain sum of money to another person, order or bearer at a future specified time. A broker who accepts a promissory note as a deposit from a prospective purchaser must generally disclose to the seller that the buyer's deposit is in the form of a promissory note.

property analysis:
A study made to familiarize a property manager with the nature and condition of a building, its relative market position, and its estimated income and operating expenses.

property brief:
Produced by the listing agent, a property brief is simply a one-page flier about the property pointing out attractive features. It usually contains a drawing or photograph of the home, and is given to people the agent feels are especially interested in the property.

property management:
That aspect of the real estate industry devoted to marketing, leasing, managing, and the maintenance of the property of others.

property manager:
Someone who manages real estate for another person for compensation. Duties include collecting rents, maintaining the property and keeping up all accounting.

property reports:
The mandatory federal and state documents compiled by subdividers and developers to provide potential purchasers with facts about a property prior to their purchase.

property taxes:
Assessment made by county or city assessor's office for real property taxes. Payment dates may vary according to state regulation.

proprietary lease:
A lease given by the corporation, which owns a cooperative apartment building to the shareholder for the shareholder's right as a tenant to an individual apartment.

prorations:
Expenses, either prepaid or paid in arrears, that are divided or distributed between buyer and seller at the closing.

prospecting:
Locating owners of properties who are interested in selling, or buyers who are interested in purchasing property. (See endless chain, farming, networking)

protected class:
Any group of people designated as such by the Department of Housing and Urban Development (HUD) in consideration of federal and state civil rights legislation. Currently includes ethnic minorities, women, religious groups, the handicapped and others.

"P" trap:
A drainage plumbing pipe in the approximate shape of a "p" laid on its face, providing a trap that prevents sewer gasses from entering the living space.

public records:
Records which by law give constructive notice of matters relating to property.

public report:
A disclosure statement required by the Subdivided Land Law stating that a buyer is not obligated until he or she has read the report and signed a receipt. (See Subdivided Land Law)

public water system:
A system that provides piped water for human consumption to at least 15 service connections or regularly serves 25 individuals.

puffing:
Exaggerated or superlative comments or opinions not made as representations of fact and thus are not grounds for misrepresentation, such as, "This property is a real good buy." One test used is whether a reasonable person would have relied on the statement. A statement such as, "The apartment has a fantastic view, " is puffing because the prospective buyer can clearly assess the view for himself or herself, whereas a statement such as "The apartment has a fantastic view of the lake," when in fact all its windows face the street, would be misrepresentation. (See caveat emptor, misrepresentation)

punitive damages:
Damages awarded to one party to punish another party for dishonest conduct. Meant to deter others from committing a similar offense.

pur antre vie:
"For the life of another." A life estate pur autre vie is a life estate that is measured by the life of a person other than the grantee.

purchase-money mortgage:
A mortgage given as part of the buyer's consideration for the purchase of real property, and delivered at the same time that the real property is transferred as a part of the transaction. It is commonly a mortgage taken back by a seller from a purchaser in lieu of purchase money. A purchase-money mortgage is usually used to fill a gap between the buyer's down payment and a new first mortgage or mortgage assumed, as when the buyer pays 10 percent in cash, gets an 80 percent first mortgage from a bank, and then the seller takes back a purchase-money second mortgage for the remaining 10 percent.

pyramiding:
The process of acquiring properties by refinancing properties already owned and investing the loan proceeds in additional properties.

qualified intermediary:
Corporation or entity who facilitates a 1031 tax deferred exchange (also known as an "accommodator"). To be a qualified intermediary, the intermediary must not be a related party.

quantity-survey method:
The appraisal method of estimating building costs by calculating the cost of all of the physical components in the improvements, adding the cost to assemble them and then including the indirect costs associated with such construction. (See appraisal)

quasi contract:
A contract implied by law, as a matter of equity, when no actual contract exists.

quiet enjoyment:
An implied warranty that the landlord will not interfere with the tenant's reasonable use and enjoyment of a leased property. (See implied warranty)

quiet title:
A court action to remove a cloud on the title.

quitclaim deed:
A conveyance by which the grantor transfers whatever interest he or she has in the real estate, without warranties or obligations.

radon:
A naturally occurring gas that is suspected of causing lung cancer.

rafter:
A roof structural support system using "2 by" wood components that are nailed together (as opposed to trusses that are connected using press-on metal plates). (See truss)

range:
1. A measure of the difference between the highest and lowest variates. (See variates)
2. A strip of land six miles wide, extending north and south and numbered east and west according to its distance from the principal meridian in the rectangular (government) survey system of legal description. For example, Range 3 East would be a strip of land between 12 and 18 miles east of its principal meridian.

rate cap:
The limit on the amount the interest rate can be increased at each adjustment period in an adjustable rate loan. The cap may also set the maximum interest rate that can be charged during the life of the loan. (See adjustable rate mortgages (ARMs).

rate factor:
The number of dollars required to pay off each $1,000 of a mortgage loan.

ratification:
Method of creating an agency relationship in which the principal accepts the conduct of someone who acted without prior authorization as the principal's agent.

ready, willing and able buyer:
One who is prepared to buy property on the seller's terms and is ready to take positive steps to consummate the transaction.

real estate:
The physical land at, above and below the earth's surface with all appurtenances, including any structures; any and every interest in land whether corporeal or incorporeal, freehold or non-freehold; for all practical purposes, the term real estate is synonymous with real property.

Real Estate Advisory Commission:
A ten member panel appointed by the Real Estate Commissioner, who preside over meetings. Six commission members must be licensed California real estate brokers, and four must be non licensed members of the public. Unlike the commissioner, commission members serve without compensation. They make recommendations to the Real Estate Commissioner on relevant matters.

real estate assistant:
A real estate assistant (also known as a personal assistant or professional assistant) is a combination of office manager, marketer, organizer and facilitator with a fundamental understanding of the real estate industry.

real estate brokerage:
A Real Estate Brokerage is a business in which real estate license-related activities are performed under the authority of a real estate broker.

real estate commissioner:
The Real Estate Commissioner is appointed by the governor and serves at the governor's discretion. The commissioner determines administrative policy and enforces that policy in the best interests of those dealing with real estate licensees. The person selected as commissioner must have been a practicing real estate broker in California for five years or otherwise engaged in real estate activity for five of the past ten years.

real estate dealer:
A real estate dealer holds property primarily for resale to customers in the course of business, in contrast to a real estate investor who holds property for personal investment. Dealers are denied certain income tax benefits available to investors.

Real Estate Educators Association (REEA):
A professional organization established by and for real estate educators, including individuals and institutions. REEA is international in scope and represents every aspect of real estate education which include, degree programs, continuing education, sales training, GRI (Graduate, REALTORS Institute), prelicense, graduate studies, consulting, research and publishing. Members of this association come from colleges, universities and proprietary schools, regulatory agencies, real estate organizations, boards and associations, and other delivery systems.

Real Estate Investment Trust (REIT):
A method of pooling investment money using the trust form of ownership. In the 1960s Congress provided favored tax treatment for certain business trusts by exempting from corporate tax certain qualified REITs that invest at least 75 percent of their assets in real estate and that distribute 95 percent or more of their annual real estate ordinary income to their investors. As an alternative to the partnership or corporate methods of investing in real estate, the REIT offers some of the flow-through tax advantages of a partnership or syndication while retaining many of the attributes and advantages of a corporate operation. (See non-institutional lenders)

real estate investor:
A real estate investor holds property for personal investment reasons, in contrast to a real estate dealer who holds property primarily for resale to customers. Investors are allowed certain income tax benefits denied to dealers.

real estate license law:
State law enacted to protect the public from fraud, dishonesty and incompetence in the purchase and sale of real estate.

Real Estate Mortgage Investment Conduit (REMIC):
A tax entity that issues multiple classes of investor interests (securities) backed by a pool of mortgages. (See securitization)

real estate owned (REO):
A term used by lenders to refer to properties acquired through foreclosure.

real estate recovery fund:
A fund established in some states from real estate license revenues to cover claims of aggrieved parties who have suffered monetary damage through the actions of a real estate licensee.

Real Estate Settlement Procedures Act (RESPA):
A federal law, enacted in 1974 and later revised, that ensures that the buyer and seller in a real estate transaction have knowledge of all settlement costs when the purchase of a one-to-four-family residential dwelling is financed by a federally related mortgage loan. Federally related loans are broadly defined to include loans made by savings and loan associations or other lenders whose deposits are insured by federal agencies, insured by the FHA or VA, administered by the Department of Housing and Urban Development or intended to be sold by the lender to Fannie Mae or a similar federal agency.

Real Estate Transfer Disclosure Statement:
As required by California Civil Code Sections 1102-1102.14, a transferee (buyer) of residential real property is entitled to a statement from the transferor (seller) which provides information regarding the physical condition of the property.

Realtist:
A member of a national organization, generally composed of African-American real estate brokers, known as the National Association of Real Estate Brokers (NAREB).

REALTORS® Code of Ethics:
A written system of standards of ethical conduct. Because of the nature of the relationship between a broker and a client or other persons in a real estate transaction, a high standard of ethics is needed to ensure that the broker acts in the best interests of both the principal and any third parties.

real property:
The earth's surface, the air above and the ground below and all appurtenances to the land including buildings/structures, fixtures, fences and improvements erected or affixed to the same, excluding growing crops. The term real property includes the interests, benefits and rights inherent in the ownership of real estate. (See bundle of rights)

real property sales contract:
(See land contract)

real property security:
A guaranteed loan or a loan where the broker will assume payments.

real property securities dealer:
A real property securities dealer is a broker who sells an existing trust deed and guarantees a return on it.

reality of consent:
Although a contract may meet all of the basic requirements, it may still be void or voidable, according to the realty of consent, which states that a contract must be entered into as a free and voluntary act of each party, and each party must be able to make a prudent and knowledgeable decision without undue influence. A mistake, misrepresentation, fraud, undue influence or duress would deprive a person of that ability, and if any of these circumstances were present, the contract would be voidable by the injured party. If the other party were to sue for breach, the injured party could use lack of voluntary assent as a defense.

REALTOR®:
A registered trade name that may be used only by members of the state and local real estate boards affiliated with the National Association of REALTORS® (NAR). The term REALTOR® designates a professional who subscribes to associations of REALTORS® to govern real estate practices of members of the board. The use of the name REALTOR® and the distinctive seal in advertising is strictly governed by the rules and regulations of the national association.

REALTOR-ASSOCIATE® (RA):
A licensed salesperson who is a member of the National Association of REALTORS® focusing its efforts on the marketing and brokerage of land.

realized capital gain:
When a property is sold, a capital gain or loss is realized. (See capital gains, deferred capital gain, excluded capital gain, realized capital gain, recognized capital gains)

rebate law:
Law that prohibits escrow and title insurance companies from giving rebates or favorable treatment as consideration for the referral of business.

recapture clause:
A clause in some percentage leases where the lessor has the right to terminate a lease if a tenant does not obtain a desired gross. (See percentage lease)

recapture rate:
A periodic allowance for the recovery of investment capital from the property's income stream.

reconstructed cash flow analysis:
An estimated cash flow analysis for a rental property, prepared by an agent using accurate property information. Its purpose is to present what the cash flow numbers for the investment property will look like when in the hands of a potential buyer.

recasting:
The process of rewriting existing loans, especially when there is a default. The term and interest rate may be adjusted to take pressure off the borrower.

receiver:
An independent party appointed by a court to impartially receive, preserve and manage property that is involved in litigation, pending final disposition of the matter before the court.

recission:
An option in the discharge of a contract. If both parties agree, they may rescind a contract in a process called recission.

recognition clause:
A clause found in some blanket mortgages used to purchase a tract of land for subdivision development providing for protection of the rights of the ultimate buyers of individual lots in case of default by the developer. (See blanket mortgages)

recognized capital gains:
The recognized capital gain from the sale of an asset subject to income taxes. (See capital gains, deferred capital gain, excluded capital gain, realized capital gain)

reconciliation:
1. The final step in an appraisal process, in which the appraiser reconciles the estimates of value received from the direct sales comparison, cost, and income approaches to arrive at a final estimate of market value for the subject property. **2.** The balancing of entries in a double-entry accounting system. (See appraisal)

reconveys:
In satisfying a deed of trust, the trustee reconveys full title to the borrower.

reconveyance deed:
A deed used by a trustee under a deed of trust to return title to the truster.

recording:
The act of entering into the book of public records the written instruments affecting the title to real property, such as deeds, mortgages, contracts for sale, options and assignments. There is also a body of public records apart from the real estate recording system that has a bearing on the quality of title. A title searcher would also check, for example, public records regarding probate, marriage, taxes and judgments.

recreant:
1. cowardly or craven. **2.** unfaithful, disloyal, or traitorous.

rectangular (government) survey system:
A system established in 1785 by the federal government, providing for surveying and describing land by reference to principal meridians and base lines.

redemption:
The right of a defaulted property owner to recover his or her property by curing the default. (See equitable redemption, statutory redemption)

redemption period:
A period of time established by state law during which a property owner has a right to redeem real estate after a foreclosure or tax sale by paying the sales price, interest and costs. Note that many states do not have such statutory redemption periods.

red flag:
A visual sign or indication of a defect. Something that warns a reasonably observant person of a potential problem, thus requiring further investigation. A broker who spots uneven floors or water-stained ceilings is on notice to inquire about soil settlement and roof leakage problems.

redlining:
A practice by some lending institutions that restricts the number of loans or the loan-to-value ratio in certain areas of a community. A redlining policy may be so severe that in effect the lending institution prohibits lending any money in certain areas of the city. The usual justification for redlining is that the lender wants to limit the risks in an area that is deteriorating. The lender discriminates against a whole class of risks rather than distinguishing among individual risks.

reduction certificate (payoff statement):
The document signed by a lender indicating the amount required to pay a loan balance in full and satisfy the debt; used in the settlement process to protect both the seller's and the buyer's interests.

refinance:
To obtain a new loan to pay off an existing loan, or to pay off one loan with the proceeds from another. Properties are frequently refinanced when interest rates drop and/or the property has appreciated in value. Sometimes, a buyer will purchase a property by way of a contract for deed with the expectation of either selling the property before the balance under the contract for deed becomes due or refinancing at better terms and interest rates than exist at the time the agreement of sale is entered into. (See realized capital gains)

reformation:
An action by a court to revise a contract to read as it was intended by the parties to read rather than as stated.

reflective coatings:
A black tinted window coating. Reflective coatings greatly reduce the transmission of daylight through clear glass. Commonly used in hot climates in which solar control is critical.

regression:
An appraisal principle that states that between dissimilar properties the value of the better-quality property is affected adversely by the presence of the lesser-quality property. (See appraisal)

Regulation Z:
Implements the Truth-in-Lending Act requiring credit institutions to inform borrowers of the true cost of obtaining credit.

reinstatement:
To bring something back to its prior position, as in restoring a defaulted loan to current status.

rejection:
Proposing any deviation from the terms of the offer constitutes a rejection of the original offer and becomes a new offer. (See counteroffer)

release:
Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a hazardous or toxic chemical or extremely hazardous substance.

release clause:
A provision found in many blanket mortgages enabling the mortgagor, upon payment of a specific sum of money, to obtain a partial release of particular portions or parcels of the collateral.

release deed:
A document, also known as a deed of reconveyance, that transfers all rights given a trustee under a deed of trust loan back to the grantor after the loan has been fully repaid.

release of liability:
The release of an old borrower from further responsibility for repayment of an assumed loan.

reliction:
An increase of the land by the permanent withdrawal of the ocean or a river.

relinquished property:
The property given up in the exchange.

remainder:
The right of future possession and use that goes to someone other than the grantor upon termination of a life estate.

remainder estate:
A future interest in real estate created at the time and by the same instrument of the original estate, but limited its immediate authority upon the termination of the prior estate. For example, Hoe Phigg owns a property in fee simple and conveys the property "to Barry Clink and upon Clink's death, to Cora Quibb and her heirs." Cora Quibb has a remainder estate, which is vested because the estate automatically passes to Cora Quibb and her heirs upon the death of Barry Clink.

remainder interest:
The remnant of an estate that has been conveyed to take effect and be enjoyed after the termination of a prior estate, such as when an owner conveys a life estate to one party and the remainder to another.

rent:
A fixed, periodic payment made by a tenant of a property to the owner for possession and use, usually by prior agreement of the parties.

rental center:
A special leasing office located in an apartment complex. Usually includes a furnished model and a closing area.

rental income:
The result when vacancies (uncollected rent) is subtracted from gross scheduled income.

rental statement:
A summary of rental amounts paid and security deposits collected on a property used for rental purposes.

rent control:
Ordinances that limit the rent a landlord can charge for a property.

rent factor:
A multiplier used to establish the rental rate for industrial properties based on the owner's desired rate of return.

rent schedule:
A statement of proposed rental rates, determined by the owner or the property manager or both, and based on a building's estimated expenses, market supply and demand and the owner's long-range goals for the property.

rent skimming:
In "no down-payment sales" where the buyer of a property collects rents and deposits on the property without making payments on the loan.

rent up:
A requirement of a lender that a developer lease a stated amount of space in a building as a prerequisite to a permanent lender "taking out" the interim lender.

renunciation:
An act or instance of relinquishing, abandoning, repudiating or sacrificing something, as a right, title, person, etc.

repair or corrective maintenance:
Involves the actual repairs that keep the building's equipment, utilities and amenities functioning. Repairing a boiler, finding a leaky faucet and mending a broken air-conditioning unit are acts of corrective maintenance.

replacement cost:
The construction cost at current prices of a property that is not necessarily an exact duplicate of the subject property but serves the same purpose or function as the original.

replacement property:
The property acquired in the exchange.

rescind:
To annul, cancel.

rescission:
The legal remedy of canceling, terminating or annulling a contract and restoring the parties to their original positions; a return to the status quo. Contracts may be rescinded due to mistake, fraud or misrepresentation and, there is no need to show any money damage.

reserve fund:
Monies a lender will often require a borrower to set aside as a cushion of capital for future payment of items such as taxes, insurance, furniture replacement and deferred maintenance. Sometimes a reserve fund is referred to as an impound account or customer's trust fund. Replacement reserves should be maintained especially when the owner is installing items having a short life expectancy-for example, appliances, furniture or carpeting in a furnished apartment.

reserve funds:
An expense category in the operating budget. Monies that are set aside for replacement expenditures not covered by insurance such as roof or furnace repairs. (See operating budget)

reserve requirements:
A flat percentage of deposits, required by the Federal Reserve, to be set aside by member banks as a precaution. (See Federal Reserve)

Residential Purchase Agreement:
A model purchase agreement form, initially developed in 1985 by the California Association of REALTORS® in cooperation with the State Bar Association, that ensures a real estate purchase agreement will be complete and in compliance with state law.

Resolution Trust Corporation:
The organization created by FIRREA to liquidate the assets of failed savings and loan associations.

respondent:
1. The party who makes an answer to a bill or other proceeding. **2.** The party who contends against an appeal.

restraining order:
An order that may issue from filing for an injunction. Though the term is sometimes used as a synonym of injunction, it is distinguished from an injunction in that it is intended only as a restraint upon a defendant until the granting of a temporary or perpetual injunction. (See injunction)

restricted license:
A probationary real estate license granted after a license was revoked, suspended or denied.

restrictive covenants:
A clause in a deed that limits the way the real estate ownership can be used. (See covenants, conditions & restrictions, deed restrictions)

Resource Conservation and Recovery Act:
Federal law administered by the EPA which regulates the generation, processing and transportation of hazardous waste.

retail property:
Income-producing property from which various types of retail products are sold.

retainer:
Retainer is a professional relationship between an advisor and a client in which a client engages the services of a professional through payment of a fee. The professional's obligation is to provide advice or services as needed by the client.

retaining wall:
A wall built to hold back or support a bank of earth.

retaliatory eviction:
An eviction due to a tenant's complaints to the landlord, a public agency or tenant association. It is illegal for a landlord to decrease services, increase rent or evict the tenant within 180 days of such a complaint. (See eviction)

retirement communities:
Many of them in temperate climates, are often structured as PUDs. They may provide shopping, recreational opportunities and health care facilities in addition to residential units.

retroactive liability:
A liability is not limited to the current owner of a property, but includes people who have previously owned the property. (See liability)

return on investment:
The net annual income divided by the original cash investment equals a percentage return on investment.

reverse-annuity mortgage (RAM):
A loan under which the homeowner receives monthly payments based on his or her accumulated equity rather than a lump sum. The loan must be repaid at a prearranged date or upon the death of the owner or the sale of the property.

reversion:
The right of future possession and use by the grantor of a life estate. (See life estate)

reversionary interest:
The remnant of an estate that the grantor holds after granting a life estate to another person. (See life estate)

reversionary right:
The return of the rights of possession and quiet enjoyment to the lessor at the expiration of a lease.

revocation:
An offeree may fail to accept the offer before it expires. The offeror may revoke the offer at any time before receiving the acceptance. This revocation must be communicated to the offeree by the offeror, either directly or through the parties' agents.

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

right of first refusal:
The right to the first opportunity to lease or purchase real property. For example, apartment tenants might retain the right of first refusal when their units are being converted to condominiums.

right of prior appropriation:
A water rights concept in California and other states that the first user of riparian water obtains priority over subsequent users. (See water rights)

right of survivorship:
The distinctive characteristics of a joint tenancy (also tenancy by entirety) by which the surviving joint tenant(s) succeeds to all right, title and interest of the deceased joint tenant without the need for probate proceedings.

right-of-way:
The right given by one landowner to another to pass over the land, construct a roadway or use as a pathway, without actually transferring ownership.

riparian rights:
The rights of a landowner whose land borders on a stream or watercourse to use and enjoy the water which is adjacent to or flows over the owners land provided such use does not injure other adjacent land owners. Property boundary would be the center line of a non-navigable river or the low waterline of a navigable stream or river. (See littoral rights, water rights)

risk:
The probability of getting your money back. High risk means low probability; low risk means high probability.

risk assessment:
Qualitative and quantitative evaluation of the risk posed to human health and/or the environment by the actual or potential presence and/or use of specific pollutants.

risk-based financing:
When the lender sets loan terms based on potential risk. Borrowers that show little risk of default would be entitled to a better rate and terms than a borrower where a higher probability of default is indicated.

risk management:
Evaluation and selection of appropriate property and other Insurance.

rolled roofing:
An asphalt roofing material that is manufactured in rolls with granules on one side. Asphalt roofing is a relatively inexpensive and short-lived product, and should not be used as a roofing material over living spaces.

rollover loan:
A loan that includes a call date earlier than its normal amortization period; also called a renegotiable rate loan or a bullet loan.

Roman Civil Law:
Roman private property ownership codes enforced by Spain on early California land owners. (See civil law)

roof decking:
The under-support material which is typically wood for attaching shingles and other materials to the roof. (See shingles)

root of the title:
The original grant (or root) of the title.

routine maintenance:
Includes such day-to-day duties as cleaning common areas, performing minor carpentry and plumbing adjustments and providing regularly scheduled upkeep of heating, air-conditioning and landscaping.

rules and regulations:
Real estate licensing authority orders that govern licensees' activities; they usually have the same force and effect as statutory law.

Rumford Act:
California's fair housing law. (See Fair Employment and Housing Act)

run with the land:
A phrase describing rights or covenants that bind or benefit successive owners of a property. An example is a restrictive building covenant in a recorded deed that would affect all future owners of the property. Unlike an easement in gross, an easement appurtenant runs with the land and thus passes to a succeeding owner even if it is not specified in the deed. For example, if the grantee Sylvia Buckner agrees, as part of the consideration to a transaction, to repair a building located on land owned by grantor Leonard Musslewhite, such a covenant will not run with the land. This is because it merely places a duty on the grantee Buckner. The promise does not touch and concern the land granted from Musslewhite to Buckner--it is only a personal covenant for the grantor's benefit.

R-value:
A term used to describe the effectiveness of various kinds of insulation to indicate their resistance to heat flow. If more than one layer of insulation is used, the R-value of the individual layers are added together to indicate a total R-value.

Safe Drinking Water Act:
Enacted by Congress in 1974, this federal law administered by the EPA and equivalent state regulators to establish and enforce drinking water standards.

safety clause:
A safety clause may be contained in a listing. It provides that a broker is still entitled to a commission for a set period of time after the listing has expired if the property is sold to a prospect, who was introduced to the property by the broker, during the period of the listing.

sale-leaseback:
A transaction in which an owner sells his or her improved property and, as part of the same transaction, signs a long term lease to remain in possession of the premises.

sales comparison approach:
The process of estimating the value of a property by examining and comparing actual sales of comparable properties. (See appraisal)

sales contract:
A real estate sales contract contains the complete agreement between a buyer of a parcel of real estate and the seller. Depending on the area, this agreement may be known as an offer to purchase, a contract of purchase and sale, a purchase agreement, an earnest money agreement or a deposit receipt.

salesperson:
A person employed directly or indirectly by a licensed real estate broker to perform various tasks and responsibilities. These may include selling and/or buying real estate; negotiating purchase, sale or exchange of real estate; negotiating leases, rents and/or improvements.

sandwich lease:
Another term used is "sublease." This is when a tenant has a current lease with the owner of a property and then "sublets" the property to a third party. The tenant is then "sandwiched" between the owner and the end user, acting as lessee and lessor at the same time.

satisfaction of mortgage:
When all mortgage loan payments have been made and the note has been paid in full, a satisfaction of mortgage (also known as a release of mortgage or mortgage discharge) returns to the mortgagor all interest in the real estate, which was conveyed to the mortgagee by the original recorded mortgage document.

savings and loan association (S&L):
A financial institution whose principal function is to promote thrift and home ownership. Depositors earn interest on their deposits, often at a higher rate than is offered at commercial banks. The S&L invests some of these deposits in residential mortgage loans, enabling more people to purchase and/or repair their homes. Savings and loan associations are active participants in the home loan mortgage market. (See thrift)

second mortgage:
A mortgage (or trust deed) that is junior or subordinate to a first mortgage; typically, an additional loan imposed on top of the first mortgage, taken out when the borrower needs more money. Because the risk involved to the lender is greater with the second mortgage, the lender's conditions are usually more stringent, the term is shorter and the interest rate is higher than for the first mortgage. (See mortgage)

secondary financing:
A loan taken out in addition to a first loan, usually obtained from an individual lender.

secondary mortgage market:
A market for the purchase and sale of existing mortgages, designed to provide greater liquidity for selling mortgages; also called secondary money market, not to be confused with secondary financing. (See primary mortgage market)

secret profit:
Refers to a broker making an undisclosed profit at the seller's expense; for example, when the broker has an undisclosed relative buy the listed property and then resell it to a buyer whose earlier offer was never presented to the seller.

section 202:
Government program that provides capital for the construction, rehabilitation or acquisition of nonprofit housing for low income elderly. (See section 8)

section 8:
Federally subsidized housing administered by HUD where the tenant pays up to thirty percent of his or her adjusted monthly income and HUD pays the difference between that amount and the market rent. Property owners are not required to participate. (See section 202)

section(s):
As used in the government survey method, a land area of one square mile, or 640 acres. A section is 1/36 of a township, or each township contains 36 sections. Sections are numbered 1 through 36. Section 1 is always in the northeast, or upper right-hand, corner. The numbering proceeds right to left to the upper left-hand corner. From there, the numbers drop down to the next tier and continue from left to right, then back from right to left. (See government survey system)

securitization:
The pooling of real estate mortgages and trust deeds to act as collateral for the sale of securities to public and private investors. (See secondary mortgage market)

security:
Evidence of obligations to pay money or of rights to participate in earnings and distribution of corporate, trust or other property. A security is usually found where an investor subjects his or her money to the risks of an enterprise over which he or she exercises no managerial control.

security agreement:
Security interests in chattels (personal property) are created by an instrument known as a *security agreement.* To give notice of a security interest, a financing statement must be recorded. (See personal property, Uniform Commercial Code)

security deposit:
Money deposited by or for the tenant with the landlord, to be held by the landlord for the following purposes: **1.** to remedy tenant defaults for damage to the premises (be it accidental or intentional), for failure to pay rent due or for failure to return keys at the end of the tenancy; **2.** to clean the dwelling so as to place it in as fit a condition as when the tenant commenced possession, considering normal wear and tear; and **3.** to compensate for damages caused by a tenant who wrongfully quits the dwelling unit. (See landlord, tenant)

seller carryback financing:
A sale of real property where the seller receives a portion of the sales price in the form of a promissory note secured by the real property purchased. An extension of credit by the seller.

seller financing disclosure statement:
There are specific additional duties imposed upon the licensee who negotiates a sale of real property when the seller receives a portion of the sales price in the form of a promissory note secured by the real property purchased. This *seller financing disclosure statement* is required in a transaction for the purchase of a dwelling for not more than four families where the purchase includes an extension of credit by the seller and where the licensee is acting as an "arranger of credit." (See arranger of credit, promissory note)

seller's agent:
An agent who represents the seller of real property. (See buyer's agent)

Seller's Real Property Disclosure Form:
As required by Nevada Real Estate Division Code NRS 113. 100-113.150, a transferee (buyer) of residential real property is entitled to a statement from the transferor (seller) which provides information regarding the physical condition of the property. Must be made by the seller at least 10 days before residential property is conveyed to a buyer.

senior loan:
A real estate loan in the first priority position. (See junior mortgage)

separate property:
Under community property law, property owned solely by either spouse before the marriage, acquired by gift or inheritance after the marriage or purchased with separate funds after the marriage. (See community property)

septic system:
A system for collecting, treating and eliminating waste from a home waste drainage system.

setback:
The amount of space local zoning regulations require between a lot line and a building line.

set-up sheet:
Also know as an "Annual Property Cash Flow Statement." Includes cash flow information about a listed rental property that is passed out to other real estate companies and/or given to prospective buyers.

servicing agreement:
Signed documentation as to who will service the loan.

servient tenement:
Land on which an easement exists in favor of an adjacent property (called a dominant tenement or estate); also called a servient estate. If property A has a right-of-way across property B, property B is the servient tenement. The servient owner may not use the property in such a way as to interfere with the reasonable use of the dominant owner. (See dominant tenement, easement)

severalty:
Sole ownership of real property.

severance:
Changing an item of real estate to personal property by detaching it from the land; for example, cutting down a tree.

sharecropping:
In an agricultural lease, the agreement between the landowner and the tenant farmer to split the crop or the profit from its sale, actually sharing the crop. (See agricultural lease)

shared-appreciation mortgage (SAM):
A mortgage loan in which the lender, in exchange for a loan with a favorable interest rate, participates in the profits (if any) the borrower receives when the property is eventually sold.

sheriff's deed:
The deed given after a sheriff's sale. (See deed)

shingles:
Roofing material characterized by short, rectangular sections, nailed to the roof decking in an overlapping pattern. Asphalt shingles are the most common type. (See roof decking)

short term rate:
A reduced rate for title insurance applicable in cases where the owner of a property has been insured previously or where any lender has been insured somewhat recently on the property.

shower pan:
A waterproof "pan" placed beneath the floor tiles or concrete base of a shower that prevents leaking.

"sick building" syndrome:
The term "sick building syndrome" (SBS) is used to describe situations in which building occupants experience discomforting health conditions that appear to be linked to time spent in a building, but no specific illness or cause can be identified.

simple interest:
Interest computed on the principal balance, and disregards previously accumulated (unpaid) interest.

signatory:
1. having signed or joined in signing a document. **2.** a signer, or one of the signers, of a document.

single agency:
The practice of representing either the buyer or the seller but never both in the same transaction. The single-agency broker may be compensated indirectly through an authorized commission split or directly by the principal who employed the agent to represent him or her. (See dual agency)

single-family, owner-occupied dwellings:
A dwelling which will be owned and occupied by a signatory to the mortgage or deed of trust secured by such dwelling within 90 days of the execution of the mortgage or deed of trust.

situs:
The personal preference of people for one area over another, not necessarily based on objective facts and knowledge.

slab:
A flat piece of concrete, typically used as a walking surface, but may also serve as a load bearing device as in slab homes.

soft money loan:
A loan where credit not cash is extended, usually by the seller carrying all or part of the financing.

Soldiers and Sailors Civil Relief Act:
A law prohibiting foreclosures while a person is serving in the military and within three months thereafter except by court order.

sole proprietorship:
A method of owning a business in which one person owns the entire business and reports all profits and losses directly on his or her personal income tax return, as contrasted with corporate, joint or partnership ownership. A sole or individual proprietorship is easy to organize and flexible to operate. It is frequently used in real estate brokerage. An individual proprietor may run a brokerage company if he or she has a valid broker's license. The proprietor may use his or her own name or a fictitious name previously registered as required by state law. There is a growing tendency for sole proprietors to incorporate and thus take advantage of certain tax and fringe benefits, such as those provided by pension and profit-sharing plans.

sole tenancy:
(See tenancy in severalty)

solid core door:
A door where the inner material (core) is made of solid wood. This type door is usually used for doors to the outside or garage.

solid waste:
As defined under Resource Conservation and Recovery Act, any solid, semi-solid, liquid, or contained gaseous materials discarded from industrial, commercial, mining, or agricultural operations, and from community activities. Solid waste includes garbage, construction debris, commercial refuse, sludge from water supply or waste treatment plants or air pollution control facilities, and other discarded materials.

source reduction:
The design, manufacture, purchase, or use of materials (such as packaging) that reduce the amount or toxicity of garbage. Source reduction can reduce waste disposal and handling costs because the expense of recycling, composting, combustion and landfill are avoided. Source reduction conserves resources and reduces pollution.

special agent:
One authorized by a principal to perform a particular act or transaction without contemplation of continuity of service as with a general agent. The real estate broker is ordinarily a special agent appointed by the seller to find a ready, willing and able buyer for a particular property. An attorney-in-fact under a limited power of attorney is a special agent. (See agency, agent, general agent)

special assessment:
A tax or levy customarily imposed against only those specific parcels of realty that will benefit from a proposed public improvement, as opposed to a general tax on the entire community. Because the proposed improvement will enhance the value of the affected homes, only those affected owners must pay this special lien. Common examples of special assessments are water, sidewalk and sewer assessments, or other special improvements such as parks and recreational facilities.

special limitation:
A fee simple estate may also be qualified by a special limitation. The estate ends automatically upon the current owner's failure to comply with the limitation. The former owner retains a possibility of reverter. If the limitation is violated, the former owner (or his or her heirs or successors) reacquires full ownership, with no need to reenter the land or go to court. A fee simple with a special limitation is also called a fee simple determinable because it may end automatically. The language used to distinguish a special limitation-the words "so long as" or "while" or "during"-is the key to creating this estate.

special-purpose property:
Hotels, resorts, nursing homes, theaters, schools, places of worship and other organizations whose specialized needs dictate the design and operation of the property.

special studies zone:
A specific area where an investigation is taking place regarding seismic or geologic considerations.

special warranty deed:
A deed in which the grantor warrants or guarantees the title only against defects arising during the period of his or her tenure and ownership of the property and not against defects existing before that time. Such a deed is usually identified by the language "by, through, or under the grantor, but not otherwise." A special warranty deed is often used when a fiduciary such as an executor or trustee conveys the property of his or her principal, because the fiduciary usually has no authority to warrant against acts of his or her predecessors in title.

specific lien:
A lien affecting or attaching only to a certain, specific parcel of land or piece of property. (See lien)

specific performance:
An action brought in a court of equity in special cases to compel a party to carry out the terms of a contract. The basis for an equity court's jurisdiction in breach of a real estate contract is the fact that land is unique and mere legal damages would not adequately compensate the buyer for the seller's breach.

splash block:
A small, specially designed portable concrete pad. Oriented downhill, splash blocks direct water from rain gutter down drains or under outside hose faucets to flow away from the house.

split-fee financing:
A form of joint venture participation where the lender purchases the fee land under the proposed development project and leases it to the developer. The lender also finances the improvements to be constructed on this leasehold. (See joint venture)

spot zoning:
Zoning of parcels not in conformance with the general zoning of an area. (See zoning)

square-foot method:
A method of estimating a building's construction, reproduction or replacement costs; whereby the structure's square-foot floor area is multiplied by an appropriate construction cost per square foot. (See appraisal)

standard coverage policy:
A standard coverage policy normally insures the title as it is known from the public records. In addition, the standard policy insures against such hidden defects as forged documents, conveyances by incompetent grantors, incorrect marital statements and improperly delivered deeds. (See extended coverage policy, title insurance)

standby takeout commitment:
An agreement by an interim lender to advance funds to take out a construction lender. (See interim financing)

stare decisis:
The reliance of courts on previous decisions when judging disputes. (See common law)

statement of information:
Also called a "Statement of Identity." Statements provided to the escrow agent verifying pertinent data identifying the grantor, grantee, or borrower.

statement of reasons:
The Federal Equal Credit Opportunity Act (ECOA) (Title VII of the Consumer Protection Act) requires that a lender/creditor who **denies** an application for credit must provide the applicant with a **statement of reasons**, or written notification of the applicant's right to obtain a statement of reasons, within thirty days after receipt of a completed application for credit. (See Equal Credit Opportunity Act)

statute of frauds:
State law that requires certain contracts to be in writing and signed by the party to be charged (or held) to the agreement in order to be legally enforceable.

statute of limitations:
That law pertaining to the period of time within which certain actions must be brought to court. The law is intended to protect the vigilant against stale claims by requiring the prompt assertion of claims; thus an action must be brought (i.e., the complaint filed) within a specified time of the occurrence of the cause of action. After the time period expires, the claim is said to be "outlawed" and may not be enforced in court. The theory behind the statute of limitations is that there must be some end to the possibility of litigation. It is said that stale witnesses and stale records produce little truth and result in accidental justice, if any.

statutory law:
The laws, rules and regulations enacted by legislatures and other governing bodies. (See civil law, common law, constitutional law)

statutory lien:
A lien imposed on property by statute—a tax lien, for example—in contrast to an equitable lien, which arises out of common law. (See lien)

statutory redemption:
The right of a defaulted property owner to recover the property after its sale by paying the appropriate fees and charges. (See equitable redemption)

steering:
The illegal practice of channeling homeseekers interested in equivalent properties to particular areas, either to maintain the homogeneity of an area or to change the character of an area to create a speculative situation. This practice makes certain homes unavailable to homeseekers on the basis of race or national origin, and on these grounds it is prohibited by the provisions of the federal fair housing act. Steering is often difficult to detect, however, because the steering tactics can be so subtle that the homeseeker is unaware that his or her choice has been limited. Steering could be a licensee's use of a word, phrase or act that is intended to influence the choice of a prospective property buyer on a discriminatory basis.

stigmatized property:
A property that has acquired an undesirable reputation due to an event that occurred on or near it, such as violent crime, gang-related activity, illness or personal tragedy. Because of the potential liability to a licensee for inadequately researching and disclosing material facts concerning a property's condition, licensees should seek competent counsel when dealing with a stigmatized property. Some states restrict the disclosure of information about stigmatized properties. In other states, the licensee's responsibility may be difficult to define because the issue is not a physical defect, but merely a perception that a property is undesirable.

stock cooperative:
Ownership of real property by a corporation where each stockholder is entitled to occupancy of a unit under a lease. (See cooperative)

stop date:
Date on a term loan when the balloon payment is due. (See balloon payment)

stop notice:
A notice given to a lender that a subcontractor has not been paid. Unless bond is posted, the lender must withhold moneys due a prime contractor.

straight-line method:
A method of depreciation, also called the age-life method, that is computed by dividing the adjusted basis of a property by the number of years of estimated remaining useful life. The cost of the property is thus deducted in equal annual installments. For example, if the depreciable basis is $ 100,000 and the estimated useful life is 25 years, the annual depreciation deduction is $4,000 for each year during the useful life of the asset. Prior to 1986, taxpayers sometimes used a form of accelerated depreciation such as 175 percent of straight line. The IRS had rules to recapture the amount of depreciation that was in excess of the straight-line rate. (See depreciation)

straight (term) loan:
A loan in which only interest is paid during the term of the loan, with the entire principal amount due with the final interest payment.

straight note:
A promissory note evidencing a loan in which payments of interest only are made periodically during the term of the note, with the principal payment due in one lump sum upon maturity. A straight note is usually a non-amortized note made for a short term, such as three to five years, and is renewable at the end of the term. (See promissory note)

stratified marketplace:
The real estate market is a marketplace that is stratified based on price.

strict foreclosure:
In a strict foreclosure procedure, after a delinquent borrower has been notified and the proper papers have been filed, the court designates a specific period during which the balance of the default must be paid in full. If the payment is not made, the borrower's equitable and statutory redemption rights are waived and the court awards full legal title to the lender. There is no deficiency judgment in strict foreclosure cases. (See foreclosure, judicial foreclosure, non-judicial foreclosure)

strict liability:
An owner of a property is responsible to an injured party without excuse. (See liability)

subagent:
An agent of a person who is already acting as an agent for a principal. The original agent can delegate authority to a subagent where such delegation is either expressly authorized or customary in the trade. For example, it is customary for listing brokers to delegate certain functions of a ministerial nature to subagents, such as to show property and solicit buyers.

Subdivided Land Law:
A disclosure law enacted to protect buyers of subdivided parcels. A public report is required for subdivisions of five or more parcels. (See public report, subdivision)

subdivider:
One who buys undeveloped land, divides it into smaller, usable lots and sells the lots to potential users.

subdivision:
Any land that is divided or is proposed to be divided for the purpose of disposition into two or more lots, parcels, units or interests. Subdivision refers to any land, whether contiguous or not, if two or more lots, parcels, units or interests are offered as part of a common promotional plan of advertising and sale.

subdivision and development ordinances:
Municipal ordinances that establish requirements for subdivisions and development.

Subdivision Map Act:
An act providing for local control of subdivisions. Cities and counties are required to adopt an ordinance to regulate subdivisions. (See subdivision)

subjacent support:
The right of land to be supported by land which lies beneath it. (See lateral support)

subject property:
A reference to the real property under discussion, or the real property under appraisal. (See appraisal)

"subject to":
The recognition by a buyer of conditions (such as a prior loan), which are not the buyer's legal responsibility.

sublease:
A lease given by a lessee for a portion of the leasehold interest, while the lessee retains some reversionary interest. The sublease may be for all or part of the premises, for the whole term or part of it, as long as the lessor retains some interest in the property. Leases normally contain a clause prohibiting subletting without prior consent of the lessor. The lessee remains directly liable to the lessor for the rent, which is usually paid by the sublessee to the lessee and then from the lessee to the lessor. The sublessee does not have a contractual obligation to pay rent to the original lessor.

sublet:
The partial transfer of a tenant's right in a rental property to a third party. (See sublease)

subordination agreement:
A written agreement between lienholders to change the priority of mortgage, judgment and other liens. Under a subordination agreement, the holder of a superior or prior lien agrees to permit a junior lienholders’ interest to move ahead of his or her lien. (See junior mortgage, lien)

subordination clause:
A clause in which the holder of a mortgage permits a subsequent mortgage to take priority. Subordination is the act of yielding priority. This clause provides that if a prior mortgage is paid off or renewed, the junior mortgage will continue in its subordinate position and will not automatically become a higher or first mortgage. A subordination clause is usually standard in a junior mortgage, because the junior mortgagee gets a higher interest rate and is often not concerned about the inferior mortgage position. (See junior mortgage)

subprime lenders:
Lenders who specialize in B, C, or D category paper. (See B, C, or D paper)

subrogation:
The substitution of one creditor for another, with the substituted person succeeding to the legal rights and claims of the original claimant. Subrogation is used by title insurers to acquire from the injured party rights to sue in order to recover any claims they have paid.

subscribe:
1) to give, pay, or pledge (a sum of money) as a contribution, investment, etc. **2)** to append one's signature or mark to (a document), as in approval or attestation of its contents.

substitution:
An appraisal principle that states that the maximum value of a property tends to be set by the cost of purchasing an equally desirable and valuable substitute property, assuming that no costly delay is encountered in making the substitution. (See appraisal)

substitution of entitlement:
Replaces one eligible veteran with another on an existing Veterans Administration loan. The entitlement is restored to the original veteran. (See Veterans Administration loan)

subsurface rights:
Ownership rights in a parcel of real estate to the water, minerals, gas, oil and so forth that lie beneath the surface of the property. (See surface rights)

subterranean termites:
A type of termite that nests underground. (See termite inspection)

subterfuge:
A clever trick or strategy used to evade a rule, escape a consequence, hide something, etc.

successors:
Those who succeed to or to whom the corporation's rights in the property are transferred. (See heirs)

suit for possession:
A court suit initiated by a landlord to evict a tenant from leased premises after the tenant has breached one of the terms of the lease or has held possession of the property after the lease's expiration.

suit for specific performance:
If a seller breaches a real estate contract, the buyer may sue for specific performance. The buyer asks the court to force the seller to go through with the sale and convey the property as previously agreed. The buyer may choose to sue for damages, in which case the buyer asks that the seller pay for costs and hardships suffered as a result of the seller's breach.

suit to quiet title:
A court action intended to establish or settle the title to a particular property, especially when there is a cloud on the title.

sump:
A reservoir that collects and holds water or some other liquid, which is subsequently disposed of by using a pump.

Superfund:
Popular name of the hazardous waste cleanup fund established by the . (See Comprehensive Environmental Response, Compensation and Liability Act) as amended by the Superfund Amendment and Reauthorization Act of 1986 (SARA). Superfund focuses on the cleanup of releases of hazardous substances on property. It creates significant legal exposure based on strict liability for owners, landlords and, sometimes lenders.

Superfund Amendments and Reauthorization Act (SARA):
An amendatory statute that contains stronger cleanup standards for contaminated sites, increased funding for Superfund and clarifications of lender liability and innocent landowner immunity. (See Comprehensive Environmental Response, Compensation and Liability Act)

supply:
The amount of goods available in the market to be sold at a given price. The term is often coupled with supply and demand The appraisal principle that follows the interrelationship of the supply of and demand for real estate. As appraising is based on economic concepts, this principle recognizes that real property is subject to the influences of the marketplace just as is any other commodity. (See appraisal, demand)

surety bond:
An agreement by an insurance or bonding company to be responsible for certain possible defaults, debts or obligations contracted for by an insured party; in essence, a policy insuring one's personal and/or financial integrity. In the real estate business a surety bond is generally used to ensure that a particular project will be completed at a certain date or that a contract will be performed as stated.

surface rights:
Ownership rights in a parcel of real estate that are limited to the surface of the property and do not include the air above it (air rights) or the minerals below the surface (subsurface rights).

surrender:
Giving up leasehold rights by a tenant in exchange for a release from future obligations under a lease.

survey:
The process by which boundaries are measured and land areas are determined; the on-site measurement of lot lines, dimensions and position of a house on a lot, including the determination of any existing encroachments or easements.

survivorship:
The right of surviving joint tenants to the ownership interest of another joint tenant upon the latter's death. (See joint tenancy)

SWAP Program:
A Freddie Mac program where lower yield mortgages are exchanged for Participation Certificates. (See participation certificates)

syndicate:
A combination of people or firms formed to accomplish a business venture of mutual interest by pooling resources. In a real estate investment syndicate the parties own and/or develop property, with the main profit generally arising from the sale of the property.

syndication:
A descriptive term for a group of two or more people united for the purpose of making and operating an investment. A syndication may operate in the form of a REIT, corporation, general partnership, limited partnership or even as tenancy in common.

table funding:
Simultaneous conveyance of purchase price and title as well as all loan papers at a closing.

tacking:
Adding or combining successive periods of continuous occupation of real property by adverse possessors. This concept enables someone who has not been in possession for the entire statutory period to establish a claim of adverse possession.

take-out financing:
Long-term permanent financing. In the usual large construction project, the developer obtains two types of financing. The first is the interim loan, a short-term loan to cover construction costs. Before lending any money, however, the interim lender normally requires a commitment by a permanent lender to agree to "take out" the interim lender in which the lender pays off the construction loan and leaves the developer with a permanent long-term loan when the building has been completed.

taking:
The concept of *taking* comes from the Takings clause of the fifth amendment of the United States Constitution. The clause reads, "nor shall private property be taken for public use, without just compensation." This means that when land is taken for public use through the government's power of eminent domain or condemnation, the owner must be compensated. (See eminent domain)

talking sign:
A radio transmitter with a range of up to 250 feet that broadcasts a description of a property to prospects listening to a radio tuned to the transmitter's frequency.

tandem plan:
A mortgage subsidy program offered from time to time by the United States Congress. The Government National Mortgage Association (GNMA) purchases certain mortgages at below market interest rates, granting borrowers low-interest loans. GMNA sells the loans on the secondary market at a discount, the discount being the amount of the subsidy. These programs are offered "in tandem" with local mortgage lenders. (See GNMA, secondary mortgage market)

taxation:
1. The process by which a government or municipal quasi-public body raises monies to fund its operation. **2.** The impact an investment has on the investor's liability for the payment of federal, state, and local taxes.

tax bill:
A property owner's tax bill is computed by applying the tax rate to the assessed valuation of the property.

tax credit:
An amount by which tax owed is reduced directly.

tax deed:
An instrument, similar to a certificate of sale, given to a purchaser at a tax sale. (See certificate of sale)

tax deferred exchange (1031 exchange):
Under Section 1031 of the Internal Revenue Code, some or all of the realized gain from the exchange of property may not need to be immediately recognized for tax purposes. Both properties in an exchange must be held for productive use in trade or business or for investment and must be of a like-kind. (See like-kind, realized capital gain)

tax-free gifts:
Gifts that are free from federal gift taxes.

tax levy:
The amount to be raised from the general real estate tax is then imposed on property owners through a tax levy. A tax levy is the formal action taken to impose the tax, usually a vote of the taxing district's governing body.

tax lien:
A charge against property, created by operation of law. Tax liens and assessments take priority over all other liens. (See assessments, lien)

tax rate:
The tax rate for each taxing body is computed separately. To arrive at a tax rate, the total monies needed for the coming fiscal year are divided by the total assessments of all real estate located within the taxing body's jurisdiction.

Tax Reform Act of 1986 (TRA 86):
Sweeping revisions to the income tax laws, enacted by the United State Congress in 1986, that lowered tax rates and eliminated many tax shelters.

Taxpayer Relief Act of 1997 (TRA 97):
Enacted by the United State Congress and effective May 7, 1997, **TRA '97** provides for broader exemption from capital gains taxes on the profits on the sale of a personal residence. Replaces the old provision for a "one-time" exemption of $125,000 for sellers over age 55.

tax sale:
A court-ordered sale of real property to raise money to cover delinquent taxes.

tax shelter:
A phrase often used to describe some of the tax advantages of real estate or other investments, such as non-cash deductions for cost recovery (depreciation), interest, taxes and postponement or even elimination of certain taxes. The tax shelter not only may offset the investor's tax liability relevant to the real estate investment but also may reduce the investor's other ordinary income, which reduces overall tax liability.

tenancy at sufferance:
A tenancy (or estate) in which a person wrongfully holds or occupies a property after the expiration of a lease without the consent of the landlord. No notice of termination is required for the landlord to evict the tenant.

tenancy at will:
A tenancy (or estate) in which a person holds or occupies real estate with the permission of the owner, for a term of unspecified or uncertain duration: i.e., there is no fixed term to the tenancy.

tenancy by the entirety:
Some states allow husbands and wives to use a special form of co-ownership called tenancy by the entirety. In this form of ownership, each spouse has an equal, undivided interest in the property. (The term entirety refers to the fact that the owners are considered one indivisible unit because early common law viewed a married couple as one legal person).

tenancy for years:
A tenancy for a definite period of time. The tenant must vacate the property at the end of the lease unless an extension or new lease has been agreed upon.

tenancy in severalty:
Ownership of a property by one person, rather than held jointly with others. Also called sole tenancy.

tenant:
In general, one who exclusively holds or possesses property, such as a life tenant or a tenant for years; commonly used to refer to a lessee under a lease. A tenant's occupancy, although exclusive, is always subordinate to the rights of the owner. Tenant refers to an occupant, not necessarily a renter.

tenant emergency procedures manual:
A printed manual outlining emergency procedures, including evacuation plans and contact information for emergency personnel. The manual is used by building managers in the event of accident, illness, fire, natural disaster or other emergency situation.

tenants in common:
A form of concurrent ownership of property between two or more persons, in which each has an undivided interest in the whole property. This form is frequently found when the parties acquire title by descent or by will. Each cotenant is entitled to the undivided possession of the property, according to his or her proportionate share and subject to the rights of possession of the other tenants. No cotenant can exclude another cotenant, or claim ownership of a specific portion of the property. Each cotenant holds an estate in land by separate and distinct titles, but with unity of possession. Their interests may be equal, as in joint tenancy, or unequal. Where the conveyance document does not specify the extent of interest of each cotenant, there is a rebuttable presumption that the shares are equal. Unlike a joint tenancy, there is no right of survivorship in a tenancy in common. Therefore when one of the cotenants dies, the interest passes to his or her heirs or beneficiaries and not to the surviving tenants in common. The property interest of a tenant in common is thus subject to probate. Also, unlike joint tenancy, dower rights may exist in property held in common.

tenant improvements:
A commercial or an industrial property manager often is called on to make tenant improvements. These are alterations to the interior of the building to meet a tenant's particular space needs. Such construction alterations range from simply repainting or recarpeting to completely gutting the interior and redesigning the space by erecting new walls, partitions and electrical systems.

tenement:
A common law real estate term that describes those real property rights of a permanent nature. These rights relate to the land and pass with conveyance of the land, such as buildings and improvements.

termite inspection:
A visible check of a property for the presence of termites. Usually performed by a licensed exterminator. Buyers often make a termite inspection a condition of a sales contract, and require a pest control report or a clearance letter showing the property to be clear of any live, visible infestation. The VA, FHA and Fannie Mae all require a termite inspection as a condition of a loan.

term loan:
A short-term loan requiring interest-only payments until maturity, at which time the entire principal is due and payable.

testamentary trust:
A trust established by will.

testate:
Having made and left a valid will.

testator:
A person who has made a valid will. A woman often is referred to as a testatrix, although testator can be used for either gender.

thermal mass:
Thermal mass is a property that enables building materials to absorb, store, and later release significant amounts of heat. Buildings constructed of concrete and masonry have a unique energy savings advantage because of their inherent thermal mass.

third party originator:
Third-party originators prepare loan applications for borrowers and submit the applications to lenders.

Thirteenth Amendment to the United States Constitution (1868):
Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation. (See Fourteenth Amendment)

3-way switch:
A light switch that allows a person to turn the light on or off from either end of a hallway or stairway.

30-day notice:
Notice to vacate a premises under a periodic tenancy. Notice must be for the rent period, but not more than 30 days. (See periodic tenancy)

three-day notice:
Notice to quit, quit or cure, or quit or pay rent. Three-day notice must be given before an unlawful detainer action. (See unlawful detainer action)

threshold notification:
Notification by brokers that they have met the threshold requirements for filing status and fiscal year reports on trust fund activities.

thrift:
Another name for a savings and loan association; a financial institution established to promote "thrift" by accepting savings deposits, and to make home mortgage loans. (See savings and loan association)

tier (township strip):
A strip of land six miles wide, extending east and west and numbered north and south according to its distance from the base line in the rectangular (government) survey system of legal description.

timing:
Refers to the length of time one must wait to receive cash flow from an investment.

time is of the essence:
A contract clause that emphasizes punctual performance as an essential requirement of the contract. Thus, if any party to the instrument does not perform within the specified time period (the drop-dead date), that party is in default, provided the non-defaulting party has made a valid tender of performance. If no tender is made, then the clause may be waived. The clause may also be waived by the subsequent acts of the parties such as accepting tardy payments or signing escrow instructions that allow for extensions of time in which to perform.

time-sharing:
A modern approach to communal ownership and use of real estate that permits multiple purchasers to buy undivided interests in real property (usually in a resort condominium or hotel) with a right to use the facility for a fixed or variable time period. Under time-sharing forms of ownership, potential purchasers of property buy fixed or floating time periods for use of a specific apartment within a project.

title:
1. The right to or ownership of land. **2.** The evidence of ownership of land. (See ownership)

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

title insurance:
A comprehensive indemnity contract under which a title insurance company warrants to make good a loss arising through defects in title to real estate or any liens or encumbrances thereon. Unlike other types of insurance, which protect a policyholder against loss from some future occurrence (such as a fire or auto accident), title insurance in effect protects a policyholder against loss from some occurrence that has already happened, such as a forged deed somewhere in the chain of title.

Needless to say, a title company will not insure a bad title any more than a fire insurance company would insure a burning building. However, if upon investigation of the public records and all other material facts, the title company feels that it has an insurable title, it will issue a policy. (See extended coverage policy, mortgagee's title insurance, standard coverage policy)

title insurance fees:
The costs involved in purchasing title insurance. May include title insurance policy and search fees.

title search:
The examination of public records relating to real estate to determine the current state of the ownership.

title theory:
Some states interpret a mortgage to mean that the lender is the owner of mortgaged land. Upon full payment of the mortgage debt the borrower becomes the landowner.

Torrens system:
A method of evidencing title by registration with the proper public authority, generally called the registrar, named for its founder, Sir Robert Torrens, an Australian who developed the system in 1857. Torrens took the idea from the system of registering title to shipping vessels.

A legal system for the registration of land, used to verify the ownership and encumbrances (except tax liens), without the necessity of an additional search of the public records. The purpose of the Torrens Act pertaining to registration of title to land is to conclusively establish an indefeasible title to the end that anyone may deal with such property with the assurance that the only rights or claims of which he or she need take notice are those so registered. The Torrens system of registration is the title itself; it differs from a title insurance policy, which is only evidence of title. In other words, a person does not acquire title to Torrens-registered real property unless that person registers the title.

The distinctive feature of registered property is that title does not pass, and encumbrances (such as mortgages) are not effective against the property until such encumbrances or conveyances are noted on the registered certificate of title. A party who suffers loss through an error made by the governmental registrar can recover damages from the state through an assurance fund. The registrar, however, will not personally defend against litigation or reimburse the landowner for litigation expenses, which is one reason why most mortgagees require title insurance even for Torrens-registered titles.

Under the Torrens system, the landowner initially petitions a state court to register his or her property, giving notice to all interested parties. After a search of title is filed with the court, there is generally a hearing to determine the status of the title and the court's determination is made in the form of a court decree. The procedure is similar to a quiet title suit. The initial use of the Torrens system is optional. But once property is registered, all subsequent transfers must follow the registration procedures.

Approximately 10 states have adopted the Torrens system. It is also popular in Canada, Australia and Great Britain. In some states, Torrens-registered property is not subject to a general judgment lien, nor can title be lost through adverse possession.

tort:
A wrongful act; a violation of a legal right.

town house:
A type of dwelling unit normally having two floors, with the living area and kitchen on the base floor and the bedrooms located on the second floor; a series of individual houses having architectural unity and a common wall between each unit.

township:
A division of territory, used in the government (rectangular survey system of land description, which is six miles square, and contains 36 sections, each of which is one mile square and consists of 23,040 acres.

township line:
Lines running east and west, parallel to the base line and six miles apart. (See base line)

township squares:
When the horizontal township lines and the vertical range lines intersect, they form squares. These township squares are the basic units of the rectangular survey system. Townships are 6 miles square and contain 36 square miles (23,040 acres).

township tiers:
Township lines form strips of land called township tiers. These township tiers are designated by consecutive numbers north or south of the base line. (See base line, township line)

Toxic Substance Control Act:
Enacted by Congress in 1976, the act authorizes EPA to secure information on all new and existing chemical substances and to control any of these substances determined to cause an unreasonable risk to public health or the environment. The act was established to ensure that the human health and environmental effects of chemical substances were identified and properly controlled prior to placing these materials into commerce.

tranche:
A series of bonds issued for a CMO. (See CMO)

trade fixture:
An article of personal property annexed or affixed to leased premises by the tenant as a necessary part of the tenant's trade or business. At the termination of a lease, a tenant must leave most fixtures in the premises; however, trade fixtures are removable by the tenant before expiration of the lease, and the tenant is responsible for any damages caused by their removal. However, a tenant cannot usually remove replacement fixtures, that is, improvements installed to replace worn-out ones. For instance, if a tenant installs a new bar to replace an old bar in a tavern the tenant leases, the tenant cannot remove the bar upon termination of the lease. If the tenant fails to remove trade fixtures within a reasonable time of lease expiration, the fixtures will be considered abandoned and will become the property of the landlord.

trading on the equity:
The practice of agreeing to buy real estate and then assigning the purchase agreement to another buyer before closing takes place; thus turning a profit by "selling the paper."

transaction broker:
A transaction broker (also referred to as a non-agent, facilitator, coordinator or contract broker) is not an agent of either party. A transactional broker's job is simply to help both the buyer and the seller with the necessary paperwork and formalities involved in transferring ownership of real property. The buyer and the seller negotiate the sale without representation.

transfer tax:
A state tax imposed on the transfer or conveyance of realty or any realty interest by means of deed, lease, sublease, assignment, contract for deed or similar instrument. One purpose of the tax is to acquire reliable data on the fair market value of the property to help establish more accurate real property tax assessments.

Treasury bill, note, bond:
Treasury **bill** issued for less than a year; Treasury **note** issued from one to five years; Treasury **bond** issued from five to ten years.

trespass:
Unlawful entry or injury to the property of another.

trigger terms:
Terms in an advertisement which trigger additional disclosure of all credit terms.

trip hazard:
Any situation where there is an increased likelihood of tripping (e.g. stairs that do not have a uniform tread or riser height all the way along the stairs).

triple-net lease:
A net-net-net lease where, in addition to the stipulated rent, the lessee assumes payment of all expenses associated with the operation of the property. This includes both fixed expenses, such as taxes and insurance, and all operating expenses, including costs of maintenance and repair. In some cases, the triple-net tenant even pays the interest payments on the lessors mortgage on the property leased.

Strictly speaking, the term triple-net lease is redundant because "net lease" adequately describes the situation. Rather than rely on labels, however, the parties must examine the provisions of the lease to discover the extent of the tenant's responsibilities.

triplex:
A building comprised of three dwelling units, each having a front and rear (or side) door and yard; similar to row houses.

truss:
A roof structural support system made up from "2 by" wood components that are attached using press-on metal plates (as opposed to rafters that are nailed together). (See rafter)

trust:
An arrangement whereby legal title to property is transferred by the grantor (or trustor) to a person called a trustee, to be held and managed by that person for the benefit of another, called a beneficiary.

trustee:
1) One who holds property in trust for another as a fiduciary and is charged with the duty to protect, preserve and enhance the value and the highest and best use of the trust property. **2)** One who holds property in trust for another to secure the performance of an obligation. In those states using trust deeds as security devices, the trustee holds bare legal title to the property pending the borrower/trustor paying off the underlying debt or promissory note. The trustee is usually a lending institution, trust company or title insurance company.

trust deed:
Also called a **deed of trust**. A legal document in which title to property is transferred to a third-party trustee as security for an obligation owed by the trustor (borrower) to the beneficiary (lender). A trust deed is similar to a mortgage—the main difference is that it involves three parties. When a borrower repays the note secured by a trust deed, the trustee must reconvey title back to the borrower by way of a deed of reconveyance. (See deed of reconveyance)

trust deed lien:
A lien on the property of a truster that secures a deed of trust loan. (See lien)

trustee's deed:
A deed executed by a trustee conveying land held in a trust.

trust funds:
Money or other things of value that are received by a broker or salesperson on behalf of a principal or any other person, and which are held for the benefit of others in the performance of any act(s) for which a real estate license is required.

trust fund bank account:
An account set up by a broker, attorney or other agent at a bank or other recognized depository, into which the broker deposits all funds entrusted to the agent by the principal or others; also called an earnest money or escrow account. (See earnest money, escrow account)

trust ledger:
Ledger where a property manager records monies paid out on behalf of an owner.

trustor:
The person who creates a trust and gives the instructions to the trustee.

truth-in-lending law:
A body of federal law effective July 1969 as part of the Consumer Credit Protection Act, and implemented by the Federal Reserve Board's Regulation Z. It was amended in 1982 by the Truth-in-Lending Simplification and Reform Act and later amendments. The main purpose of this law is to ensure that borrowers and customers in need of consumer credit are given meaningful information with respect to the cost of credit. In this way consumers can more readily compare the various credit terms available to them and thus avoid the uninformed use of credit. This law creates a disclosure device only, and does not establish any set maximum or minimum interest rates or require any charges for credit. (See Regulation Z)

two-step mortgage:
A hybrid loan between a fixed-rate and adjustable-rate loan where a lower rate remains in effect for seven years and is then adjusted once for the balance of the loan period. (See hybrid financing)

uncollected rent:
Uncollected rent or vacancy is subtracted from gross scheduled income. Uncollected rent is an estimate expressed as a percentage then converted to dollars. (See gross scheduled income)

unconscionable contracts:
An agreement that is so unfair and one-sided that the courts will refuse to honor it.

underground storage tanks (USTs):
USTs are commonly used for storing petroleum products, chemicals or process wastes. Sites which use USTs include airports, gas stations, industrial locations and military bases. Over time neglected tanks may leak hazardous substances into the environment, contaminating groundwater. State and federal laws impose strict requirements on landowners where USTs are located to detect and correct leaks to protect groundwater.

underwriter:
A person who evaluates the risk of default by a mortgage loan applicant, and grants approval or denial of the loan.

underwriting:
The process of evaluating a mortgage loan applicant's credit, collateral value and the risks in making a loan.

undisclosed dual agency:
A broker may not intend to create a dual agency. However, like any other agency, it may occur unintentionally or inadvertently. Sometimes the cause is carelessness, and other times a salesperson does not fully understand his or her fiduciary responsibilities. Some salespersons lose sight of other responsibilities when they focus intensely on bringing buyers and sellers together. For instance, a salesperson representing the seller might suggest to a buyer that the seller will accept less than the listing price, or that same salesperson might promise to persuade the seller to accept an offer that is in the buyer's best interests. Giving a buyer any specific advice on how much to offer can lead him or her to believe that the salesperson represents the buyer's interests and is acting as the buyer's advocate.

undue influence:
Strong enough persuasion to completely overpower the free will of another and prevent him or her from acting intelligently and voluntarily, as in a case where a broker guilty of blockbusting has induced someone to sell in fear of a change in the racial character of the community. Undue influence usually requires a close or confidential relationship like parent-child, broker-seller, attorney-client, or trustee-beneficiary. When a person has been unduly influenced to sign a contract, that person can void the contract.

unenforceable contract:
A contract which is considered unenforceable either because it cannot be proven or will not be enforced by a court. In addition to being considered void or illegal, other reasons for unenforceable contracts may be because they were not presented in writing which may have been a requirement under state statutes of frauds or the statutes of limitations period has elapsed.

unequivocal:
Unambiguous; clear; having only one possible meaning or interpretation.

Uniform Building Code:
A national building code published by the International Conference of Building Officials. It has been adopted in part by municipalities throughout the United States, but used mostly in the western states. (See building code)

Uniform Commercial Code:
A codification of commercial law, adopted in most states, that attempts to make uniform all laws relating to commercial transactions, including chattel mortgages and bulk transfers. Security interests in chattels are created by an instrument known as a security agreement. To give notice of the security interest, a financing statement must be recorded. Article 6 of the code regulates bulk transfers--the sale of a business as a whole, including all fixtures, chattels and merchandise.

Uniform Condominium Act (UCA):
Many states have adopted the Uniform Condominium Act (UCA). Under its provisions, a condominium is created and established when the owner of an existing building (or developer of unimproved property) executes and records a declaration of condominium.

Uniform Partnership Act (UPA):
Most states have adopted the "Uniform Partnership Act" (UPA), which permits real estate to be held in the partnership name. The "Uniform Limited Partnership Act" (ULPA) has also been widely adopted. It establishes the legality of the limited partnership entity and provides that realty may be held in the limited partnership's name. Profits and losses are passed through the partnership to each partner, whose individual tax situation determines the tax consequences.

Uniform Residential Landlord and Tenant Act (URLTA):
A uniform act intended to provide some consistency in regulating the relationship of landlord and tenant in residential leases. A number of states have adopted all or parts of the URLTA, or have enacted similar legislation.

uniform residential loan application:
A loan application form required by Freddie Mac and Fannie Mae.

Uniform Settlement Statement:
The standard HUD Form 1 required to be given to the borrower, lender and seller at the time or before settlement by the settlement agent in a transaction covered under the Real Estate Settlement Procedures Act. The lender must retain its copy for at least two years.

unilateral contract:
A one-sided contract wherein one party makes a promise so as to induce a second party to do something. The second party is not legally bound to perform; however, if the second party does comply, the first party is obligated to keep the promise.

unit-in-place method:
The appraisal method of estimating building costs by calculating the costs of all of the physical components in the structure with the cost of each item including its proper installation, connection, etc. Also called the segregated cost method. (See appraisal)

unity of ownership:
The four unities that are traditionally needed to create a joint tenancy-unity of title, time, interest and possession.

unity of possession:
One of the four "unities" required to create a joint tenancy. All joint tenants hold an undivided right to possession. (See joint tenancy, four unities)

unlawful detainer action:
A legal action that provides a method of evicting a tenant who is in default under the terms of the lease; a summary proceeding to recover possession of property.

universal agent:
A person empowered to do anything the principal could do personally. The universal agent's authority to act on behalf of the principal is virtually unlimited.

Unruh Civil Rights Act:
Forbids discrimination as to sex, race, color, religion, ancestry or national origin in accommodations and business establishments. Under this law there can be no arbitrary eviction, rent increase or withholding of services by virtually any landlord, including the owner of a non-owner-occupied single-family dwelling that is sold or leased for income or gain.

Example:

Len Lessor brings an action to evict Adam Lessee from one of his rental properties because Adam has long hair, associates with black people and homosexuals, receives public assistance and is a student.

Len will not be successful because all of those "reasons" are arbitrary and fail to establish good cause for an eviction.

unsecured:
Describes a debt instrument, such as a debenture, that is backed only by the debtor's promise to pay.

urea-formaldehyde:
First used in building materials, particularly insulation, in the 1970s. Gases leak out of the urea-formaldehyde foam insulation (UFFI) as it hardens and become trapped in the interior of a building. Once used to conserve energy by sealing crawl spaces and attics, it is longer used because emissions were found to be a health hazard. (See formaldehyde)

usury:
Charging interest at a higher rate than the maximum rate established by state law.

utility liens:
Municipalities often have the right to impose a specific, equitable, involuntary lien on the property of an owner who refuses to pay bills for municipal utility services. (See lien)

utility value:
The value in use to an owner-user, which includes a value of amenities attaching to a property; also known as subjective value.

u-value:
A measure used to indicate the insulating value of a window. The U-value measures the heat flow. The smaller the U-value, the better a material can stop heat flow.

valid contract:
A contract that complies with all the essentials of a contract and is binding and enforceable with all associated parties. (See contract)

VA loan:
A government-sponsored mortgage assistance program administered by the Department of Veterans Affairs. Under the Servicemen's Readjustment Act of 1944, eligible veterans and widows or widowers (who have not re-married) of veterans who died in service or from service-connected causes may obtain partially guaranteed loans for the purchase or construction of a house or to refinance existing mortgage debt.

value:
The measure of the monetary equivalent of a property. The four essential elements of value are utility, scarcity, demand and transferability. Cost does not equal value nor does equity.

There are various types of value, such as market value, tax assessed value, book value, insurance value, use value, par value, rental value and replacement value. By far, the type of value used for the largest number of real estate transactions is market value.

value in exchange:
The market value of a property.

value in use:
The value of a property as used for a specific purpose.

vapor retarders:
Special materials used in the installation of thermal insulation to reduce the passage of water vapor. These materials include treated papers, plastic sheets, and metallic foils.

variable costs:
Operating expenses that fluctuate with occupancy, such as utilities and maintenance costs.

variable lease:
Allows for increases in the rental charges during the lease period. One of the more common is the graduated lease which provides for specified rent increases at set future dates. Another is the index lease, which allows rent to be increased or decreased periodically based on changes in the consumer price index or some other indicator.

variance:
Permission obtained from governmental zoning authorities to build a structure or conduct a use that is expressly prohibited by the current zoning lows; an exception from the zoning laws. A variance gives some measure of elasticity to the zoning game.

variate:
A single item in a group.

vendee:
The purchaser of realty; the buyer. The buyer under a land contract.

vendor:
The seller of realty. The seller under a land contract. In some cases, the vendor may not be the owner--he or she might be the holder of an option.

verification:
Confirmation under oath of the truthfulness of a statement.

Veteran's Administration (VA):
Federal agency providing assistance to veterans, including the guarantee of VA mortgage loans.

veteran's exemption:
California war veterans may receive a $4,000 exemption on the full cash value of their homes.

void:
Having no legal force or binding effect; a nullity; not enforceable. A void agreement is no contract at all. A void contract need not be disaffirmed, nor can it be ratified. A contract for an illegal purpose (for example, gambling) is void. A voidable contract is one that is able to be voided. Voidable implies a valid act that may be rejected by an act of disaffirmance, rather than an invalid act that may be confirmed. For example, if a minor contracts to buy a diamond ring, the contract can be voided by the minor because of lack of sufficient age. If, however, the minor elects to enforce the contract, the contract is valid and the other party cannot assert the minor's lack of age as a defense.

voidable contract:
A contract that seems to be valid on the surface but may be rejected or disaffirmed by one or both of the parties.

volatile organic compounds:
Carbon compounds that tend to be emitted as gases into the air. Organic chemicals are widely used as ingredients in household products. Paints, varnishes, and wax all contain organic solvents, as do many cleaning, disinfecting, cosmetic, degreasing, and hobby products. Fuels are made up of organic chemicals. All of these products can release organic compounds while in use or in storage.

voluntary conveyance:
Voluntarily signing over to a lender the property pledged as collateral on a defaulted loan. (See deed in lieu of foreclosure)

voluntary lien:
A lien placed on property with the knowledge and consent of the property owner. (See lien)

waiver:
To give up a right voluntarily. (See workout)

walk-through:
A final inspection of a property just before closing. This assures the buyer that the property has been vacated, that no damage has occurred and that the seller has not taken or substituted any property contrary to the terms of the sales agreement. If damage has occurred, the buyer might ask that funds be withheld at the closing to pay for the repairs.

warehousing:
Warehousing is the assembly of mortgage loans into "pools." Securities that represent shares in these pools are then sold to investors. Examples of warehousing "agencies" include Fannie Mae/Federal National Mortgage Association and Ginnie Mae/Government National Mortgage Association.

warranty:
A promise that certain stated facts are true. A guaranty by the seller, covering the title as well as the physical condition of the property. A warranty is different from a representation in that a representation is a statement made in the course of negotiations leading up to the sale, but not incorporated into the contract. A warranty, on the other hand, is a statement in the contract asserting the truth of certain things about the property.

warranty deed:
A deed in which the grantor fully warrants good clear title to the premises; also called a general warranty deed. The usual covenants of title are covenant of seisin (possession), covenant of quiet enjoyment, covenant against encumbrances, covenant of warranty forever and covenant of further assurance. A warranty deed warrants the title, not the quality of construction of the real property. A warranty deed is used in most real estate deed transfers and offers the greatest protection of any deed.

waste:
An improper use or an abuse of a property by a possessor who holds less than fee ownership, such as a tenant, life tenant, mortgagor or vendee. Such waste ordinarily impairs the value of the land or the interest of the person holding the title or the reversionary rights.

water rights:
(See appropriative water rights, correlative water rights, littoral rights, right of correlative user, right of prior appropriation, riparian rights)

water table:
The natural level at which water is located in a particular area, be it above or below the surface of the earth.

water well:
An excavation where the intended use is for location, acquisition, development, or artificial recharge of ground water.

weekly activity report:
A weekly written report given to an owner by a listing broker reviewing the sales activities conducted by the broker to sell the listed property.

weighted average technique:
When reconciling appraisal approaches, the application of a weight to each approach for averaging. (See appraisal)

wetlands:
Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support vegetation typically adapted for life in saturated soils. Also referred to as bogs, marshes, sloughs and swamps.

wholesale agreements:
An agreement of a loan originator to work exclusively with a single lender.

will:
A written document, properly witnessed, providing for the transfer of title to property owned by the deceased, called the testator.

will-buy buyers:
Will-buy buyers are bargain-hunters looking for motivated "must-sell" sellers. (See must-sell sellers)

will-sell sellers:
Unmotivated sellers who put their property on the market at an above-market price. Sellers who do not need to sell but will if the price is right.

window well:
The dugout area just outside of a basement window that can be used to escape in the event of a fire.

workers' compensation acts:
Laws that require an employer to obtain insurance coverage to protect his or her employees who are injured in the course of their employment.

working level (WL):
A unit of measurement for documenting exposure to radon decay products. One working level is equal to approximately 200 picoCuries per liter.

workout:
The various ways to offset a foreclosure. (See moratorium, waiver)

wraparound mortgage:
A method of financing in which the new mortgage is placed in a secondary or subordinate position; the new mortgage includes both the unpaid principal balance of the first mortgage and whatever additional sums are advanced by the lender. Sometimes called an all-inclusive loan, an overriding loan or an overlapping loan. In essence, it is an additional mortgage in which another lender refinances a borrower by lending an amount over the existing first mortgage amount, without cashing out or disturbing the existence of the first mortgage. The entire loan combines two or more debts and is treated as a single obligation, and the wrap, or secondary, mortgagee pays the obligations of the first mortgage from the total payments received. While the wraparound lender makes the debt service payments on the first mortgage, the lender does not assume liability for this first lien. A default on the wraparound mortgage would usually result in a default on the underlying mortgage.

writ of execution:
A court order authorizing and directing an officer of the court (sheriff, police officer) to levy and sell property of the defendant to satisfy a judgment.

yield:
The return on an investment or the amount of profit, stated as a percentage of the amount invested; the rate of return. In real estate, yield refers to the effective annual amount of income that is being accrued on an investment. The yield on income property is the ratio of the annual net income from the property to the cost or market value of the property. The yield, or profit, to a lender is the spread or differential between the cost of acquiring the funds lent and the interest rate charged.

zero coupon bonds:
A single-payment bond that grows to its face value over a prescribed time period at a specific interest rate. All compound interest is tax-deferred until the bond is cashed.

zoning:
The regulation of structures and uses of property within designated districts or zones. Zoning regulates and affects such things as use of the land, lot sizes, types of structure permitted, building heights, setbacks and density (the ratio of land area to improvement area). (See aesthetic zoning, bulk zoning, comprehensive zoning, cumulative zoning, downzoning, exclusionary zoning, incentive zoning, non-cumulative zoning, partial zoning, spot zoning)

zoning ordinance:
An exercise of police power by a municipality to regulate and control the character and use of property.

zoning variance:
A zoning variance permits a change in the specifications required by the zoning ordinance.